Docket #0005 Date Filed: 5/25/2012

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Joint Administration Pending

RESIDENTIAL CAPITAL, LLC, et al.,	Case No. 12-ap-1671 (MG)
Plaintiffs,	Bankruptcy Case No. 12-12020 (MG)
v.	Joint Administration Pending
ALLSTATE INS. CO., THE OTHER PARTIES LISTED ON EXHIBIT A TO THE COMPLAINT, JOHN DOES 1-1000,	
Defendants.	

DECLARATION OF JOEL C. HAIMS

I, Joel C. Haims, hereby declare:

1. I am an attorney admitted to practice before the Courts of the State of New York and the U.S. District Court for the Southern District of New York and a partner with Morrison & Foerster LLP, proposed counsel to the Debtors and Debtors in Possession and counsel for plaintiffs in the above-captioned action, with respect to all Defendants except Federal Home Loan Bank of Boston and Federal Home Loan Bank of Chicago. I submit this declaration in support of Plaintiffs' Motion for a Stay or, in the Alternative, Injunctive Relief Enjoining Prosecution of Certain Litigation against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates.[1]

[1] Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Motion for Stay or, in the Alternative, Injunctive Relief Enjoining Prosecution of Certain Litigation Against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates.

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2. Attached as Exhibit 1 is a true and correct copy of the First Amended Complaint (excluding exhibits) filed in *Allstate Ins. Co. et al. v. GMAC Mortg., LLC et al.,* No. 27-CV-11-3480 (Minn. Dist. Ct., Hennepin Cnty. filed Apr. 15, 2011).

3. Attached as Exhibit 2 is a true and correct copy of the Complaint and Jury Demand (excluding appendices) filed in *Cambridge Place Inv. Mgmt., Inc. v. Morgan Stanley & Co. et al.*, No. 10-2741-BLS2 (Mass. Super. Ct., Suffolk Cnty. filed July 9, 2010).

4. Attached as Exhibit 3 is a true and correct copy of the Complaint and Jury Demand (excluding appendix) filed in *Cambridge Place Inv. Mgmt., Inc. v. Morgan Stanley & Co. et al.*, No. 11-0555-BLS2 (Mass. Super. Ct., Suffolk Cnty. filed Feb. 11, 2011)

5. Attached as Exhibit 4 is a true and correct copy of the Complaint (excluding exhibits and schedules) filed in *Fed. Deposit Ins. Corp. As Receiver for Citizens Nat'l Bank and Strategic Capital Bank v. Bear Stearns Asset Backed Securities I LLC et al.*, No. 12-cv-4000 (S.D.N.Y. filed May 18, 2012).

6. Attached as Exhibit 5 is a true and correct copy of the Complaint for Rescission and Damages and Demand for Jury Trial (excluding appendices) filed in *Fed. Home Loan Bank of Bos. v. Ally Fin. Inc. et al.*, No. 1:11-cv-10952-GAO (D. Mass.) (removed from Mass. Super. Ct. (No. 11-1533-BLS1), filed Apr. 20, 2011).

7. Attached as Exhibit 6 is a true and correct copy of the Corrected Amended Complaint for Rescission and Damages (excluding exhibits) filed in *Fed. Home Loan Bank of Chi. v. Ally Fin. Inc. et al.*, No. 10 CH 45033 (Ill. Cir. Ct., Cook Cnty. filed Apr. 8, 2011).

8. Attached as Exhibit 7 is a true and correct copy of the Amended Complaint for Rescission and Damages (excluding appendices) filed in *Fed. Home Loan Bank of Indianapolis v. Ally Fin. Inc. et al.*, No. 49D05 10 10 PL 045071 (Ind. Super. Ct., Marion Cnty. filed July 14, 2011).

9. Attached as Exhibit 8 is a true and correct copy of the Amended Complaint filed in *Huntington Bancshares Inc. v. Ally Fin. Inc. et al.*, No. 27-CV-11-20276 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 19, 2011).

10. Attached as Exhibit 9 is a true and correct copy of the First Amended Complaint filed in *Mass. Mutual Life Ins. Co. v. Residential Funding Co., LLC et al.*, No. 11-cv-30035-MAP (D. Mass. filed May 17, 2012).

11. Attached as Exhibit 10 is a true and correct copy of the Consolidated Second Amended Securities Class Action Complaint filed in *N.J. Carpenters Health Fund et al. v. Residential Capital, LLC et al.*, No. 08-cv-8781-HB (S.D.N.Y. filed Jan. 3, 2011).

12. Attached as Exhibit 11 is a true and correct copy of the Summons with Notice filed in *SeaLink Funding Ltd. v. Royal Bank of Scotland Grp. PLC et al.*, No. 650484/2012 (N.Y. Sup. Ct., N.Y. Cnty., summons filed Feb. 21, 2012).

13. Attached as Exhibit 12 is a true and correct copy of the Complaint filed in *Stichting Pensioenfonds ABP v. Ally Fin. Inc. et al.*, No. 27-CV-11-20426 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 11, 2011).

14. Attached as Exhibit 13 is a true and correct copy of the Amended Complaint (excluding exhibits) filed in *Thrivent Fin. for Lutherans et al. v. Residential Funding Co., LLC et al.*, No. 27-CV-11-5830 (Minn. Dist. Ct., Hennepin Cnty. filed Oct. 24, 2011).

15. Attached as Exhibit 14 is a true and correct copy of the Amended Complaint for Violations of the Federal Securities Laws and New York Common Law Fraud filed in *Union Cent. Life Ins. Co. et al. v. Credit Suisse First Bos. Mortg. Sec. Corp. et al.*, No. 11-cv-2890-GBD (S.D.N.Y. filed May 4, 2012).

16. Attached as Exhibit 15 is a true and correct copy of the Amended Complaint (excluding exhibits) filed in *Western & Southern Life Ins. Co. v. Residential Funding Co., LLC et al.*, No. A1105042 (Ohio Ct. of Comm. P., Hamilton Cnty. filed Sept. 9, 2011).

17. Attached as Exhibit 16 is a true and correct copy of the Amended Complaint filed in *FGIC v. GMAC Mortg., LLC et al.*, No. 11-cv-9729 (S.D.N.Y.) (removed from N.Y. Sup. Ct. (No. 653302/2011), filed Mar. 30, 2012).

18. Attached as Exhibit 17 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-00338 (S.D.N.Y.) (removed from N.Y. Sup. Ct. (No. 653623/2011), filed Dec. 27, 2011).

19. Attached as Exhibit 18 is a true and correct copy of the Complaint (excluding exhibits) filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-00339 (S.D.N.Y.) (removed from N.Y. Sup. Ct. (No. 653622/2011), filed Dec. 27, 2011).

20. Attached as Exhibit 19 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.,* No. 12-cv-00340 (S.D.N.Y.) (removed from N.Y. Sup. Ct. (No. 653621/2011), filed Dec. 27, 2011).

21. Attached as Exhibit 20 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-00341 (S.D.N.Y.) (removed from N.Y. Sup. Ct. (No. 653493/2011), filed Dec. 15, 2011).

22. Attached as Exhibit 21 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-0780 (S.D.N.Y. filed Jan. 31, 2012).

23. Attached as Exhibit 22 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-1601 (S.D.N.Y. filed Mar. 5, 2012).

24. Attached as Exhibit 23 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-1658 (S.D.N.Y. filed Mar. 6, 2012).

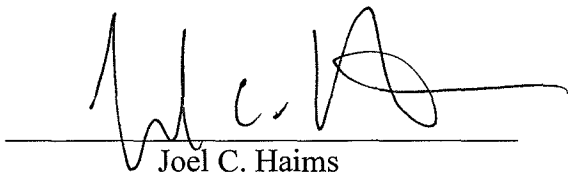
25. Attached as Exhibit 24 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-1818 (S.D.N.Y. filed Mar. 12, 2012).

26. Attached as Exhibit 25 is a true and correct copy of the Complaint filed in *FGIC v. Ally Fin. Inc. et al.*, No. 12-cv-1860 (S.D.N.Y. filed Mar. 13, 2012).

27. Attached as Exhibit 26 is a true and correct copy of the Complaint filed in *Assured Guar. Mun. Corp. v. GMAC Mortg., LLC et al.*, No. 12-cv-3776 (S.D.N.Y. filed May 11, 2012).

28. Attached as Exhibit 27 is a true and correct copy of the Complaint (excluding exhibits) filed in *Fed. Hous. Fin. Agency v. Ally Fin., Inc.*, No. 11-cv-07010 (S.D.N.Y.) (removed from N.Y. Sup. Ct. (No. 652441/2011), filed Sept. 2, 2011).

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 24, 2012 in New York, New York.



Joel C. Haims

Exhibit 1

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BY HENN. CO. DISTRICT COURT ADMINISTRATOR DEPUTY

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER/CIVIL

Allstate Insurance Company, Allstate Life Insurance Company, Allstate Bank (f/k/a Allstate Federal Savings Bank), Allstate New Jersey Insurance Company, American Heritage Life Insurance Company, First Colonial Insurance Company, Allstate Life Insurance Company of New York, Allstate Retirement Plan, and Kennett Capital, Inc.,

Plaintiffs,

v.

GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation), Residential Funding Company, LLC (f/k/a Residential Funding Corporation), Residential Funding Securities, LLC (d/b/a GMAC RFC Securities, f/k/a Residential Funding Securities Corporation), Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., and Residential Asset Securities Corporation,

Defendants.

Civil File No. 27-CV-11-3480
Honorable Margaret A. Daly

FIRST AMENDED COMPLAINT

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Plaintiffs Allstate Insurance Company, Allstate Life Insurance Company, Allstate Bank (f/k/a Allstate Federal Savings Bank), Allstate New Jersey Insurance Company, American Heritage Life Insurance Company, First Colonial Insurance Company, Allstate Life Insurance Company of New York, Allstate Retirement Plan, and Kennett Capital, Inc. (collectively, "Allstate"), by and through their attorneys, bring this action against GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation), Residential Funding Company, LLC (f/k/a Residential Funding Corporation), Residential Funding Securities, LLC (d/b/a GMAC RFC Securities, f/k/a Residential Funding Securities Corporation), Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., and Residential Asset Securities Corporation, and allege as follows:

NATURE OF ACTION

1. This action arises out of the defendants' fraudulent sale of residential mortgage-backed securities (the "Certificates") to Allstate. Whereas Allstate was made to believe it was buying highly-rated, safe securities backed by pools of loans with specifically-represented risk profiles, in fact the defendants knew the pool was a toxic mix of loans given to borrowers that could not afford the properties, and thus were highly likely to default.

2. The defendants made numerous material misrepresentations and omissions regarding the riskiness and credit quality of the Certificates in registration statements, prospectuses, prospectus supplements, preliminary term sheets, final term sheets, and other written materials (the "Offering Materials"). For example:

(i) ***Underwriting guidelines.*** The Offering Materials each represented that a particular, reasonable underwriting process was followed to ensure that only loans that the borrower could repay would be included in the pool underlying the Certificates (the "Mortgage Loans"). In fact, the defendants systematically ignored the disclosed underwriting standards in

originating or otherwise acquiring non-compliant loans. Confidential witness testimony confirms that senior executives at the defendants' affiliated lender were trained on how to manipulate the data fed into the system (including by submitting as many as twenty-five different applications) until the loan was approved. It confirms that defendants instructed its affiliated lender to increase the number of applications that used less documentation – which, of course, is the type of applications that can be even more easily manipulated. It also confirms underwriters within the defendants would review files to determine if they could be "tweaked" enough to get a loan approved – including by making undocumented assumptions about the borrower's debt-to-income ratios. It is not surprising, then, that a recent review of the loan files underlying some of Allstate's Certificates by the defendants' own insurer revealed a pervasive lack of proper documentation, facially absurd (yet unchecked) claims about the borrower's purported income, and the routine use of at least three different programs that circumvented the underwriting guidelines altogether. Based on data compiled from third-party due diligence firms, the federal Financial Crisis Inquiry Commission ("FCIC") noted (at 187) in its January 2011 report:

> The Commission concludes that firms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. ***Potential investors were not fully informed or were misled*** about the poor quality of the mortgages contained in some mortgage-related securities. ***These problems appear to be significant.***

(ii) ***Percentage of Known Non-Conforming Loans.*** The defendants fraudulently omitted the fact that both the underwriters' internal due diligence, as well as third-party due diligence firms, had identified numerous loans that did not conform to the stated underwriting guidelines. Nor did they disclose that many of those same non-conforming loans had been "waived" into the collateral pools underlying the Certificates despite not having any purported "compensating" factors. Data recently made available from one of the largest due diligence firms – which worked for many of the underwriters here – confirms this was occurring

on a staggering scale. This not only confirms the results of Allstate's statistical analysis of the loans at issue, but also confirms the defendants' knowledge of those underwriting violations.

(iii) ***Owner Occupancy Statistics.*** The Offering Materials made specific representations regarding the percentage of borrowers who would be occupying the property being mortgaged – a key risk characteristic given that borrowers are less likely to walk away from properties they live in, as compared to properties being used as a vacation home or as an investment. Confidential witness testimony confirms underwriters had what information they needed in the loan files (which Allstate was not given access to) to double-check these figures. But analytical tools recently made available to investors confirm that in truth, a far greater percentage of the loans underlying Allstate's Certificates were in fact given to borrowers who lived elsewhere.

(iv) ***Loan-to-Value Ratios.*** The Offering Materials represented that the underlying loans had specific loan-to-value ("LTV") and combined loan-to-value ("CLTV") ratios. The LTV and CLTV represent the size of the borrower's obligations as compared to the value of the property being used as collateral. The CLTV is the LTV after all loans are considered, not just the first mortgage. These are also key risk metrics, because they represent the equity "cushion" that borrowers have and the likelihood of repayment to lenders upon foreclosure. Analytical tools recently made available to investors confirm that the Offering Materials vastly overstated the value of the collateral being included in the loan pools, and hid additional liens that had been placed on the properties. Confidential witness testimony confirms defendants were relying on facially absurd "comp" calculations – such as treating a house on a canal the same as a beach house – and were relying on arbitrary comp 'mark-ups' which could increase the purported value by as much as 25%. It also confirms that certain appraisers

submitted the same exact analysis for every application – indicating no investigative work was actually being done – yet those companies' appraisals were still approved for use in these calculations.

(v) ***Purpose and Use of Exceptions.*** The Offering Materials represented that loans that did not meet certain criteria were approved as "exceptions" only on the basis of countervailing features of the borrowers' risk profiles that 'made up' for negative aspects of the risk profile. In fact, "exceptions" were instead used as a way to increase loan volume by circumventing the applicable underwriting guidelines. And a recent review of the loan files underlying some of Allstate's Certificates by the defendants' own insurer revealed that non-compliant Mortgage Loans did not have any identified countervailing features, and that the defendants abused at least three bulk-purchase and bulk-approval procedures to create loan pools outside of the disclosed underwriting guidelines.

3. As summarized below, Allstate purchased over ***half a billion dollars*** in the defendants' mortgage-backed securities in reliance on these and the other misrepresentations and omissions. The purchases are further detailed in the exhibits to this complaint, which are all incorporated as if set forth fully herein.

Transaction	Total Investment	Further Details
RALI 2005-QA2	$24,371,448	Exh. A, B, C, & D
RALI 2005-QS6	$7,710,938	Exh. A, B, C, & E
RALI 2006-QO3	$15,000,000	Exh. A, B, C, & F
RALI 2006-QS14	$52,343,814	Exh. A, B, C, & G
RALI 2007-QH6	$29,974,320	Exh. A, B, C, & H
RAMP 2004 RZ4	$10,520,000	Exh. A, B, C, & I
RAMP 2004-RZ2	$20,596,062	Exh. A, B, C, & J
RAMP 2005-RS4	$22,338,000	Exh. A, B, C, & K
RAMP 2006-RS3	$33,000,000	Exh. A, B, C, & L
RAMP 2006-RZ3	$12,003,750	Exh. A, B, C, & M
RASC 2005-KS3	$14,065,000	Exh. A, B, C, & N
RASC 2005-KS4	$10,000,000	Exh. A, B, C, & O
RFMSI 2005-S8	$10,031,192	Exh. A, B, C, & P

Transaction	Total Investment	Further Details
RFMSI 2006-S6	$22,031,492	Exh. A, B, C, & Q
RFMSII 2005-HI3	$6,076,086	Exh. A, B, C, & R
RFMSII 2005-HS1	$18,229,692	Exh. A, B, C, & S
RFMSII 2005-HS2	$44,020,893	Exh. A, B, C, & T
RFMSII 2005-HSA1	$6,471,308	Exh. A, B, C, & U
RFMSII 2006-HI4	$30,317,751	Exh. A, B, C, & V
RFMSII 2006-HI5	$38,468,851	Exh. A, B, C, & W
RFMSII 2007-HI1	$29,985,573	Exh. A, B, C, & X
RFMSII 2007-HSA2	$21,996,880	Exh. A, B, C, & Y
RFMSII 2007-HSA3	$24,991,433	Exh. A, B, C, & Z
GMACM 2005-HE1	$20,000,000	Exh. A, B, C, & AA
GMACM 2006-HE3	$29,999,622	Exh. A, B, C, & BB

4. Allstate invested in the Certificates as part of a broader plan to invest in a diverse array of mortgage-backed securities. Allstate typically purchased senior classes of mortgage-backed securities (i.e., those rated AAA/Aaa or AA/Aa by the rating agencies Standard & Poor's and Moody's Investors Service). Allstate purchased the Certificates to generate income and total return through safe investments. But Allstate also purchased these securities with the expectation that the investments could be – and indeed some would be and were – sold on the secondary market.

5. The systemic (but hidden) abandonment of the disclosed underwriting guidelines has predictably led to soaring default rates in the mortgage loans underlying the Certificates, resulting in a drastic drop in the value of the Certificates. For instance, despite the fact that most of the of the Certificates started out with AAA ratings – the same rating given to treasury bills backed by the full faith and credit of the United States government – over 75% are now not even rated as investment-grade securities. These problems are so drastic and their onset was so rapid (in comparison to the long-term security of the investments Allstate thought it was purchasing) that the poor performance to date of the Certificates is itself powerful evidence that the Mortgage Loans were not underwritten according to the procedures represented to Allstate. With the

underlying loans performing so poorly, the value of Allstate's Certificates has plummeted, causing Allstate to incur significant losses. These losses were not caused by the downturn in the U.S. housing market, but by defendants' faulty underwriting.

6. As the FCIC concluded in its January 2011 report (at 224):

> As mortgage securities lost value, investors found significant deficiencies in securitizer's due diligence on the mortgage pools underlying the mortgage-backed securities as well as in their disclosure about the characteristics of those deals. As private mortgage insurance companies found similar deficiencies in the loans they insured, they have denied claims to an unprecedented extent . . .

The report also recounted (at 224) that investigations by the government-sponsored entities Fannie Mae and Freddie Mac similarly found loan disclosures consistently lacking. For instance, "Freddie reviewed $76.8 billion of loans . . . and found $21.7 billion to be ineligible, meaning they did not meet representations and warranties."

PARTIES

7. ***The Plaintiffs.*** Plaintiff Allstate Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Illinois, with its principal place of business in Northbrook, Illinois. It is the nation's largest publicly-held personal-lines insurer, selling property and casualty insurance. Allstate Insurance Company is licensed in the state of Minnesota and writes insurance products within this State. Allstate Insurance Company is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation.

8. Plaintiff Allstate Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Illinois, with its principal place of business in Northbrook, Illinois. It is licensed in the State of Minnesota and sells life, accident, and health

insurance products in this State. Allstate Life Insurance Company is a wholly-owned subsidiary of Allstate Insurance Company.

9. Plaintiff Allstate Bank, formerly known as Allstate Federal Savings Bank, is a federally-chartered thrift institution that provides retail bank products and services. It is a wholly-owned subsidiary of The Allstate Corporation, and has its registered office in Northbrook, Illinois.

10. Plaintiff Allstate New Jersey Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Illinois, with its statutory office in Northbrook, Illinois. It is licensed in the states of Illinois and New Jersey, writing property and casualty insurance products in New Jersey.

11. Plaintiff American Heritage Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Florida, with its principal place of business in Jacksonville, Florida. It sells life, accident, and health insurance and annuity products. American Heritage Life Insurance Company is a wholly-owned subsidiary of American Heritage Life Investment Corporation, which is a Delaware corporation. American Heritage Life Investment Corporation is a wholly-owned subsidiary of The Allstate Corporation.

12. Plaintiff First Colonial Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Florida, with its principal place of business in Jacksonville, Florida. It sells property and casualty insurance products. It is a wholly-owned subsidiary of American Heritage Life insurance Company

13. Plaintiff Allstate Life Insurance Company of New York is an insurance company formed under the laws of, and domiciled in, the State of New York, with its principal place of business in Hauppauge, New York. It sells life, accident and health insurance and annuity

products. Allstate Life Insurance Company of New York is a wholly-owned subsidiary of Allstate Life Insurance Company.

14. Plaintiff Allstate Retirement Plan is an ERISA plan sponsored by Allstate Insurance Company.

15. Plaintiff Kennett Capital, Inc. is a Delaware corporation and an indirect wholly-owned subsidiary of The Allstate Corporation.

16. ***The Defendants.*** All of the defendants in this action are part of the same corporate family, and acted together to control the entire creation, marketing, and sale of the Certificates at issue here, from loan origination, to mortgage pooling, to securities underwriting, to sale to Allstate. Allstate is not seeking relief against any bankrupt entity. It is, however, seeking relief from the defendants, including their successors-in-interest (if any), by reason of a sale or transfer of all or a portion of its assets.

17. ***Seller, Sponsor, and Servicer Defendants.*** Defendant Residential Funding Company, LLC, formerly known as Residential Funding Corporation, is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. It is engaged in the business of, among other things, originating and acquiring residential mortgage loans and selling those loans through securitization programs.

18. Defendant GMAC Mortgage, LLC, formerly known as GMAC Mortgage Corporation, is a Delaware limited liability company with its principal place of business in Horsham, Pennsylvania. It acquired, originated, and serviced residential loans, and sponsored the securitization of some of the mortgage loans at issue here.

19. ***Affiliated Underwriter Defendant.*** Defendant Residential Funding Securities, LLC, doing business as GMAC RFC Securities and formerly known as Residential Funding

Securities Corporation, is a Delaware limited liability company and registered broker-dealer with its principal place of business in Minneapolis, Minnesota. Residential Funding Securities, LLC's banking operations are limited to broker-dealer functions in the issuance and underwriting of residential and commercial mortgage-backed securities. It served as a co-underwriter for the offerings at issue here except RALI 2005-QA2, RALI 2006-QS14, RALI 2006-QO3, RAMP 2004-RZ4, RAMP 2006-RS3, RASC 2005-KS3, RASC 2005-SK4, and RFMSI 2006-S6.

20. ***Depositor Defendants.*** The Depositors are considered issuers of the Certificates within the meaning of Section 2(a)(4) of the Securities Act of 1933, 15 U.S.C. §77b(a)(4), and in accordance with Section 11(a), 15 U.S.C. §77k(a).

21. Defendant Residential Accredit Loans, Inc. is a Delaware corporation and a limited-purpose indirect subsidiary of Residential Capital with its principal place of business in Minneapolis, Minnesota. It was the Depositor for certain of the offerings in which Allstate invested, the Registrant for certain Registration Statements filed with the SEC, and an issuer of certain mortgage-backed Certificates purchased by Allstate.

22. Defendant Residential Asset Mortgage Products, Inc. is a Delaware corporation and a limited-purpose indirect subsidiary of Residential Capital with its principal place in Minneapolis, Minnesota. It was the Depositor for certain of the offerings in which Allstate invested, the Registrant for certain Registration Statements filed with the SEC, and an issuer of certain mortgage-backed Certificates purchased by Allstate.

23. Defendant Residential Funding Mortgage Securities I, Inc. is a Delaware corporation and a limited-purpose subsidiary of Residential Capital with its principal place of business in Minneapolis, Minnesota. It was the Depositor for certain of the offerings in which

Allstate invested, the Registrant for certain Registration Statements filed with the SEC, and an issuer of certain mortgage-backed Certificates purchased by Allstate.

24. Defendant Residential Funding Mortgage Securities II, Inc. is a Delaware corporation and a limited purpose subsidiary of Residential Capital with its principal place of business in Minneapolis, Minnesota. It was the Depositor for certain of the offerings in which Allstate invested, the Registrant for certain Registration Statements filed with the SEC, and an issuer of certain mortgage-backed Certificates purchased by Allstate.

25. Defendant Residential Asset Securities Corporation is a Delaware corporation and limited purpose subsidiary of Residential Capital with its principal place of business in Minneapolis, Minnesota. It was the Depositor for certain of the offerings in which Allstate invested, the Registrant for certain Registration Statements filed with the SEC, and an issuer of certain mortgage-backed Certificates purchased by Allstate.

26. ***Relevant Non-Parties.*** Ally Financial Inc. is a Delaware corporation with its principal place of business in Detroit, Michigan. On November 30, 2006, General Motors sold a 51% interest in General Motors Acceptance Corporation to FIM Holdings LLC, and changed its name to GMAC, LLC. On June 30, 2009, GMAC, LLC changed its name to GMAC, Inc., and on May 10, 2010, GMAC, Inc. changed its name to Ally Financial Inc. It is now a lending, independent, globally-diversified financial services firm. It is the direct or indirect parent of all the defendants in this action.

27. GMAC Mortgage Group, LLC, formerly known as GMAC Mortgage Group, Inc., is a Delaware limited liability company with its principal place of business in Horsham, Pennsylvania. It is a wholly-owned subsidiary of Ally Financial Inc., and the direct parent of Residential Capital, LLC.

28. Residential Capital, LLC, formerly known as Residential Capital Corporation, is a Delaware limited liability company, an indirect subsidiary of Ally Financial Inc., and a direct subsidiary of GMAC Mortgage Group, LLC, with its principal place of business in Minneapolis, Minnesota. Residential Capital LLC is the direct or indirect parent company of the depositor defendants, Residential Funding Securities, LLC, Residential Funding Company, LLC, and GMAC Mortgage, LLC. Residential Capital and its subsidiaries originate, purchase, sell, and securitize residential mortgage loans primarily in the United States, provide primary and master servicing to investors in residential mortgage loans and securitizations, and provide collateralized lines of credit (referred to as warehouse lending facilities) to other originators.

29. Homecomings Financial, LLC, formerly known as Homecomings Financial Network, Inc., was an affiliate of defendants. Before its lending operations were shut down, it was a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. It originated loans for securitization by the Residential Funding defendants.

30. The Certificates for each securitization relevant to this action were issued by a trust. The issuing trusts are identified in Exhibit A along with other details regarding Allstate's purchases.

31. At all relevant times, the defendants committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this complaint. Any allegation about acts of the corporate defendants means that those acts were committed through their officers, directors, employees, agents, and/or representatives while those individuals were acting within the actual or implied scope of their authority.

JURISDICTION AND VENUE

32. This Court has personal jurisdiction over the defendants because the defendants transact business in Minnesota and because they committed acts in Minnesota causing injury to the plaintiffs.

33. Venue in this Court is proper under Minn. Stat. § 542.09 (2010) because the cause of action arose, in part, in Hennepin County and because defendants Residential Funding Company, LLC, Residential Funding Securities, LLC, Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., and Residential Asset Securities Corporation reside within this county.

34. On information and belief, based on, among other things, the defendants' principal place of businesses, a majority of the acts giving rise to the claims set forth in this complaint occurred in Minnesota. Specifically, on information and belief: (a) the representations at issue were prepared and/or approved in Minnesota; (b) decisions regarding which loans to securitize were made in and directed from Minnesota; (c) the defendants' underwriting policies and practices were set and implemented in Minnesota; and (d) many of the collateral loans were originated or acquired in Minnesota. Further, on information and belief, many of the key witnesses and documents still reside here in Minnesota.

BACKGROUND

35. ***The Mechanics of Mortgage Securitization.*** Mortgage pass-through securities or certificates represent interests in a pool of mortgage loans; the securities are "shares" in the pool that are sold to investors. The pass-through securities entitle the holder to payments from the pool of mortgages. Although the structure and underlying collateral may vary by offering, the basic principle of pass-through securities remains the same: the cash flow from the pool of

mortgages is "passed through" to the securities holders when payments are made by the underlying mortgage borrowers.

36. The initial step in creating a mortgage pass-through security is the acquisition by a "depositor" of an inventory of loans from a "sponsor" or "seller," which either originates the loans or acquires the loans from other mortgage originators. This "sponsor" of a mortgage-backed security ("MBS") was often created by a financial institution, such as the defendants.

37. Upon acquisition, the depositor transfers, or deposits, the acquired pool of loans to an "issuing trust." The depositor then securitizes the pool of loans in the issuing trust so that the rights to the cash flows from the pool can be sold to investors. The securitization transactions are structured such that the risk of loss is divided among different levels of investment, or "tranches." Tranches consist of multiple series of related securities offered as part of the same offering, each with a different level of risk and reward. Any losses on the underlying loans – whether due to default, delinquency, or otherwise – are generally applied in reverse order of seniority. As such, the most senior tranches of pass-through securities receive the highest credit ratings. Junior tranches, being less insulated from risk, typically obtain lower credit ratings.

38. Once the tranches are established, the issuing trust passes the securities or certificates back to the depositor, who becomes the issuer of the securities. The depositor then passes the securities to one or more underwriters, who offer and sell the securities to investors in exchange for cash that is passed back to the depositor, minus any fees owed to the underwriters.

39. The underwriters, such as defendants, play a critical role in the securitization process by purchasing the securities from the issuing trust through a depositor and then selling

them to investors. Significantly, the underwriters provide the information that potential investors like Allstate use to decide whether to purchase the securities.

40. Because the cash flow from the loans in the collateral pool of a securitization is the source of payments to holders of the securities issued by the trust, the credit quality of the securities depends upon the credit quality of the loans in the collateral pool. The most important information about the credit quality of the loans is contained in the "loan files" that the mortgage originator develops while making the loans.

41. For residential mortgage loans, each loan file normally contains documents including the borrower's application for the loan; verification of the borrower's income, assets, and employment; references; credit reports on the borrower; an appraisal of the property that will secure the loan and provide the basis for measures of credit quality, such as loan-to-value ratios; and a statement of the occupancy status of the property. The loan file also typically contains the record of the investigation by the loan originator of the documents and information provided by the borrower, as well as the detailed notes of the underwriter setting forth the rationale for the making of each loan. Investors like Allstate were not given access to the loan files and they must rely on the representations made by the sponsors and underwriters in the Offering Materials.

42. The collateral pool for each securitization usually includes thousands of loans. Instead of having each potential investor reviewing all of these loan files, the underwriters are generally responsible for gathering, verifying, and presenting to potential investors accurate and complete information about the credit quality and characteristics of the loans that are deposited into the issuing trust. In accordance with industry standards, this involves performing due diligence on the loan pool and the originators to ensure the representations being made to

investors are accurate. Investors, like Allstate, rely on the offering materials to correctly describe the quality and nature of the loans that form the security for their investments.

43. Traditionally, mortgage originators financed their mortgage business through customer deposits, retained ownership of the loans they originated, and directly received the mortgage payment streams. When an originator held a mortgage through the term of the loan, the originator also bore the risk of loss if the borrower defaulted and the value of the collateral was insufficient to repay the loan. As a result, the originator had a strong economic incentive to verify the borrower's creditworthiness through prudent underwriting and to obtain an accurate appraisal of the value of the underlying property before making the mortgage loan.

44. Mortgage loan securitization, however, shifted the traditional "originate to hold" model to an "originate to distribute" model, in which originators sell residential mortgages and transfer credit risk to investors through the issuance and sale of RMBS (residential MBS). Under the new model, originators no longer hold the mortgage loans to maturity. Instead, by selling the mortgages to trusts, which provide their securities to investors, the originators obtain the funds to make more loans. Securitization also enables originators to earn most of their income from transaction and loan-servicing fees, rather than from the spread between interest rates paid on deposits and interest rates received on mortgage loans, as in the traditional model. Thus, securitization gives originators an incentive to increase the number of mortgages they issue regardless of credit quality. However, contractual terms, adherence to solid underwriting standards, and good business practices obligate originators to underwrite loans in accordance with their stated policies and to obtain accurate appraisals of the mortgaged properties.

45. Originally, most mortgage securitizations were conducted through the major Government Sponsored Enterprises (the "Agencies"), *i.e.*, the Federal National Mortgage

Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Government National Mortgage Association ("Ginnie Mae"). The Agencies purchased loans from originators and securitized the loans. These Agency securitizations had high credit quality because the Agencies required the underlying loans to be originated in accordance with strict underwriting guidelines. Most non-Agency mortgage securitizations during this period also had relatively high credit quality because they typically complied with the Agencies' underwriting standards.

SUBSTANTIVE ALLEGATIONS

I. THE DEFENDANTS ABUSED THEIR CONTROL OF THE RAPIDLY-EXPANDING SECURITIZATION PROCESS

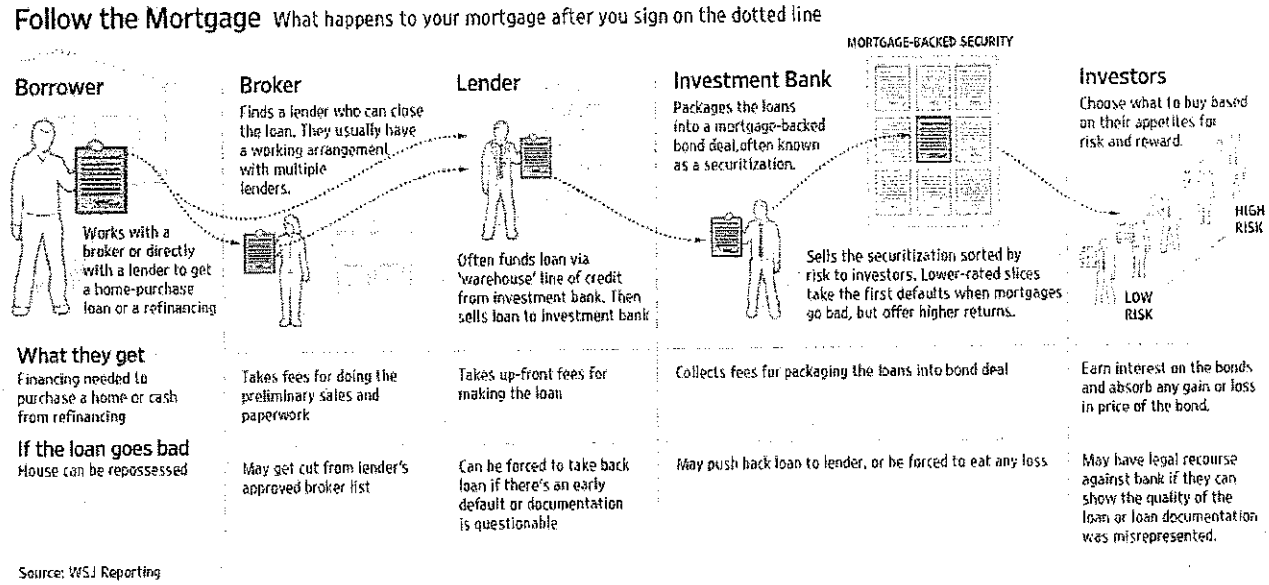
A. Evidence of a Rise in Securitization Volume Leading to a Decline in Underwriting Standards

46. The FCIC "reviewed millions of pages of documents, interviewed more than 700 witnesses, and held 19 days of public hearings in New York, Washington, D.C., and communities across the country." In the resulting January 2011 report, the FCIC stated (at xvi):

> In this report, we detail the events of the crises . . . [I]t was the collapse of the housing bubble – fueled by low interest rates, easy and available credit, scant regulation, and toxic mortgages – that was the spark that ignited a string of events, which led to a full-blown crises in the fall of 2008. Trillions of dollars in risky mortgages had become embedded throughout the financial system, as mortgage-related securities were packaged, repackaged, and sold to investors around the world.

47. The report noted (at 22-23): "[I]t has been estimated that ultimately as many as 13 million households in the United States may lose their homes to foreclosure." Already, according to the report, "four million families have lost their homes to foreclosure and another four and a half million have slipped into the foreclosure process or are seriously behind on their mortgage payments."

48. As above, in a securitization, mortgages are aggregated, then securities are sold that are backed by the resulting mortgage pools. The cash flows from the pooled loans, in the form of payments of interest and principal, are used to make payments on the securities. The purchase of each Certificate here was thus the purchase of a right to participate in the cash flows generated by the pool of Mortgage Loans. The *Wall Street Journal* has summarized the securitization process as follows:



49. Also as above, traditional securitizations were primarily done in conjunction with the government-sponsored entities Fannie Mae and Freddie Mac. Those entities limited the types of loans that could be securitized through them, and their perceived government backing simultaneously lowered the risk.

50. In the early 2000s, as interest rates at historic lows were pushing down the profits of traditional lending and even securitization through Fannie Mae or Freddie Mac, banks began to look for ways to increase the fees they could generate. Banks, lenders, and securitizers began increasingly focusing on creating products outside the traditional lending guidelines, expanding the number of borrowers who could purportedly qualify for loans while also enabling themselves

to charge those borrowers much higher fees than they would have realized on conforming loan terms.

51. For instance, Confidential Witness 2 ("CW2") worked as a director of GMAC RFC Securities for three years, until 2005. According to CW2, in the 2004-2005 time frame, "people were very focused on increasing volume production," and not much else. "Every year was projected to be a record year." The only way to achieve those projections, according to CW2, was to "loosen the underwriting guidelines." According to CW2, people at GMAC RFC Securities "didn't see the forest for the trees."

52. Similarly, Confidential Witness 4 ("CW4") was a Senior Underwriter at GMAC from 1997 to 2008. According to CW4, GMAC was "always being compared to Countrywide" and "we wanted to be number one," and so GMAC "did what Countrywide did" to keep up with this main competitor.

53. A larger perceived potential borrower base and higher profits per borrower created a huge incentive to increase lending volume. The number of loans issued on terms riskier than those that could be securitized through Fannie Mae or Freddie Mac skyrocketed. For instance, according to an April 7, 2010 report by the FCIC, non-conforming loans went from around $670 billion in 2004 to over $2 trillion in 2006. The same report indicates that Residential Funding Corporation was the eighth-largest sponsor of non-agency mortgage-backed securities in 2007.

54. Such a huge increase in mortgage volume in a short period of time also created the problem of where the money to actually fund those loans would come from, and who would bear the risk. As the FCIC put it in its January 2011 report (at 7): "under the radar, the lending and financial services industry had mutated." It found (at 70) that "[s]ecuritization and subprime

origination grew hand in hand," as (at 125) "[t]he nonprime mortgage securitization process created a pipeline through which risky mortgages were conveyed and sold throughout the financial system. The pipeline was essential to the origination of the burgeoning numbers of high-risk mortgages."

55. In other words, simultaneous with a shift away from non-traditional loans was a focus on an "originate and distribute" business model. In a traditional "originate and hold" business model, the lender is economically vested in establishing the creditworthiness of the borrower and the true value of the underlying property, as it would be stuck with any resulting losses. In an "originate and distribute" model, the incentives are vastly different. The risk of non-payment was transferred to the investors, and thus the only incentive for the originators, underwriters, and others in the securitization chain was to pump out as many loans as possible, the more exotic (and thus the higher-fees) the better – as long as they could be sold. The defendants were willing to abandon sound underwriting practices because they were routinely placing the risk onto investors like Allstate by misrepresenting the resulting loans to ensure their marketability. As the FCIC concluded (at 125): "The originate-to-distribute model undermined responsibility and accountability for the long-term viability of the mortgages and mortgage-related securities and contributed to the poor quality of mortgage loans."

56. Because the underlying loans were on non-traditional terms, the banks could offer investors higher rate of returns on the securitized pools even as the deal's structure (such as, for instance, including "extra" Mortgage Loans in the collateral pool) purportedly made the investments safe. Unknown to investors like Allstate, however, they were in fact much riskier because the defendants misrepresented many aspects of the Mortgage Loans. For instance, though the defendants may have disclosed that the loan pool included adjustable-rate mortgages

(which may be riskier than fixed-rate as the borrower may be unable to afford his or her monthly payment should interest rates rise), they overstated how many loans were owner-occupied (owner-occupied properties have lower risks), understated the loan pools' average loan-to-value ratios (suggesting the owners had more of an equity "cushion" than they did), misrepresented the amount of verification of the borrower's assets and income that had been done (understating the risk that the borrower could not actually afford the monthly payments), and omitted to inform Allstate about the high number of rejected loans that were "waived" in by the underwriters (making representations regarding the quality of the underwriting process even more misleading).

57. Each misrepresentation and omission created an additional, hidden layer of risk well beyond that known to be associated with an "adjustable rate mortgage" or a "home equity loan" in the abstract. In short, by misrepresenting the true risk profile of the loan pools, the defendants defrauded investors like Allstate into accepting the risks created by the defendants' shoddy lending and underwriting practices. A managing director of a financial services analyst quoted in the FCIC's report (at 6) described the financial products created at this time as being a lot like "cheap sangria," "[a] lot of cheap ingredients repackaged to sell at a premium . . . it might taste good for a while, but then you get headaches later and you have no idea what's really inside."

58. The FCIC report summarized (at 28, emphasis added):

> [W]e follow the profound changes in the mortgage industry, from the sleepy days when local lenders took full responsibility for making and servicing 30-year loans to a new era in which the idea was to sell the loans off as soon as possible, so that they could be packaged and sold to investors around the world. New mortgage products proliferated, and so did new borrowers. ***Inevitably, this became a market in which the participants – mortgage brokers, lenders, and Wall Street firms – had a greater stake in the quantity of mortgages signed up and sold than in their quality.***

59. The perverse incentives created by the move to "originate and distribute" did not just operate on an entity level, but flowed down to the individual decisionmakers within the defendants. The FCIC's January 2011 report noted (at 6) that "[b]ondsalesman earned multi-million dollar bonuses packaging and selling new kinds of loans, offered by new kinds of lenders, into new kinds of investment products that were deemed safe but possessed complex and hidden risks." It also found (at 64) that "[c]ompensation structures were skewed all along the mortgage securitization chain."

60. In a section discussing "employee compensation," the chair of the FDIC provided a statement to an investigative panel in January 2010 that:

> The standard compensation practice of mortgage brokers and bankers was based on the volume of loans originated rather than the performance and quality of the loans made. From the underwriter's perspective, it was not important that consumers be able to pay their mortgages when interest rates reset . . . . The long-tail risk posed by these products did not affect mortgage brokers and bankers' incentives because these mortgages were sold and securitized. The lack of a downside in these compensation schemes ultimately hurt both those who could not pay their risky mortgages and the economy.

61. The testimony of CW4 similarly confirms here that GMAC loan officers, executives, and even the underwriters had compensation packages tied to loan volume.

62. To make matters worse, the FCIC found (at 14) that the explosion also created a surging demand for people to carry out the paperwork – a void that was filled, according to a study cited by the FCIC, with thousands of newly-minted "mortgage brokers" with criminal records, including thousands with convictions for fraud, racketeering, and extortion. The FCIC also found (at 162) that "despite the underreporting" of fraud, there was a 20-fold increase in "suspicious activity reports" related to mortgage fraud between 1996 and 2006, numbers that kept climbing during the time the Mortgage Loans at issue here were originated.

63. In short, as summarized by the President's Working Group in March 2008, there was a "significant erosion of market discipline by those involved in the securitization process . . . related in part to failures to provide . . . adequate risk disclosures." It also found that the "turmoil in the financial markets was triggered by a dramatic weakening of underwriting standards for U.S. subprime mortgages . . ." Similarly, the Comptroller of Currency's written statement for a Special Seminar on International Banking and Finance in November 2009 stated that a lethal combination of poor practices "produced, on a nationwide scale, the worst underwritten mortgages in our history." And the FCIC's January 2010 report concluded (at 101) that "there was untrammeled growth in risky mortgages. ***Unsustainable, toxic loans polluted the financial system and fueled the housing bubble.***" (Emphasis added.)

B. <u>The Defendants' Control Over the Vertically-Integrated Process</u>

64. The defendants and their affiliates controlled, and thus had actual knowledge of or were indifferent to the truth or falsity about, every aspect of the securitization process, from loan origination through sale to Allstate. In particular, the defendants controlled every aspect of originating and servicing the underlying Mortgage Loans, providing them with unique and special knowledge regarding the characteristics of the Mortgage Loans and the quality of the underwriting and servicing practices. The defendants also acquired and pooled the mortgage loans, created the securities, and marketed and sold the Certificates at issue using purported disclosures that were wrongful and fraudulent. On information and belief, the fraudulent representations and omissions took place in and/or were directed from Minnesota. All but one of the defendants had their principal place of business in Minnesota.

a. Many of the Mortgage Loans came from the defendants' affiliates. Every Certificate was backed in part by loans from Homecomings Financial, GMAC Mortgage LLC, or

GMAC Bank (an affiliate of GMAC Mortgage LLC). According to the Offering Materials, such affiliated originators were often the single largest source of Mortgage Loans:

Asset	Percent of Affiliated Loans
RALI 2005-QA2	15%
RALI 2005-QS6	65.5%
RALI 2006-QO3	47.6%
RALI 2006-QS14	36.9%
RALI 2007-QH6	43.0%
RAMP 2004 RZ4	42.1%
RAMP 2004-RZ2 Gr. I/II	28.3%/19.1%
RAMP 2005-RS4	24.1%
RAMP 2006-RS3	85.5%
RAMP 2006-RZ3	100%
RASC 2005-KS3	35.2%
RASC 2005-KS4	36.6%
RFMSI 2005-S8	33.2%
RFMSI 2006-S6	39.4%
RFMSII 2005-HI3	7.7%
RFMSII 2005-HS1	7.9%
RFMSII 2005-HS2 Gr. I/II	9.5%/42.3%
RFMSII 2005-HSA1 Gr. I/II	10.8%/41.0%
RFMSII 2006-HI4	43.5%
RFMSII 2006-HI5	21.3%
RFMSII 2007-HI1	18.8%
RFMSII 2007-HSA2	22.4%
RFMSII 2007-HSA3 Gr. I/II	34.9%/40.3%
GMACM 2005-HE1	75.68%
GMACM 2006-HE3	100%

b. Defendants or their affiliates acted as the sponsor, seller, and servicer for the loans underlying the securities. GMAC Mortgage LLC was sponsor, seller, and servicer for GMACM 2005-HE1 and GMACM 2006-HE3, with Residential Funding Company, LLC assuming these roles for the remaining Certificates. Defendants first obtained the Mortgage Loans from originators or sellers, including from its affiliates, as described above. Defendants then pooled the Mortgage Loans in the securitizations and conveyed those loans to the Depositor pursuant to Pooling and Servicing Agreements. The Pooling and Servicing Agreements also

established defendants or their affiliates as Master Servicer of the Mortgage Loans underlying each security.

c. Defendants or their affiliates were underwriters for many of the securities marketed and sold to Allstate. Residential Funding Securities, LLC was co-underwriter for seventeen of the twenty-five offerings at issue here. In that role, it shared responsibility for underwriting and managing the securitizations' sale of Certificates to Allstate and other investors, including screening the Mortgage Loans for compliance with the defendants' underwriting guidelines.

d. Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Funding Mortgage Securities I, Residential Funding Mortgage Securities II, and Residential Asset Securities Corporation were the Depositors for the offerings. The Depositors purchased the Mortgage Loans, including large amounts of the Mortgage Loans from defendants' affiliates as above, pursuant to the Pooling and Servicing Agreements. The Depositors then conveyed the Mortgage Loans to the Trustees, which held the Mortgage Loans in the Trusts for the benefit of Allstate and other Certificateholders. The Depositors then issued the Certificates, which represent interests in the Mortgage Loans held by the Trusts, to Allstate and other investors. The Depositors, Sellers, and Underwriters marketed and sold the Certificates to investors such as Allstate. The Certificates were sold in classes according to their expected credit ratings, and were expected to provide interest on the income stream generated by the Mortgage Loans in the collateral pools. The Depositors were established as limited-purpose finance subsidiaries of the other defendants.

65. Defendants' involvement in and control over each aspect of the securitization process provided them with unique and special knowledge and expertise regarding the

application of any purported standards or procedures for originating, acquiring, underwriting, and servicing the Mortgage Loans, as well as the loan characteristics of the loan pools securing each Certificate at issue.

II. THE DEFENDANTS' MATERIAL MISREPRESENTATIONS AND OMISSIONS

66. The Offering Materials made repeated representations regarding the risk profile of the Mortgage Loans. Because payments to investors are based on the stream of payments from borrowers, if enough loans in the pool default, investors will not be paid the interest returns promised and may even lose their principal. The market value for the Certificates also decreases as the perceived risk of the underlying pool increases, because the prospects for eventually receiving a full payment stream over the life of the investment decreases. As such, any representation bearing on the riskiness of the underlying Mortgage Loans was material to investors, including Allstate.

67. The Offering Materials for each of the securitizations at issue here had similar representations to those highlighted below. A larger sample of the representations on which Allstate relied are found in Exhibits D through BB.

A. The Defendants' Misrepresentations Regarding Underwriting Guidelines

68. Proper underwriting of the Mortgage Loans underlying Allstate's Certificates was material to Allstate because, as discussed above, the quality of loans in the pool determines the risk of the certificates backed by those loans. If a reasonable underwriting process was not actually followed, the chances that the loans had riskier features than the defendants claimed greatly increased, making the entire loan pool much riskier. A systemic underwriting failure would decrease the reliability of *all* the information investors had about the loans, and thus would significantly increase the perceived and actual risk to investors, while materially decreasing the value of the Certificates.

69. The Offering Materials all represented that the Mortgage Loans had been vetted to ensure that they had been originated according to a reasonable, consistent underwriting program. For example, the Offering Materials for RALI 2006-QS14 represented: "All of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of Residential Funding . . . Residential Funding will review each mortgage loan for compliance with its underwriting standards prior to purchase." It also represented that the "applicable underwriting standards include a set of specific criteria by which the underwriting evaluation is made. . . ." Further similar representations for each Certificate are set forth in Exhibits D through BB.

70. These representations were false. As confirmed by a statistical analysis of the Mortgage Loans at issue here, information provided by confidential witnesses, a review of the defendants' loan files by their own insurer, and other facts referenced below, the guidelines were systematically ignored.

B. The Defendants' Misrepresentations Regarding Due Diligence Results

71. The defendants' representations regarding the underwriting process would be understood by any reasonable investor, including Allstate, to mean that non-compliant loans would not be included in the mortgage pools. Indeed, the underwriting disclosures would be pointless if read to mean only that the some (but not all) of a pool of loans met the given standards, but the defendants approved all the loans together for securitization, including many that failed the applicable standards.

72. The loan pools were subject to review by defendants and/or third-party due diligence firms. The defendants, however, did not disclose that: (1) the defendants were informed from those loan-level review processes that a substantial percentage of loans in the collateral pools were defective; (2) the defendants and other underwriters nonetheless had

waived the defects as to a substantial percentage of these loans; (3) underwriters had instead used the due diligence reports to negotiate a lower price for the loan pools, while retaining the toxic loans for inclusion in the loan pools; and (4) the defendants improperly failed to adjust their investigations (such as by increasing their sampling size or refusing to continue to work with problem originators) given the high number of non-conforming loans the due diligence process had in fact identified.

73. That defendants were including loans that their due diligence procedures had flagged as being defective has been confirmed by information provided by confidential witnesses, by the recent release of documents from the defendants' third-party due diligence firm, Clayton Holdings, and other facts set forth below.

74. The defendants' failure to disclose that high numbers of loans had been rejected by the due diligence process, yet "waived" into the collateral pools anyway, was a fraudulent omission, and rendered the disclosures regarding underwriting even more misleading.

C. The Defendants' Misrepresentations Regarding Case-by-Case Underwriting Exceptions

75. Whether the defendants and those from which defendants were purchasing its loans were making case-by-case (rather than bulk) exceptions to the otherwise-applicable underwriting guidelines was material to Allstate and other investors. A disclosed guideline is factually irrelevant – and indeed misleading – from a risk-analysis perspective if large numbers of loans were excused from those standards.

76. The defendants represented that they made only case-by-case exceptions to the disclosed underwriting standards, based on compensating factors that increased the quality of a loan application. For example, the Offering Materials for RALI 2006-QA14 represented that "[a] mortgage loan may be considered to comply with the underwriting standards described

above, even if one or more specific criteria included in the underwriting standards were not satisfied, if other factors positively compensated for the criteria that were not satisfied." And the Offering Materials for RFMSII 2006-HI4 represented that "normally, in order to be eligible for a reduced loan documentation program, a borrower must have a good credit history, and other compensating factors, including a relatively low combined LTV ratio or other favorable underwriting factors, must be present." Further similar representations for each Certificate are set forth in Exhibits D through BB.

77. These representations were false. As confirmed by, among other things, a review of the defendants' loan files by their own insurer, underwriting "exceptions" were not given based on any positive compensating factors. This is further supported by a statistical analysis of the Mortgage Loans at issue here, and other facts referenced below.

D. The Defendants' Misrepresentations Regarding Owner-Occupancy Statistics

78. Owner-occupancy statistics were material to Allstate because high owner-occupancy rates should have made the Certificates safer investments than certificates backed by second homes or investment properties. Homeowners who reside in mortgaged properties are less likely to default than owners who purchase homes as investments or vacation homes.

79. The Offering Materials contained detailed statistics regarding the Mortgage Loans in the collateral pool, including the reported owner-occupancy characteristics of the Mortgage Loans. For example, in the Offering Materials for RALI 2007-QH6, it was claimed that among the 1,549 loans, 1,282 were purportedly owner-occupied properties. Further similar representations for each Certificate are set forth in Exhibits D through BB.

80. These representations were false. In truth, a much lower percentage of the loans were owner-occupied. Occupancy was being misrepresented first to get the borrower approved for the loan, then being misrepresented to investors to get the loan sold. A material amount of

the loans were not in fact owner-occupied, and the defendants omitted that the given statistics were (due to their abandonment of their underwriting standards) baseless. This is evidenced by a statistical analysis of the Mortgage Loans at issue here, and other facts described below.

E. The Defendants' Misrepresentations Regarding Loan-to-Value Ratios

81. The loan-to-value ("LTV") ratio is the ratio of a mortgage loan's original principal balance to the appraised value of the mortgaged property. The related Combined LTV ("CLTV") takes into account other liens on the property (such as "second" mortgage and home equity loans). These ratios were material to Allstate and other investors because higher ratios are correlated with a higher risk of default. A borrower with a small equity position in a property has less to lose if he or she defaults on the loan. There is also a greater likelihood that a foreclosure will result in a loss for the lender if the borrower fully leveraged the property. These are common metrics for analysts and investors to evaluate the price and risk of mortgage-backed securities.

82. The Offering Materials contained detailed statistics regarding these ratios for the Mortgage Loans in the collateral pool. For example, the Offering Materials for RALI 2007-QH6 represented that the weighted-average loan-to-value ratio at origination was 73.89%. Similarly, the Offering Materials for RFMSII 2005-HS2 represented that no loan had a CLTV ratio greater than 100%. Further similar representations for each Certificate are set forth in Exhibits D through BB.

83. These representations were false. The underlying data was being manipulated in order to get loans approved, making the LTV and CLTV ratios baseless. The defendants did not genuinely believe the appraisal values used in these statistics because they knew that the property values were being artificially inflated in order to increase the amount of money that could be given to a borrower. The defendants had access to detailed information about the borrowers and

about all the loans the borrowers were receiving. The CLTV ratios also omitted the effect of additional liens on the underlying properties, rendering them even further from the truth. The defendants also misleadingly omitted that the disclosed statistics were baseless and that the appraisers were systematically pressured to inflate their appraisals. Thus, the defendants knew that the LTV and CLTV ratios were false and misleading. This is confirmed not only by the statements of a confidential witness who worked within GMAC and testimony showing widespread appraisal fraud, but by a loan-level analysis of the specific Mortgage Loans at issue here, and other facts set forth below.

F. The Defendants' Misrepresentations Regarding the Sufficiency of Borrower Income

84. The sufficiency of a borrower's income to cover the mortgage payments is of facial importance to investors. One way this is measured is through the use of debt-to-income ratios. The Offering Materials represented that the underwriting process was designed to ensure that borrowers could afford the loan, and often made specific representations as to the borrower's debt-to-income ratios.

85. For example, the Offering Documents for RALI 2006-QA14 represented that mortgagers were generally (subject to limited exceptions) required to furnish "information regarding its assets, liabilities, income . . . , credit history and employment history, and to furnish an authorization to apply for a credit report . . ." Based on all of this data, "a determination" was to be made "that the mortgagor's monthly income" was sufficient to "meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations." And the Offering Materials for GMACM 2005-HE1 represented that the weighted debt-to-income ratio was 38%,

and the loans were generally originated with a maximum ratio of 45%. Further similar representations for each Certificate are set forth in Exhibits D through BB.

86. These representations were false. The abandonment of sound underwriting practices facilitated the widespread falsification of these statistics within the Offering Materials. This abandonment is evidenced by all the facts set forth below, including Allstate's statistical analysis into the loans at issue here and statements provided by a confidential witness. In reality, the borrowers' claimed income was regularly inflated, such that the true debt-to-income ratios were materially higher than they were represented to be. As the defendants systematically abandoned their underwriting guidelines, the representations were baseless. Their falsity is confirmed by a review of the defendants' loan files by their own insurer, and is further confirmed by the rising delinquency rates for the Mortgage Loans, which shows borrowers were put into loans they could not afford.

G. The Defendants' Misrepresentations Regarding Credit Enhancements

87. Credit enhancement represents the amount of "cushion" or protection from loss exhibited by a given security. This cushion is intended to improve the likelihood that holders of highly-rated certificates receive the interest and principal they expect. The level of credit enhancement offered is based on the make-up of the loans in the underlying collateral pool. Riskier pools necessarily need higher levels of credit enhancement to ensure payment to senior certificate holders. Credit enhancements for a given trust also impact the overall credit rating a given tranche of certificates receives. The level of credit enhancement for the Certificates was material to Allstate because it represented the protection purportedly afforded from loss.

88. The Offering Materials represented that the Certificates had certain credit enhancements used to improve the likelihood that holders of such certificates would receive regular principal and interest payments thereon. For instance, the Offering Documents for RALI

2006-QO3 represented that "Credit enhancements for the offered certificates consists of: excess cash flow; overcollateralization; and subordination." And the Offering Materials for RFMSII 2005-HS2 represented: "Credit enhancements for the term notes consists of: excess interest; overcollateralization; and two financial guaranty insurance policies . . ."

89. "Excess cash flow," "excess interest," and "overcollateralization" all generally refer to the purported affects of including in the collateral pool more mortgage loans than would be strictly necessary to pay off all investors, assuming that every borrower made every payment on time. "Subordination" refers to the fact that, should loans become delinquent or default, not all investors are treated equally. Rather, generally, certain investors are paid out of what funds are available despite those losses first. Any leftover funds from what was actually received then "waterfall" into the next class of investors, and so on.

90. The representations regarding the purported credit enhancements were untrue and misleading. All of the purported "enhancements" depended on or derived from the false representations regarding the quality of the Mortgage Loans underlying the Certificates. Highly risky, misrepresented loans piled on top of other highly risky, misrepresented loans is not a true "enhancement" as represented.

H. The Defendants' Misrepresentations Regarding Credit Ratings

91. Each of the Certificates received a rating purportedly indicating the rating agencies' view of the risk profile of the securities. The initial and current ratings given to each Certificate are contained in Exhibit C. The ratings were material to reasonable investors, including Allstate, because the ratings provide additional assurances that the investors would receive the expected interest and principal payments. But for the provision of these ratings, the Certificates would have been unmarketable to many institutional investors such as Allstate, and likely would not have been issued.

92. The Offering Materials represented that the rating agencies conducted an analysis designed to assess the likelihood of delinquencies and defaults in the underlying mortgage pools. For example, the Offering Materials for RALI 2006-QA14 represented: "When issued, the offered certificates will receive ratings which are not lower than those listed in the table . . . The ratings on the offered certificates address the likelihood that holders of the offered certificates will receive all distributions on the underlying mortgage loans to which they are entitled." Further similar representations for each Certificate are set forth in Exhibits D through BB.

93. These representations were false and misleading. Unknown to Allstate, the rating agencies were fed baseless and false statistics regarding the loans (including the same statistics and other representations discussed herein), as evidenced by a statistical analysis of the Mortgage Loans at issue here. This made representations regarding the ratings process false (as a rigged process is not designed to "address the likelihood that holders" would receive distributions), and rendered the "ratings" themselves similarly false and misleading (as they only represented the credit rating agencies' analysis of a non-existent mortgage pool that had no relation to that truly underlying Allstate's Certificates).

I. Documentary Basis for the Loan Approval

94. Whether the information in a loan file was fully documented, or whether it was instead approved pursuant to a reduced or no-documentation procedure, was material to Allstate. Reduced-documentation loans are riskier because the borrower provides less substantiating information for criteria such as his or her income and assets. With less confirmation, it is more likely that there are errors or misrepresentations in the loan file.

95. The Offering Materials contained detailed statistics regarding the documentation procedures purportedly used for the Mortgage Loans. For example, the Offering Materials for RFMSII 2006-HI4 represented that 5,223 of the 5,513 loans were based on "full documentation,"

while only 16 were based on "no documentation." Further similar representations for each Certificate are set forth in Exhibits D through BB.

96. These representations were false. A review by the defendants' own insurer found many files incomplete, and Residential Funding itself has accused its originators of using incomplete loan files.

III. EVIDENCE THAT ALL OF THE DEFENDANTS' REPRESENTATIONS WERE UNTRUE AND MISLEADING

97. The Mortgage Loans were not originated according to the underwriting standards disclosed in the relevant Offering Materials. Instead of focusing on assessing an applicant's credit standing and repayment ability, the defendants subordinated loan quality to the goal of originating and securitizing as many loans as possible to generate fees in the secondary mortgage market. That the disclosed underwriting standards were systematically ignored rendered all of the above representations false or misleading at the time they were made.

98. The representations regarding the underwriting processes, underwriting quality, loan selection, and use of exceptions were untrue. The loans did not comply with the underwriting standards the Offering Materials described, as those standards were systemically ignored. In originating or acquiring the loans, the defendants ignored borrowers' actual repayment ability and the value and adequacy of mortgaged property used as collateral in issuing loans. Systematic, bulk exceptions were used without consideration of any compensating factors. The defendants also misleadingly omitted that the defendants were systematically abusing "exceptions" in order to further circumvent their purported underwriting standards.

99. The defendants' representations regarding the underwriting and due diligence processes were made even more misleading by their fraudulent omission of information

regarding the number of rejected loans that that process did identify, and the high number of such loans that were "waived" into the collateral pools anyway.

100. The representations regarding owner-occupancy and the sufficiency of the borrower's income were untrue. The abandonment of sound underwriting practices facilitated the widespread falsification of these statistics within the Mortgage Loans. In reality, a far greater percentage of properties were not owner-occupied, and the borrowers' claimed income was regularly inflated. The defendants also failed to disclose that the representations were baseless.

101. The representations regarding loan-to-value and combined loan-to-value ratios were untrue. The defendants did not genuinely believe the appraisal values used in these statistics because they knew that the property values were being artificially and baselessly inflated in order to increase the amount of money that could be given to a borrower. The CLTV ratios also omitted the effect of additional liens on the underlying properties, rendering them even further from the truth. Additionally, the defendants misleadingly omitted that the disclosed statistics were baseless and that appraisers were systematically pressured to inflate their appraisals.

102. The representations regarding the purported credit enhancements were untrue and misleading. All of the purported "enhancements" depended on or derived from the (false) representations regarding the quality of the Mortgage Loans. Highly risky, misrepresented loans piled on top of other highly risky, misrepresented loans is not a true "enhancement" as represented. Even representations regarding the presence of such enhancements as insurance or similar agreements with third parties was misleading, in that the defendants' fraudulently omitted to disclose that, on information and belief, they procured those contracts making similar

misrepresentations as the defendants made to Allstate, calling into doubt whether their terms will ultimately be honored.

103. The representations regarding the credit ratings were also untrue. The defendants fed baseless loan statistics to the credit rating agencies, essentially pre-determining the ratings that would be given. The use of baseless statistics also made representations about the ratings process being designed to assess credit risk false, as the entire ratings process was rigged from the start through the use of incorrect data. The defendants thus did not genuinely believe that the ratings the agencies assigned to these Certificates reflected their actual risk.

A. Evidence of the Securities' High Default Rates and Plummeting Credit Ratings

104. The drastic rise in default rates on the Mortgage Loans underlying Allstate's Certificates is itself cogent evidence of faulty underwriting. Absent fraud, even in the face of a mortgage crisis, true AAA paper with adequate credit protection should not have experienced the drastic loss in value that was experienced by most of the Certificates.

105. Even though the Certificates were supposed to be long-term, stable investments, just years after their issuance, the underlying Mortgage Loans have already shown serious deterioration in performance. For instance, for RALI 2007-QH6, ***55% of the loans from the original pool have either already had to be written off at a loss or are currently delinquent.*** Similarly, for RAMP 2006-RS3, RAMP 2006-RZ3, RFMSII 2007-HSA2, and RFMSII 2007-HSA3, ***over 40% of the loans from each deal's original pool have either already had to be written off at a loss or are currently delinquent.***

106. Overall, approximately ***24% of the original Mortgage Loans have already had to be written off at a loss***, and of the remaining loans, approximately ***25% are currently delinquent.***

107. Relatedly, the ratings given to the Certificates have significantly deteriorated. Most of Allstate's investments initially received the highest possible ratings – S&P's AAA rating or their equivalent from the other rating agencies. According to S&P's website: "An obligation rated 'AAA' has the highest rating assigned by Standard & Poor's. The obligor's capacity to meet its financial commitment on the obligation is extremely strong." Moody's similarly describes its highest rating, Aaa, as meaning that the investment is "judged to be of the highest quality, with minimal credit risk." These are the same ratings typically given to bonds backed by the full faith and credit of the United States government, such as treasury bills. Historically, an AAA rated security had an expected loss rate of less than .05%.

108. Because of the high delinquency and default rates and other factors, most of Allstate's Certificates have been downgraded from the highest possible ratings to junk-bond ratings. ***Despite two-thirds of the purchases being for Certificates that had the same rating given to treasury bills (i.e., AAA), currently over 75% of the purchases are backed by Certificates currently rated by at least one of the major agencies as being non-investment grade***. Indeed, ***over half have fallen even further***, falling into the "C" and "D" ranges of the agencies' scales. According to S&P's website, far from having the "extremely strong capacity" to meet commitments required by AAA-rated investments, instead these ratings now indicate that the Certificates are "***currently vulnerable*** and dependent on favorable business, financial and economic conditions to meet financial commitments."

109. The ratings history for the Certificates is set forth in Exhibit C. Most downgrading actions take place after March 2008, and the most serious downgrades (i.e., to non-investment grade) did not take place until mid-2008 or later.

110. The drastic rise in default rates on the Mortgage Loans underlying Allstate's Certificates reflects the defendants' faulty underwriting. The Certificates were supposed to be long-term, stable investments, yet they have already experienced payment problems significantly beyond what was expected for loan pools that were properly underwritten and that contained loans that actually had the characteristics the Offering Materials claimed.

111. It is usually a large and unexpected disruption to a borrower's income that causes an actual payment default. In a properly underwritten pool of loans, one would thus not expect to see a large spike of defaults occurring shortly after origination, since it is unlikely that many borrowers would all incur a sudden and unexpected change to their payment ability so soon after purchasing a home.

112. Indeed, economic studies have confirmed that high default rates early in a loan's life are highly correlated with misrepresentations in the loan files. This makes sense – as borrowers are put in loan products they cannot actually afford, they quickly and predictably fall behind on their payments. For instance, the F.B.I. studied three million residential mortgages that found that between ***30% and 70% of early payment defaults were linked to significant misrepresentations in the original loan applications***. Loans containing egregious misrepresentations were ***five times*** as likely to default in the first six months than loans that did not. The FCIC's "examination found [at xxii], according to one measure, that the percentage of borrowers who defaulted on their mortgages within just a matter of months after taking a loan ***nearly doubled from the summer of 2006 to late 2007***. This data indicates they likely took out mortgages that they ***never had the capacity or intention to repay***." (Emphasis added).

113. In short, the dismal performance of the Mortgage Loans is itself strong evidence that they were improperly underwritten, and that they did not have the credit risk characteristics

the Offering Materials claimed. The defaults and related drop in value thus are due to the defendants' wrongdoing, and not due to the general change in economic conditions.

B. Loan-Level Evidence That Borrowers Did Not Actually Occupy the Mortgage Properties as Represented

114. As above, the defendants repeatedly represented that the loan pools underlying the Certificates had high percentages of loans issued to borrowers that were living in the mortgaged properties. The Certificates here were in fact backed by Mortgage Loans that had a far higher percentage of non-owner occupied properties.

115. According to a January 2011 *Business Week* report, loan files often misrepresented the owner-occupancy status of the mortgaged properties. The study, which looked at a loan's history for 16 months before labeling it "misreported," found that 23% of mortgages that were securitized as being "owner occupied" were either never moved into or were quickly vacated by the borrower.

116. Allstate need not rely solely on such industry-wide studies to support its allegation that the Mortgage Loans here were misrepresented. Allstate selected a random sample of the specific loans underlying the Certificates here to test the defendants' representations on a loan-level basis. Using techniques and methodologies that only recently became available to investors, Allstate conducted loan-level analyses on over 30,000 Mortgage Loans underlying its Certificates.

117. For each offering tested, Allstate attempted to analyze 800 defaulted loans and 800 randomly-sampled loans from within the collateral pool. Where the loan pool contained fewer than 1,600 loans, Allstate tested every loan associated with that transaction.

118. These sample sizes are more than sufficient to provide statistically-significant data to demonstrate the degree of misrepresentation of the Mortgage Loans' characteristics.

Analyzing data for each Mortgage Loan in each Offering would have been cost-prohibitive and unnecessary for purposes of Allstate's complaint. Statistical sampling is an accepted method of establishing reliable conclusions about broader data sets, and is routinely used by courts, government agencies, and private businesses. As the size of a sample increases, the reliability of its estimations of the total population's characteristics increase as well. Experts in RMBS cases have found that a sample size of just 400 loans can provide statistically significant data, regardless of the size of the actual loan pool, because it is unlikely that so large a sample would yield results vastly different from results for the entire population.

119. To determine whether a given borrower actually occupied the property as claimed, Allstate investigated tax information for the sampled loans. One would expect that a borrower residing at a property would have the tax bills sent to that address, and would take all applicable tax exemptions available to residents of that property. If a borrower had his or her tax records sent to another address, that is good evidence that that borrower was not actually residing at the mortgaged property. If a borrower declined to make certain tax exemption elections that depend on the borrower living at the property, that also is strong evidence the borrower was living elsewhere.

120. A review of credit records was also conducted. One would expect that people have bills sent to their primary address. If a borrower was telling creditors to send bills to another address, even six months after buying the property, it is good evidence the borrower was living elsewhere.

121. A review of property records was also conducted. It is less likely that a borrower lives in any one property if in fact that borrower owns multiple properties. It is even less likely

the borrower resides at the mortgaged property if a concurrently-owned separate property did not have its own tax bills sent to the property included in the mortgage pool.

122. A review of other lien records was also conducted. If the property was subject to additional liens but those materials were sent elsewhere, that is good evidence the borrower was not living at the mortgaged property. If the other lien involved a conflicting declaration of residency, that too would be good evidence that the borrower did not live in the subject property.

123. Though the availability to gather such information for large numbers of loans and run these tests was only recently made available to investors like Allstate, these tests draw from data contemporaneous with the transactions at issue. They thus are evidence that a then-existing fact – owner occupancy – was misrepresented. Further, even though this recently-available technique draws on contemporaneous information, and thus provides a robust 'test' of the defendants' representations for pleading purposes – it still does not represent the level of information that was uniquely in defendants' control, such as the loan files. As above, Allstate did not and does not have access to the loan files.

124. The results of Allstate's loan-level analysis of true owner-occupancy rates on the Mortgage Loans underlying its Certificates are set forth below and are further detailed in Exhibits D through BB. Failing multiple of the above tests is strong evidence the borrower did not in fact reside at the mortgaged properties. These statistics thus show that, despite the defendants' representations, a much higher percentage of borrowers did not occupy the mortgaged properties:

Asset	Percentage of Owner-Occupied Properties in Prospectus	Actual Percentage of Owner-Occupied Properties	Prospectus Overstatement
RALI 2005-QA2	81.5%	71.3%	10.2%
RALI 2005-QS6	67.3%	57.0%	10.3%

Asset	Percentage of Owner-Occupied Properties in Prospectus	Actual Percentage of Owner-Occupied Properties	Prospectus Overstatement
RALI 2006-QO3	84.7%	73.1%	11.5%
RALI 2006-QS14	73.0%	62.3%	10.7%
RALI 2007-QH6	82.8%	66.7%	16.1%
RAMP 2004-RZ4	85.4%	74.7%	10.7%
RAMP 2004-RZ2	85.0%	75.4%	9.5%
RAMP 2005-RS4	74.1%	64.2%	9.9%
RAMP 2006-RS3	57.5%	48.7%	8.8%
RASC 2005-KS3	91.1%	80.7%	10.43%
RASC 2005-KS4	90.4%	79.6%	10.7%
RFMSI 2005-S8	97.0%	85.2%	11.9%
RFMSI 2006-S6	96.2%	82.4%	13.8%
RFMSII 2005-HI3	100%	93.6%	6.4%
RFMSII 2005-HS2	92.9%	83.9%	9.0%
RFMSII 2005-HSA1	90.3%	78.9%	11.4%
RFMSII 2006-HI5	99.7%	92.0%	7.7%
RFMSII 2007-HI1	99.3%	91.8%	7.50%
RFMSII 2007-HSA2	77.4%	66.7%	10.6%
RFMSII 2007-HSA3	81.7%	70.4%	11.3%

125. The facts alleged in this complaint show the defendants' problems were systemic, and such is confirmed by the consistency of the results set forth above – the results of reviewing over 30,000 loans across twenty of the twenty-five Certificates at issue here. The untested Certificates involved the same parties, the same affiliated originators, nearly identical disclosures, and both the underlying loans and the certificates themselves were being generated around the same time purportedly according to the same processes. As such, on information and belief, the Offering Materials for the Certificates that Allstate was not able to test on a loan-level basis also misrepresented the owner-occupancy information at approximately the same, material rate as seen in the large sample of Certificates discussed above.

C. Loan-Level, Independent Evidence That the LTV Ratios Were Materially Misrepresented

126. As above, the defendants made representations about the Mortgage Loans' LTV and CLTV ratios. These ratios compare the amount of the loan to the value of the mortgaged property, theoretically calculated using an appraisal process. An inflated appraisal would thus directly result in false and misleading LTV and CLTV ratios.

127. Using techniques and methodologies that only recently became available to investors, Allstate had the underlying property valued, using data contemporaneous with the original valuation the defendants would have done, by an industry-standard automated valuation model ("AVM"). AVMs are routinely used in the industry as a way of valuing properties during prequalification, origination, portfolio review, and servicing. AVMs have become so ubiquitous that their testing and use is specifically outlined in regulatory guidance, and is discussed in the Dodd-Frank Act. AVMs rely upon similar data as appraisers – primarily county assessor records, tax rolls, and data on comparable properties. AVMs produce independent, statistically-derived valuation estimates by applying modeling techniques to this data. The AVM that Allstate used incorporates a database of 500 million mortgage transactions covering zip codes that represent more than 97% of the homes, occupied by more than 99% of the population, in the United States. Independent testing services have determined that this AVM is the most accurate of all such models.

128. The results of this analysis for each Certificate tested is set forth in Exhibits D through BB. Applying the AVM to the available data for the loans underlying the Certificates shows that the value used by the defendants in the represented LTVs were materially and consistently inflated. This caused the disclosed LTV and CLTV ratios to be lower than they really were, i.e., the owners were represented to have more of an equity "cushion" than they

really did, and the prospects for recovery of any funds upon a foreclosure were represented to be much higher than they really were.

129. As with owner-occupancy, though the availability to gather such information and run these tests was only recently made available to investors like Allstate, these tests draw from data contemporaneous with the transactions at issue. They thus are evidence that the LTV and CLTV ratios were misrepresented at the time the representations were made, but still do not represent the level of information that was uniquely in defendants' control, such as the loan files. As above, Allstate did not and does not have access to the loan files.

130. Overall, for those tested Offering Materials that focused on LTV (rather than CLTV) statistics, 37% of the loans sampled had recalculated LTV ratios understated by more than 10%, and ***12% of the loans sampled had LTV ratios understated by more than 25%.*** This overvaluation affected numerous statistics in the Offering Materials.

131. For instance, the Offering Materials made representations about the percent of loans that had LTVs higher than 90%. LTVs in excess of 90% provide the lender little value cushion to protect against borrower default and loss upon foreclosure. However, the AVM indicates that a much higher percentage of the loans had LTVs higher than 90%:

Asset	Percentage of Loans Represented to Have LTVs Greater than 90%	Actual Percentage of Loans With LTVs Greater than 90%	Prospectus Understatement of Percent of Loans With High LTVs
RALI 2005-QA2	1.55%	18.94%	17.39%
RALI 2005-QS6	8.63%	29.25%	20.62%
RALI 2006-QO3	1.42%	32.77%	31.35%
RALI 2006-QS14	4.36%	30.96%	26.60%
RALI 2007-QH6	2.07%	53.62%	51.55%
RAMP 2006-RS3	14.14%	44.43%	30.29%
RASC 2005-KS3	19.04%	47.65%	28.61%
RASC 2005-KS4	17.53%	45.33%	27.80%
RFMSI 2005-S8	2.33%	18.12%	15.79%
RFMSI 2006-S6	0.42%	21.03%	20.61%

132. The Offering Materials also made representations about how many of the Mortgage Loans had LTV ratios greater than 100 percent, meaning the size of the loan is greater than the value of the property. (This is known as being "underwater," where a borrower owes more on the property than it is worth.) Loans with over 100% LTV afford the lender no equity cushion and leave the lender with inadequate collateral from the outset of the loan. Allstate's analysis has found that, despite the defendants representations, a substantial number of the Mortgage Loans had LTVs greater than 100%:

Asset	Percentage of Loans Represented to Have LTVs Greater than 100%	Actual Percentage of Loans With LTVs Greater than 100%	Prospectus Understatement of Percent of Loans Already Underwater
RALI 2005-QA2	0%	6.94%	6.94%
RALI 2005-QS6	0%	12.80%	12.80%
RALI 2006-QO3	0%	13.36%	13.36%
RALI 2006-QS14	0%	15.23%	15.23%
RALI 2007-QH6	0%	28.60%	28.60%
RAMP 2004-RZ4	54.41%	68.96%	14.55%
RAMP 2004-RZ2	55.65%	62.31%	6.66%
RAMP 2005-RS4	2.24%	46.31%	44.07%
RAMP 2006-RS3	0%	23.25%	23.25%
RASC 2005-KS3	0%	24.49%	24.49%
RASC 2005-KS4	0%	23.59%	23.59%
RFMSI 2005-S8	0%	7.00%	7.00%
RFMSI 2006-S6	0%	9.79%	9.79%

133. Allstate has also analyzed the weighted average LTV of the Mortgage Loans in each pool and has found that the weighted average LTV was also understated:

Asset	Represented Weighted Average LTV	Actual Weighted Average LTV	Prospectus Understatement
RALI 2005-QA2	76.93%	81.89%	4.96%
RALI 2005-QS6	77.32%	83.46%	6.14%
RALI 2006-QO3	74.31%	85.79%	11.48%
RALI 2006-QS14	77.46%	84.92%	7.46%

Asset	Represented Weighted Average LTV	Actual Weighted Average LTV	Prospectus Understatement
RALI 2007-QH6	73.89%	91.94%	18.05%
RAMP 2004-RZ4	102.19%	106.81%	4.62%
RAMP 2004-RZ2	102.13%	104.03%	1.9%
RAMP 2005-RS4	93.55%	100.07%	6.52%
RAMP 2006-RS3	80.22%	92.07%	11.85%
RASC 2005-KS3	82.31%	89.09%	6.78%
RASC 2005-KS4	83.03%	88.79%	5.76%
RFMSI 2005-S8	68.73%	75.59%	6.86%
RFMSI 2006-S6	69.98%	81.16%	11.18%

134. Other Offering Materials, particularly for those deals with large numbers of second-lien loans, also focused on the CLTV statistics of the underlying loans. This is because the quality of such a loan should take into account the pre-existing "senior" lien on the property, as that eats into the owner's equity and has to be paid first upon foreclosure. (Deals that purport to not contain many loans subject to a second lien often do not contain CLTV representations.) As with the LTV statistics, the defendants misrepresented the CLTV statistics, seriously understating the riskiness of the Mortgage Loans underlying the Certificates.

135. Overall, for those Offering Materials that focused on CLTV statistics, 49% of the loans sampled had recalculated CLTV ratios of more than 10% higher than what was claimed in the Offering Materials, and ***18% of the loans sampled had CLTV ratios understated by more than 25%***. This overvaluation affected numerous statistics in the Offering Materials.

136. Certain Offering Materials made representations about the percent of loans that had CLTVs higher than 100%. Just as with LTVs, CLTVs in excess of 100% provide the lender no cushion to protect against borrower default and loss upon foreclosure. Using both the AVM to recalculate the value of the property and researching the existence of additional, hidden liens revealed that a much higher percentage of the loans had CLTVs higher than 100%:

Asset	Percentage of Loans Represented to Have CLTVs Greater than 100%	Actual Percentage of Loans With CLTVs Greater than 100%	Prospectus Understatement of Percent of Loans Already Underwater
RFMSII 2005-HS2	0%	50.05%	50.05%
RFMSII 2005-HSA1	0%	52.11%	52.11%
RFMSII 2006-HI5	85.21%	87.21%	2.00%
RFMSII 2007-HI1	90.66%	93.76%	3.10%
RFMSII 2007-HSA2	0%	62.22%	62.22%
RFMSII 2007-HSA3	0%	64.85%	64.85%

137. Even when the Offering Materials disclosed that the Mortgage Loans had high CLTV ratios, it significantly understated *how* high. For instance, as above the Offering Materials for RFMSII 2006-HI5 and 2007-HI1 "only" understated the number of loans underwater by 2-3%. But that is only part of the story. In these instances, the Offering Materials represented that less than ten loans out of each pool had a CLTV ratio higher than 125%. Yet the true ***weighted average for both deals was over 125%***. For RFMSII 2007-HI1, ***over half of the loans had their CLTVs materially understated, with nearly a fifth being understated by more than 25%.*** Thus, even when certain Offering Materials disclosed that some loans were underwater, they still materially misrepresented how much of the collateral pool was underwater, *and* how far underwater those loans were.

138. The Offering Materials similarly misrepresented the weighted-average of the CLTVs:

Asset	Represented Weighted Average CLTV	Actual Weighted Average CLTV	Prospectus Understatement
RFMSII 2005-HI3	117.76%	129.40%	11.64%
RFMSII 2005-HS2	91.45%	101.71%	10.26%
RFMSII 2005-HSA1	91.98%	104.21%	12.23%
RFMSII 2006-HI5	114.81%	126.53%	11.72%
RFMSII 2007-HI1	117.32%	131.00%	13.68%
RFMSII 2007-HSA2	93.60%	107.31%	13.71%
RFMSII 2007-HSA3	91.98%	108.20%	16.22%

139. The defendants did not genuinely believe the appraised values were reasonable estimations of the properties' values at the time they were given. The defendants knew that the appraisals were being inflated to allow borrowers to be approved for loans that they could not afford. As such, they knew the LTV and CLTV statistics were baseless. Further, the CLTV statistics above were inflated in part because of the presence of hidden liens, which do not turn on any purported difference in the appraisal "opinion."

140. The facts alleged in this complaint show the defendants' problems were systemic, and such is confirmed by the consistency of the results set forth above – the results of reviewing over 30,000 loans across twenty of the twenty-five Certificates at issue here. The untested Certificates involved the same parties, the same affiliated originators, nearly identical disclosures, and both the underlying loans and the certificates themselves were being generated around the same time purportedly according to the same processes. As such, on information and belief, the Offering Materials for the Certificates that Allstate was not able to test on a loan-level basis also misrepresented the LTV and CLTV statistics at approximately the same, material rate as seen in the large sample of Certificates discussed above.

D. Evidence From A Former Senior Underwriter That GMAC Accepted Absurd Income Claims

141. According to CW4, a former Senior Underwriter at GMAC, the share of "stated income" loans went up in the 2004-2007 time frame. CW4 "hated" these, which "drove [CW4] insane," because CW4 "had to accept" whatever income was given. CW4 gave an example of a city bus driver that provided a stated income of $9,000 *per month*. As below, a review by the defendants' own insurer, of defendants' loan files at issue here, found similar, numerous problems infected Allstate's Certificates.

142. According to CW4, only a human could really judge the facial reasonableness of a "stated income" amount as against the claimed occupation. Nonetheless, according to CW4, GMAC relied on its automated systems to underwrite stated-income loans, and there was no system in place for otherwise evaluating the reasonableness of the income claims.

143. When CW4 raised such concerns, CW4's supervisor responded that 'this is what we pay you to do.' CW4 felt that "short of walking out, we didn't have a choice."

E. Evidence From the Defendants' Own Insurers' Review of Loan Files at Issue Here

144. MBIA Insurance Corporation had access to some of the complete loan files for certain of the defendants' securitizations – including some of the Certificates at issue here. Its analyses – the first part of which was only made public in December 2008 – provides additional strong evidence that essential characteristics of the Mortgage Loans underlying the Certificates were misrepresented, and that the problems in the defendants' underwriting practices were systemic.

145. MBIA is a monoline insurer that wrote insurance on certain Residential Funding and GMAC mortgage-backed securities. MBIA conducted an investigation into certain loan files after it was asked to make payments on its insurance policies. MBIA's analysis included at least two deals that Allstate invested in: RFMSII 2007-HSA2 and RFMSII 2007-HSA3. The other deals that MBIA analyzed are also probative of problems underlying Allstate's Certificates because the defendants' problems were systemic, and because the collateral pools for the securitizations that MBIA investigated were composed of the same type of collateral underlying some of Allstate's Certificates.

146. In carrying out its review of the approximately 12,000 Residential Funding/GMAC loan files – ***including loans that were securitized and sold to Allstate*** – MBIA

found that ***88% of the defaulted or delinquent loans in those securitizations contained material deviations from the stated underwriting guidelines***. MBIA's report showed that a material number of mortgage loans included in the mortgage loan pools underlying the securitizations were made to borrowers who could not reasonably have expected to be able to repay the mortgage loans, and the risks inherent in the portfolios was significantly higher than as represented. Indeed, ***MBIA claims that Residential Funding admitted to it that it knew mortgage loan pools failed to comply with Residential Funding's guidelines.***

147. MBIA also found that "there were fundamental, material, and consistent violations of [Residential Funding's] underwriting guidelines and policies in connection with the underwriting of the mortgage loans . . . The undisclosed and misrepresented risks were pervasive throughout the mortgage loan portfolios for the securitization transactions." Similarly, the results of its GMAC-focused review "made clear that GMAC Mortgage had wholly abandoned its own underwriting policies and instead routinely approved loans to borrowers who failed to meet basic risk criteria."

148. MBIA gave examples of individual loans that diverged from the stated underwriting guidelines. Below is just a small sample of the problems MBIA found, some of which came from the very loan files that were used to originate the loans pooled into the Certificates at issue here:

- "On November 30, 2006, a loan with a principal balance of $140,000 was made to a borrower in Newton, Massachusetts on a property with an original appraisal value of $740,000 and a senior loan balance of $513,567. The property subject to the loan was a non-owner occupied investment property. The borrower stated his income to be $41,666 per month ($500,000 per year) as the owner of a Wine/Spirits store. Further, the borrower did not demonstrate any liquid assets. The stated income was unreasonable based on the borrower's employment and not substantiated by the borrower's credit/asset profile. Notably, the borrower filed for bankruptcy in 2007 in connection with which the borrower

claimed to have earned $0.00 for 2006. Further, the appraisal indicated the property failed to conform to legal standards and the loan file lacked any letter from the local authority regarding rebuilding. RFC Underwriting Guidelines require verification of 6 months of reserves for the monthly Principle, Interest, Taxes and Insurance ('PITI') payments for stated income loans on non-owner occupied investment properties yet there is no indication in the loan files that these reserves were identified or verified. Finally, RFC guidelines limit loans under the non-owner occupied loan program to $100,000, $40,000 less than was loaned. (Loan # 11169067 – 2007-HSA2)."

- "On March 16, 2007, a loan with a principal balance of $40,000 was made to a borrower in Bradenton, Florida on a property with an original appraisal value of $440,000 and a senior loan balance of $328,000. The borrower is retired and receives a fixed income that was stated as $6,450 per month. The borrower's FICO credit score of 688 required the DTI for the loan not to exceed 45%, however, the borrower's DTI was 55.93%. Because the borrower receives a fixed income, the borrower does not meet the residual income requirements for a higher DTI under RFC's Underwriting Guidelines. Further, the loan file lacks any evidence of 2 months of PITI reserves as required by RFC's Underwriting Guidelines. (Loan # 11434381 – 2007-HSA3)."

- "On November 12, 2006, a loan with a principal balance of $135,000.00 was made to a borrower in Scottsdale, Arizona on a property with an original appraisal value of $540,000.00 and a senior loan balance of $405,000.00. The borrower stated income of $11,000 per month as a sales manager at a concrete company, however, the borrower could only demonstrate assets of $11,491. The stated income was unreasonable based on the borrower's employment and not substantiated by the borrower's credit/asset profile. Notably, the borrower filed for bankruptcy in 2008 in connection with which the borrower claimed to have actually earned $43,523 for 2006 and $20,401 for 2007. Additionally, the bank account used to verify the borrower's reserves is actually held in the name of the loan officer that issued the loan. (Loan # 11165457 – 2007-HSA3)."

- "On April 20, 2007, a loan in the amount of $40,000 was made to co-borrowers in Vernon, New Jersey on a property with an original appraisal value of $305,000 and a senior loan balance of $244,000. The loan file is incomplete and lacks, among other documents, verbal verification of either borrower's employment, evidence of sufficient closing funds and reserves, an appraisal, a copy of the note from the senior lien, and the borrowers' credit reports. Further, the loan was approved even though the income stated by each borrower was unreasonable. One claimed to earn $4,583 per month as a counter manager at a discount tire store though, for example, salary.com, a website which maintains a national salary database based on job title and zip code, reports that the income at the 90th

percentile for such a position is only $2,801 per month. The second borrower claimed to earn $59,592 annually as a sales associate at a home improvement store, but an income verification database showed that the borrower earned only $28,092 in 2006 and $32,977 in 2007. The loan has been charged-off. (Loan # 1000117685 – [GMAC] 2006 Transaction.)"

- "On January 23, 2007, a loan with a principal balance of $100,000 was made to a borrower in Yuma, Arizona on a property with an original appraisal value of $298,000 and a senior loan balance of $129,035. The borrowers claimed on their loan application that their combined income was $113,520 per year. However, on May 12, 2009, the borrowers jointly filed for bankruptcy under Chapter 7, and their court filings indicated that they earned only $13,085 in 2007 and $17,650 in 2008. Moreover, no record of the borrower's claimed employer can be located on websites commonly used to verify the existence of a business: manta.com or yellowpages.com. The loan has been charged-off. (Loan # 8254730412 – [GMAC] 2007 Transaction.)"

149. In short, in its review of Residential loan files – files that underlie some of the Certificates at issue here – Residential Funding's own insurer found:

- "A significant number of mortgage loans have DTI ratios far in excess of RFC's Underwriting Guidelines, have CLTV ratios far in excess of RFC's Underwriting Guidelines and were made on the basis of 'stated incomes' that were grossly unreasonable."

- "[C]ontrary to RFC's Underwriting Guidelines, RFC failed, with respect to a significant number of mortgage loans, to verify employment for mortgage loan borrowers where required to do so, failed to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with credit scores that are ineligible under the Underwriting Guidelines and closed mortgage loans without verifying that the borrower had sufficient funds or reserves as required by the Underwriting Guidelines."

- "Numerous mortgage loan files are missing necessary mortgage loan documents and are missing certain disclosures, such as disclosures relating to loan transfers, which are necessary under applicable law."

- "RFC even contributed mortgage loans to the mortgage loan pools that violated either, or both, the federal Home Ownership and Equity Protection Act ('HOEPA') and state predatory lending laws . . . RFC's failure to identify HOEPA violations indicates that RFC failed to perform the calculation, incompetently performed the calculation or performed the calculation but purposely ignored the result."

150. Similarly, MBIA's review of GMAC's loan files found that, among other things:

- "GMAC Mortgage egregiously and routinely breached its representation and warranty that the mortgage loans were underwritten generally in compliance with GMAC Mortgage's underwriting standards."

- "A significant number of mortgage loans were made on the basis of 'stated incomes' that were grossly unreasonable or were approved despite DTI or CLTV ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines or the Purchase Agreements or Prospectus Supplements."

- "Moreover, contrary to its Underwriting Guidelines, GMAC Mortgage failed in many cases to verify the borrower's employment when required to do so or to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with ineligible credit scores, and approved loans without verifying that the borrower had sufficient funds or reserves."

- "GMAC Mortgage used its proprietary automated electronic loan underwriting program, known as 'Assetwise,' to approve loans that did not comply with its Underwriting Guidelines . . . Assetwise, however, failed to analyze proposed mortgage loans using the criteria set forth in GMAC Mortgage's Underwriting Guidelines."

- "The vast majority of mortgage loan files are missing necessary mortgage loan documents, such as disclosures relating to loan transfers and notes establishing the first lien."

- "GMAC Mortgage . . . furnish[ed] . . . mortgage loans to the pools that violated state predatory lending laws. These laws are designed to protect borrowers from abusive lending practices by, for example, prohibiting the approval of a loan to a borrower who lacks the ability to repay."

151. MBIA reviewed loans associated with some of the very deals at issue here. Even for deals that were not identical, some were in the same series of offerings – for instance MBIA analyzed GMACM 2006-HE*4* (prospectus supplement dated September 25, 2006), while Allstate purchased certificates in GMACM 2006-HE*3* (prospectus supplement dated August 28, 2006). For the deals MBIA analyzed, the parties, structure, timing, and disclosures made all significantly overlapped with – if were not identical to – those present here. In addition, MBIA's findings are consistent with, and confirmed by, Allstate's statistical analyses of the Certificates

here, discussed above. Thus, on information and belief, all of the findings of the defendants' own insurer, made upon a review of the defendants' own loan files, apply equally to all of the Certificates at issue here.

F. Documentary and Testimonial Evidence that Due Diligence Flagged Many Problem Loans That Were "Waived In" Anyway

152. The defendants wore multiple hats in connection with the Offerings at issue here, acting in various capacities including sponsor and underwriter of the offered securities. In its overlapping capacities, and through their affiliates, they were was responsible for originating and purchasing large blocks of mortgage loans from third-party originators, repackaging those loans into securities, and selling the newly-created securities to investors like Allstate.

153. In connection with the purchase of the Mortgage Loans from the loan originators, and consistent with industry practice, the defendants performed due diligence to determine the quality of the Loans they were purchasing.

154. Specifically, on information and belief, the defendants operated quality assurance and risk management departments tasked with ensuring that loans met the stated guidelines. The defendants conducted due diligence on the loans included in each offering to ensure compliance with defendant-created or approved underwriting guidelines. To make this determination, the defendants employed a team of underwriters who reviewed a sample of the purchased loans to confirm that they both conformed with the representations made by the originators and complied with the defendants' own credit policies.

155. On information and belief, the defendants' own due diligence revealed that a significant percentage of loans purchased from their affiliated and even third-party originators failed to meet applicable underwriting standards, yet were provided unjustified exceptions. This is evidenced by the amount of defective loans Allstate's analysis, as well as that of the

defendants' own insurer, have found – as well as evidence from how underwriters who worked on these deals reacted when they outsourced their due diligence obligations.

156. Sometimes, the underwriters relied on outside firms to conduct the requisite due diligence. One of the largest such firms is Clayton. As the FCIC put it (at 166): "Because of the volume of loans examined by Clayton during the housing boom, the firm had a unique inside view of the underwriting standards that originators were actually applying – and that securitizers were willing to accept."

157. For each loan pool they were hired to review, Clayton checked for: (1) adherence to seller-credit underwriting guidelines and client-risk tolerances; (2) compliance with federal, state and local regulatory laws; and (3) the integrity of electronic loan data provided by the seller to the prospective buyer. This review was commonly referred to as a "credit and compliance review." Contract underwriters reviewed the loan files, compared tape data with hard copy or scanned file data to verify loan information, identified discrepancies in key data points, and graded loans based on seller guidelines and client tolerances. This included answering such questions as whether the "loans meet the underwriting guidelines," "comply with federal and state laws, notably predatory-lending laws and truth-in-lending requirements," and "were the reported property values accurate." (FCIC Report at 166.) It also "critically" analyzed whether, to the extent a loan was deficient, there were any "compensating factors." (*Id.*)

158. Each day, Clayton generated reports that summarized its findings, including summaries of the loan files that failed to meet the relevant underwriting standards. This included giving loans three grades – a Grade 3 loan "failed to meet guidelines and were not approved." Importantly, these Grade 3 loans did not contain any "compensating factors." Tellingly, only 54% of the nearly one-million loans reviewed by Clayton "met guidelines," a number that its

former president admitted indicated "there [was] a quality control issue in the factory" for mortgage-backed securities.

159. Clayton Holdings performed work on Residential Funding and GMAC transactions. Indeed, most all of the unaffiliated underwriters for the Certificates here – including JPMorgan, Bear Stearns, Lehman Brothers, Citigroup, Barclays, Goldman Sachs, Credit Suisse, Banc of America Securities, Deutsche Bank, and Morgan Stanley – have been directly linked to Clayton Holdings through documents made public in September 2010 by the government's investigation into the financial crisis.

160. According to an internal Clayton Holdings "Trending Report" made public by the government in conjunction with testimony given in September 2010, many of the underwriters who handled the Certificates here routinely found that high percentages of the loans they underwrote were outside the given underwriting guidelines, but waived them in in large numbers anyway.

161. These high percentage of problem loans were identified despite, on information and belief, underwriters pressuring Clayton to provide reports in a very short time frame, and with only limited re-verification of data. Thus, on information and belief, the percent of loans that were truly problematic was in fact higher than the astounding rates Clayton's reports managed to discover.

162. With such high failure rates, the proper response would be to reject the pool outright, and seriously investigate whether that originator could be considered a trusted source of loans in the future. Even assuming the defendants incredibly believed the high rates could be chalked up to 'sampling error' (due to the fact that Clayton did not review every loan in a pool),

the proper response would be to increase the sample size to test that hypothesis or to cease doing business with the problematic originators. The defendants did neither.

163. As set forth above, there is ample evidence that the Mortgage Loans at issue here were not, in fact, properly underwritten. Indeed, the recent review of the loan files by MBIA demonstrated that the defendants' loan files were missing information and were full of other red flags. Many of those types of errors were exactly the type that the third-party due diligence firms were supposed to detect. The third-party due diligence reports that were generated here, then, would have showed high levels of loans being rejected, and similarly high levels of those flagged loans being waved in as set forth above.

164. JP Morgan, who was an underwriter in GMACM 2005-HE1 and GMACM 2006-HE3, was informed that 27% of the loans it had reviewed "failed to meet guidelines." It intervened to "waive" 51% of those rejected loans anyway. On information and belief, JP Morgan was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

165. Bear Stearns, who was an underwriter in RAMP 2004-RZ4, RAMP 2006-RZ3, RFMSII 2005-HS2, RFMSII 2005-HSA1, RFMSII 2005-HI3, RFMSII 2006-HI4, RFMSII 2007-HI1, GMACM 2005-HE1, and GMACM 2006-HE3, was informed that 16% of the loans it had reviewed "failed to meet guidelines." It intervened to "waive" 42% of those rejected loans anyway. On information and belief, Bear Sterns was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

166. Lehman Brothers, who was an underwriter in GMACM 2005-HE1, was informed that 26% of the loans it had reviewed "failed to meet guidelines." It intervened to "waive" 37% of those rejected loans anyway. On information and belief, Lehman Brothers was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

167. Citigroup, who was an underwriter in RALI 2005-QA2, RALI 2005-QS6, and RFMSI 2005-S8, RFMSII 2007-HSA2, was informed that 42% of the loans it had reviewed "failed to meet guidelines." Citigroup intervened to "waive" 31% of those rejected loans anyway. On information and belief, it was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

168. Barclays, who was an underwriter in RALI 2006-QS14, was informed that 27% of the loans it had reviewed "failed to meet guidelines." It intervened to "waive" 28% of those rejected loans anyway. On information and belief, Barclays was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

169. Goldman Sachs, who was an underwriter in RALI 2006-QO3 and RALI 2007-QH6, was informed that 23% of the loans it had reviewed "failed to meet guidelines." Goldman Sachs intervened to "waive" 29% of those rejected loans anyway. On information and belief, it was similarly informed of the high number of problematic Mortgage Loans at issue here, and

similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

170. Credit Suisse, who was an underwriter in RASC 2005-KS4, RALI 2005-RS4, RFMSII 2005-HS1, RFMSII 2005-HSA1, RFMSII 2007-HSA3, and RFMSI 2006-S6, was informed that 32% of the loans it had reviewed "failed to meet guidelines." Credit Suisse intervened to "waive" 33% of those rejected loans anyway. On information and belief, it was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

171. Bank of America, who was an underwriter in RAMP 2004-RZ2, RAMP 2006-RZ3, RFMSII 2005-HS2, RFMSII 2005-HSA1, and RFMSII 2005-HS1, was informed that 31% of the loans it had reviewed "failed to meet guidelines." Bank of America intervened to "waive" 27% of those rejected loans anyway. On information and belief, it was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

172. Deutsche Bank, who was an underwriter in RFMSII 2006-HI5, was informed that 35% of the loans it had reviewed "failed to meet guidelines." Deutsche Bank intervened to "waive" 50% of those rejected loans anyway. On information and belief, it was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

173. Morgan Stanley, who was an underwriter in RFMSI 2006-S6, was informed that 37% of the loans it had reviewed "failed to meet guidelines." Morgan Stanley intervened to "waive" 56% of those rejected loans anyway. On information and belief, it was similarly informed of the high number of problematic Mortgage Loans at issue here, and similarly wrongfully waived in high numbers of those loans into the loan pools underlying the mortgage-backed securities purchased by Allstate.

174. In sum, on information and belief, the underwriters' due diligence identified high numbers of problematic loans, but those loans were "waived" into the collateral pools at issue here at a materially high rate. The hidden "waiver" of rejected loans that were not subject to any compensating factors was a fraudulent omission, and rendered the disclosures regarding the underwriting and due diligence processes even more misleading. As the FCIC report concluded (at 167, 170) (emphasis added):

> [M]any prospectuses indicated that the loans in the pool either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of Grade 3 Even loans were waived in.
>
> . . . .
>
> [O]ne could reasonably expect [the untested loans] to have many of the same deficiencies, at the same rate, as the sampled loans. ***Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few of the loans were reviewed, raising the question of whether the disclosures were materially misleading, in violation of the securities laws.***

G. Evidence That the Ratings Were Meaningless

175. The defendants fed the same misrepresentations found in the Offering Materials to the ratings agencies in an attempt to manufacture predetermined ratings. This not only rendered false the defendants' representations about how the ratings process really functioned,

but also assured that the ratings themselves in no way reflected the actual risk underlying the Certificates.

H. Evidence of Serious and Repeated Problems at the Affiliated Originator Homecomings Financial

176. As set forth above, many of the Mortgage Loans were generated by the defendants' affiliate, Homecomings Financial. It originated or acquired large portions of loans in all but two of the Certificates. For instance, in RALI 2006-QO3 it was responsible for 47.6% of the loans, and in RALI 2007-QH6 it was responsible for 43%. In twenty-three of the twenty-five transactions, it was responsible for at least 15% of the Mortgage Loans. It is thus in many respects the most pivotal originator at issue in this case, and evidence showing Homecomings Financial had problems at the origination stage is further evidence loans that loans included in Allstate's collateral pools were riskier than represented.

177. Not surprisingly given what is known about the actual Mortgage Loans at issue here, government investigations and statements provided by insiders in fact further confirm that the defendants' own originator was churning out problematic loans.

(1) Confidential witness: Automated system manipulated to obtain approvals

178. Confidential Witness 5 ("CW5") worked as a Regional Account Executive at Homecomings from 2003 to 2005, then worked in the Wholesale Lending Department within GMAC until early 2006. CW5 knew Correspondent Lending sales managers personally, and attended meetings with Residential Capital's Correspondent Lending personnel.

179. Part of CW5's duties included training loan brokers on how to use Homecomings' automated loan system. Based on CW5's personal experience, daily conversations with other Account Executives, automated Help Desk personnel, and others, according to CW5, ***Account***

Executives were trained by senior management how to teach outside mortgage brokers how to manipulate borrower data to generate an approval.

180. According to CW5, training people on how to use the automated system involved "loading data in AssetWise with the intent of getting an approval. They could run it through a number of times with different data until it got an approval." Indeed, the automated system allowed multiple applications to be submitted on the same borrower. According to CW5, ***"there were brokers running [the automated system] twenty-five times for the same borrower."***

181. Even though brokers were trained on how to do this data manipulation, according to CW5 brokers sometimes would just fax their changes to Account Executives. However, as this would leave the Account Executive's user ID on the loan file, senior management tried to crack down on this practice. Rather than stressing how data manipulation should not take place at all, according to CW5, they simply wanted more training so the brokers could enter the data themselves, leaving less of a 'paper trail' leading back to the Account Executives.

182. However, because certain Account Executives did not want the social awkwardness of asking brokers to do the data entry themselves, according to CW5 many continued to perform the data changes on behalf of larger clients. Others simply would email the brokers instructions regarding the data changes, or talk them through the process on the phone.

183. In these ways, according to CW5, ***"there was complicity on the part of employees, a lot of employees, in manipulating AssetWise until loan applications were approved."*** According to CW5, ***"this was sanctioned behavior."***

184. Homecomings even had a Help Desk. Rather than being just for technical support, according to CW5, this desk was designed to inform brokers why a particular loan was

being denied by the automated program. An explanation was provided as to what minimum change would be required to generate an approval.

185. According to CW5, the most commonly manipulated data included income, assets, and debt-to-income ratios.

186. CW5 believes that Homecomings' underwriters could see all the prior versions of the loan applications put through the system. Thus, if the first application claimed a borrower was a carpenter making $6,000, they could see that even if the fifth claimed $16,000. According to CW5, underwriters could get "trapped by the guidelines." That is, even if they noticed that income levels were changing in such a way, because the automated system was generating an approval on the last version of the application, the underwriters would be told they could not decline the application.

187. According to CW5, in the 2004-2005 timeframe, the parent company RFC capped the percentage of loans that could be generated using "full documentation" procedures. It made a push to increase loan volumes elsewhere because "that's where the profits were" and wanted the loans for its mortgage-backed securities operations. Around 2004 and 2005, CW5 noticed an unannounced change to the automated systems. Whereas before, users had to input the product the loan application was being submitted under (full documentation, Al-A, etc.), the automated program instead began approving the loan under any program that it qualified for.

188. Despite the manipulation – which, according to CW5, could be done even more so with loans given through low-doc procedures – the automated system initially was ill-suited to the parent company's demand for more subprime products as at first it was rejecting many loans. Though according to CW5 seven of ten of the loans rejected by their own automated program

were eventually given a pass through manual underwriting, that process took time. Because that delay caused the company to lose business, Residential Funding turned to "bulk" purchases.

(2) Confidential witnesses: QC group overridden

189. Confidential Witness 3 ("CW3") worked as a Pre-Funding Quality Control Supervisor at Homecomings from 1997 to 2005. This review was supposed to identify missing information and documents. However, according to CW3, pre-funding reviews covered only 5%-10% of the approved mortgages.

190. According to CW3, 30-35% of the loans CW3's QC team reviewed resulted in a "inconclusive" recommendation, meaning that the underwriter needed to make further proof that the loan file was reliable. According to CW3, 5% received a "misrepresentation with certainty" recommendation.

191. According to CW3, there was no formal channel for the QC group to challenge and overturn an underwriter's decision to approve a mortgage – area managers even had the power to disregard QC's rejection of a mortgage, which, according to CW3, did occur even when the recommendation was "misrepresentation with certainty." According to CW3, Homecomings "gave a lot of loans they shouldn't have." CW3 considered the stated-income loans "all lies."

192. Confidential Witness 6 ("CW6") worked at Homecomings from 2002 to 2007. Until 2006, CW6 worked as a Post-Funding QC Auditor. Thus, unlike CW3's team, CW6 would review loan files of mortgages that had already been funded. Around 2006, CW6's role changed to fixing deficiencies in mortgages that had been identified as "unsellable," and CW6's title changed to "Resolutions Coordinator." According to CW6, this change occurred around the same time changes were occurring within the GMAC organization, and around that time Homecomings "started to spiral downward."

193. By 2005, according to CW6, the borrower qualifying process had gotten "more lax, they took more risks, and got greedy." This caused CW6 to wonder how certain borrowers got loans at all.

(3) Other evidence of problems at Homecomings

194. In mid-2008, the FTC began an investigation into Homecomings Financial, after a staff review had found evidence of discriminatory lending practices. The FTC found that Homecomings Financial "originated the vast majority of its loans through independent brokers" that were allowed to assess discretionary charges on borrowers. The FTC found that disparities in the fees were "substantial, statistically significant, and cannot be explained by any legitimate underwriting or credit characteristics in violation of the ECOA and the FTC Act."

195. On September 3, 2009, Residential Capital announced it was shutting down its wholesale mortgage origination operations, thereby closing down the lending operations of both Homecomings Financial and the other affiliated originator at issue here, GMAC Mortgage LLC. In a January 22, 2009 letter, the FTC explained it was closing its investigation into Homecomings Financial because it had ceased originating loans, and that according to Residential Capital "the ability of [Homecomings Financial] to continue as a going concern is in substantial doubt," in part because Homecomings Financial "is heavily dependent on its own indirect parent, GMAC, LLC, for funding and capital support and that there can be no assurance that such support will continue."

196. A March 5, 2009 article in the *Portland Tribune* discussed the massive failures in the lending industry. It quoted Tim Boyd, who worked at Homecomings Financial for seven years, as saying that: "In order to keep your market share, you had to be more aggressive." According to the article, he knew of loan officers who would tell title agents to "keep quiet about

Option ARM loan provisions during document-signing time. 'They'd tell the title officer, 'Don't go over this, just glean through it quickly and get the thing signed.'"

197. Pay-option loans give the borrower the choice of what to pay each month – but if they choose a low amount, the principal loan balance actually *increases*, eventually causing the "minimum" payment to jump. Option ARMs combine this with another confusing, risky feature: an initially low teaser interest rate that will reset after a certain period. The counterintuitive nature of an increasing principal is a risk many borrowers may not fully understand, particularly when combined with the complex calculation of interest-rate risk. Obviously, a borrower that does not understand the loan terms is more likely to default as it is more likely the borrower cannot properly determine whether it can afford the loan, or plan for and adjust for any unexpected change of circumstances. The FCIC's report (at 90) recounted a study that found that ***38% of borrowers with adjustable-rate mortgages did not understand*** how much their interest rates could reset at one time, and ***more than half underestimated*** how high their rates could reach over the years.

198. According to CW5, by the end of 2006, 50% of Homecomings' loans were option-ARMS. CW6 noted that borrowers who were given ARMs were only qualified at the initial, low rate – without consideration of whether they could afford any changes that might occur after the initial fixed period expired.

199. These same and other types of exotic loans were included in many of the loan pools at issue here. On information and belief, the loans at issue here were similarly, deliberately given to borrowers who were deceived about the risks they presented. This represented yet another deliberate end-run around proper underwriting standards, and created yet another layer of hidden, undisclosed risk.

I. Evidence that the Loans Were Approved Based on Incomplete Loan Files

200. According to the FCIC's report (at 110-11), traditionally, low-documentation loans were used for the particular borrowers with fluctuating or hard-to-verify incomes, such as longtime customers with strong credit. Lenders later realized they could charge borrowers more and approve more borrowers using those processes: "Around 2005 . . . low- and no-documentation loans took on an entirely different character . . . [F]raud specialists described stated income loans as 'an open invitation for fraud' that justified the industry term 'liar loans.'" It also concluded (at 160): "Across the mortgage industry, with the bubble at its peak, standards had declined, documentation was no longer verified, and warnings from internal audit departments and concerned employees were ignored. These conditions created an environment ripe for fraud."

201. As above, a review of the defendants' actual loan files here found many to be incomplete. As below, Residential Funding is itself suing its originators based in part on incomplete loan files. On information and belief, the Offering Materials at issue here similarly materially overstated the percent of underlying loans that were based on a fully-documented basis, and thus materially understated the risk associated with Allstate's Certificates.

J. Evidence that Residential Funding Itself Believes Loans it Purchased Were Non-Compliant

202. According to news reports from early January 2009, Residential Funding *tripled* the number of lawsuits it had filed against unaffiliated originators, alleging that they had wrongfully refused to buy back non-compliant loans that they had sold Residential Funding for use in its securitizations.

203. These suits are based on Residential Funding's originators' alleged breach of their contracts with Residential Funding to abide by the terms of the Seller Guide, representations that the loans were prudently underwritten, and that all loan documents were complete and accurate.

204. These are thus necessarily admissions that Residential Funding was acquiring loans that were based on insufficient documentation and not in compliance with Residential Funding's underwriting guidelines, including around the same time that loans Residential Funding were acquiring were being shuffled into securitizations such as those at issue here.

IV. THE DEFENDANTS KNEW THEIR REPRESENTATIONS WERE FALSE

A. The Statistical Evidence is Itself Persuasive Evidence the Defendants Knew of the Falsity of Their Representations – Particularly Given They Originated Many of the Loans

205. As above, the Certificates have significantly underperformed. For instance, for RALI 2007-QH6, ***55% of the loans have either already had to be written off at a loss or are currently delinquent.*** And overall, ***approximately 30% of the Mortgage Loans underlying the Certificates have already had to be written off at a loss or are currently delinquent.***

206. Allstate's analysis also shows that the loans were consistently misrepresented – by large margins. On average, ***owner occupancy was overstated by over 10%***. The analysis also shows a ***18% understatement of the amount of loans had had LTVs over 100% and 37% understatement of the loans that had CLTVs over 100% (i.e., of loans that were underwater).***

207. In addition, MBIA's similar and overlapping review of thousands of the defendants' actual loan files demonstrates systemic problems in the loans underlying the Certificates.

208. The remarkable default and delinquency rates, understated LTV and CLTV ratios, overstated owner occupancy statistics, and the problem files uncovered by the defendants' insurer are not only evidence that the Mortgage Loans underlying the Offerings were defective.

They are themselves strong evidence that the defendants knew the Mortgage Loans underlying the Offerings were grossly defective when they made contrary representations to Allstate. Simply put, they could not have pooled these Mortgage Loans without knowing that, contrary to their representations, the loans were widely defective.

209. That the Mortgage Loans could have made it to the securitization market without their knowledge of the problems is made all the less improbable by the fact that, as above, many of the loans were originated by defendants' own affiliates. Residential Funding transactions involved affiliated Residential Funding originators, sellers, sponsors, servicers, underwriters, and depositors. Similarly, the GMAC transactions involved affiliated GMAC originators, sponsors, servicers, underwriters, and depositors. All of the defendants involved in the Certificates were related directly or indirectly through Ally Financial Inc., Residential Capital, LLC, and/or GMAC Mortgage Group, LLC. Indeed, starting in 2007, CW6 (who, as above, worked at Homecomings) started receiving an "unsellable report" that reflected *all* funded loans enterprise-wide (i.e., including mortgages originated by GMAC entities other than Homecomings.)

210. This vertical integration between originators and issuers heightened the already-perverse incentives created by the move to the "originate and distribute" business model. The originator, secure with a pipeline to the market, would have even more incentive to loosen its practices. Those responsible for the securitization, focused on volume, would push them to do so even more. Indeed, according to CW5, Residential Funding mandated that Homecomings limit the share of loans approved on a fully-documented basis, and instead focus on the more-profitable low-doc products. And once the loans were issued, those responsible for securitization would have significant incentives to ignore problem loans because rejecting a loan would saddle an affiliated company with a toxic loan.

211. As purchasers of the loans, the defendants had extensive business relationships with the originators (even the unaffiliated ones), had access to the originators mortgage origination personnel and internal information, and conducted due diligence into the originators through their own personnel and third-party loan review firms.

212. Thus, regardless of the originator, the defendants were either aware of the falsity of their representations, or made representations without knowing their truth. In short, the defendants' relationships with the originators, particularly their own affiliates who originated the bulk of the loans at issue here, gave them yet another source of actual knowledge of the falsity of the representations it made to Allstate. Because of those ties, the defendants had a direct window into the lax practices that led to the creation of the toxic pools of loans to begin with.

213. The prevalence of such problems as evidence of the defendants' knowledge is further magnified when one considers the size of the defendants' operations. As above, Residential Funding was the eighth-largest sponsor of non-agency mortgage backed securities in 2007. It is inconceivable that problems on the scale at issue here could be anything but the result of knowing conduct with regard to the true risk profiles of the Mortgage Loans, or conduct undertaken with no regard to the truth or falsity of information uniquely within defendants' knowledge. Indeed, as above, MBIA claims that Residential Funding admitted to it that it knew mortgage loan pools failed to comply with Residential Funding's guidelines.

B. Evidence From Third-Party Due Diligence Firms Demonstrates That Defendants Knew Defective Loans Were Being Securitized

214. Not only *must* the defendants have known that the Mortgage Loans were widely defective; they *did* know.

215. As above, many of the loans at issue here originated from the defendants' affiliated companies, where they had a direct window into the lax origination processes. Further,

the defendants represented that they reviewed the loans they were purchasing both through automated and manual procedures "for conformity with the applicable underwriting standards." Even for those loans not generated in-house, the Offering Materials for RALI 2005-QA2 represented that "[p]rior to assigning the mortgage loans to the depositor, ***Residential Funding will have reviewed*** the underwriting information provided by the mortgage collateral sellers ***for most of the loans*** and, in those cases, determined that the mortgage loans were generally originated with or in a manner generally consistent with the underwriting standards described in the Seller Guide." Similarly, the Offering Materials for RALI 2006-QS14 represented that "Residential Funding Corporation ***evaluates many of the mortgage loans*** that it purchases through the use of one or more automated underwriting systems. In general, these systems are programmed to review ***most of the information*** set forth in Residential Funding Corporation's Seller Guide as the underwriting criteria necessary to satisfy each underwriting program."

216. In other words, the defendants represented that they undertook their own due diligence procedures. This review, if properly performed, would necessarily have revealed the pervasive deficiencies in the Mortgage Loans at issue here.

217. The defendants' willingness to include knowingly defective loans in securitization pools is confirmed by the testimony of CW4, who testified that ***half*** of all applications that were flagged as falling meaningfully short of underwriting guidelines were funding through underwriting "exceptions." It is also confirmed by the testimony of CW5 who, as above, testified of systemic, senior-level-approved manipulation of the data being put into the automated underwriting system, and by the testimony of CW1, discussed in detail further below.

218. It is further demonstrated by data recently revealed by one of the firms hired to carry out the underwriting due diligence. As noted above, underwriters typically hire third-party

due diligence firms, such as Clayton Holdings, Inc., to conduct a review of the proposed loan pool for the underwriters. Clayton Holdings would identify loans that "failed to meet guidelines" and that did *not* contain any "compensating factors." Based on the information released in conjunction with the government's investigation as well as the other facts set forth above, on information and belief the underwriters here were informed by their third-party due diligence firms that high percentages of the Mortgage Loans underlying Allstate's Certificates "failed to meet guidelines," yet the underwriters waived in high numbers of such rejected loans.

219. Such third-party due-diligence data not only supports the fact the Mortgage Loans were defective, but also shows they knew the defendants knew the representations were false. According to the September 2010 testimony of Clayton's Vice President Vicky Beal, the third-party due diligence firms' "exception reports" were provided not just to the underwriter, but also to the sellers. Further, according to the September 2010 testimony before the FCIC by Clayton's former president, D. Keith Johnson, the investment banks would use the exception reports to force a lower price from loan originators.

220. On information and belief, then, the defendants here through their numerous roles of co-underwriter in many of these deals (GMAC RFC Securities), originators (through their affiliates GMAC Bank, GMAC Mortgage LLC and Homecomings Financial, LLC), and sellers (GMAC Mortgage LLC and Residential Funding Company, LLC), thus were aware of the due diligence reports that would have been generated by the third-party due diligence firms. On information and belief, their own due diligence revealed similar problems even apart from Clayton Holdings' review.

221. Thus, the defendants were made well aware by the underwriters' third-party due diligence reports, as well as from their own due diligence, that a high number of the Mortgage

Loans had been red-flagged by those third-party reviews, yet were waived for inclusion in the securitizations anyway by the underwriters. In other words, they knew the Offering Materials were false and misleading.

C. Other Confidential Witness Testimony Further Confirms' Defendants' Knowledge

222. Confidential Witness 1 ("CW1") was a Senior Mortgage Operator within GMAC during 2004 and 2005. CW1's team was responsible for reviewing loan applications and files before closing, in order to approve GMAC's funding of the loan. CW1 believes that the loans CW1's group worked on were designated for sale in loan pools.

223. The loans CW1's team reviewed had already been flagged by automated underwriting systems as being outside normal guidelines. CW1's team, and those like it, were to manually review the file to determine if they could be "tweaked" enough to allow approval of the loan. According to CW1, "There were ways to get any loan approved," and CW1's job was "to make a loan look to be a much prettier package" than it really was.

224. According to CW1, beginning in 2005 there was a pressure to approve loans that did not meet guidelines, and that lacked any compensating features. Whereas things "made sense" before, according to CW1, room was made for a new supervisor that "threw all [CW1] knew out the window."

225. CW1 informed the supervisor that such changes would result in the exposure for the company by way of "buy-backs," but the supervisor did not care and just wanted to "make deals work." CW1 felt pressure and was told such things as "don't be such a hard ass."

226. In addition to the explicit pressure, a change was made that CW1's underwriting team could no longer use other personnel to help complete and clear loan files. This lead to additional time demands on the underwriters, causing underwriters to let missing paperwork

(such as recent pay stubs) in the loan files slide in order to keep up with the expected turn times. Further, the policy was changed such that loan officers – who were paid by GMAC on commission – were allowed to contact underwriters directly – making the environment even more like a boiler room.

227. According to CW1, though other underwriters bent to the new pressure and approved loans despite a lack of compensating features, CW1 left.

228. CW1 gave a particular example of how debt-to-income figures could be manipulated to justify approval. One DTI standard excluded car loans that were less than six months to be paid off. If a credit report was outdated, the underwriter would assume that additional payments had been made in the time since the credit report – then further assume the borrower would make additional payments in the time before loan closing. Making such assumptions, the underwriters would then leave out the car loan from the DTI calculation.

229. As to owner-occupancy, CW1 said that the loan files contained information that could be used to verify owner-occupancy declarations. For instance, CW1 would look for letters from prior landlords confirming they had received a Notice to Vacate, or would call landlords directly. Or, borrowers who owned prior properties were required to show that the first home had been sold. CW1 looked to confirm declarations of other properties being "second homes" (with the property being currently mortgaged the occupied one) by comparing the value of the "vacation home" to the value of the property being mortgaged.

230. As above, CW6 worked within Homecomings. However, according to CW6, there were also auditors in other parts of the GMAC organization that reviewed Homecomings' loan files for underwriting guideline compliance, including within the "investor sales teams," who conducted a "more intense" review of the loans that were to be sold to third parties. This

further confirms defendants would have been knowledgeable about the lax practices of its affiliated-originator.

D. Evidence of Residential Funding's Improper "Bulk Buying" Procedures

231. MBIA's review of the loan files and other parts of its investigation undertaken in its role as the defendants' insurer found that the non-compliant nature of many of the loans it reviewed was due to the systemic abuse of underwriting "exceptions." According to MBIA, a "significant number" of the "exception" loan files MBIA reviewed did not even identify which supposed exception was being relied upon, let alone contain sufficient documentation to justify the use of such an exception. In addition, MBIA found that for a "significant number" of the loans it reviewed were instead approved based on the secret abuse of three practices that resulted in large numbers of non-compliant loans being contributed into securitization programs.

232. According to MBIA, first, Residential Funding improperly abused "negotiated commitments," where it agreed to buy future loans from the originator that failed to comply with Residential Funding's underwriting guidelines. Second, it improperly abused a "bulk purchase program" where it agreed to purchase a large amount of pre-existing loans that Residential Funding would not then confirm whether they had been originated in compliance with Residential Funding's underwriting guidelines. Finally, Residential Funding underwrote or purchased loans using an automated system, Assetwise, that did not in fact analyze the proposed mortgages in accordance with Residential Funding's underwriting guidelines. According to MBIA, these practices all helped contribute to the "substantial and material" number of non-compliant loans that were found in the reviewed securitization pools.

233. On information and belief, based in part on the overlapping nature of the certificates studied by MBIA and those at issue here, these same practices were also used and abused with respect to the Mortgage Loans at issue here. Such practices represent conscious

decisions by the defendants to pool loans that they had no idea as to whether they in fact met any of their claimed underwriting guidelines. As such, these practices show the defendants knew of, or were indifferent to, the falsity of the Offering Materials.

234. The results of MBIA's study is corroborated by the testimony of CW5. As discussed above, in 2004-2005, according to CW5, Residential Funding dictated that its affiliated originator Homecomings produce no more than fifty percent of its loans through fully-documented processes. According to CW5, it did this because it felt other products were more profitable, and wanted the alternative products for use in its securitizations.

235. As also discussed above, according to CW5, even though the automated underwriting system was being manipulated, and even though low-doc loans could be manipulated even more, the system was still rejecting too many loans. The resulting delay in approval by having to manually approve the rejected loans caused the company to lose business. Thus, according to CW5, it turned to "bulk buy" procedures.

236. According to CW5, Residential Funding would buy hundreds of millions of fully-funded loans at a time. The loans were not put through the automated system until Residential Funding won the "bid." Only then did Residential Funding conduct due diligence. However, it would not perform due diligence on all the files, but only a small sample. The sample would decrease with each successive purchase from that seller – eventually such that no testing was done. According to CW5, this allowed Residential Funding to pursue fewer and fewer repurchase demands from the bulk-sellers. "It makes for a better relationship if you're not kicking back a lot of loans."

E. Evidence That the Defendants Knew the Appraisals Were Falsely Inflated

237. As above, the appraised value of a mortgaged property is a key component in the LTV and CLTV ratios. Defendants knew at the time the appraisals were false and baseless, and

thus did not genuinely believe at the time the disclosed statistics were accurate. This is supported, as above, by the consistency of the wide disparities in Allstate's Certificates, discovered through use of loan-level, contemporaneous information. It is also supported by evidence of the systemic problems within defendants' underwriting operations, and by statements provided by a confidential witness, and other testimony that has been provided by industry insiders.

238. CW1 received appraisals that CW1 knew were inflated, but was pressured to approve loans anyway. For instance, appraisals would come in using "comparables" (or "comps") that were in no way comparable to the property being mortgages – such as a home sitting on a canal being compared to a beachside property. In addition, appraisers were allowed to make the comp values even higher using "line adjustments," increasing the aggregate total comp value by as much as 25%.

239. Also, according to CW1, GMAC required that appraisals be obtained from a specific-pre-approved list. CW1 said that some of the appraisers should have been kicked off for consistently submitting inflated appraisals, or submitting the same exact appraisal analysis on every appraisal they submitted – indicating they were not actually doing any independent analysis on each unique property.

240. In addition, according to CW3, the QC team at Homecomings was supposed to ensure that the underwriters had run the appraisal's recommendation through an automated valuation model. As above, an industry-accepted AVM model, using the same type of contemporaneous data that would have likely been used in defendants' models, shows large discrepancies from what figures Defendants put into the Offering Materials.

241. Further, on information and belief, the defendants used their economic leverage over the appraisal process to make the appraised values fit the loan they wanted to approve, rather than to fit the true value of the property. This further establishes that they knew the LTV and CLTV statistics were false.

242. That the misstatements go heavily in one direction – seriously inflated values leading to materially understated LTV and CLTV statistics – is itself persuasive evidence that the overstatements revealed by Allstate's recent analysis were not mere errors or differences of opinion, but conscious misrepresentations. This is further confirmed by Congressional testimony and other statements made by those in the industry about the widespread corruption in the appraisal processes during all times relevant to this Complaint.

243. For instance, Richard Bitner, a former executive of a subprime lender for fifteen years, testified in April 2010 that "the appraisal process [was] highly susceptible to manipulation," and that the rise in property values was in part due to "the subprime industry's acceptance of overvalued appraisals." Similarly, Patricia Lindsay, a former wholesale lender, testified in April 2010 that in her experience appraisers were "often times pressured into coming in 'at value,'" i.e., at least the amount needed for the loan to be approved. The appraisers "fearing" their "future business and their livelihoods" would choose properties "that would help support the needed value rather than finding the best comparables to come up with the most accurate value."

244. And Jim Amorin, President of the Appraisal Institute, testified in April 2009 that "in many cases, appraisers are ordered or severely pressured to doctor their reports to convey a particular, higher value for a property, or else never see work from those parties again . . . [T]oo often state licensed and certified appraisers are forced into making a "Hobson's Choice.'"

245. The FCIC's January 2011 report recounts (at 91) the similar testimony of Dennis J. Black, an appraiser with 24 years of experience who held continuing education services across the country. "He heard complaints from appraisers that they had been pressured to ignore missing kitchens, damaged walls, and inoperable mechanical systems. Black told the FCIC, 'The story I have heard most often is the client saying he could not use the appraisal because the value was [not] what they needed.' The client would hire somebody else."

V. ALLSTATE'S DETRIMENTAL RELIANCE AND DAMAGES

246. In making the investments, Allstate relied upon the defendants' representations and assurances regarding the quality of the mortgage collateral underlying the Certificates, including the quality of their underwriting processes. Allstate received, reviewed, and relied upon the Offering Materials, which described in detail the Mortgage Loans underlying each offering. Offering Materials containing the representations outlined above and in the Exhibits (or nearly identical, materially similar counterparts thereto) were obtained, reviewed, and relied upon before any purchase was made.

247. In purchasing the Certificates, Allstate justifiably relied on the defendants' false representations and omissions of material fact detailed above, including the misstatements and omissions in the Offering Materials. These representations materially altered the total mix of information upon which Allstate made its purchasing decisions.

248. But for the misrepresentations and omissions in the Offering Materials, Allstate would not have purchased or acquired the Certificates as it ultimately did, because those representations and omissions were material to its decision to acquire the Certificates, as described above.

249. Allstate's losses on the Certificates have been much greater than they would have been if the Certificates and the loans underlying them were as the defendants described them to

be. The false and misleading statements of material facts and omissions of material facts in the Offering Materials directly caused Allstate damage, because the Certificates were in fact far riskier than the defendants described them to be, and that risk has actually already materialized. For example, the fact that the loans were not secured by owner-occupied properties at their claimed rate made them more prone to default. Owners who do not occupy their properties are more likely to default on their loans, which made the Certificates poorer investments, accelerated the Certificates' decline in value, and greatly worsened Allstate's losses.

250. In fact, the loans underlying the Certificates have experienced default and delinquency at extraordinarily high rates due to the abandonment of the disclosed underwriting guidelines. These rates of default are much higher than what a pool of loans that had the features defendants' described would have experienced in the same economic conditions. The income and principal payments that Allstate received have been less than Allstate expected under the "waterfall" provisions of the securitizations. Further, the higher default rates have eaten into the safety "buffer" such features as overcollateralization were supposed to provide, meaning the prospects for full receipt of the payments once expected have dropped significantly.

251. The high rates of default, the lower safety "buffer" left in its wake, and the discovery of fundamental irregularities in the defendants' underwriting practices all signal increased risk in the Certificates. As a fundamental financial principle, the diminished prospect of continued cash flows – i.e., perceived and actual risk – dictates that the Certificates are currently less valuable than they would have been but not for the misrepresentations. Thus, Allstate is not seeking recovery for (or, in the alternative, to rescind based on) future potential losses, but recovery based on its past and current damages.

252. Even in the context of the real estate crisis, the Certificates would have held most, if not all, their value had the security underlying the loans been as represented by the defendants in their Offering Materials, because such mortgage pools would not have defaulted at nearly the same high rate. This decreased value is evidenced collectively by, but need not be measured solely by, among other things: (a) the high rates of default and delinquency of the Mortgage Loans; (b) the Certificates' plummeting ratings; (c) lower-than-expected past and current income streams from the Certificates; and (d) lower market value.

253. There are several potential ways of valuing a mortgage-backed security. One of the potential ways that lower value can be measured, and part of the evidence that Allstate has been damaged, can be found in secondary-market pricing. Though the market may have temporarily "seized up" during the financial crisis, it has since recovered and there was and is a functioning, liquid secondary market for mortgage-backed securities such as the Certificates here. Numerous brokers are active in, and have trading desks specifically dedicated to, the secondary market for RMBS, including without limitation Credit Suisse, Barclays, Bank of America, Citigroup, Deutsche Bank, Goldman Sachs, Royal Bank of Scotland, J.P. Morgan, Nomura, and Morgan Stanley. Indeed, Allstate has already sold some of these Certificates on the secondary market.

254. According to data provided to the FCIC, between May 2007 and November 2008 Goldman Sachs alone bought and sold $17 billion worth of RMBS cash securities, and $32 billion worth of credit default swaps linked to RMBS securities, representing a total of 7,000 trades. These figures demonstrate the liquidity in the secondary market for RMBS.

255. The *Wall Street Journal* recently reported that "AIG Bonds are in Demand," finding that the Federal Reserve Bank of New York's "much anticipated" auction of $1.5 billion

in subprime bonds was "deemed successful by industry participants." "Industry participants said dealers saw solid interest from investors." According to a CEO quoted by the article, "The overwhelming majority of the list [of bonds] traded at more than the estimated price, indicating healthy demand by dealers and investors."

256. The *Wall Street Journal* separately also recently quoted the Federal Reserve Bank of Dallas President Richard Fisher as saying that "there is plenty of liquidity" in the markets to drive growth. One of the signs he pointed to was the "rejuvenation of the subprime markets."

257. Allstate purchased the Certificates not only for their income stream, but held them on a "available for sale" basis, with the expectation that some of Allstate's RMBS portfolio could and would be sold on the existing secondary market. Some of these Certificates have already been sold on the secondary market. Allstate thus viewed market value as a critical aspect of the Certificates it purchased. Allstate has lost much of the market value in these securities – much more than it would have lose if the Certificates had been backed by loans of the quality the defendants' represented, which would have held up to the recent economic downturn much better than those loans the defendants actually included in these Certificates.

258. In short, defaults were much higher than they would have been if the Mortgage Loans had been properly underwritten. This has caused the value of the Certificates to plummet. This is evidenced by, but not contingent entirely upon, the drop in market value of the securities. As loans which were properly underwritten would have withstood the same economic conditions much better than those defendants offloaded onto Allstate here, and thus securities backed by loans with the features defendants describe would currently have a much higher value than Allstate's Certificates, Allstate was damaged by defendants' wrongdoing.

259. Allstate's damages here are separate and severable from Allstate's losses caused by the economic downturn, and such could be reliably measured through the discovery process. For instance, but without limitation, upon discovery of the full extent of defendants' misrepresentations, expert testimony may compare the performance of the *actual* Certificates and/or loan pools here, with the performance of securities and/or loan pools that had the features described in the Offering Materials, with Allstate's damages being the difference. However, it is well beyond Allstate's pleading burden to perform such analysis here, and in any event the full extent of the defendants' misrepresentations is unknown as Allstate does not have access to the loan files.

FIRST CAUSE OF ACTION
(Common-law Fraud)

260. Allstate realleges each allegation above as if fully set forth herein.

261. The material representations set forth above were fraudulent, and the defendants' representations falsely and misleadingly misrepresented and omitted material statements of fact. The representations at issue are identified above, further identified in Exhibits D through BB, and are summarized in Section II above.

262. Each of the defendants knew their representations and omissions were false and/or misleading at the time they were made, or made such representations and omissions without knowledge of their truth or falsity.

263. Each made the misleading statements for the purpose of inducing Allstate to purchase the Certificates.

264. Allstate justifiably relied on the defendants' false representations and misleading omissions.

265. Had Allstate known the true facts regarding the defendants' underwriting practices and quality of the loans making up the securitizations, it would not have purchased the Certificates as it ultimately did.

266. As a result of the foregoing, Allstate has suffered damages according to proof or, in the alternative, Allstate has the right to rescind the fraudulently induced Certificate purchases and to require the defendants to repurchase the Certificates at their original cost, plus interest.

SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

267. Allstate realleges each allegation above as if fully set forth herein.

268. Including not only the Certificates at issue here but others not part of this action, Allstate made forty-nine purchases in numerous offerings of mortgage-backed securities that the defendants securitized and sold.

269. Because the defendants arranged the securitizations, and originated or acquired, underwrote, and serviced all of the underlying mortgage loans, they had unique and special knowledge about the loans in the offerings. In particular, they had unique and special knowledge and expertise regarding the quality of the underwriting of those loans as well as the servicing practices employed as to such loans.

270. Because Allstate could not evaluate the loan files for the Mortgage Loans underlying its Certificates, and because Allstate could not examine the underwriting quality or servicing practices for the Mortgage Loans in the securitizations on a loan-by-loan basis, it was heavily reliant on the unique and special knowledge of these defendants regarding the Mortgage Loans when determining whether to make each investment of Certificates. Allstate was entirely reliant on the defendants to provide accurate information regarding the loans in engaging in that

analysis. Accordingly, the defendants were uniquely situated to evaluate the economics of each Securitization.

271. Going back seven years over forty-nine separate purchases, Allstate relied on the defendants' unique and special knowledge regarding the quality of the underlying Mortgage Loans and their underwriting when determining whether to invest in the Certificates at issue in this action. This longstanding relationship, coupled with their unique and special knowledge about the underlying loans, created a special relationship of trust, confidence, and dependence between the defendants and Allstate.

272. The defendants were aware that Allstate relied on their unique and special expertise and experience and depended upon them for accurate and truthful information. They also knew that the facts regarding their compliance with their underwriting standards were exclusively within their knowledge.

273. Based on their expertise, superior knowledge, and relationship with Allstate, the defendants owed a duty to Allstate to provide complete, accurate, and timely information regarding the Mortgage Loans and the offerings. These defendants breached their duty to provide such information to Allstate.

274. They likewise made misrepresentations in order to induce Allstate's investment in the offerings. The misrepresentations are set forth above and in Exhibits D through BB. At the time they made these misrepresentations, the defendants knew, or at a minimum were negligent in not knowing, that these statements were false, misleading, and incorrect. Such information was known to the defendants but not known or readily known to Allstate, and the defendants knew that Allstate was acting in reliance on mistaken information.

275. Allstate reasonably relied on the information the defendants did provide and was damaged as a result of these misrepresentations. Had Allstate known the true facts regarding the defendants' underwriting practices and the quality of the loans making up the securitizations, it would not have purchased the Certificates as it ultimately did.

276. The defendants were in the business of providing information for use by others, including Allstate. Specifically but without limitation, they were in the business of providing information by way of the Offering Materials so that investors could rely on them in deciding whether to invest in the securities being offered. Though this information was publically available, due to the complexities of these Certificates and the nature of the market for mortgage-backed securities, the Offering Materials were primarily intended for the much smaller circle of institutional purchasers.

277. The defendants' material misrepresentations and omissions set forth above were made without any reasonable ground for believing that the representations were true.

278. As a result of the foregoing, Allstate has suffered damages according to proof.

THIRD CAUSE OF ACTION
(Fraudulent Inducement)

279. Allstate realleges each allegation above as if fully set forth herein.

280. Allstate was fraudulently induced to purchase the Certificates by the defendants' misrepresentations and omissions of material facts. The materially untrue statements and omissions of material fact in the Offering Materials are summarized above and are further set forth in the Exhibits.

281. Each of the defendants knew their representations and omissions were false and/or misleading at the time they were made. Each made the misleading statements with an intent to induce Allstate to purchase the Certificates.

282. Allstate justifiably relied on the defendants' false representations and misleading omissions in purchasing the Certificates.

283. Had Allstate known the true facts, it would not have purchased the Certificates as it ultimately did.

284. As a result of the foregoing, Allstate has the right to rescind the fraudulently induced Certificate purchases and to require the defendants to repurchase the Certificates at their original cost, plus interest.

FOURTH CAUSE OF ACTION
(Consumer Fraud Act)

285. The Certificates at issue in this case are "merchandise" as defined under the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.68 ("any objects, wares, goods, commodities, intangibles, real estate, loans, or services").

286. By way of the acts, representations, and omissions set forth above, the defendants used "fraud, false pretense[s], false promise[s], misrepresentation[s], misleading statement[s], or deceptive practice[s], with the intent that others rely thereon in connection with the sale of" merchandise, in violation of Minn. Stat. § 325F.69.

287. The Minnesota Consumer Fraud Act and the Minnesota Private Attorney General statute, Minn. Stat. § 8.31, allow "any person injured," regardless of their alleged sophistication, to bring suit. *See, e.g.*, *Group Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 8 (Minn. 2001) ("In describing who may bring an action, subdivision 3a does so in the broadest terms, stating that '*any person* injured by a violation . . . may bring a civil action and recover damages' . . . . Neither the private remedies statute nor the substantive statutes contains any language restricting those who may sue to purchasers or consumers.") (emphasis in original, citations omitted).

288. Though Allstate's investing activities are designed to protect its stakeholders (including insureds in the state of Minnesota) through the use of safe and sound investing practices, Allstate purchased the Certificates on its own account. Allstate was not acting as a broker or merchant in connection with the purchase or potential resale of the Certificates.

289. As above, because it was the defendants that arranged the securitizations, and originated or acquired, underwrote, and serviced all of the underlying mortgage loans, they had unique and special knowledge about the loans in the offerings. In particular, they had unique and special knowledge and expertise regarding the quality of the underwriting of those loans as well as the servicing practices employed as to such loans. Allstate could not evaluate the loan files for the Mortgage Loans underlying its Certificates because those files were not provided to it. Nor could Allstate examine the underwriting quality or servicing practices for the Mortgage Loans in the securitizations on a loan-by-loan basis. The disproportionate access to the information at issue in this case between defendants and Allstate was substantial, regardless of any allegations of Allstate's more generalized level of sophistication.

290. This claim is brought for the public benefit under the Minnesota Private Attorney General statute, Minn. Stat. § 8.31, subd. 3a. The number securities at issue here, all containing the same types of misrepresentations, and the other facts set forth above all demonstrate a wide, repeated pattern of deceit by one of the country's largest issuers of these types of securities.

291. Further, even though the securities were largely purchased by institutional investors, they were publically offered, and the ramifications of fraudulent activities in the securitization market quickly spread throughout the economy. Acts such as those by defendants has spawned numerous governmental and regulatory investigations. As above, the President's

Working Group concluded that the "turmoil in the financial markets was triggered by a dramatic weakening of underwriting standards for U.S. subprime mortgages . . ."

292. Also as above, the FCIC has noted estimates that nearly thirteen million homes may eventually be lost to foreclosure. Soaring foreclosure rates do not just depress local property values, but have also been linked to such additional local problems as increases in arson rates and vandalism, including in Minnesota.

293. Enjoining defendants and discouraging others from engaging in fraudulent activities that, due to their sheer size and importance, impact everything from the world's macroeconomic status to the local neighborhood's quality of life would provide public benefits far beyond compensating Allstate's numerous stakeholders (including those in Minnesota).

294. Allstate was injured by the defendants' violations. The defendants' wrongful acts have a causal nexus to Allstate's losses incurred in connection with the Certificates it purchased.

295. As a result of the foregoing, Allstate has the right to recover its damages according to proof or, in the alternative, rescission under the Minnesota Consumer Fraud Act and the Minnesota Private Attorney General statute. In addition, pursuant to Minn. Stat. § 8.31, subd. 3a, it is entitled to its costs and attorney's fees. Allstate further requests an injunction barring defendants from continuing to engage in deceptive practices such as those described herein.

PRAYER FOR RELIEF

WHEREFORE Allstate prays for relief as follows:

An award of damages against the defendants in favor of Allstate, jointly and severally, for all damages sustained as a result of the defendants' wrongdoing, in an amount to be proven at trial, but including at a minimum:

a. Allstate's monetary losses, including loss of value and loss of principal and interest payments;

b. Attorneys' fees and costs;

c. Prejudgment interest at the maximum legal rate;

d. Entry of a permanent injunction enjoining the defendants and their respective successors, agents, officers, directors, employees, and all persons acting in concert with them from engaging in the deceptive practices complained of herein; and

e. Such other and further relief as the Court may deem just and proper.

In the alternative, in addition to injunctive relief, Allstate demands rescission and recovery of the consideration paid for the Certificates, with interest thereon. Allstate is prepared to tender the Certificates in the event the Court grants such relief.

JURY TRIAL DEMANDED

Allstate hereby demands a trial by jury on all issues triable by jury.

Dated: April 15, 2011

Michael G. Taylor (#161950)
Arthur G. Boylan (#338229)
LEONARD, STREET AND DEINARD
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Telephone: (612) 335-1500
Fax: (612) 335-1657

Of Counsel:

Daniel L. Brockett *(pro hac to be submitted)*
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010-1601
Telephone: (212) 849-7000
Fax: (212) 849-7100

Jeremy Andersen (*pro hac to be submitted*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Fax: (213) 443-3100

Attorneys for Plaintiffs

Exhibit 2

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION NO.

CAMBRIDGE PLACE INVESTMENT MANAGEMENT INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.; CITIGROUP GLOBAL MARKETS INC.; CREDIT SUISSE SECURITIES (USA) LLC; RBS SECURITIES, INC.; DEUTSCHE BANK SECURITIES, INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.; UBS SECURITIES LLC; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES INC.; COUNTRYWIDE SECURITIES CORPORATION; FBR CAPITAL MARKETS & CO.; HSBC SECURITIES (USA), INC.; BANC OF AMERICA SECURITIES LLC; RESIDENTIAL FUNDING SECURITIES, LLC; BARCLAYS CAPITAL INC.; ACCREDITED MORTGAGE LOAN REIT TRUST; ACE SECURITIES CORPORATION; AEGIS ASSET BACKED SECURITIES CORPORATION; ALLIANCE SECURITIES CORPORATION; AMERICAN HOME MORTGAGE ASSETS LLC; AMERIQUEST MORTGAGE SECURITIES INC.; ARGENT SECURITIES INC.; ASSET BACKED FUNDING CORPORATION; ASSET BACKED SECURITIES CORPORATION; BANC OF AMERICA MORTGAGE SECURITIES, INC.; BCAP LLC; BEAR STEARNS ASSET BACKED SECURITIES I LLC; CITIGROUP MORTGAGE LOAN TRUST INC.; CREDIT SUISSE FIRST

COMPLAINT and JURY DEMAND

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JUL 09 2010
SUPERIOR COURT - CIVIL
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

[CAPTION CONTINUED ON NEXT PAGE]

BOSTON MORTGAGE SECURITIES CORP.; CWABS, INC.; CWALT, INC.; FBR SECURITIZATION, INC.; FIELDSTONE MORTGAGE INVESTMENT CORPORATION; FINANCIAL ASSET SECURITIES CORP.; FREMONT MORTGAGE SECURITIES CORPORATION; GS MORTGAGE SECURITIES CORP.; HSI ASSET SECURITIZATION CORPORATION; J.P. MORGAN ACCEPTANCE CORPORATION I; LONG BEACH SECURITIES CORP.; MERRILL LYNCH MORTGAGE INVESTORS, INC.; MORGAN STANLEY ABS CAPITAL I INC.; MORGAN STANLEY CAPITAL I INC.; MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC.; NATIONSTAR FUNDING LLC; NEW CENTURY MORTGAGE SECURITIES LLC; NEW CENTURY MORTGAGE SECURITIES, INC.; NOVASTAR MORTGAGE FUNDING CORPORATION; PARK PLACE SECURITIES, INC.; PEOPLE'S CHOICE HOME LOAN SECURITIES CORP.; POPULAR ABS, INC.; RESIDENTIAL ACCREDIT LOANS, INC.; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; RESIDENTIAL ASSET SECURITIES CORPORATION; SACO I INC.; SAXON ASSET SECURITIES COMPANY; SECURITIZED ASSET BACKED RECEIVABLES LLC; STANWICH ASSET ACCEPTANCE COMPANY, L.L.C.; STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.; and WASHINGTON MUTUAL MORTGAGE SECURITIES CORP.

Defendants.

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I. NATURE OF THE ACTION

1. The Defendants identified below in ¶¶ 15-32 offered or sold approximately $2.4 billion of residential mortgage-backed securities (the "Securities" or "RMBS") to the investor Plaintiff (as defined in ¶¶ 11-13), by means of untrue statements of material facts and omissions of material fact. As a result of Defendants' untrue statements to Plaintiff in Massachusetts, Plaintiff has incurred losses exceeding $1.2 billion. Defendants' written and oral untrue statements concerned: (1) the mortgage originators' underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the loan-to-value ("LTV") ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Bank Defendants' due diligence of the loans and the mortgage originators' underwriting practices; and (5) various forms of credit enhancement applicable to certain tranches of Securities.

2. Defendants' statements of material facts were not true. In reality, each of the Defendants offered to sell and sold Securities backed by mortgages that came from a small group of now notorious subprime mortgage originators that violated their own underwriting standards, used faulty appraisals that overvalued the mortgaged properties, and accepted untrue information in loan applications.

3. The Wall Street Bank Defendants were complicit in creating an environment of improper lending practices by the mortgage originators; indeed, in many instances the Wall Street Banks had personnel on site at the mortgage originators to monitor their loan underwriting practices. The Wall Street Bank Defendants also fostered the environment for, permitted, and profited from the mortgage originators' rampant violations of sound lending practices. Driven to profit from the lucrative securitization business, the Wall Street Bank Defendants demanded enormous volumes of loans to securitize and sell to investors in the form of RMBS, leading to erosion in lending standards.

4. As a result of the relationships between mortgage originators and the Wall Street Bank Defendants, the Wall Street Banks had superior access to information about the business and lending practices of the mortgage originators and data about the loans, such as loan attributes, beyond what was conveyed to investors in the offering documents for RMBS. Nevertheless, the Wall Street Bank Defendants repeated the untrue information from the mortgage originators in the offering documents used to sell the Securities to investors.

5. While the Wall Street Banks stated to Plaintiff that they performed careful due diligence into the loans and the mortgage originators' underwriting practices, the Wall Street Banks conducted inadequate due diligence and failed to satisfy their own responsibilities. Thus, the statements of material facts that these Wall Street Banks made to Plaintiff in Massachusetts while offering or selling the Securities were untrue and omitted material information.

6. In addition, the Wall Street Banks materially aided the Depositor Defendants, who also offered or sold the Securities to the Plaintiff. The Depositor Defendants are Special Purpose Vehicles ("SPVs") that were created as part of the securitization process to acquire and securitize the loans for sale to investors. Working together with the Wall Street Banks, the Depositor Defendants drafted the offering documents that contained the untrue statements of material facts and circulated them to investors.

7. The Plaintiff brings this action to recover damages incurred as a result of the Defendants' offer or sale of securities in Massachusetts by means of untrue statements of material facts or omissions of material facts in violation of Mass. Gen. Laws Ch. 110A, § 410 (the "Massachusetts Securities Act").

8. Plaintiff alleges the following upon personal knowledge as to itself and its own acts and upon information and belief as to all other matters. Plaintiff's information and belief are based on the investigation conducted by and through counsel. The investigation included interviews with confidential witnesses; documents filed in connection with investigations and actions brought by the United States Securities and Exchange Commission (the "SEC"), the Attorneys General of Massachusetts, New York, and California, and private litigants; testimony

before the Federal Financial Crisis Inquiry Commission; a report of a court-appointed bankruptcy trustee; news reports; interviews published in the financial press; Congressional testimony; and other available information. Some of the facts related to Plaintiff's allegations are known only by the Defendants named herein, or are exclusively within their custody or control. Plaintiff believes that additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.

II. JURISDICTION AND VENUE

9. Jurisdiction is proper because the offer or sale of the Securities by the Defendants occurred in Massachusetts (see Mass. Gen. Laws Ch. 110A, § 414). In addition, Plaintiff's principal place of business is located in the Commonwealth of Massachusetts, and many of the Defendants have offices in Massachusetts. The amount in controversy exceeds $25,000.

10. Venue is proper pursuant to Mass. Gen. Laws Ch. 223, § 1 and Superior Court Administrative Directive No. 09-01 because many of the Defendants have usual places of business in Suffolk County.

III. THE PARTIES

a. Plaintiff

11. Cambridge Place Investment Management Inc. ("CPIM") is a Delaware corporation with its principal place of business in Concord, Massachusetts.

12. CPIM was responsible for the sourcing, review, analysis, and purchase decisions for U.S. investments for its clients, including Caliber Global Investment Ltd., CAMBER 3 PLC, CAMBER 4 PLC, CAMBER 5 Ltd, CAMBER 7 PLC, CPIM Structured Credit Fund 20 LP, CPIM Structured Credit Fund 500 LP, CPIM Structured Credit Fund 1000 LP, and CPIM Structured Credit Fund 1500 LP (collectively, the "Clients").

13. CPIM is the exclusive assignee of, and the exclusive attorney-in-fact for and with respect to, all of the Clients' claims relating to the offer and sale of Securities that are the subject of this Complaint. CPIM, as such exclusive assignee and attorney-in-fact of the Clients, is referred to herein as the "Plaintiff."

14. Plaintiff was solicited in Massachusetts by investment firms, underwriters, and dealers (the "Wall Street Bank Defendants") and by the Depositor Defendants (as defined in ¶ 31), who offered or sold the Securities to Plaintiff.

b. The Wall Street Bank Defendants

15. **Morgan Stanley & Co., Inc.**: Defendant Morgan Stanley & Co. Incorporated ("Morgan Stanley") is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 1585 Broadway, New York, New York 10036 and an office located at 1 International Place, Boston, Massachusetts 02110. The Defendant Morgan Stanley is the broker-dealer subsidiary of Morgan Stanley, a Delaware corporation headquartered in New York, New York. Defendant Morgan Stanley offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Morgan Stanley sales representatives who offered or sold Securities to Plaintiff included Howard Hennick, Paul Knepple, and Ryan Rossitto. Morgan Stanley, Knepple, and Rossitto are all licensed to sell securities in Massachusetts. Other Morgan Stanley representatives who offered or sold Securities to Plaintiff included investment bankers Michael Dubeck, Howard Hubler, Steven Shapiro (who is also licensed to sell securities in Massachusetts), and Terry Smith. The Securities that Morgan Stanley offered or sold to Plaintiff are listed in Appendix A.

16. **Citigroup Global Markets, Inc.**: Defendant Citigroup Global Markets, Inc. ("Citigroup") is a New York corporation and an SEC-registered broker-dealer with its principal place of business located at 388 Greenwich Street, New York, New York. Citigroup representatives from Citigroup's office located at 2 International Place, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Citigroup sales representatives who offered or sold Securities to Plaintiff included Douglas Meyer, John W. Murray (the manager of Citigroup's Boston office), and David Crean. Citigroup, Murray, and Crean are all licensed to sell securities in Massachusetts. Other

Citigroup representatives who offered or sold Securities to Plaintiff included investment bankers James Demare, Matthew Cherwin, and Philip Seares (who is also licensed to sell securities in Massachusetts). The Securities that Citigroup offered or sold to Plaintiff are listed in Appendix B.

17. **Credit Suisse Securities (USA) LLC**: Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at 11 Madison Avenue, New York, New York. Credit Suisse representatives from Credit Suisse's office located at 1 Federal Street, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Credit Suisse sales representatives who offered or sold Securities to Plaintiff included James "Jay" Allen (the manager of Credit Suisse's Boston office) and Andrew Mingle. Credit Suisse, Allen, and Mingle are all licensed to sell securities in Massachusetts. Other Credit Suisse representatives who offered or sold Securities to Plaintiff included syndicate manager Tricia Hazelwood and investment bankers Christopher Schoen, Patrick Dodman, Gregory Richter, and Mark Tecotzky. The Securities that Credit Suisse offered or sold to Plaintiff are listed in Appendix C.

18. **RBS Securities, Inc., f/k/a Greenwich Capital Markets, Inc.**: Defendant RBS Securities, Inc., f/k/a Greenwich Capital Markets, Inc. ("Greenwich Capital"), is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 600 Washington Boulevard, Stamford, Connecticut. Greenwich Capital representatives from Greenwich Capital's office located at 28 State Street, Boston, Massachusetts 02109, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Greenwich Capital sales representatives who offered or sold Securities to Plaintiff included Christopher J. Csrnko and Jeffrey Dimodica. Greenwich Capital, Csrnko, and Dimodica are all licensed to sell securities in Massachusetts. Other Greenwich Capital representatives who offered or sold

Securities to Plaintiff included investment banker Adam Smith. The Securities that Greenwich Capital offered or sold to Plaintiff are listed in Appendix D.

19. **Deutsche Bank Securities Inc.**: Defendant Deutsche Bank Securities Inc. ("Deutsche Bank") is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 60 Wall Street, New York, New York. Deutsche Bank representatives from Deutsche Bank's office located at 225 Franklin Street, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Deutsche Bank sales representatives who offered or sold Securities to Plaintiff included Alexandra DaCosta, Christopher Del Col, Laurence Pike, and Chris Walter. Deutsche Bank, DaCosta, Del Col, and Pike are all licensed to sell securities in Massachusetts. Other Deutsche Bank representatives who offered or sold Securities to Plaintiff included syndicate managers Fred Brettschneider (who is also licensed to sell securities in Massachusetts) and Brian Wiele, trader Greg Lippman, and investment bankers Michael Commaroto, Paul Mangione, Joseph Swartz, and Ryan Stark. The Securities that Deutsche Bank offered or sold to Plaintiff are listed in Appendix E.

20. **Merrill Lynch, Pierce, Fenner & Smith, Inc.**: Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at One Bryant Park, New York, New York. Merrill Lynch is a wholly owned subsidiary of Merrill Lynch & Co., which became a wholly owned subsidiary of Bank of America Corporation on January 1, 2009. Merrill Lynch representatives from Merrill Lynch's office located at 1 Financial Center, Boston, Massachusetts 02111, offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Merrill Lynch sales representatives who offered or sold Securities to Plaintiff included William Farrell, James Peck, and Greg St. Pierre. Merrill Lynch, Farrell, Peck, and St. Pierre are all licensed to sell securities in Massachusetts. Other Merrill Lynch

representatives who offered or sold Securities to Plaintiff included investment bankers Matthew Whalen, Paul Park, and Ketan Parekh. The Securities that Merrill Lynch offered or sold to Plaintiff are listed in Appendix F.

21. **UBS Securities LLC**: Defendant UBS Securities LLC ("UBS") is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at 677 Washington Boulevard, Stamford, Connecticut 06901 and an office located at 1 International Place, Boston, Massachusetts 02110. UBS offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The UBS sales representatives who offered or sold Securities to Plaintiff included Blake Myers. UBS and Myers are licensed to sell securities in Massachusetts. Other UBS representatives who offered or sold Securities to Plaintiff included syndicate managers Jack McCleary and Richard Onkey and investment bankers Jeffrey "Jay" Lown, Carole Mortenson, and Ketan Parekh. The Securities that UBS offered or sold to Plaintiff are listed in Appendix G.

22. **Goldman, Sachs & Co.**: Defendant Goldman, Sachs & Co. ("Goldman Sachs") is a New York partnership and an SEC-registered broker-dealer with its principal place of business located at 200 West Street, New York, NY 10282. Goldman Sachs maintains an office at 125 High Street, Boston, Massachusetts 02110. Goldman Sachs offered or sold the Securities to Plaintiff in at least one face-to-face meeting and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Goldman Sachs sales representatives who offered or sold Securities to Plaintiff included Michael Cagnassola, Eric Feinstein, Samuel Hancock, and Lorin Radtke. Goldman Sachs, Cagnassola, Feinstein, Hancock, and Radtke are all licensed to sell securities in Massachusetts. Other Goldman Sachs representatives who offered or sold Securities to Plaintiff included investment banker Kevin Gasvoda, who is also licensed to sell securities in Massachusetts. The Securities that Goldman Sachs offered or sold to Plaintiff are listed in Appendix H.

23. **J.P. Morgan Securities Inc.:** Defendant J.P. Morgan Securities Inc. ("J.P. Morgan") is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 383 Madison Avenue, New York, New York 10179. J.P. Morgan is a wholly owned subsidiary of JPMorgan Chase & Co., a financial holding company with its principal place of business located at 270 Park Avenue, New York, New York 10017. J.P. Morgan maintains an office at 2 International Place, Boston, Massachusetts 02110. J.P. Morgan offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The J.P. Morgan sales representatives who offered or sold Securities to Plaintiff included James McLaughlin of J.P. Morgan's Boston office. J.P. Morgan and McLaughlin are both licensed to sell securities in Massachusetts. Other J.P. Morgan representatives who offered or sold Securities to Plaintiff included syndicate managers Andrew Cherna (who is also licensed to sell securities in Massachusetts) and Brian McDonald. The Securities that J.P. Morgan offered or sold to Plaintiff are listed in Appendix I.

24. **J.P. Morgan, successor to Bear Stearns:** In addition to Plaintiff's claims based on J.P. Morgan's own offers or sales of Securities to Plaintiff, Plaintiff also brings claims against J.P. Morgan as successor-in-interest to Bear Stearns & Co., Inc. ("Bear Stearns"), which was a Delaware corporation and was an SEC-registered broker-dealer with its principal place of business located at 383 Madison Avenue, New York, New York 10179. On October 1, 2008, J.P. Morgan merged with and into Bear Stearns, with the surviving entity being Defendant J.P. Morgan. Bear Stearns representatives from Bear Stearns' office located at 1 Federal Street, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Bear Stearns sales representatives who offered or sold Securities to Plaintiff included Daniel Kenslea, Jr., Felix Moy, Andrew Reese, and Steven Scari. Bear Stearns was, and Kenslea, Moy, Reese, and Scarri all are, licensed to sell securities in Massachusetts. Other Bear Stearns representatives who offered or sold Securities to Plaintiff

included investment bankers Scott Eichel, Keith Lind, and Chris Scott. Eichel and Lind are also licensed to sell securities in Massachusetts. The Securities that Bear Stearns offered or sold to Plaintiff are listed in Appendix J.

25. **Countrywide Securities Corporation**: Defendant Countrywide Securities Corporation ("Countrywide") is a California corporation with its principal place of business located at 4500 Park Granada, Calabasas, California. Countrywide was an SEC-registered broker-dealer during the relevant period. Countrywide was a subsidiary of Countrywide Financial Corporation, which merged on July 1, 2008 with a wholly owned subsidiary of Bank of America Corporation, making Countrywide an indirect wholly owned subsidiary of Bank of America. Countrywide offered or sold the Securities to Plaintiff in Massachusetts by making telephone calls and sending documents to Plaintiff in Massachusetts. The Countrywide sales representatives who offered or sold Securities to Plaintiff included Matthew Kennedy, who is licensed to sell securities in Massachusetts, and Elaine Pang. The Securities that Countrywide offered or sold to Plaintiff are listed in Appendix K.

26. **FBR Capital Markets & Co., f/k/a/ Friedman, Billings, Ramsey & Co., Inc.**: Defendant FBR Capital Markets & Co., formerly known as Friedman, Billings, Ramsey & Co., Inc. ("FBR"), is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 1001 Nineteenth Street North, Arlington, Virginia 22209. FBR maintains an office at 100 Federal Street, Boston, Massachusetts 02110. FBR offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. The FBR sales representatives who offered or sold Securities to Plaintiff included John Calabrese. Other FBR representatives who offered or sold Securities to Plaintiff included investment bankers Paul Miller and Scott Valentin. FBR, Calabrese, Miller, and Valentin are all licensed to sell securities in Massachusetts. The Securities that FBR offered or sold to Plaintiff are listed in Appendix L.

27. **HSBC Securities (USA), Inc.**: Defendant HSBC Securities (USA), Inc. ("HSBC") is a Delaware corporation and an SEC-registered broker-dealer with its principal place

of business located at 452 Fifth Avenue, New York, New York. HSBC offered or sold the Securities to Plaintiff in Massachusetts by making telephone calls and sending documents to Plaintiff in Massachusetts. The HSBC sales representatives who offered or sold Securities to Plaintiff included Michael Sheldon and Wendy Horn. HSBC and Horn are licensed to sell securities in Massachusetts. Other HSBC representatives who offered or sold Securities to Plaintiff included investment bankers Jon Voigtman, Martin Priest, and Thomas Benz. The Securities that HSBC offered or sold to Plaintiff are listed in Appendix M.

28. **Banc of America Securities LLC**: Defendant Banc of America Securities LLC ("Banc of America") is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at One Bryant Park, New York, New York 10036. Banc of America offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Banc of America's sales representatives who offered or sold Securities to Plaintiff included Thomas Kanes and Kalefe Wright. Banc of America, Kanes, and Wright are all licensed to sell securities in Massachusetts. Other Banc of America representatives who offered or sold Securities to Plaintiff included syndicate manager Patrick Beranek (who is also licensed to sell securities in Massachusetts) and investment bankers Chris Henteman, Paul Jablansky (who is also licensed to sell securities in Massachusetts), and Jeff Willoughby. The Securities that Banc of America offered or sold to Plaintiff are listed in Appendix N.

29. **Residential Funding Securities, LLC, d/b/a GMAC RFC Securities**: Defendant Residential Funding Securities, LLC, f/k/a Residential Funding Securities Corporation ("GMAC"), is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at One Meridan Crossings, Richfield, Minnesota 55423. Representatives of GMAC offered or sold the Securities to Plaintiff in at least one meeting in Massachusetts and by making telephone calls and sending documents to Plaintiff in Massachusetts. GMAC sales representatives who offered or sold Securities to Plaintiff

included Robert Djorup and Ted Kallina. The Securities that GMAC offered or sold to Plaintiff are listed in Appendix O.

30. **Barclays Capital Inc.**: Defendant Barclays Capital Inc. ("Barclays") is a Connecticut corporation and an SEC-registered broker-dealer with its principal place of business located at 745 Seventh Avenue, New York, New York 10019, and an office at 125 High Street, Boston, Massachusetts 02110. Barclays offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Barclays' sales representatives who offered or sold Securities to Plaintiff included James Hurst and Maria Palermo. Barclays and Hurst are licensed to sell securities in Massachusetts. Other Barclays representatives who offered or sold Securities to Plaintiff included investment bankers John Carroll and Paul Menefee. The Securities that Barclays offered or sold to Plaintiff are listed in Appendix P.

c. The Depositor Defendants

31. To securitize and sell mortgage loans to investors, financial institutions created SPVs to serve various roles in the securitization process. "Depositors" purchased or acquired the mortgage loans, securitized them, and were the "issuers" of the Securities. *See* 17 CFR § 230.191. Working together with the Wall Street Banks, the Depositor Defendants set forth in the table below prepared and circulated the registration statements, accompanying prospectuses, and subsequent prospectus supplements, or private placement memoranda, through which the Depositor Defendants and the Wall Street Bank Defendants offered and sold the Securities and filed the registration statements, prospectuses, and prospectus supplements with the SEC.

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
a	**Accredited Mortgage Loan REIT Trust**, 15253 Avenue of Science, San Diego, CA 92128 (Maryland)	ACCR 2005-3

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
b	**Ace Securities Corporation**, 6525 Morrison Blvd., Ste. 318, Charlotte, NC 28211 (Delaware)	ACE 2005-HE2, ACE 2005-HE5, ACE 2005-HE6, ACE 2005-HE7, ACE 2006-FM2, ACE 2006-HE1, ACE 2006-NC1, ACE 2006-NC2, ACE 2006-OP1, ACE 2006-SL1, ACE 2006-SL2, ACE 2007-HE2
c	**Aegis Asset Backed Securities Corporation**, 3250 Briarpark, Ste 400, Houston, TX 77042 (Delaware)	AABST 2005-4, AABST 2005-5
d	**Alliance Securities Corporation**,1000 Marina Blvd., Ste. 100, Brisbane, CA 94005 (Delaware)	ALBT 2007-S1
e	**American Home Mortgage Assets LLC**, 538 Broadhollow Road, Melville, NY 11747 (Delaware)	AHMA 2007-3
f	**Ameriquest Mortgage Securities Inc.**, 1100 Town & Country Road, Orange, CA 92868 (Delaware)	AMSI 2005-R6, AMSI 2005-R7, AMSI 2005-R8, AMSI 2006-R2
g	**Argent Securities Inc.**, 1100 Town & Country Rd, Orange, CA 92868 (Delaware)	ARSI 2005-W2, ARSI 2005-W3, ARSI 2006-W1, ARSI 2006-W3, ARSI 2006-W5
h	**Asset Backed Funding Corp.**, 214 North Tryon St, Charlotte, NC 28255 (Delaware)	ABFC 2005-HE1, ABFC 2006-OPT2
i	**Asset Backed Securities Corporation**, 11 Madison Ave., New York, NY 10010 (Delaware)	ABSHE 2005-HE1, ABSHE 2005-HE3, ABSHE 2005-HE4, ABSHE 2005-HE5, ABSHE 2006-HE3, ABSHE 2006-HE6, ABSHE 2007-HE7
j	**Banc of America Mortgage Securities, Inc.**, 214 North Tryon St., Charlotte, NC 28255 (Delaware)	BOAA 2006-6
k	**BCAP LLC**, 200 Park Avenue, New York, NY 10166 (Delaware)	BCAP 2006-6, EQLS 2007-1

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
l	**Bear Stearns Asset Backed Securities I LLC**, 383 Madison Ave, New York, NY 10179 (Delaware)	AMIT 2005-1, BSABS 2005-AQ2, BSABS 2005-HE10, BSABS 2005-HE4, BSABS 2005-HE8, BSABS 2005-HE9, BSABS 2006-EC1, BSABS 2006-EC2, BSABS 2006-HE1, BSABS 2006-HE10, BSABS 2006-HE3, BSABS 2006-HE4, BSABS 2006-HE7, BSABS 2006-PC1, BSABS 2007-FS1, BSMF 2007-SL2, GPMF 2007-HE1, IRWHE 2005-A, SACO 2005-5, SACO 2005-7, SACO 2005-8, SACO 2005-WM3, SACO 2007-2
m	**Citigroup Mortgage Loan Trust Inc.**, 390 Greenwich Street, Fl 4, New York, NY 10013 (Delaware)	CARR 2005-NC3, CMLTI 2005-9, CMLTI 2005-HE1, CMLTI 2005-HE3, CMLTI 2006-HE1, CMLTI 2006-WFH3, CMLTI 2007-FS1
n	**Credit Suisse First Boston Mortgage Securities Corp.**, 11 Madison Ave., New York, NY 10010 (Delaware)	HEAT 2005-1, HEAT 2005-2, HEAT 2005-3, HEAT 2005-4, HEAT 2005-5, HEAT 2005-6, HEAT 2005-7, HEAT 2005-8, HEAT 2005-9, HEAT 2006-4, HEAT 2006-7, HEMT 2005-5, HEMT 2006-2
o	**CWABS, Inc.**, 4500 Park Granada, Calabasas, CA 91302 (Delaware)	CWL 2005-11, CWL 2006-17, CWL 2006-18
p	**CWALT, Inc.**, 4500 Park Granada, Calabasas, CA 91302 (Delaware)	CWALT 2005-82, CWALT 2005-J6
q	**FBR Securitization, Inc.**, 1001 Nineteenth St. North, Arlington, VA 22209 (Delaware)	FBRSI 2005-5
r	**Fieldstone Mortgage Investment Corporation**, 11000 Broken Land Parkway, Ste 600, Columbia, MD 21044 (Maryland)	FMIC 2007-1
s	**Financial Asset Securities Corp.**, 600 Steamboat Road, Greenwich, CT 06830 (Delaware)	EMLT 2005-1, FFML 2006-FF8, FHLT 2005-1, MMLT 2005-2, SVHE 2005-1, SVHE 2005-A, SVHE 2005-DO1, SVHE 2006-OPT2, SVHE 2006-OPT5
t	**Fremont Mortgage Securities Corp.**, 2727 East Imperial Highway, Brea, CA 92821 (Delaware)	FHLT 2005-A
u	**GS Mortgage Securities Corp.**, 85 Broad St, New York, NY 10004 (Delaware)	GSAMP 2005-HE6, GSAMP 2006-HE6, GSAMP 2006-S1

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
v	**HSI Asset Securitization Corporation**, 452 Fifth Ave, New York, NY 10018 (Delaware)	FFML 2006-FF5, HASC 2005-NC2, HASC 2006-OPT3
w	**J.P. Morgan Acceptance Corporation I**, 60 Wall Street, New York, NY 10260 (Delaware)	JPMAC 2005-FLD1, JPMAC 2005-OPT1, JPMAC 2005-OPT2, JPMAC 2005-WMC1, JPMAC 2006-CH1, JPMAC 2006-CW2, JPMAC 2006-WMC1
x	**Long Beach Securities Corp.**, 1100 Town & Country Road, Orange, CA 92868 (Delaware)	LBMLT 2005-1, LBMLT 2005-2, LBMLT 2005-WL1, LBMLT 2005-WL2; LBMLT 2006-7, LBMLT 2006-WL1
y	**Merrill Lynch Mortgage Investors, Inc.**, 250 Vesey Street, 4 World Financial Center, 10 Fl. New York, NY 10080 (Delaware)	FFMER 2007-H1; MLMI 2005-AR1, MLMI 2005-NCB, MLMI 2005-SL2, MLMI 2005-SL3, MLMI 2005-WMC1, MLMI 2006-HE4, MLMI 2006-HE5, MLMI 2006-SL1, SURF 2005-BC1
z	**Morgan Stanley ABS Capital I Inc.**, 1585 Broadway, New York, NY 10036 (Delaware)	AMIT 2005-4, IXIS 2005-HE2, IXIS 2005-HE3, IXIS 2005-HE4, IXIS 2006-HE3, MSAC 2005-HE4, MSAC 2005-NC2, MSAC 2005-WMC2, MSAC 2005-WMC3, MSAC 2005-WMC5, MSAC 2005-WMC6, MSAC 2006-HE3, MSAC 2007-HE3, MSHEL 2005-1, MSHEL 2006-1, NTIX 2007-HE2
aa	**Morgan Stanley Capital I Inc.**, 1585 Broadway, New York, NY 10036 (Delaware)	MSAC 2006-HE1
bb	**Mortgage Asset Securitization Transactions, Inc.**, 1285 Ave of the Americas, New York, NY 10019 (Delaware)	FFML 2005-FF7, MABS 2005-FRE1, MABS 2005-NC1, MABS 2006-AM2, MABS 2006-FRE2, MABS 2006-HE1, MABS 2006-NC2, MABS 2006-WMC4
cc	**Nationstar Funding LLC**, 550 Highland Drive, Lewisville, TX 75067 (Delaware)	HELT 2007-FRE1
dd	**New Century Mortgage Securities LLC**, 18400 Von Karman, Irvine, CA 92612 (Delaware)	NCHET 2005-3, NCHET 2005-4, NCHET 2005-D
ee	**New Century Mortgage Securities, Inc.**, 18400 Von Karman, Irvine, CA 92612 (Delaware)	NCHET 2005-B, NCHET 2005-C
ff	**NovaStar Mortgage Funding Corporation**, 8140 Ward Parkway, Ste. 300, Kansas City, MO 64114 (Delaware)	NHEL 2005-1, NHEL 2005-3

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
gg	**Park Place Securities, Inc.**, 1100 Town & Country Rd., Orange, CA 92868 (Delaware)	PPSI 2005-WHQ1, PPSI 2005-WHQ3
hh	**People's Choice Home Loan Securities Corp.**, 7515 Irvine Center Drive, Irvine, CA 92618 (Delaware)	PCHLT 2005-2, PCHLT 2005-4
ii	**Popular ABS, Inc.**, 103 Springer Building, 3411 Silverside Road, Wilmington, DE 19810 (Delaware)	POPLR 2005-5
jj	**Residential Accredit Loans, Inc.**, 8400 Normandale Lake Boulevard Ste 250, Minneapolis, MN 55437 (Delaware)	RALI 2006-QS17
kk	**Residential Asset Mortgage Products, Inc.**, 8400 Normandale Lake Boulevard Ste 250, Minneapolis, MN 55437 (Delaware)	RAMP 2005-EFC4, RAMP 2006-RZ3
ll	**Residential Asset Securities Corporation**, 8400 Normandale Lake Boulevard Ste 250, Minneapolis, MN 55437 (Delaware)	RASC 2006-KS2, RASC 2006-KS6, RASC 2006-KS9
mm	**SACO I Inc.**, 383 Madison Avenue, New York, NY 10179 (Delaware)	SACO 2005-1, SACO 2005-2, SACO 2005-3, SACO 2005-4, BSSLT 2007-SV1A
nn	**Saxon Asset Securities Company**, 4860 Cox Rd., Ste. 300, Glen Allen, VA 23060 (Virginia)	SAST 2005-2, SAST 2006-3, SAST 2007-2
oo	**Securitized Asset Backed Receivables LLC**, 200 Park Avenue, New York, NY 10166 (Delaware)	SABR 2005-FR4, SABR 2005-FR5, SABR 2006-WM2
pp	**Stanwich Asset Acceptance Company, L.L.C.**, 9 Greenwich Office Park, Greenwich, CT 06831 (Delaware)	CARR 2005-NC4, CARR 2005-NC5, CARR 2006-FRE1, CARR 2006-FRE2, CARR 2006-NC2, CARR 2006-NC4, CARR 2006-RFC1
qq	**Structured Asset Mortgage Investments II Inc.**, 383 Madison Avenue, New York, NY 10179 (Delaware)	SAMI 2005-AR6
rr	**Washington Mutual Mortgage Securities Corp.**, 1201 Third Avenue, WMT 1706, Seattle, WA 98101 (Delaware)	WAMU 2005-AR2

32. The Defendants identified in ¶ 31 are collectively referred to herein as the "Depositor Defendants."

IV. FACTUAL BACKGROUND

a. The Mechanics of Mortgage Securitization

33. Mortgage pass-through securities represent interests in a pool of mortgages; the securities are shares in the pool that are sold to investors. The securities represent an equity interest in the "issuing trust" that holds the pool. The pass-through securities entitle the holder to payments from the pool of mortgage loans. Although the structure and underlying collateral of the mortgages may vary, the basic principle of pass-through securities remains the same: The cash flow from the pool of mortgages is "passed through" to the securities holders when payments are made by the underlying mortgage borrowers.

34. The first step in creating a mortgage pass-through security is the acquisition by a "depositor" of an inventory of loans from a "sponsor" or "seller," which either originates the loans or acquires the loans from other mortgage originators, in exchange for cash. The type of loans in the inventory may vary, including conventional, fixed-rate or adjustable-rate mortgage loans (or mortgage participations), secured by first liens, junior liens, or a combination of first and junior liens, with various lifetimes to maturity. The depositor then transfers, or deposits, the acquired pool of loans to an "issuing trust."

35. The depositor then securitizes the pool of loans in the issuing trust so that the rights to the cash flows from the inventory can be sold to investors. The securitization transactions are structured such that the risk of loss is divided among different levels of investment, or "tranches." Tranches consist of multiple series of related RMBS offered as part of the same offering, each with a different level of risk and reward. Any losses on the underlying loans - whether due to default, delinquency, or otherwise - are generally applied in reverse order of seniority. As such, the most senior tranches of pass-through securities are rated as the best quality, or "AAA/Aaa." Junior tranches, which usually obtained lower ratings, ranging from "AA/Aa" to "BB/Bb," are less insulated from risk, but offer greater potential returns.

36. Once the tranches are established, the issuing trust passes the securities back to the depositor, who becomes the issuer of those securities, like the Depositor Defendants herein.

The depositor then passes the securities to one or more Wall Street banks, who offer and sell the securities to investors in exchange for cash that is passed back to the depositor, minus any fees owed to the Wall Street banks.

37. Wall Street banks play a critical role in the securitization process. They underwrite the sale of the securities, that is, they purchase the securities from the issuing trust through a depositor and then sell them to investors. Importantly, the Wall Street banks provide the information that potential investors use to decide whether to purchase the securities.

38. Because the cash flow from the loans in the collateral pool of a securitization is the source of funds to pay the holders of the securities issued by the trust, the credit quality of the securities depends upon the credit quality of the loans in the collateral pool. The most important information about the credit quality of the loans is contained in the "loan files" that the mortgage originator develops while making the loans. For residential mortgage loans, each loan file normally contains documents including the borrower's application for the loan; verification of the borrower's income, assets, and employment; references; credit reports on the borrower; an appraisal of the property that will secure the loan and provide the basis for important measures of credit quality, such as loan-to-value ratios; and a statement of the occupancy status of the property.

39. The collateral pool of loans for each securitization usually includes thousands of loans. Instead of each potential investor reviewing thousands of loan files, the Wall Street banks that underwrite the sale of the securities in a securitization are responsible for gathering, verifying, and presenting to potential investors accurate and complete information about the credit quality and characteristics of the loans that are deposited into the trust.

b. <u>Securitization of Mortgage Loans: The Traditional Model</u>

40. In the 1980s and 1990s, mortgage originators and Wall Street banks fulfilled their respective obligations to comply with underwriting standards and provide accurate information to investors. The mortgage securitization business, therefore, functioned well, to the benefit of home buyers, financial institutions, and investors. For the securitization model to work properly,

the mortgage originators and the Wall Street banks must perform their roles properly. In particular, it is necessary for the mortgage originators to underwrite loans and appraise properties in accordance with their stated standards and to assure accurate information is obtained from loan applicants. Likewise, it is necessary for the Wall Street banks to perform adequate due diligence into the loan pools and to provide accurate information to investors.

41. In the traditional mortgage model, a mortgage originator originated loans to borrowers, held the loans to maturity, and therefore retained the credit (default) risk. As such, under the traditional model, the mortgage originator had a financial incentive to ensure that (1) the borrowers had the financial ability to repay the loans, and (2) the underlying properties had sufficient value to enable the mortgage originator to recover its principal and interest if the borrowers defaulted on the loans.

42. Traditionally, mortgage originators financed their mortgage business primarily using funds from depositors, retained ownership of the mortgage loans they originated, and received a direct benefit from the income flowing from the mortgages. When a mortgage originator held a mortgage through the term of the loan, the mortgage originator received revenue from the borrower's payment of interest and fees. The mortgage originator also bore the risk of loss if the borrower defaulted and the value of the collateral was not sufficient to repay the loan. As a result, the mortgage originator had an economic incentive to verify the borrower's creditworthiness through prudent underwriting and to obtain an accurate appraisal of the value of the underlying property before issuing the mortgage loan.

43. With the advent of securitization, the traditional "originate to hold" model gave way to the "originate to distribute" model, in which mortgage originators sell the mortgages and transfer credit risk to investors through the issuance and sale of RMBS. Through securitization, mortgage originators no longer hold the mortgage loans to maturity. By selling the mortgages to investors through Wall Street banks, the mortgage originators obtain funds, enabling them to make more loans. Securitization also enables mortgage originators to earn most of their income from transaction and loan-servicing fees, rather than from the spread between interest rates paid

on deposits and interest rates received on mortgage loans as in the traditional model. Thus, securitization gives the mortgage originators an incentive to increase the number of mortgages they issue and reduces their incentive to ensure the mortgages' credit quality. However, the contractual terms of the securitization transactions and good business practices obligate mortgage originators to underwrite loans in accordance with their stated policies and to obtain accurate appraisals of the mortgaged properties.

44. During the 1980s and 1990s, the mortgage securitization business grew rapidly, making it possible for mortgage originators to make more loans than would have been possible using only the traditional primary source of funds from deposits. During that period, mortgage originators made loans in accordance with their stated underwriting and appraisal standards and provided accurate information about the loans, borrowers, and mortgaged properties to the Wall Street banks that securitized the loans. In turn, the Wall Street banks provided accurate information about the loans, borrowers, and properties to investors in the RMBS. In the 1980s and 1990s, most mortgage securitizations were conducted through the major Government Sponsored Enterprises (the "Agencies"), *i.e.*, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Government National Mortgage Association ("Ginnie Mae"). The Agencies purchased loans from mortgage originators and securitized the loans. These Agency securitizations had high credit quality because the Agencies required the underlying loans to be originated in accordance with strict underwriting guidelines. Most non-Agency mortgage securitizations during this period also complied with the Agencies' underwriting standards.

c. The Systemic Violation of Underwriting and Appraisal Standards in the Mortgage Securitization Industry

45. The securitization of mortgage loans fundamentally shifts the risk of loss from the mortgage originator to the investors who purchase RMBS. As discussed in Section IV.b above, traditionally, the mortgage originator had an economic incentive to verify mortgage borrowers' creditworthiness and obtain accurate appraisals of the value of the underlying properties before

issuing mortgage loans because the mortgage originator held the loans to maturity. In securitizations where the mortgage originator instead sells the loans to Wall Street banks, the mortgage originator does not have the same economic interest in verifying borrowers' creditworthiness or obtaining accurate appraisals in the loan origination process. Nevertheless, the mortgage securitization process worked well during the 1980s and 1990s because both mortgage originators and Wall Street banks played by the rules and complied with their obligations to underwrite loans responsibly and provide accurate information to investors in RMBS.

46. Mortgage originators began systematically to violate their stated underwriting and appraisal standards, made loans with little or no documentation, and accepted untrue information from loan applicants. The mortgage originators also began to provide untrue information about their underwriting practices and about the borrowers, loans, appraisals, and mortgaged properties in connection with the securitization of the loans. As a result of this pervasive breakdown of compliance with proper practices among the mortgage originators, the Wall Street Banks that securitized mortgages provided Plaintiff with untrue information about the mortgage originators' practices and about the underlying mortgage borrowers, loans, and properties. The Wall Street Banks also provided Plaintiff with untrue information about their own due diligence of the mortgage originators and underlying loans.

47. To fund their loans, the mortgage originators maintained credit facilities with warehouse lenders, including the Wall Street Banks. The Wall Street Banks loaned money to the mortgage originators pursuant to "warehouse agreements," so that the mortgage originators could continue to make loans to home buyers. The mortgage originators borrowed from these credit facilities to fund their loans, until the loans were sold and the warehouse agreement was repaid. When loans serving as collateral lost value, the Wall Street Banks made margin calls requiring the mortgage originators to pay cash back to the Wall Street Banks. As a result of the warehouse arrangements between the mortgage originators and the Wall Street Banks, the Wall Street Banks had superior access to information about the mortgage originators' business and lending practices

and the mortgage loans' characteristics and performance, including early warning signs of poor credit quality in loans before the loans were securitized.

48. Fannie Mae and Freddie Mac provided investors in Agency-sponsored RMBS with protection by guaranteeing that the investors would receive timely payments of principal and interest. If the borrower for one of the underlying mortgages failed to make scheduled principal or interest payments, the Agency that issued the RMBS would make the payments to the trust. Because the Agencies were perceived to be backed by the federal government, investors viewed their guarantees as essentially removing the credit risk from Agency-sponsored RMBS.

49. Between 2001 and 2006, non-Agency loan originations and securitizations increased dramatically, while Agency loan originations and securitizations decreased moderately, as summarized in the following table:

	2001	**2006**
Agency loan originations	$1.433 trillion	$1.040 trillion
Agency securitizations	$1.087 trillion	$904 billion
Non-Agency loan originations	$680 billion	$1.480 trillion
Non-Agency securitizations	$240 billion (including $87.1 billion of subprime securitizations)	$1.033 trillion (including $448 billion of subprime securitizations)

Source: *Inside Mortgage Finance* (2007).

50. Thus, from 2001 to 2006, non-Agency loan originations grew by approximately 115%; non-Agency securitizations grew by approximately 330%; and non-Agency securitizations of subprime loans grew by approximately 415%. According to *Inside Mortgage Finance* (2009), non-Agency RMBS more than trebled in market share between 2003 and 2007, peaking at about 38% of the market in 2006, from 6% in 2003. Another measure of the dramatic growth of the non-Agency RMBS market is that "[t]he amount of all outstanding mortgages held in non-[Agency] MBS rose notably from only $670 billion in 2004 to over $2,000 billion in

2006." Financial Crisis Inquiry Commission ("FCIC"), "Preliminary Staff Report: Securitization and the Mortgage Crisis," April 7, 2010.

51. Starting in or about 2005, the growth in non-Agency mortgage securitizations was accompanied by widespread violation by the mortgage originators of their stated underwriting and appraisal standards. According to Ben S. Bernanke, Chairman of the Federal Reserve Board, in a March 2008 speech, "[t]he deterioration in underwriting standards that appears to have begun in late 2005 is another important factor underlying the current crisis. A large share of subprime loans that were originated during this time feature high combined loan-to-value ratios and, in some cases, layers of additional risk factors, such as a lack of full documentation or the acceptance of very high debt-to-income ratios." The loan-to-value ("LTV") ratio is a significant measure of credit risk, because both the likelihood of default and the severity of loss are higher when borrowers have less equity to protect in the event of foreclosure. The debt-to-income ratio is also a significant measure of credit risk, because borrowers who incur debt that is relatively high compared to their income are more likely to default on their loans. In its March 2008 Policy Statement on Financial Market Developments, the President's Working Group on Financial Markets concluded that "[t]he turmoil in financial markets clearly was triggered by a *dramatic weakening of underwriting standards for U.S. subprime mortgages, beginning* in late 2004 and extending into early 2007." (Emphasis in original.) As U.S. housing prices subsequently declined, the delinquency rates for such mortgages soared.

52. An important aspect of the mortgage originators' violation of their stated underwriting standards was their reliance on faulty appraisals. According to the April 7, 2010 FCIC testimony of Richard Bitner, a former executive of a subprime mortgage originator for 15 years and the author of the book *Confessions of a Subprime Lender*, "the appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted, [and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value." He continued:

> To put things in perspective, during my company's history, half of all the loans we underwrote were overvalued by as much 10%. This meant one out of two appraisals were still within an acceptable tolerance for our end investors. Our experience showed that 10% was the most an appraisal could be overvalued and still be purchased by these investors. Another quarter that we reviewed were overvalued by 11-20%. These loans were either declined or we reduced the property value to an acceptable tolerance level. The remaining 25% of appraisals that we initially underwrote were so overvalued they defied all logic. ***Throwing a dart at a board while blindfolded would've produced more accurate results.***[1]

53. Mr. Bitner testified about the implications of inflated appraisals:

> If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals. The process then repeats itself. We saw it on several occasions. We'd close a loan in January and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. Of course, demand is a key component to driving value, but the defective nature of the appraisal process served as an accelerant. In the end, the subprime industry's willingness to consistently accept overvalued appraisals significantly contributed to the run-up in property values experienced throughout the country.
>
> * * *
>
> If the appraisal process had worked correctly, a significant percentage of subprime borrowers would've been denied due to a lack of funds. Inevitably, this would have forced sellers to drop their exorbitant asking prices to more reasonable levels. The rate of property appreciation experienced on a national basis from 1998 to 2006 was not only a function of market demand, but was due, in part, to the subprime industry's acceptance of overvalued appraisals, coupled with a high percentage of credit-challenged borrowers who financed with no money down.
>
> Mr. Bitner testified that the engine behind the increased malfeasance was the Wall Street Banks: "[T]he demand from Wall Street investment banks to feed the securitization machines coupled with an erosion in credit standards led the industry to drive itself off the proverbial cliff."

54. Patricia Lindsay, a wholesale underwriter for 10 years at New Century Financial Corporation, testified before the FCIC on April 7, 2010, about the fraudulent practices of New Century's appraisers:

> The role and practices of appraisers in subprime mortgage origination:

[1] Throughout this Complaint, emphasis in quotations is added except where otherwise noted.

> Properly valuing a property . . . is one of the most important components in a loan. In my experience at New Century, fee appraisers hired to go to the properties were often times pressured into coming in "at value", fearing if they didn't, they would lose future business and their livelihoods. They would charge the same fees as usual, but would find properties that would help support the needed value rather than finding the best comparables to come up with the most accurate value. Some appraisers would take boards off boarded up windows, to take the needed photos, then board the properties back up once the shots were taken. Or they would omit certain important elements of a property by angling the camera a certain way or zooming close in to make the property look the best possible. This level of appraiser activism compromises their objectivity.

55. Alan Hummel, Chair of the Appraisal Institute, testified before the Senate Committee on Banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraisers "experience[d] systemic problems of coercion" and were "ordered to doctor their reports" or they might be "placed on exclusionary or 'do-not-use' lists."

56. A 2007 survey of 1,200 appraisers conducted by October Research Corp., which publishes *Valuation Review*, found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through. This figure was nearly double the findings of a similar study conducted just three years earlier. The 2007 study also "found that 75% of appraisers reported 'negative ramifications' if they did not cooperate, alter their appraisal, and provide a higher valuation." Adding to these problems was the fact that lenders were generally unable to assess the accuracy of the appraisals for loans originated by mortgage brokers, since the lenders were typically located far from the properties and knew little about the properties' neighborhoods.

57. In addition, the mortgage securitization process was undermined by the widespread industry practice of originating types of loans that were inherently risky and extremely susceptible to delinquencies and default, including (1) stated income loans, where both the income and assets of the borrower were taken as stated on the credit application without verification; (2) "NINA" or No Income, No Asset loans, which were made without any

disclosure of the borrower's income or assets; and (3) "No Doc" loans, which were made to borrowers who did not disclose their income, assets, or employment history.

d. The Wall Street Banks Conduct Less Due Diligence

58. As the Wall Street Banks that profited from securitizations sought increasing volumes of mortgage loans from mortgage originators, the mortgage originators gained bargaining power over the terms on which they would sell the loans. Mortgage originators demanded that the Wall Street Banks limit quality control reviews (*i.e.*, due diligence) to smaller percentages of loans prior to purchase. Additionally, if a Wall Street Bank chose to "kick out" a large number of loans from a pool – because the loans failed to conform to the mortgage originators' underwriting guidelines or did not contain adequate documentation – the Wall Street Bank risked being excluded from future loan purchases. As a result, the Wall Street Banks performed increasingly cursory due diligence on the mortgage loans they securitized. The sheer volume and pace of the securitization business during this period exacerbated such failures.

59. The Wall Street Banks often acquired large quantities of loans for securitization from "loan auctions." There, mortgage originators provided the Wall Street Banks with Bid Stipulation Sheets ("Bid Sheets") which stated the times and dates of the auctions and described the general characteristics of the loan pools. The Bid Sheets also dictated: (1) the percentage of the pool on which the Wall Street Banks would be permitted to conduct due diligence (*e.g.*, 25%); and (2) the number of loans the Wall Street Banks could "kick-out" due to borrower deficiencies, payment delinquencies, early payment defaults, lack of requisite legal documentation, and similar deficiencies. Prior to bid submission, mortgage originators also sent the Wall Street Banks spreadsheets known as "Loan Tapes" which typically contained 50 to 100 columns of data regarding the loans. The Wall Street Banks were supposed to "crack" the Loan Tapes, analyze them, and determine what prices to bid for the loan pools. Once this "bid package" analysis was complete, the Wall Street Banks submitted their bids.

60. If the mortgage originator accepted a bid, the Wall Street Bank typically had a short period of time prior to the settlement date (when cash was paid to the mortgage originator

for the loans) to conduct due diligence on the loans. The Wall Street Banks generally used their own investment bankers to conduct due diligence. Many of the Wall Street Banks also hired third-party due diligence firms such as Clayton Holdings, Inc. ("Clayton") or the Bohan Group ("Bohan") to conduct this review under the supervision of the Wall Street Banks' investment bankers. Clayton's Form 10-K filed March 14, 2008 specifically identified Wall Street Bank Defendants Morgan Stanley and Deutsche Bank among its clients. Bohan's clients included Bear Stearns (predecessor-in-interest to Wall Street Bank Defendant J.P. Morgan Securities) and Wall Street Bank Defendant Merrill Lynch.

61. For each loan pool, Clayton and Bohan reviewed the percentage of loans designated in the Bid Sheet to ensure, *inter alia*, that the loans: (1) conformed to the mortgage originators' underwriting guidelines; (2) contained loan data matching the loan data in the Loan Tape; and (3) contained the appropriate mortgage documents. Upon completion of the review, Clayton and Bohan sent the Wall Street Bank a "due diligence report," which it was supposed to use to decide which loans should be "kicked out" of the pool prior to the settlement date. Wall Street Banks, however, were incentivized to kick-out as few loans as possible because, as explained above, (1) mortgage originators would not invite Wall Street Banks that consistently kicked out large numbers of loans to future auctions; and (2) the securitization became smaller as loans were kicked out, thus decreasing the underwriting fee.

62. As a result, the percentage of loans per pool that Clayton and Bohan were instructed to review declined with time. Frank P. Filipps, Clayton's chairman and CEO, stated that "[e]arly in the decade, a securities firm might have asked Clayton to review 25% to 40% of the sub-prime loans in a pool, compared with typically 10% in 2006." Bohan President Mark Hughes stated, "[b]y contrast, loan buyers who kept the mortgages as an investment instead of packaging them into securities would have 50% to 100% of the loans examined."

63. In June 2007, New York Attorney General Andrew Cuomo ("NYAG") subpoenaed documents from Clayton and Bohan related to their due diligence efforts. The NYAG's investigation focused on whether Wall Street banks failed to adequately disclose the

warnings they received regarding the number of loans that failed to meet lending guidelines. Clayton also received an information request from the SEC and information subpoenas from the Massachusetts and Connecticut Attorneys General.

64. On January 12, 2008, in an article entitled "Inquiry Focuses on Withholding of Data on Loans," the *New York Times* reported:

> An investigation into the mortgage crisis by New York State prosecutors is now focusing on whether Wall Street banks withheld crucial information about the risks posed by investments linked to subprime loans. Reports commissioned by the banks raised red flags about high-risk loans known as exceptions, which failed to meet even the lax credit standards of subprime mortgage companies and the Wall Street firms. ***But the banks did not disclose the details of these reports to credit-rating agencies or investors.*** The inquiry, which was opened last summer by New York's attorney general, Andrew M. Cuomo, centers on how the banks bundled billions of dollars of exception loans and other subprime debt into complex mortgage investments.

65. On January 27, 2008, Clayton revealed that it had entered into an agreement with the NYAG for immunity from civil and criminal prosecution in New York in exchange for providing documents and testimony regarding its due diligence reports. That same day, in an article entitled "Loan Reviewer Aiding Inquiry Into Big Banks," the *New York Times* reported that a person familiar with the NYAG's investigation stated that as demand for loans surged, mortgage originators were in a superior bargaining position and required that Wall Street Banks have Clayton and other consultants review fewer loans. Incredibly, "investment banks directed Clayton *to halve the sample of loans it evaluated in each portfolio*."

66. On March 17, 2008, in an article entitled "Sub-Prime mortgage watchdogs kept on leash; loan checkers say their warnings of risk were met with indifference," the *Los Angeles Times* reported that Clayton and Bohan employees (including eight former loan reviewers who were interviewed for the article) "raised plenty of red flags about flaws [in subprime home loans] so serious that mortgages should have been rejected outright – such as borrowers' incomes that seemed inflated or documents that looked fake – but the problems were glossed over, ignored or stricken from reports."

e. **Plaintiff's Acquisition of the Securities**

67. Plaintiff, located in Massachusetts, was responsible for the sourcing, review, analysis, and purchase decisions for the U.S. investments for the Clients, and made the decision in Massachusetts to purchase the Securities on behalf of the Clients. At all relevant times, Plaintiff had numerous employees in Concord, Massachusetts, and Plaintiff continues to have employees in Concord.

68. Plaintiff decided to purchase each Security on behalf of the Clients on the basis of the information contained in the applicable registration statement, prospectus, and prospectus supplements filed with the SEC or the applicable private placement memorandum (the "Offering Documents"), as identified in Appendices A-P, and based on additional information provided to Plaintiff by the Wall Street Bank Defendants, as described below. In connection with their offers or sales of the Securities to Plaintiff, the Wall Street Bank Defendants sent to Plaintiff's office in Massachusetts the Offering Documents and additional documents, such as statistical tables to be included in the prospectus supplements. These documents included term sheets, pooling and servicing agreements, data, computational material, data regarding the LTV and debt-to-income ratios of the pools, computer models of the financial structures of the securitizations, tabular sensitivity data, loan tapes, rating agency expected loss levels, emails, sampling data regarding credit/compliance/appraisal and due diligence, "kickout" criteria and data, and collateral characteristics. ("Kickout" refers to the mortgage originator's contractual obligation under the terms of the securitization transaction documents to repurchase or replace any mortgage loan that had deficient documentation, an uncured material breach of a representation or warranty, a payment default within a specified time period, or other specified deficiencies.)

69. These documents contained numerous statements of material facts about the Securities, including statements concerning: (1) the mortgage originators' underwriting guidelines that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal guidelines that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios,

debt to income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Banks' due diligence of the loans and the mortgage originators' underwriting practices; and (5) various forms of credit enhancement applicable to certain tranches of Securities. For example, one form of credit enhancement is overcollateralization, which means that the total principal balance of the mortgage loans in the pool for a securitization (and therefore presumably the total value of the underlying properties) exceeds the aggregate amount of Securities issued and sold in the securitization. Another example of credit enhancement is excess interest, which means that the amount of interest collected on the mortgage loans underlying a securitization for each payment period is expected to be higher than the interest distributable on the Securities and fees and expenses payable by the trust for that period; excess interest may be applied both to absorb any interest shortfalls and to pay principal on the Securities to the extent needed to maintain the required level of overcollateralization.

70. These statements of material facts were untrue because: (1) the mortgage originators violated their stated underwriting guidelines and did not consistently evaluate the borrowers' ability to repay the loans; (2) inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue; and (3) the actual numbers of riskier "second home" and "investment property" mortgagees were higher than the stated numbers. In addition, metrics such as debt-to-income ratios were untrue as a result of the mortgage originators' acceptance of untrue information from mortgage applicants. For example, the mortgage originators allowed applicants for "stated income" loans to provide untrue income information and did not verify the applicants' purported income. Stated income loans were therefore widely known among personnel of the mortgage originators as "liar loans."

71. Often at meetings, including meetings in Massachusetts, the Wall Street Bank Defendants also showed Plaintiff "pitch books" and other materials regarding the credit quality of the Securities and the Wall Street Banks' due diligence of the mortgage originators' underwriting practices. Plaintiff, however, was not allowed to keep the pitch books. These pitch

books and other materials contained untrue statements similar to those described above. In addition to the untrue statements and omissions in the documents provided or shown to Plaintiff, the Wall Street Bank Defendants made additional untrue oral statements to Plaintiff during face-to-face meetings and by telephone between 2005 and 2007. The representatives of the Wall Street Bank Defendants who offered or sold the Securities to Plaintiff received compensation based, directly or indirectly, on the volume of Securities they sold to investors, including the Clients on whose behalf Plaintiff purchased Securities.

V. THE OFFERING DOCUMENTS CONTAINED UNTRUE STATEMENTS OF MATERIAL FACTS AND OMISSIONS ABOUT THE MORTGAGE ORIGINATORS' UNDERWRITING STANDARDS AND PRACTICES

72. Most of the mortgage loans underlying the Securities purchased by Plaintiff on behalf of the Clients came from the following eight mortgage originators (the "Mortgage Originators"): New Century Mortgage Corp. ("New Century"), Long Beach Mortgage Company ("Long Beach"), Washington Mutual ("WaMu"), Fremont Investment & Loan ("Fremont"), WMC Mortgage Corporation ("WMC"), Argent Mortgage Company ("Argent"), Ameriquest Mortgage ("Ameriquest"), and Option One Mortgage Corporation ("Option One"). Together with Defendant Countrywide, which originated most of its own mortgage loans through its affiliates, these eight Mortgage Originators accounted for approximately 70% of the loans underlying the RMBS purchased by Plaintiff on behalf of the Clients. The remaining 30% of the loans were originated by approximately 80 other mortgage originators. On information and belief, the types of violations of underwriting and appraisal standards that are alleged below specifically with respect to each of the eight larger Mortgage Originators were also prevalent among the other, smaller mortgage originators.

73. All eight of these large Mortgage Originators have now failed, and numerous consumer and securities fraud cases – both private and regulatory – have been lodged against them. In an April 8, 2010 statement by John C. Dugan, Comptroller of the Currency, before the FCIC, these Mortgage Originators were identified among the "Worst Ten in the Worst Ten," a list of the worst mortgage originators based on the number of foreclosures in the nation's worst ten

metro areas (all except for WaMu, but WaMu's subsidiary Long Beach was on the "Worst Ten" list). During the time that Plaintiff, on the Clients' behalf, was purchasing Securities from the Wall Street Banks that contained mortgage loans provided by these Mortgage Originators, (1) the Mortgage Originators violated their stated underwriting standards when issuing loans to borrowers; (2) the underlying mortgages were based on appraisals that overstated the value of the mortgaged properties and therefore understated the LTV ratios of the mortgage loans; and (3) these underwriting deficiencies rendered the mortgage loans far less valuable and far riskier than disclosed. As a result, the Securities that were issued by the Depositor Defendants and offered or sold by the Wall Street Bank Defendants were backed by mortgage collateral that was much less valuable and posed a significantly greater risk of delinquencies, foreclosures, and other forms of default than the Wall Street Banks stated to Plaintiff.

a. New Century Mortgage Corporation

1. Defendants Made Untrue Statements of Material Facts About New Century's Underwriting Standards and Practices

74. New Century originated Mortgage Loans that were included in the pools for the following offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
CARR 2005-NC4	Carrington Mortgage Loan Trust	Bear Stearns
CARR 2005-NC3	Carrington Mortgage Loan Trust	Citigroup
CARR 2005-NC5	Carrington Mortgage Loan Trust	Citigroup
CARR 2006-NC2	Carrington Mortgage Loan Trust	Citigroup
CARR 2006-NC4	Carrington Mortgage Loan Trust	Citigroup
ABSHE 2005-HE1	Asset Backed Securities Corp. Home Equity	Credit Suisse
ABSHE 2005-HE4	Asset Backed Securities Corp. Home Equity	Credit Suisse
ACE 2006-HE1	Ace Securities Corp.	Deutsche Bank
ACE 2006-NC1	Ace Securities Corp.	Deutsche Bank
ACE 2006-NC2	Ace Securities Corp.	Deutsche Bank
ACE 2006-SL1	Ace Securities Corp.	Deutsche Bank
ACE 2006-SL2	Ace Securities Corp.	Deutsche Bank
NCHET 2005-4	New Century Home Equity Loan Trust	Deutsche Bank

Offering	Depositor Defendant	Wall Street Bank Defendant
IXIS 2005-HE4	IXIS Real Estate Capital Trust	Morgan Stanley
SVHE 2005-B	SoundView Home Loan Trust	Greenwich Capital
HASC 2005-NC2	HSI Asset Securitization Corporation Trust	HSBC
MLMI 2005-NCB	Merrill Lynch Mortgage Investors	Merrill Lynch
IXIS 2005-HE2	IXIS Real Estate Capital Trust	Morgan Stanley
IXIS 2005-HE3	IXIS Real Estate Capital Trust	Morgan Stanley
IXIS 2006-HE3	IXIS Real Estate Capital Trust	Morgan Stanley
MSAC 2005-NC2	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2006-HE3	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2007-HE3	Morgan Stanley ABS Capital I	Morgan Stanley
NCHET 2005-3	New Century Home Equity Loan Trust	Morgan Stanley
NCHET 2005-B	New Century Home Equity Loan Trust	Morgan Stanley
NCHET 2005-C	New Century Home Equity Loan Trust	Morgan Stanley
NCHET 2005-D	New Century Home Equity Loan Trust	Morgan Stanley
NTIX 2007-HE2	Natixis Real Estate Capital Trust	Morgan Stanley
MABS 2005-NC1	MASTR Asset Backed Securities Trust	UBS
MABS 2006-NC2	MASTR Asset Backed Securities Trust	UBS

75. Defendants offered or sold to Plaintiff approximately $286.3 million of Securities for which New Century originated some or all of the underlying mortgage loans.

76. The Offering Documents for these Securities all contained substantially similar, if not identical, statements of material fact regarding New Century's underwriting standards and practices. For example, the prospectus supplement for Asset-Backed Securities Corporation Home Equity Loan Trust, ABSHE Series 2005-HE4 stated:

> The New Century Underwriting Guidelines are primarily intended to assess the borrower's ability to repay the mortgage loan, to assess the value of the mortgaged property and to evaluate the adequacy of the property as collateral for the mortgage loan. All of the mortgage loans in the mortgage pool were also underwritten with a view toward the resale of the mortgage loans in the secondary mortgage market. ***While the originator's primary consideration in underwriting a mortgage loan is the value of the mortgaged property, the originator also***

> ***considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type and use of the mortgaged property.***
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> * * *
>
> ***The mortgage loans will have been originated in accordance with the underwriting guidelines.*** On a case-by-case basis, exceptions to the underwriting guidelines are made where compensating factors exist. It is expected that a substantial portion of the Mortgage Loans will represent these exceptions.
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> * * *
>
> *Exceptions*. As described above, the foregoing categories and criteria are guidelines only. On a case by case basis, it may be determined that an applicant warrants a debt service-to-income ratio exception, a pricing exception, a loan-to-value ratio exception, an exception from certain requirements of a particular risk category, etc. **An exception may be allowed if the application reflects compensating factors, such as:** low loan-to-value ratio; pride of ownership; a maximum of one 30 day late payment on all mortgage loans during the last 12 months; and stable employment or ownership of current residence of four or more years. An exception may also be allowed if the applicant places a down payment through escrow of at least 20% of the purchase price of the mortgaged property or if the new loan reduces the applicant's monthly aggregate mortgage payment by 25% or more. Accordingly, a mortgagor may qualify in a more favorable risk category than, in the absence of compensating factors, would satisfy only the criteria of a less favorable risk category. It is expected that a substantial portion of the Mortgage Loans will represent these kinds of exceptions.

77. The relevant Offering Documents also contained statements of material fact about the information contained in New Century's loan files. For example, the same prospectus supplement stated:

> Each applicant completes an application which includes information with respect to the applicant's liabilities, income, credit history, employment history and personal information. The underwriting guidelines require a credit report on each applicant from a credit reporting company. The report typically contains information relating to matters such as credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcies, repossessions or judgments.

78. The relevant Offering Documents also contained statements of material fact about New Century's appraisal standards and practices. For example, the same prospectus supplement stated:

> Mortgaged properties that are to secure mortgage loans are appraised by qualified independent appraisers. These appraisers inspect and appraise the subject property and verify that the property is in acceptable condition. Following each appraisal, the appraiser prepares a report which includes a market value analysis based on recent sales of comparable homes in the area and, when deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. ***All appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac.*** The underwriting guidelines require a review of the appraisal by a qualified employee of the originator or by an appraiser retained by the originator.

79. These statements are substantially similar, if not identical, to statements concerning New Century's appraisal standards and practices found in the other Prospectus Supplements for the Securities whose underlying mortgage loans were originated by New Century.

80. The above statements of material facts were untrue when made because, as explained below in ¶¶ 81-95, they failed to disclose that New Century: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgaged properties in the loan origination and underwriting process.

2. New Century Violated Its Stated Underwriting Standards

81. Defendants J.P. Morgan (as successor-in-interest to Bear Stearns), Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, Greenwich Capital, HSBC, Merrill Lynch, Morgan Stanley, and UBS offered or sold to Plaintiff Securities containing loans originated by New Century and made untrue statements to Plaintiff about New Century's underwriting and appraisal standards and practices and the loans underlying the Securities. These Wall Street Banks had extensive business relationships with New Century, had access to New Century's mortgage origination personnel and internal information, and conducted due diligence into New Century using their own personnel and third-party loan review firms. As a result of the Wall

Street Banks' access to and due diligence into New Century, they were or reasonably should have been aware of the untruth of the statements about New Century described above.

82. The court-appointed Bankruptcy Examiner issued a detailed report explaining how New Century's "brazen obsession" with loan originations undermined sound underwriting standards. Moreover, New Century's officers are the targets of both a civil class action and a regulatory action brought by the SEC based on their knowledge of and perpetuation of these practices, and allegations of New Century's deficient underwriting practices have been endorsed by several courts. New Century topped the Comptroller of the Currency's list of the "Worst Ten in the Worst Ten," discussed above.

83. Once one of the nation's largest mortgage origination companies, New Century collapsed and filed for bankruptcy on April 2, 2007. Formed in 1996, New Century grew rapidly to become one of the country's largest subprime lenders, reporting $56.1 billion of total mortgage originations and purchases in 2005 alone. Beginning in 2003, New Century secretly loosened its own underwriting standards and made unjustified exceptions to those already severely weakened standards. These allegations have been substantiated by many sources, as discussed below.

84. On February 29, 2008, following New Century's bankruptcy, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a detailed report on the various deficiencies at New Century, including lax mortgage origination standards. The Examiner's report detailed "serious loan quality issues at [New Century] beginning as early as 2004"; numerous "red flags" relating to loan quality; and the failure of New Century's senior management and board of directors to devote sufficient attention to improving loan quality until it "was too late to prevent the consequences of longstanding loan quality problems in an adversely changing market."

85. During the course of his investigation, the Examiner conducted 110 interviews of 85 witnesses and reviewed millions of pages of documents from New Century, its outside auditors, and others. In his 550-page Final Report, the Examiner concluded that:

- "New Century had a brazen obsession with increasing loan originations, without due regard to the risks associated with that business strategy. Loan originations rose dramatically in recent years, from approximately $14 billion in 2002 to approximately $60 billion in 2006. The Loan Production Department was the dominant force within the Company and trained mortgage brokers to originate New Century loans in the aptly named "CloseMore University." Although a primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately fatal levels." (Examiner's Report, at 3.)

- "The increasingly risky nature of New Century's loan originations created a ticking time bomb that detonated in 2007. Subprime loans can be appropriate for a large number of borrowers. New Century, however, layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers." *Id.*

- "New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the 'number one issue is exceptions to guidelines.' Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies. Of the New Century loans rejected by investors, issues with appraisals were the cause of more than 25% of these 'kick-outs.'" *Id.* at 3-4.

- "Senior Management turned a blind eye to the increasing risks of New Century's loan originations and did not take appropriate steps to manage those risks. . . ." *Id.* at 4.

- "Senior Management was aware of an alarming and steady increase in early payment defaults ('EPD') on loans originated by New Century, beginning no later than mid- 2004. The surge in real estate prices slowed and then began to decrease, and interest rates started to rise. The changing market conditions exacerbated the risks embedded in New Century's products, yet Senior Management continued to feed eagerly the wave of investor demands without anticipating the inevitable requirement to repurchase an increasing number of bad loans. Unfortunately, this wave turned into a tsunami of impaired and defaulted mortgages." *Id.* at 4.

86. The Examiner highlighted the severity of New Century's improper conduct: "The Examiner recognizes that the subprime mortgage market collapsed with great speed and unprecedented severity, resulting in all of the largest subprime lenders either ceasing operations or being absorbed by larger financial institutions. Taking these events into consideration and attempting to avoid inappropriate hindsight, the Examiner concludes that New Century engaged

in a number of significant improper and imprudent practices related to its loan originations, operations, accounting and financial reporting processes."

87. According to Confidential Witness ("CW") 1, a former New Century fraud investigator and senior loan underwriter employed from January 1999 until April 2007 and who examined numerous New Century mortgage loans, New Century's problems began when it "started to abandon prudent underwriting guidelines" at the end of 2003 in order to "push more loans through" the system. According to CW 1, New Century, in effect, "stopped underwriting" and adopted an approach that the Company would be "okay if [it] could out run [its] delinquency rate."

88. According to CW 2, a former New Century Senior Vice President employed from July 2005 until April 2006 in Irvine, California, New Century could only meet its increasing year-over-year sales projections by reducing the underwriting standards. According to CW 2, in his position as Senior Vice President of New Century, he would approve just about any loan under New Century's "weak" underwriting standards.

89. According to CW 3, a former New Century underwriting unit manager employed from 1998 through October 2006, underwriting standards were loosened in order to increase sales volume. According to CW 3, exceptions to New Century's underwriting standards were "the norm" and employees were told to make loans "work." At one meeting in the late spring of 2006, CW 3 and other underwriters were told by their operations manager that the underwriters had to do what was necessary to increase volume.

90. Many lenders across the country allowed the sales personnel or account executives at their retail or in-house origination facilities to order and control appraisals and the appraisal process. According to CW 4, a former New Century underwriter employed by the Company from May 2005 to March 2006 in Itasca, Illinois and, previously, from 2000 until 2003 in Cincinnati, Ohio, as an underwriter for New Century, he could not recall the last loan that he looked at that did not have an exception; he handled close to 200 loans a month; and nearly every loan had an exception such as debt ratio exceptions or loan-to-value exceptions. According to

CW 4, "the guidelines were thrown against a wall," underwriters were instructed to "dig deep" in order to make loans work, and all decisions were volume driven. According to CW 4, appraisals even if turned down, were often accepted later as branch or regional sales managers "gave them hell" for rejecting appraisals. According to CW 4, he was told by his superiors that New Century was a volume based company and that New Century needed to increase its volume to outrun "shrinkages" in the secondary market.

91. On May 7, 2007, the front page of the *Washington Post* reported "Pressure at Mortgage Firm Led to Mass Approval of Bad Loans." The *Washington Post* reported that a former New Century appraiser Maggie Hardiman recounted that "[y]ou didn't want to turn away a loan because all hell would break loose," and when she did reject a loan, "her bosses often overruled her and found another appraiser to sign off on it."

92. On March 12, 2007, *USA Today* reported that, one day after New Century "said its lenders were cutting off financing because it didn't have enough money, or prospects of new assistance, to cover billions of dollars in obligations," New Century disclosed that the SEC was investigating the company. *USA Today* also reported that "New Century also said Tuesday that it has received a grand jury subpoena requesting documents. The request is part of the U.S. Attorney in Los Angeles' criminal probe into the company." On May 1, 2007, the *New York Times* (Today in Business) reported that New Century was facing investigations by both federal prosecutors and securities regulators, and on July 6, 2007, *Reuters* reported that the SEC had elevated its investigation of New Century to "formal status" which "gives the SEC subpoena power."

93. On December 7, 2009, the SEC charged three of New Century's top officers with violations of the federal securities laws, and claimed that "New Century's business was anything but 'good' and it soon became evident that its lending practices, far from being 'responsible,' were the recipe for financial disaster." SEC Complaint, ¶ 3. The SEC Complaint further details the falsity of New Century's assurances to the market about its "adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market," and its policy to "only

approve subprime loan applications that evidence a borrower's ability to repay the loan." *Id.*, ¶¶ 19-20.

94. New Century's systematic disregard for its underwriting guidelines led to dramatic downgrades of the value of the Securities in which New Century acted as a mortgage originator. On December 6, 2007, the *New York Times* reported that "[l]oans made by New Century, which filed for bankruptcy protection ..., have some of the highest default rates in the industry. . . , according to data from Moody's Investor Services."

95. Allegations of New Century's dismal underwriting have been sustained by Courts in similar actions. For example, in *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc., et al.*, an investor brought class claims against the dealer, issuer, and underwriter of RMBS containing collateral loans underwritten by New Century, alleging that New Century failed to comply with its "loan-approval oversight and control mechanisms as represented in [its] underwriting guidelines." The court substantially denied defendants' motion to dismiss, holding that the complaint properly alleged "systemic borrower defaults, complete lack of controls and oversight, and flagrant violations of the Guidelines," and that New Century, along with the dealer and issuer defendants, "acted with reckless abandon in their zeal to generate loan volume and profits."

b. Long Beach Mortgage Company

1. Defendants Made Untrue Statements of Material Facts About Long Beach's Underwriting Standards and Practices

96. Long Beach Mortgage Company ("Long Beach") originated mortgage loans that were included in the pools for the following offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
ACE 2006-SL2	Ace Securities Corp.	Deutsche Bank
GSAMP 2006-S1	GS Mortgage Securities Corp.	Goldman Sachs
LBMLT 2005-1	Long Beach Mortgage Loan Trust	Greenwich Capital
LBMLT 2005-2	Long Beach Mortgage Loan Trust	Goldman Sachs
LBMLT 2005-WL1	Long Beach Mortgage Loan Trust	Greenwich Capital
LBMLT 2005-WL2	Long Beach Mortgage Loan Trust	Credit Suisse

Offering	Depositor Defendant	Wall Street Bank Defendant
LBMLT 2006-7	Long Beach Mortgage Loan Trust	Goldman Sachs
LBMLT 2006-WL1	Long Beach Mortgage Loan Trust	Goldman Sachs
SVHE 2005-B	SoundView Home Loan Trust	Greenwich Capital

97. Defendants offered or sold to Plaintiff approximately $123.0 million of Securities for which Long Beach originated some or all of the underlying mortgage loans.

98. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding Long Beach's underwriting standards and practices. For example, prospectus supplement ACE 2006-SL2 stated:

> All of the mortgage loans owned by the trust that have been originated by Long Beach, have been originated by Long Beach through wholesale brokers or re-underwritten upon acquisition from correspondents by Long Beach generally in accordance with Long Beach's underwriting guidelines described in this section. Long Beach's underwriting guidelines are primarily intended to evaluate the prospective borrower's credit standing and repayment ability as well as the value and adequacy of the mortgaged property as collateral.
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> The adequacy of the mortgaged property as collateral is generally determined by an appraisal of the mortgaged property that generally conforms to Fannie Mae and Freddie Mac appraisal standards and a review of that appraisal. The mortgaged properties are appraised by licensed independent appraisers who have satisfied the servicer's appraiser screening process.
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> * * *
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> On a case-by-case basis and only with the approval of an employee with appropriate risk level authority, Long Beach may determine that, based upon compensating factors, a prospective borrower not strictly qualifying under its underwriting risk category guidelines warrants an underwriting exception.

99. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 100-127, they failed to disclose that Long Beach: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in

many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. Long Beach Violated Its Stated Underwriting Standards

100. Defendants Credit Suisse, Deutsche Bank, Goldman Sachs, and Greenwich Capital offered or sold to Plaintiff Securities containing loans originated by Long Beach and made untrue statements to Plaintiff about Long Beach's underwriting and appraisal standards and practices and the loans underlying the Securities. These Wall Street Banks had extensive business relationships with Long Beach, had access to Long Beach's mortgage origination personnel and internal information, and conducted due diligence into Long Beach using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into Long Beach, they were or reasonably should have been aware of the untruth of the statements about Long Beach described above.

101. In 1999, Long Beach was acquired by WaMu, a Washington corporation headquartered at 1301 Second Avenue, Seattle, Washington 98101. WaMu was founded in 1889 and, before its bankruptcy, was the largest savings and loan association in the country. Long Beach served as WaMu's subprime loan origination division until January 1, 2006 and was thereafter known as WaMu's "specialty mortgage lending" channel. According to CW 5, who served as a Long Beach Senior Underwriter in the Chicago area from 2004 through September 2007, WaMu sold subprime loans with interest-only and negative-amortization features, increasing the riskiness of these loans.

102. The Senate Permanent Subcommittee on Investigations ("PSI"), after investigating and holding hearings on Long Beach's role in the recent financial crisis, concluded the following about the company:

> Subprime lending can be a responsible business. Most subprime borrowers pay their loans on time and in full. Long Beach, however, was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry.

103. Long Beach financially rewarded its employees for closing higher-risk loans and instituted loan sales quotas. Long Beach loan officers, for example, received more money per loan for originating higher-risk loans and for exceeding established loan targets. Loan processing personnel were compensated according to the speed and number of the loans they processed. Loan officers and their sales associates received still more compensation if they charged borrowers higher interest rates or points than required in bank rate sheets specifying loan prices, or included prepayment penalties in the loan agreements. That added compensation created incentives to increase loan profitability, but not loan quality. Accordingly, Long Beach's employees targeted more and more borrowers who were less able to afford the loan payments they would have to make, and many of whom had no realistic ability to meet the obligations incident to the loans they were sold.

104. According to CW 6, a First Vice President in the Capital Markets Group and Director of Investor Relations at WaMu Capital Corp. in New York, New York, from October 2004 until December 2007, Long Beach compensated its account executives and underwriters based on the volume of loans that they brought in and closed, and their compensation structure gave no consideration to the quality of those loans.

105. CW 7, an Account Executive for Long Beach in New Jersey from 1998 until October 2007, noted a shift in underwriting philosophy in 2005 toward increasing loan volume at all costs. When CW 7 first joined the subprime business, Long Beach relied on "common sense underwriting" and was not exclusively focused on credit scores. CW 7 noted the change away from a "know your borrower" focus beginning in the 2005 timeframe, with Long Beach relying more on credit scores and less on common sense. The borrower needed to produce less and less documentation, and Fair Isaac Credit Organization ("FICO") credit scores became more important than verifying income for Long Beach. In response, "volume really went through the roof."

106. Long Beach pushed through every loan it could close, through whatever means necessary. CW 8, a Senior Underwriter for Long Beach in Dallas, Texas, from 2004 through

April 2007, reported that on occasion CW 8 would express concerns to her manager over funding some of the loans underwritten, but the manager's "direction from corporate" was simply to fund loans. CW 8 also reported that at month-end team meetings, it was often discussed that the Company was trying to increase volume by getting more "borrowers to fit."

107. CW 8 recalled that some of the "crazier" programs at Long Beach included stated-income loans for W-2 wage earners, a program that started in 2005. Stated-income programs, to the extent that lenders accepted them, were traditionally reserved for self-employed borrowers with significant assets. At Long Beach, however, these "liar's loans" were common, even for those borrowers who were not self-employed. Long Beach would also approve 100% financing for stated-income borrowers with FICO scores as low as 500.

108. CW 8 also described a "three letters of reference" program for self-employed borrowers, where a borrower only had to submit three letters of reference from anyone for whom they supposedly worked. CW 8 said no attempt was made to verify the information in the letters. CW 8 related that some of the accepted letters included statements such as: "So-and-so cuts my lawn and does a good job." At Long Beach, FICO scores ranged from 500-620, but CW 8 said that if Long Beach salespeople had a borrower with a 620, they were "hooping and hollering" about having a borrower with good credit.

109. CW 8 also relayed that borrowers could get a loan with no established FICO score merely by providing "three alternative trade lines." An "alternative trade line" was anything that did not appear on the borrower's credit report, including documentation of car insurance payments, verification of rent payment, or a note from a person claiming the borrower had repaid a personal debt. CW 8 said that Long Beach originated "a significant amount" of these types of problematic loans. CW 8 commented: "It was just a disaster." Furthermore, CW 8 said that these loans made up the majority of first payment defaults – *i.e.*, loans on which the borrower failed to make even the first payment – in the end of 2006.

110. CW 9 was a Wholesale Mortgage Underwriter at the Long Beach loan processing center located in Lake Oswego, Oregon from August 2005 until December 2006. CW 9 first

joined WaMu in Lake Oswego in 2003 as a Senior Credit Analyst and subsequently joined Long Beach in 2004 as a Senior Loan Coordinator, ultimately becoming a Wholesale Mortgage Underwriter. CW 9 said that at Long Beach there was always a sense of "working the underwriting guidelines" to close loans, rather than to mitigate Long Beach's credit risk. CW 9 said that there was simply an environment in the loan processing center to "approve, approve, approve" and that any exception that was needed to approve a loan was not only done, but was "sought after." CW 9 felt that Long Beach consistently pressured its underwriters to "find a way to make it work."

111. According to CW 5, even the few loans that Long Beach underwriters refused to approve were regularly pushed through by Long Beach management by granting exceptions to the guidelines. According to CW 5, "There were so many exceptions." Long Beach allowed LTV ratio exceptions, and the "rate exceptions were ridiculous." According to CW 5, WaMu allowed even the salespeople to give interest-rate exceptions to borrowers to push loans through. CW 5 explained: "There were really no restrictions to approve a loan," and some "really bad loans" went through the office. The attitude at WaMu was "push, push, push."

112. Numerous other Long Beach employees agreed that exceptions to Long Beach's guidelines were commonplace. CW 10, a Senior Underwriter with WaMu in Livermore, California from 2003 through September 2007, said that if Long Beach's competitors could not approve a loan, it was known to send the loan to Long Beach and they would make an exception to get the loan through. CW 10 said that guidelines were "loose to the point of disbelief." CW 10 described Long Beach's lending approach as follows: "If [potential borrowers] were breathing and had a heart beat, you could probably get the loan done."

113. CW 9 stated that many employees at Long Beach were disappointed about the decisions that were being made about loan quality, but they were resigned to simply "keep their heads down." According to CW 5, several WaMu employees contacted corporate headquarters about the incessant underwriting exceptions, including issuing loans to unqualified borrowers. CW 5 stated, "[w]e did a lot of underhanded stuff." CW 5 stated that if an underwriter at Long

Beach refused to force a file through, they would be written up, not because they made a bad decision but because the sales team did not like their decision. CW 5 said: "Basically, sales is what ran Long Beach Mortgage, it wasn't the Operations part."

114. CW 11 served as a Quality Assurance Manager in the Long Beach Loan Fulfillment Center ("LFC") in Dallas, Texas from November 2005 until his termination in August 2007. CW 11 explained that the Quality Assurance group in Dallas performed a monthly audit on a random selection of subprime loans from the various loan origination centers around the country. This analysis was not focused on loan-specific issues, but instead concerned WaMu/Long Beach-wide trends that might suggest necessary changes in underwriting guidelines, compliance standards, or other systems.

115. CW 11 observed that, despite the extensive analysis that the group performed to determine the causes for WaMu/Long Beach-wide loan problems, WaMu/Long Beach ignored the results. CW 11's group continued to identify the same problematic trends again and again without WaMu/Long Beach taking any steps to address the causes. According to CW 11, although WaMu/Long Beach was "going through the motions" to present a façade of legitimate quality control, in reality there was nothing but a "free for all to approve loans by the thousands."

116. According to CW 12, an employee of Long Beach from 2001 until October 2006, serving as an underwriter and later becoming a Quality Assurance Manager, a group of WaMu employees regularly reviewed a percentage (typically around 20%) of Long Beach's loans to monitor Long Beach's underwriting. CW 12 forwarded the report to Long Beach's Loan Servicing Center managers. The Long Beach managers receiving the reports had a certain number of days to go through the loan files in question and respond to the findings in the reports.

117. According to CW 13, a Senior Default Foreclosure Loan Specialist with Long Beach in Chatsworth, California from 2002 to September 2006, her department received statistics every month that showed the number of first payment defaults from the prior month. According to CW 13, at the end of 2004, the default numbers were at 6-7% and, "although they may have increased slightly, did not go over 9%." Suddenly, however, they increased "all at

once" to as high as 14%. According to CW 13, first payment defaults just "seemed to go up and up."

118. In his opening statement at the first PSI hearing on Wall Street and the Financial Crisis (related to the role of high risk home loans), Senator Carl Levin noted that an internal WaMu audit of Long Beach in 2005 found that "relaxed credit guidelines, breakdowns in manual underwriting processes, and inexperienced subprime personnel . . . coupled with a push to increase loan volume and the lack of an automated fraud monitoring tool" led to deteriorating loans. Many of the loans defaulted within three months of being sold to investors. Investors demanded that Long Beach repurchase them. Long Beach had to repurchase over $875 million in loans in 2005 and 2006, lost over $107 million from the defaults, and had to cover a $75 million shortfall in its repurchase reserves.

119. Senator Levin also noted that in response to the repurchase requests, WaMu "fired Long Beach's senior management and moved the company under the direct supervision of the President of WaMu's Home Loans Division, David Schneider" and that "WaMu promised its regulator that Long Beach would improve. But it didn't." In April 2006, WaMu's President, Steve Rotella, emailed the CEO, Kerry Killinger, that Long Beach's "delinquencies are up 140% and foreclosures close to 70%. . . . It is ugly." Five months later, in September, he emailed that Long Beach is "terrible. . . . Repurchases, [early payment defaults], manual underwriting, very weak servicing/collections practices and a weak staff." Two months after that, in November 2006, the head of WaMu Capital Markets in New York, David Beck, wrote to Mr. Schneider that "LBMC [Long Beach] paper is among the worst performing in the [market]."

120. In June 2007, WaMu shut down Long Beach and took over its subprime lending operations. Currently, Long Beach mortgage backed securities report loan delinquency rates in excess of 40%. At the end of 2007, a Long Beach employee was indicted for having taken kickbacks to process fraudulent or substandard loans.

121. In April 2010, the Senate Permanent Subcommittee on Investigations ("PSI") held a series of hearings "to examine some of the causes and consequences of the crisis." The goals

of the hearings were threefold: (1) to construct a public record of the facts to deepen public understanding of what happened and to try to hold some of the perpetrators accountable; (2) to inform the legislative debate about the need for financial reform; and (3) to provide a foundation for building better defenses to protect Main Street from the excesses of Wall Street.

122. The hearings were based on an in-depth bipartisan investigation that began in November 2008. The PSI conducted over 100 detailed interviews and depositions, consulted with dozens of experts, and collected and reviewed millions of pages of documents. Given the extent of the economic damage and the complexity of its root causes, the Subcommittee's approach has been to develop detailed case studies to examine each stage of the crisis.

123. On April 13, 2010, the PSI held a hearing that focused on the role high risk loans played in the financial crisis, using WaMu as a case history. It showed how WaMu originated and sold hundreds of billions of dollars in high risk loans to Wall Street Banks in return for big fees, polluting the financial system with toxic mortgages.

124. The PSI reached the following findings of fact following the April 13, 2010 hearing:

> 1. **High Risk Lending Strategy**. Washington Mutual ("WaMu") executives embarked upon a high risk lending strategy and increased sales of high risk home loans to Wall Street, because they projected that high risk home loans, which generally charged higher rates of interest, would be more profitable for the bank than low risk home loans.
>
> 2. **Shoddy Lending Practices.** WaMu and its affiliate, Long Beach Mortgage Company ("Long Beach"), used shoddy lending practices riddled with credit, compliance, and operational deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.
>
> 3. **Steering Borrowers to High Risk Loans**. WaMu and Long Beach too often steered borrowers into home loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans or sell their homes before the payments shot up.
>
> 4. **Polluting the Financial System.** WaMu and Long Beach securitized over $77 billion in subprime home loans and billions more in other high risk home loans, used Wall Street firms to sell the securities to investors worldwide, and

polluted the financial system with mortgage backed securities which later incurred high rates of delinquency and loss.

5. Securitizing Delinquency-Prone and Fraudulent Loans. At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.

6. Destructive Compensation. WaMu's compensation system rewarded loan officers and loan processors for originating large volumes of high risk loans, paid extra to loan officers who overcharged borrowers or added stiff prepayment penalties, and gave executives millions of dollars even when its high risk lending strategy placed the bank in financial jeopardy.

125. The PSI also concluded that "from 2004 to 2007, in exchange for lucrative fees, Goldman Sachs helped lenders like Long Beach, Fremont, and New Century, securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting residential mortgage backed securities (RMBS), and sell the RMBS securities to investors, pushing billions of dollars of risky mortgages into the financial system."

126. Long Beach and WaMu's appraisal practices have also been the target of governmental investigations. On November 1, 2007, New York State Attorney General Andrew Cuomo announced that he was suing eAppraiseIT and its parent company First American Corporation, charging them with caving into pressure from WaMu to use a list of preferred "Proven Appraisers" who provided inflated appraisals on homes. *People of the State of New York v. First Am. Corp. and First Am. eAppraiseIT*, Index No. 406796/2007 (N.Y. Sup. Ct.). Cuomo's suit alleged that eAppraiseIT colluded with WaMu (the parent of Mortgage Originator Long Beach) to inflate the appraisal values of homes. According to Cuomo, between April 2006 and October 2007, First American performed 262,000 appraisals for WaMu. When WaMu loan officers began complaining that valuations by eAppraiseIT's independent roster were coming in too low, WaMu allegedly pressured First American to assign only appraisers on WaMu's approved list when appraising WaMu mortgage-related properties. WaMu allegedly threatened to take its business elsewhere, and dangled the prospect of greater use of First American's other

settlement services, to convince eAppraiseIT to accede to its demands. In a press release that accompanied the suit, Cuomo stated:

> The independence of the appraiser is essential to maintaining the integrity of the mortgage industry. First American and eAppraiseIT violated that independence when Washington Mutual strong-armed them into a system designed to ripoff homeowners and investors alike . . . . The blatant actions of First American and eAppraiseIT have contributed to the growing foreclosure crisis and turmoil in the housing market. By allowing Washington Mutual to hand-pick appraisers who inflated values, First American helped set the current mortgage crisis in motion.

127. On June 8, 2010, the New York State Appellate Division, First Department, issued a decision upholding Attorney General Cuomo's complaint.

c. <u>WaMu</u>

1. Defendants Made Untrue Statements of Material Facts About WaMu's Underwriting Standards and Practices

128. In addition to the loan originations by WaMu's Long Beach subsidiary discussed above, WaMu originated mortgage loans that were included in the pools for the following Offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
SACO 2005-WM3	SACO I Trust	Bear Stearns
WAMU 2005-AR2	Washington Mutual	Greenwich Capital

129. Defendants offered or sold to Plaintiff approximately $25.6 million of Securities for which WaMu originated some or all of the underlying mortgage loans.

130. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding WaMu's underwriting standards and practices. For example, prospectus supplement WAMU 2005-AR2 stated:

> [WaMu]'s underwriting standards are intended to evaluate the prospective Mortgagor's credit standing and repayment ability, and the value and adequacy of the proposed Mortgaged Property as collateral. In the loan application process, prospective Mortgagors will be required to provide information regarding such factors as their assets, liabilities, income, credit history, employment history and other related items. Each prospective Mortgagor will also provide an authorization to apply for a credit report which summarizes the Mortgagor's credit history. With respect to establishing the prospective Mortgagor's ability to

> make timely payments, the Company will require evidence regarding the Mortgagor's employment and income, and of the amount of deposits made to financial institutions where the Mortgagor maintains demand or savings accounts. In some instances, Mortgage Loans which were originated under a Limited Documentation Origination Program may be sold to the Company. For a mortgage loan originated under a Limited Documentation Origination Program to qualify for purchase by the Company, the prospective mortgagor must have a good credit history and be financially capable of making a larger cash down payment, in a purchase, or be willing to finance less of the appraised value, in a refinancing, than would otherwise be required by the Company. Currently, the Company's underwriting standards provide that only mortgage loans with certain loan-to-value ratios will qualify for purchase. If the mortgage loan qualifies, the Company waives some of its documentation requirements and eliminates verification of income and employment for the prospective mortgagor.
>
> The Company's underwriting standards generally follow guidelines acceptable to Fannie Mae and Freddie Mac. In determining the adequacy of the property as collateral, an independent appraisal is made of each property considered for financing. The appraiser is required to inspect the property and verify that it is in good condition and that construction, if new, has been completed. The appraisal is based on the appraiser's judgment of values, giving appropriate weight to both the market value of comparable homes and the cost of replacing the property.

131. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 132-158, they failed to disclose that WaMu: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. WaMu Violated Its Stated Underwriting Standards

132. J.P. Morgan (as successor-in-interest to Bear Stearns) and Greenwich Capital offered or sold to Plaintiff Securities containing loans originated by WaMu and made untrue statements to Plaintiff about WaMu's underwriting and appraisal standards and practices and the loans underlying the Securities. These Wall Street Banks had extensive business relationships with WaMu, had access to WaMu's mortgage origination personnel and internal information, and conducted due diligence into WaMu using their own personnel and third-party loan review firms.

As a result of the Wall Street Banks' access to and due diligence into WaMu, they were or reasonably should have been aware of the untruth of the statements about WaMu described above.

133. In addition to the facts alleged above regarding improper underwriting and appraisal practices by Long Beach, WaMu's subprime mortgage subsidiary, WaMu also pervasively violated its stated underwriting and appraisal standards in its purportedly prime mortgage business. In order to generate a greater volume of risky loan products, WaMu financially rewarded loan origination personnel for closing higher-risk loans and instituted minimum loan sales quotas. Accordingly, WaMu's employees targeted more and more borrowers who were less able to afford the loan payments they would have to make, and many of whom had no realistic ability to make payments on the loans they were sold.

134. CW 14, a WaMu Vice President and Senior Credit Quality Manager from 2005 until February 2008 and a Senior Credit Risk Manager from April 2004 through March 2005, explained with regard to WaMu's loans, "[t]he more you slammed out, the more you made." Similarly, CW 15, a Senior Loan Consultant with WaMu from 2005 to 2007, observed that sometimes mortgage originators were surprised by the loans they could get approved. However, as a loan officer, if CW 15 could personally earn $2,000 - $3,000 by closing a loan, then CW 15's only concern was getting the loan approved. According to CW 15: "Once you get paid, you don't care what happens." CW 16, a Senior Loan Coordinator for WaMu's Home Loan Center in Bethel Park, Pennsylvania from February 1998 until September 2007, felt that WaMu employees were "greedy" and that the borrowers suffered as a result. CW 16 concluded, "[w]e could never figure it out why people came to us [for loans]."

135. In a November 2, 2008 *New York Times* article titled "Was There a Loan It Didn't Like?," former WaMu Senior Mortgage Underwriter Keysha Cooper, who started at WaMu in 2003 and left in 2007, explained that "***[a]t WaMu it wasn't about the quality of the loans; it was about the numbers . . . . They didn't care if we were giving loans to people that didn't qualify.*** Instead, it was how many loans did you guys close and fund?" According to the article, "[i]n

February 2007, . . . the pressure became intense. WaMu executives told employees they were not making enough loans and had to get their numbers up . . . ." Ms. Cooper concluded, "I swear 60 percent of the loans I approved I was made to. . . . If I could get everyone's name, I would write them apology letters."

136. Other former employees agreed that the primary factor driving WaMu's mortgage lending practices was to produce as much volume as possible. CW 17, who was a Closing Loan Coordinator at WaMu in Bethel Park, Pennsylvania, from 2003 until July 2007, explained that WaMu's priority regarding loans was "always quantity rather than quality," and her branch closed an "insane" number of loans every day. WaMu loan personnel could meet these volume expectations only because "[i]f you flew by the seat of your pants and didn't look at everything, you could get it done." CW 17 observed that the branch goal was "hitting certain numbers every month." WaMu rewarded high-performing loan officers with "fabulous vacations" if they made their numbers. CW 17 noted, "It was all about sell, sell, sell."

137. Similarly, according to CW 18, a Loan Coordinator/Mortgage Processor for WaMu in Jacksonville, Florida from March 2007 until December 2007, there was a company-wide culture that required WaMu employees to do "whatever it took to get loans closed." WaMu managers would constantly press WaMu underwriters and salespeople to "push, push, push" to close loans. CW 16 stated that "***WaMu's top priority was to get as many loans closed as quickly as they could close and not worry – they just wanted the volume, and it didn't seem to matter how they got it. . . . Everybody just wanted their chunk of the money.***" Not only did loan coordinators receive bonuses for loans they closed, but also CW 16 understood that if loan officers did not meet their quotas, WaMu fired them.

138. Mortgage originators were also paid more for originating loans that carried higher profit margins for WaMu and had commensurately higher credit risk. For example, CW 19, a Senior Loan Consultant with WaMu at Riverside, California, from 2005 through December 2007, reported that "every year [WaMu] came out with a new commission outline and [WaMu's] extra commissions for teaser rate loans." Further, according to CW 19, occasionally WaMu would

send out emails to mortgage originators about commission "specials." One of WaMu's "specials," CW 19 recalls, was to give mortgage originators extra commissions for Option ARM loans. In addition, ***WaMu paid additional commissions for non-conforming loans***. According to CW 19, at WaMu "[i]t's not about what's best for the client; it's about what's best for the Company." According to CW 20, a Sales Manager with WaMu for twenty years until October 2006, WaMu managers also received increases in their bonuses if their group closed a certain percentage of Option ARM loans.

139. CW 21, a former Loan Consultant for WaMu in Riverside, California, reported that because of WaMu's additional incentive compensation, WaMu salespeople undertook particularly aggressive tactics to sell Option ARM loans. As CW 22, who served as a Senior Underwriter with WaMu through a private mortgage insurance company, put it, "WaMu's biggest things are ARMs – they push those things like cotton candy." According to CW 21, "most borrowers" who came to WaMu "wanted the fixed rate loans." Thus, selling Option ARM loans required "pushing" them, which was done in a "nasty" way. ***WaMu loan officers would fail to educate the borrower, so that Option ARM loan borrowers "would think they were paying the fully-indexed rate, when they were only paying a portion of the interest" because the loan consultants did not explain the programs thoroughly***. WaMu loan consultants were under "a lot of pressure" from their managers to promote and sell Option ARM loans. CW 21 originated only "one or two" Option ARM loans because CW 21 was so morally opposed to these "risky" loans. As a result, CW 21 was frequently reprimanded by CW 21's managers at WaMu.

140. CW 23 was an employee at WaMu from 1993 to 2006 and was a "Senior Trainer" from 2000-2004, training employees on processing, closing, underwriting, leadership, products, and pricing. According to CW 23, Option ARM loans were suitable only for rental, non-owner occupied properties or for "savvy investment people who play the stock market." However, many of the WaMu sales people in CW 23's class did not understand the concept of negative amortization and could not explain it to borrowers.

141. Indeed, an internal WaMu presentation on Option ARM loans shows that WaMu focused on unsophisticated borrowers for its high-risk Option ARM loans. The internal WaMu presentation states that appropriate "Option ARM Candidates" are:

- Savvy Investors
- ***First Time Home Buyers***
- High Income Earners
- ***Self Employed Borrowers***
- ***Retired Borrowers***
- Real Estate Agents

The next page of the same presentation further explained that WaMu's target borrowers were of:

- ***All Ages***
- ***Any Social Status***
- ***All Economic Levels***

In other words, WaMu pushed its Option ARM loans on borrowers regardless of their sophistication, income level, or financial stability.

142. WaMu financially incentivized its underwriters, who supposedly served as WaMu's "gatekeepers" of loan credit quality, to approve an enormous volume of loans without regard to loan quality.

143. CW 24, a Senior Underwriter with WaMu in Livermore, California, from 2003 through September 2007, confirmed that loan underwriters received commissions based upon volume of loans underwritten and closed. CW 6 confirmed that underwriters were compensated on the volume of loans brought in and closed, with no consideration given to the quality of the loans.

144. According to CW 14, underwriters were required to underwrite a minimum of nine loans a day, and any loans underwritten in excess of that number provided for bonus payments. Indeed, certain senior underwriters earned in excess of $100,000 annually because of these bonuses; some underwriters received monthly bonus payments of $5,000 for underwriting a high volume of loans.

145. Notwithstanding underwriters' exorbitant volume-based bonuses, according to CW 25, who worked at WaMu from 1997 to February 2008 and served as a Credit Quality Manager and an Area Underwriting Manager, WaMu's senior management believed that if underwriters knew about underwriting problems that led to problem loans, WaMu's underwriters would "by nature" have tightened up WaMu's lending standards. Thus, WaMu refused to provide loan delinquency data to its underwriters.

146. Highly experienced mortgage underwriters who worked at WaMu during the relevant period were shocked by how lenient WaMu was in its lending. CW 26 was a Senior Underwriter in the Washington Mutual Wholesale loan fulfillment center in Lake Success, New York, from June 2005 through February 2008. CW 26 had twenty-plus years of experience underwriting home loans. When CW 26 arrived at WaMu, CW 26 was stunned to find that WaMu's supposedly "A paper" (*i.e.*, prime loans) consisted of loans made to borrowers with credit scores in the 500s, high LTV ratios, and Option ARM loans. CW 26 reported that there was "only so much you could do" with the loans she underwrote, because they met WaMu's lenient underwriting guidelines and CW 26 did not want to discriminate among borrowers by denying loans to some borrowers who met WaMu's loose guidelines merely because CW 26 did not think that borrower could actually repay the loan that WaMu had sold.

147. Similarly, CW 27, who served as a Senior Underwriter with WaMu through a private mortgage insurance company for most of 2007, was appalled by the lenient standards in place at WaMu. CW 27 reported that WaMu's reputation in the mortgage industry was that "if you had a pulse, WaMu would give you a loan." CW 27 stated that the underwriting guidelines at WaMu "changed every minute. . . . You would literally be getting an email every second that the guidelines changed or would have a pissed off account executive at your desk asking why the loan can't go through." Often, CW 27 reported, loans would be taken away from her to be approved by another underwriter who was not as conscientious. CW 27 often saw active or approved loans in the system that CW 27 had refused to underwrite and were ultimately signed

off on by someone else. According to CW 27, "They would give it to one of their 'lead underwriters' to approve."

148. Before a loan came to CW 27's desk, it could be automatically underwritten through a computer program, modeled after Fannie Mae's "Desktop Underwriter" ("DU") program. Loans that could be underwritten using the DU system could be approved by a loan processor without any involvement from an underwriter. CW 27 recalled that regularly, if a loan was rejected by the computer, the loan consultant would repeatedly re-enter the loan's information, changing the information a little each time, "tweak[ing] the system."

149. CW 16 recalled, "I saw underwriting managers and other managers waive a lot [of supposed underwriting rules]." According to CW 16, "[o]nce a week you'd go in with your manager, [and he'd say] 'why didn't this loan close, why didn't that one close?'" CW 16 said ***the pressure "was coming from the very top, the managers had to listen to the head manager, who had to listen to corporate.***" CW 16 added, "I almost had a nervous breakdown." According to CW 16, the underwriting procedures progressively loosened and "got really bad in 2006." ***WaMu's "top priority was to get as many loans closed as quickly as they could close and not worry – they just wanted the volume, and it didn't seem to matter how they got it."***

150. Notwithstanding the fact that, according to regulatory agencies including the Federal Deposit Insurance Corporation and the Office of Thrift Supervision, "prime" loans should have been available only to borrowers with FICO scores of 660 or above, WaMu regularly made loans to borrowers with FICO scores well below this standard. A WaMu training document for subprime loan production employees, entitled "Specialty Lending UW [Underwriter] HLCA [Home Loans Credit Authority] Training," revised September 26, 2007, makes clear that, regardless of a borrowers' credit history or actual potential to repay a loan, if the borrower WaMu targeted for one of its "prime" loans had a FICO score over 619, that borrower was considered a "prime" borrower.

151. In one stunning example of how WaMu abused the watered-down "standard" above, the Company instructed in an internal WaMu document to its underwriters that if a

borrower applied for a "5/1 Amortizing ARM" and the borrower had a bankruptcy "less than 4 years ago," but had a FICO score of 621, WaMu would consider that borrower prime. In fact, CW 28, a Loan Consultant for WaMu in New York from 2003 to 2006, stated that borrowers with credit scores as low as 540 (well below any accepted prime threshold) were approved for "prime" loans during the relevant period.

152. Various witnesses with direct experience in WaMu's underwriting operations have explained that during the relevant period, exceptions to WaMu's already low prime underwriting guidelines were the rule.

153. As observed by CW 29, who worked for WaMu from 1995 through 2008, most recently as Assistant Vice President Credit Level 3, Underwriting Supervisor, no exception to the underwriting guidelines was needed for many questionable loans, because WaMu's "guidelines were so generous." However, for those loans that did not fit within the loose guidelines of WaMu's underwriting standards, exceptions were encouraged and readily available. CW 30, a Senior Underwriter at the WaMu home loan center in Lake Success, New York from 2007 to 2008, agreed, stating that guideline exceptions were "part of the norm . . . it was so commonplace to go outside of the guidelines." ***Underwriting exceptions that were sent to management for approval "were always approved, so it was just business as usual and something that they were comfortable with."*** CW 14 explained that WaMu encouraged loan consultants to obtain exceptions to the underwriting guidelines whenever necessary to close more loans. CW 31, a Senior Loan Processor at WaMu in Pittsburgh from 2004 through 2006 and again in 2007, agreed that WaMu's loans were exception-ridden: "You could pretty much get an exception on any loan you wanted to."

154. As an Area Underwriting Manager, CW 25 was one of four senior underwriters with the Company charged with approving exceptions to WaMu underwriting guidelines for loans greater than $3 million and exceptions beyond those that WaMu underwriting managers were allowed to make. CW 25 stated that she and others in her position at WaMu were required to make numerous exceptions to WaMu's stated underwriting guidelines. Indeed, CW 25 stated

that the Negotiated Transaction Managers would be under a great deal of pressure to approve certain loans, especially where loan consultants had "important relationships." Those loans for which CW 25 and the other Negotiated Transaction Managers refused to make exceptions, even after being pressured, were referred up WaMu's chain of command to Mark Brown, National Underwriting Manager, or Cheryl Feltgen, Division Executive Chief Risk Officer, for approval where the loans would readily be approved.

155. According to CW 32, an underwriter with WaMu from 2002 through 2006 in Portland, Oregon, even when "borrowers were simply not qualified," WaMu's loose underwriting guidelines allowed borrowers to meet stated-income loan guidelines because of their credit scores. For example, CW 32 recalled multiple times where underwriters wanted to lower the stated income on the loan application, based on an evaluation of the borrower's actual circumstances, but WaMu would not allow such revisions. CW 32 said that stated income loans were commonly referred to at WaMu as "lie-to-me loans." Indeed, CW 32 reported that, over underwriter objections, the Company began to accept a job description in lieu of proof of employment for stated-income loans. CW 32 recalled that the borrower's job description did not even have to be produced by the borrower's employer or have to be on their employer's letterhead: "it was sufficient to print out a job description found online."

156. WaMu also did not underwrite its Option ARM loans to the fully-indexed rate. CW 33, a Retail Loan Consultant with WaMu from 2002 through 2007, reported that throughout the relevant period ***until late 2007, WaMu had underwritten its Option ARM loans to ensure only that the borrower could make monthly payments at the "teaser" rate.*** When, in late 2007, the Company changed its guidelines to finally require its underwriters to underwrite the loans to the fully-indexed rate, it was a major change for the underwriters. CW 33 observed that "At the time the loans started falling out of favor, they started underwriting based on the index rate and it just snowballed from there." CW 34, a WaMu Retail Loan Consultant in Kensington, Maryland from 2001 through December 2007, confirmed that WaMu underwrote Option ARM loans to the teaser rate, rather than the fully-indexed rate. In 2007, according to CW 34, WaMu's new

guidelines resulted in fewer borrowers being able to qualify for Option ARM loans based on the fully-indexed rate. Similarly, CW 35, a Senior Underwriter at WaMu's Lake Success, New York branch from June 2005 until February 2008, and CW 21 also confirmed that WaMu underwrote its Option ARM loans to the "teaser" rate, rather than the fully-indexed rate.

157. Witnesses in other divisions of WaMu also have confirmed that WaMu underwrote its Option ARM loans to their "teaser" rates, at least until August 2007. According to CW 36, a Due Diligence Director in the WaMu Transaction Management group in Anaheim and subsequently Fullerton, California, who spent over 17 years with WaMu from 1991 until 2008, WaMu required loans that it purchased from third parties to conform with underwriting guidelines that WaMu applied to the loans that it originated. Thus, WaMu periodically updated its "Bulk Seller Guide" to conform to WaMu's own underwriting requirements. WaMu's "Mortgage Securities Corp. Seller Guide Update – Announcement Concerning Qualifying Rate and Qualifying Payment for Hybrid ARM, IO, and Option ARM Products" indicates that, effective August 1, 2007, WaMu Option ARM loan underwriting shifted to require qualification for such loans only at the fully-indexed rate.

158. On November 1, 2007, New York State Attorney General Andrew Cuomo filed a complaint against First American Corporation and eAppraiseIT, which detailed that WaMu pressured appraisers to inflate appraisal values. According to a November 2, 2007 *New York Times* article, the complaint was filed after "investigators had spent nine months interviewing hundreds of mortgage industry executives and poring over millions of documents obtained through subpoenas." The complaint alleges, on the basis of numerous internal emails, that WaMu executives pressured eAppraiseIT to increase the appraised value of homes and that eAppraiseIT improperly allowed WaMu's loan production staff to hand-pick appraisers who brought in appraisal values high enough to permit WaMu's loans to close. Additionally, the New York Attorney General's complaint alleges that WaMu repeatedly pressured eAppraiseIT appraisers to change appraisal values that were too low to permit loans to close.

d. Fremont Investment & Loan

1. Defendants Made Untrue Statements of Material Facts About Fremont's Underwriting Standards and Practices

159. Fremont Investment & Loan ("Fremont") originated mortgage loans that were included in the pools for the following offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
ACE 2005-HE2	Ace Securities Corp.	Deutsche Bank
ACE 2005-HE5	Ace Securities Corp.	Deutsche Bank
ACE 2005-HE6	Ace Securities Corp.	Deutsche Bank
ACE 2006-FM2	Ace Securities Corp.	Deutsche Bank
ACE 2006-HE1	Ace Securities Corp.	Deutsche Bank
ACE 2006-SL1	Ace Securities Corp.	Deutsche Bank
ACE 2006-SL2	Ace Securities Corp.	Deutsche Bank
BSABS 2005-HE10	Bear Stearns Asset Backed Securities Inc.	Bear Stearns
BSABS 2006-HE4	Bear Stearns Asset Backed Securities Inc.	Bear Stearns
CARR 2006-FRE1	Carrington Mortgage Loan Trust	Barclays Capital
CARR 2006-FRE2	Carrington Mortgage Loan Trust	Barclays Capital
FHLT 2005-1	Fremont Home Loan Trust	Greenwich Capital
FHLT 2005-A	Fremont Home Loan Trust	Credit Suisse
GSAMP 2005-HE6	GS Mortgage Securities Corp.	Goldman Sachs
HELT 2007-FRE1	Home Equity Loan Trust	Greenwich Capital
IXIS 2005-HE2	IXIS Real Estate Capital Trust	Morgan Stanley
IXIS 2005-HE4	IXIS Real Estate Capital Trust	Goldman Sachs
MABS 2005-FRE1	MASTR Asset Backed Securities Trust	UBS
MABS 2006-FRE2	MASTR Asset Backed Securities Trust	UBS
MABS 2006-HE1	MASTR Asset Backed Securities Trust	UBS
MLMI 2005-SL2	Merrill Lynch Mortgage Investors	Merrill Lynch
MLMI 2006-HE4	Merrill Lynch Mortgage Investors	Merrill Lynch
MSAC 2007-HE3	Morgan Stanley ABS Capital I	Morgan Stanley
SABR 2005-FR4	Securitized Asset Backed Receivables	Barclays Capital
SABR 2005-FR5	Securitized Asset Backed Receivables	Barclays Capital
SABR 2006-FR1	Securitized Asset Backed Receivables	Barclays Capital
SVHE 2005-A	SoundView Home Loan Trust	Greenwich Capital
SVHE 2005-B	SoundView Home Loan Trust	Greenwich Capital

160. Defendants offered or sold to Plaintiff approximately $275.5 million of Securities for which Fremont originated some or all of the underlying mortgage loans.

161. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding Fremont's underwriting and appraisal standards and practices. For example, the prospectus supplement for MLMI 2005-FM1 stated:

> Mortgage loans are underwritten in accordance with Fremont's current underwriting programs, referred to as the Scored Programs ("Scored Programs"), subject to various exceptions as described in this section. Fremont's underwriting standards are primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan. The Scored Programs assess the risk of default by using Credit Scores as described below along with, but not limited to, past mortgage payment history, seasoning on bankruptcy and/or foreclosure and loan-to-value ratio as an aid to, not a substitute for, the underwriter's judgment. All of the mortgage loans in the mortgage pool were underwritten with a view toward the resale of the mortgage loans in the secondary mortgage market.
>
> * * *
>
> All of the mortgage loans were underwritten by Fremont's underwriters having the appropriate approval authority. Each underwriter is granted a level of authority commensurate with their proven judgment, experience and credit skills. **On a case by case basis, Fremont may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category guidelines described below is nonetheless qualified to receive a loan, i.e., an underwriting exception. Compensating factors may include, but are not limited to, low loan-to-value ratio**, low debt to income ratio, substantial liquid assets, good credit history, stable employment and time in residence at the applicant's current address. It is expected that a substantial portion of the mortgage loans may represent such underwriting exceptions.
>
> There are the three documentation types, Full Documentation ("Full Documentation"), Easy Documentation ("Easy Documentation") and Stated Income ("Stated Income"). Fremont's underwriters verify the income of each applicant under various documentation types as follows: under Full Documentation, applicants are generally required to submit verification of stable income for the periods of one to two years preceding the application dependent on credit profile; under Easy Documentation, the borrower is qualified based on verification of adequate cash flow by means of personal or business bank statements; under Stated Income, applicants are qualified based on monthly income as stated on the mortgage application. The income is not verified under

the Stated Income program; however, the income stated must be reasonable and customary for the applicant's line of work.

Fremont originates loans secured by 1-4 unit residential properties made to eligible borrowers with a vested fee simple (or in some cases a leasehold) interest in the property. **Fremont's underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal.** Generally, initial appraisals are provided by qualified independent appraisers licensed in their respective states. Review appraisals may only be provided by appraisers approved by Fremont. In some cases, Fremont relies on a statistical appraisal methodology provided by a third-party. Qualified independent appraisers must meet minimum standards of licensing and provide errors and omissions insurance in states where it is required to become approved to do business with Fremont. Each uniform residential appraisal report includes a market data analysis based on recent sales of comparable homes in the area and, where deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. The review appraisal may be a desk review, field review or an automated valuation report that confirms or supports the original appraiser's value of the mortgaged premises.

162. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 163-182, they failed to disclose that Fremont: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. Fremont Violated Its Stated Underwriting Standards

163. Defendants Barclays, J.P. Morgan (as successor-in-interest to Bear Stearns), Credit Suisse, Deutsche Bank, Goldman Sachs, Greenwich Capital, Merrill Lynch, Morgan Stanley, and UBS offered or sold to Plaintiff Securities containing loans originated by Fremont and made untrue statements to Plaintiff about Fremont's underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with Fremont, had access to Fremont's mortgage origination personnel and internal information, and conducted due diligence into Fremont using their own personnel and third-party loan review

firms. As a result of the Wall Street Banks' access to and due diligence into Fremont, they were or reasonably should have been aware of the untruth of the statements about Fremont described above.

164. Fremont originated subprime residential real estate loans nationwide on a wholesale basis through independent loan brokers in nearly all 50 states. Fremont was one of the country's largest subprime lenders until March 2007, when the Federal Deposit Insurance Corporation ("FDIC") effectively forced Fremont out of the subprime lending business for extending subprime credit "in an unsafe and unsound manner" and committing violations of law and FDIC regulations. Fremont later filed for bankruptcy.

165. On March 7, 2007, following an extensive investigation, the FDIC issued a Cease & Desist Order to Fremont, concluding that Fremont was, in fact, "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]," "operating with a large volume of poor quality loans," and "engaging in unsatisfactory lending practices."

166. According to the FDIC's March 7, 2007 press release:

> In taking this action, the FDIC found that [Fremont] was operating without effective risk management policies and procedures in place in relation to its subprime mortgage and commercial real estate lending operations. The FDIC determined, among other things, that the bank had been operating without adequate subprime mortgage loan underwriting criteria, and that it was marketing and extending subprime mortgage loans in a way that substantially increased the likelihood of borrower default or other loss to the bank.

167. In response to Fremont's dangerous subprime lending practices, on October 4, 2007, the Commonwealth of Massachusetts, through its Attorney General, brought an enforcement action against Fremont for an array of "unfair and deceptive business conduct," "on a broad scale." *Massachusetts v. Fremont Investment & Loan and Fremont General Corp.*, No. 07-4373 (Sup. Ct. Mass.) (the "Massachusetts Action"). Specifically, the Massachusetts Action alleged that Fremont abdicated its underwriting standards, provided misleading or incomplete

information to borrowers, made subprime loans that it knew would fail, and participated in predatory lending.

168. According to the Massachusetts Attorney General's complaint, Fremont's loans were "structurally unfair due to their multiple layers of risk with no meaningful consideration whether borrowers [could] afford to pay the loans." Fremont "approve[ed] borrowers without considering or verifying the relevant documentation related to the borrower's credit qualifications, including the borrower's income"; "approv[ed] borrowers for loans with inadequate debt-to-income analyses that do not properly consider the borrowers' ability to meet their overall level of indebtedness and common housing expenses"; "failed to meaningfully account for [ARM] payment adjustments in approving and selling loans"; "approved borrowers for these ARM loans based only on the initial fixed 'teaser' rate, without regard for borrowers' ability to pay after the initial two year period"; "consistently failed to monitor or supervise brokers' practices or to independently verify the information provided to Fremont by brokers"; and "ma[de] loans based on information that Fremont knew or should have known was inaccurate or false, including, but not limited to, borrowers' income, property appraisals, and credit scores."

169. On December 9, 2008, the Supreme Judicial Court of Massachusetts affirmed a preliminary injunction obtained in conjunction with the Massachusetts Action that prevented Fremont from foreclosing on thousands of its loans issued to Massachusetts residents. As a basis for its unanimous ruling, the Supreme Judicial Court found evidence that "Fremont made no effort to determine whether borrowers could 'make the scheduled payments under the terms of the loan,'" and that "Fremont knew or should have known that [its lending practices and loan terms] would operate in concert essentially to guarantee that the borrower would be unable to pay and default would follow."

170. In reaching its decision, the Supreme Judicial Court relied in part on the affidavits of two outside account executives who marketed Fremont's loan products to brokers in Massachusetts. Once loans were produced, these account executives worked with Fremont

employees, such as underwriters and account managers, to process and close the loans. According to their affidavits filed in the Massachusetts Action, both outside account executives attested that Fremont purposefully relaxed its underwriting standards and made loans based on documents known to be untrue.

171. The terms of the preliminary injunction were made permanent by a settlement of the Massachusetts Action, reached on June 9, 2009. In addition to agreeing to the protections for borrowers that would prevent Fremont from foreclosing on "unfair" loans, Fremont agreed to pay the Commonwealth of Massachusetts $10 million in consumer relief, penalties, and costs.

172. Numerous confidential witnesses interviewed by Plaintiff's counsel also corroborate the findings of the FDIC and the Massachusetts Action. According to CW 37, an Assistant Vice President, Regulatory Risk Examiner at Fremont, who was involved in the FDIC's investigation of Fremont, Fremont's Regulatory Risk Management group (of which CW 37 was a member) submitted numerous, repeated adverse written findings to senior Fremont executives in 2005 and 2006, which "mirrored" the FDIC's eventual Cease & Desist Order, one to two years later. CW 37 stated that these repeated adverse reports specifically highlighted, among other things, unfair and deceptive acts in which Fremont was engaging, "pretty obvious" poor underwriting, and problematic incentive compensation. CW 37 stated that these reports were based on reviews performed by the Regulatory Risk Management group, including interviews of underwriters, quality control, and other Fremont personnel. CW 37 stated that Fremont filed repeated Suspicious Activity Reports ("SARs") regarding broker fraud as to the same brokers, but Fremont executives would not end relationships with the identified brokers. CW 37 stated that some of the fraud was "so egregious" including "ridiculous" stated income applications, yet nothing was being done about "obvious problems" including repeated broker fraud.

173. The personal accounts of other former employee confidential witnesses confirm that Fremont failed to adhere to its established underwriting guidelines and promoted the wide use of exceptions to Fremont's underwriting standards in order to drive loan quantity at the expense of quality. For example, Fremont underwriters were instructed that Fremont's

guidelines and underwriting policies were a mere "guide," and that they were to "think outside the box" (according to CW 38, a senior underwriter from 2004 through March 2007 at Fremont's Downers Grove, Illinois center), "make it work" (according to CW 39, an underwriter at Fremont's Downers Grove center from August 2002 to January 2007, and CW 40, an assistant operations manager at Fremont's Anaheim, California center from October 2003 to January 2007), or "massage the file" (according to CW 41, a senior account manager at Fremont's Downers Grove, Illinois center from July 2001 to February 2007) to get loans approved.

174. As explained by CW 42, a former Fremont sales manager from August 1998 through March 2007, not only were Fremont's guidelines loose, but there were frequent granted exceptions to the guidelines. Underwriters made several types of exceptions "everyday," according to CW 43, an operations manager at Fremont's Anaheim, California center from April 2004 to January 2007, and a lot of them were not warranted, according to CW 40. Indeed, an estimated 30% of Fremont's loans had some sort of exception, partly because anyone from an assistant manager on up had the authority to sign off on exceptions, according to CW 44, an underwriter at Fremont's Anaheim, California center from May 2005 to March 2007.

175. According to CW 44 and CW 45 (an account manager at Fremont's Downers Grove, Illinois center from August 2005 to January 2007), when borrowers were rejected for failing to meet Fremont's underwriting criteria for fully documented loans, the loans were simply converted to "stated income" loans – with a higher reported income than previously documented – and approved. According to the separate accounts of CW 39 and CW 41, Fremont approved loans with unrealistic stated incomes, including "pizza delivery men" with reported monthly income of $5,000 or $6,000. Fremont accepted claims that "landscapers and housekeepers" earned $10,000 in monthly income, according to CW 46 (a former senior underwriter at Fremont's Anaheim and Ontario, California centers from 2002 to 2007), and that "window washers" made $75,000 per year, according to CW 41. In addition, Fremont continually ignored obviously fraudulent documents when approving loans, according to CW 47, an account manager from 2005 through May 2007. By way of specific example, Fremont ignored a case

where 40 loan files from the same broker had the exact same banking statements, according to CW 48, a former quality control investigator at Fremont from 2002 until March 2007. Indeed, fraudulent bank statements and W2s were discovered and ignored every day, according to CW 49, a quality control auditor with Fremont from May 2005 to February 2007. And, when Fremont could not ignore fraudulent information, such as a false pay stub, Fremont simply removed the information from the file or replaced it, according to CW 40.

176. According to CW 50, a senior underwriter at Fremont's Anaheim, California center from 1997 to September 2007, Fremont also loosened its debt-to-income-ratio requirements. Before 2004, Fremont generally did not approve loans with more than a 50% debt-to-income ratio. Thereafter, according to CW 50, Fremont approved loans with a 55% debt-to-income ratio. And when CW 50 reviewed the loan files, he often determined that the debt-to-income ratios actually were between 65% or 70%, or even up to 90%. In addition, CW 50 stated that Fremont routinely approved stated-income loans with claimed incomes that were simply "off the wall figures."

177. In addition, according to CW 51, an account manager at Fremont's Downers Grove, Illinois center from January 2002 to July 2006, CW 51's superiors would call property appraisers and request that they inflate their appraisal values by at least a few thousand dollars, and the appraisers would do so. According to CW 51, while auditing loans in the Due Diligence Department and later, in connection with CW 51's review of investor repurchase claims, CW 51 discovered, among other things, incomplete appraisals, appraisals that did not match the address of the property, and appraisals that described the home as owner-occupied when it was rented, on the large majority of the loans.

178. Further corroborating Fremont's poor underwriting practices, Fremont's business partners have alleged that Fremont originated and sold large amounts of loans that were terribly underwritten. In October of 2007, Morgan Stanley Mortgage Capital Holdings LLC sued Fremont for breach of contract for Fremont's failure to repurchase loans that Fremont sold from May of 2005 through December of 2006 to Morgan Stanley's predecessor-in-interest, Morgan

Stanley Mortgage Capital, Inc. (referred to collectively with Morgan Stanley Mortgage Capital Holdings LLC as "Morgan Stanley"). That action was captioned *Morgan Stanley Mortgage Capital Holdings LLC, as Successor-in-Interest to Morgan Stanley Mortgage Capital Inc. v. Fremont Investment & Loan*, No. 07-Civ.-9457 (S.D.N.Y.). According to the complaint, when Fremont sold the loans at issue, Fremont warranted, among other things, that the loans met its underwriting criteria and that Fremont had adequately verified the underlying information, such as the borrowers' income, credit history, and assets. Further, according to the complaint, Fremont agreed to repurchase any loans that materially violated the warranties and indemnify Morgan Stanley for any damages it suffered due to the defective loans.

179. Morgan Stanley alleged that it discovered "hundreds" of improperly underwritten loans shortly after they were purchased. In particular, Morgan Stanley alleged that the "loans fail[ed] to meet Fremont's underwriting guidelines" because Fremont had "fail[ed] to verify assets prior to closing," performed "defective verification of rent, failed[ed] to obtain the minimum credit history information, and [made] loans . . . to borrowers that did not have the requisite credit score." Morgan Stanley also alleged, consistent with the statements of former Fremont employees set forth herein, that the "loan documents" contained "misrepresentations of the income or employment of the borrower" and "misrepresentations concerning appraisal values." Morgan Stanley further alleged that the loans contained "misrepresentations of the occupancy of the residence," "misrepresentations of the assets of the borrower," and "misrepresentations of the condition of the property."

180. Morgan Stanley is not the only one of Fremont's business partners to sue the Company for its improper underwriting. In June of 2007, Lehman Brothers Holdings, Inc. and Lehman Brothers Bank, FSB (collectively, "Lehman Brothers") also sued Fremont for breach of contract and unjust enrichment for Fremont's failure to repurchase loans that Lehman Brothers had purchased beginning in March of 2004. That action was captioned *Aurora Loan Services LLC, et al. v. Fremont Investment & Loan Corp.*, No. 07-cv-01284-RPM (D. Colo.).

181. In that case, Lehman Brothers, just like Morgan Stanley, alleged that when Fremont sold the loans at issue, Fremont warranted that the loans met its underwriting criteria and that the underlying documentation was accurate as to the borrowers' identity, income, employment, credit history, and assets, among other things. Furthermore, Fremont agreed to repurchase those loans that violated the warranties and indemnify Lehman Brothers for any damages it suffered due to the defective loans.

182. After Lehman Brothers purchased the loans, according to its complaint, loan servicers and other third parties notified Lehman Brothers of "certain issues" concerning the loans. When Lehman Brothers "conducted further due diligence," it "confirmed that Fremont breached one or more representations and/or warranties" concerning the loans. According to the Lehman complaint, the breached warranties included "[t]he conformance of the Mortgage Loans with applicable underwriting guidelines and loan program requirements"; "[t]he accuracy and integrity of all information and documentation regarding borrower identity, income, employment, credit, assets, and liabilities used to originate the Mortgage Loans"; "[t]he validity of all Mortgage Loan documentation"; "[t]he ownership, nature, condition, and value of the real property securing the respective Mortgage Loans"; and "[b]orrower occupancy of the property securing the Mortgage Loans."

e. <u>WMC Mortgage Corporation</u>

1. Defendants Made Untrue Statements of Material Facts About WMC's Underwriting Standards and Practices

183. WMC originated Mortgage Loans that were included in the pools for the following offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
ABSHE 2005-HE1	Asset Backed Securities Corp. Home Equity	Credit Suisse
ABSHE 2005-HE3	Asset Backed Securities Corp. Home Equity	Credit Suisse
ABSHE 2005-HE5	Asset Backed Securities Corp. Home Equity	Credit Suisse
ACE 2005-HE5	Ace Securities Corp.	Deutsche Bank

Offering	Depositor Defendant	Wall Street Bank Defendant
ACE 2005-HE7	Ace Securities Corp.	Deutsche Bank
ACE 2006-HE1	Ace Securities Corp.	Deutsche Bank
ACE 2007-HE2	Ace Securities Corp.	Deutsche Bank
CMLTI 2005-HE1	Citigroup Mortgage Loan Trust	Citigroup
CMLTI 2005-HE3	Citigroup Mortgage Loan Trust	Citigroup
JPMAC 2005-WMC1	J.P. Morgan Mortgage Acquisition Corp.	JP Morgan
JPMAC 2006-WMC1	J.P. Morgan Mortgage Acquisition Corp.	JP Morgan
MABS 2006-WMC4	MASTR Asset Backed Securities Trust	UBS
MLMI 2005-WMC1	Merrill Lynch Mortgage Investors	Merrill Lynch
MSAC 2005-HE4	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2005-WMC2	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2005-WMC3	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2005-WMC5	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2005-WMC6	Morgan Stanley ABS Capital I	Morgan Stanley
MSAC 2006-HE1	Morgan Stanley Capital I	Morgan Stanley
MSAC 2006-HE3	Morgan Stanley ABS Capital I	Morgan Stanley
SABR 2006-WM2	Securitized Asset Backed Receivables	Barclays Capital
SVHE 2005-1	SoundView Home Loan Trust	Greenwich Capital
SVHE 2005-B	SoundView Home Loan Trust	Greenwich Capital

184. Defendants offered or sold to Plaintiff approximately $253.9 million of Securities for which WMC originated some or all of the underlying mortgage loans.

185. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding WMC's underwriting and appraisal standards and practices. For example, the prospectus supplement for ABSHE 2005-HE5 stated:

> *Underwriting Standards*. The mortgage loans have been originated generally in accordance with the underwriting guidelines established by it (collectively, the "Underwriting Guidelines"). **WMC Mortgage Corp. also originates certain other mortgage loans that are underwritten to the guidelines of specific investors, which mortgage loans are not included among those sold to the trust as described herein. The Underwriting Guidelines are primarily intended to (a) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (b) determine that the**

related mortgaged property will provide sufficient value to recover the investment if the borrower defaults. On a case-by-case basis WMC Mortgage Corp. may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category or other guidelines described below warrants an underwriting exception. Compensating factors may include, but are not limited to, low debt-to-income ratio ("Debt Ratio"), good mortgage payment history, an abundance of cash reserves, excess disposable income, stable employment and time in residence at the applicant's current address. It is expected that a substantial number of the mortgage loans to be included in the trust will represent such underwriting exceptions.

The mortgage loans in the trust will fall within the following documentation categories established by WMC Mortgage Corp.: Full Documentation, Full-Alternative Documentation, Limited Documentation, Lite Documentation, Stated Income Documentation and Stated Income/Verified Assets (Streamlined) Documentation. In addition to single-family residences, certain of the mortgage loans will have been underwritten (in many cases, as described above, subject to exceptions for compensating factors) in accordance with programs established by WMC Mortgage Corp. for the origination of mortgage loans secured by mortgages on condominiums, vacation and second homes, manufactured housing, two- to four-family properties and other property types. In addition, WMC Mortgage Corp. has established specific parameters for jumbo loans, which are designated in the Underwriting Guidelines as mortgage loans with original principal balances in excess of $650,000. However, WMC Mortgage Corp. sometimes increases the original principal balance limits if borrowers meet other compensating credit factors.

Under the Underwriting Guidelines, WMC Mortgage Corp. verifies the loan applicant's eligible sources of income for all products, calculates the amount of income from eligible sources indicated on the loan application, reviews the credit and mortgage payment history of the applicant and calculates the Debt Ratio to determine the applicant's ability to repay the loan, and reviews the mortgaged property for compliance with the Underwriting Guidelines. **The Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require, among other things, (1) an appraisal of the mortgaged property which conforms to Uniform Standards of Professional Appraisal Practice and (2) an audit of such appraisal by a WMC Mortgage Corp.-approved appraiser or by WMC Mortgage Corp.'s in-house collateral auditors (who may be licensed appraisers), which audit may in certain circumstances consist of a second appraisal, a field review, a desk review or an automated valuation model.**

186. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 187-193, they failed to disclose that WMC: (i) systematically failed to

follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. WMC Violated Its Stated Underwriting Standards

187. Defendants Barclays, Citigroup, Credit Suisse, Deutsche Bank, Greenwich Capital, J.P. Morgan, Merrill Lynch, Morgan Stanley, and UBS offered or sold to Plaintiff Securities containing loans originated by WMC and made untrue statements to Plaintiff about WMC's underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with WMC, had access to WMC's mortgage origination personnel and internal information, and conducted due diligence into WMC using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into WMC, they were or reasonably should have been aware of the untruth of the statements about WMC described above.

188. According to Reuters, WMC originated "some of the worst-performing loans in the . . . $575 billion market for home equity asset-backed securities." According to a lawsuit filed in September 2009, a review of WMC's mortgage loan files showed that "in reality [WMC] followed few, if any, objective standards or criteria in underwriting [mortgage loans] and showed little concern if any, for any borrower's ability to repay." WMC's reckless underwriting standards and practices resulted in a huge amount of foreclosures, ranking WMC fourth in the Comptroller of the Currency's "Worst Ten of the Worst Ten" list presented in April 2010 to the FCIC.

189. In 2004, WMC, then the sixth-largest subprime lender in the nation, was purchased by General Electric from private equity firm Apollo Management. WMC's concentration was in nonprime loans and jumbo loans up to $1 million dollars. According to a March 2007 article published by *MortgageDaily.com*, WMC was faced with growing

delinquencies, and announced that it would no longer write mortgages with no down payments. Soon after, on September 20, 2007, General Electric closed WMC's operations, taking a $400 million charge as a result.

190. The market has now become aware of WMC's reckless loan originating practices. For example, on September 2, 2009, PMI Mortgage Insurance Co. ("PMI") sued WMC in California state court for misrepresentations and failure to adhere to its contractual repurchase obligations relating to the securitization of a pool of certain subprime mortgage loans originated by WMC ("PMI Complaint"). PMI alleged that WMC "made extensive representations and warranties" about the underwriting of its mortgage loans and the accuracy of the information underlying such loans. PMI Complaint, ¶¶ 21, 33. According to PMI, an external investigation by Clayton into a sample of some of the thousands of WMC-originated loans revealed that WMC "breached various representations and warranties . . . because, *inter alia*, the loan-to-value ratio at the time of origination was greater than 100%; fraud, errors, misrepresentations, or gross negligence took place on the part of WMC . . . ; the loans did not comply with WMC's own underwriting standards at the time of origination; certain documents were missing; and/or WMC had failed to utilize a methodology in underwriting the loans that employed objective mathematical principles designed to determine that, at the time of origination, the borrower had the reasonable ability to make timely payments on the [m]ortgage [l]oans." Id., ¶ 35.

191. According to the PMI Complaint, the Clayton investigation "demonstrate[d] a systemic failure by WMC to apply sound underwriting standards and practices which cuts across all of the [loans in the securitization]." In the defective loans, "Clayton discovered unreasonable stated income and/or misrepresentations of income and/or employment by the borrower, the large majority of which could have been discovered by WMC prior to transfer via simple diligence procedures." ¶ 36. Moreover, nearly a quarter of the loans sampled by Clayton were shown to contain "misrepresentations of occupancy by the borrower, another factor that could have easily been verified by WMC." *Id.*

192. WMC's reckless loan originating practices were noticed by the regulatory authorities as well. In June 2008, the Washington State Department of Financial Institutions, Division of Consumer Services filed a Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Prohibit From Industry, Impose Fine, Order Restitution and Collect Investigation Fees against WMC Mortgage and its principal owners individually: Amy C. Brandt, WMC's CEO and President; Mark Walter, WMC's executive vice president; and Marc Becker, WMC's Director. The Statement of Charges was the result of a lengthy investigation in which WMC's and its business partners' books were subpoenaed. The investigation found that WMC had originated loans with unlicensed or unregistered mortgage brokers, understated amounts of finance charges on multiple loans, understated amounts of payments made to escrow companies, understated annual percentage rates by almost one-half of 1%, and committed many other violations of Washington State deceptive and unfair practices laws. This investigation is ongoing.

193. In January 2009, WMC Mortgage was sued in the United States District Court for the Eastern District of California for violations of the Truth In Lending Act, 15 U.S.C. § 1601, *et seq*. The plaintiff in that action is a mortgage borrower who alleges that, in an effort to maximize the number of loans sold to consumers and to maximize WMC's profits, WMC assured the plaintiff throughout the loan application process that the plaintiff would have low mortgage payments and failed to disclose the correct payment amounts or finance charges.

f. The Ameriquest Loan Sellers

1. Defendants Made Untrue Statements of Material Facts About the Ameriquest Loan Sellers' Underwriting Standards and Practices

194. ACC Capital Holdings ("ACC Capital") was the nation's largest subprime lender. Argent was a wholly owned mortgage subsidiary of ACC Capital. Citigroup purchased Argent on August 31, 2007. Ameriquest Mortgage Company ("Ameriquest") was ACC Capital's wholly owned retail lending subsidiary. On August 1, 2007, Ameriquest announced that it would no

longer be accepting loan applications. Ameriquest and Argent are, at times, collectively referred to herein as the "Ameriquest Loan Sellers."

195. Together, the Ameriquest Loan Sellers originated mortgage loans that were included in the pools for the following offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
ABSHE 2006-HE6	Asset Backed Securities Corp. Home Equity	Credit Suisse
ABSHE 2006-HE7	Asset Backed Securities Corp. Home Equity	Credit Suisse
ACE 2005-HE2	Ace Securities Corp.	Deutsche Bank
ACE 2006-SL1	Ace Securities Corp.	Deutsche Bank
ACE 2006-SL2	Ace Securities Corp.	Deutsche Bank
AMSI 2005-R6	Ameriquest Mortgage Securities Inc.	Credit Suisse
AMSI 2005-R7	Ameriquest Mortgage Securities Inc.	UBS
AMSI 2005-R8	Ameriquest Mortgage Securities Inc.	Credit Suisse
AMSI 2006-R2	Ameriquest Mortgage Securities Inc.	Credit Suisse
BSABS 2005-AQ2	Bear Stearns Asset Backed Securities Inc.	Bear Stearns
BSABS 2006-HE3	Bear Stearns Asset Backed Securities Inc.	Bear Stearns
CMLTI 2005-9	Citigroup Mortgage Loan Trust	Citigroup
CMLTI 2007-AMC2	Citigroup Mortgage Loan Trust	Citigroup
GSAMP 2006-HE6	GS Mortgage Securities Corp.	Goldman Sachs

196. Defendants offered or sold to Plaintiff approximately $207.4 million of Securities for which the Ameriquest Loan Sellers originated some or all of the underlying mortgage loans.

197. The Offering Documents for all these Securities contained substantially if not exactly the same statements of material facts regarding the Ameriquest Loan Sellers' underwriting standards and practices. For example, the prospectus supplement for AMSI 2005-R8 stated:

> The Mortgage Loans were originated generally in accordance with guidelines (the "Underwriting Guidelines") established by the Originator with one of the following income documentation types: "Full Documentation," "Limited Documentation" or "Stated Income." **The Underwriting Guidelines are primarily intended to evaluate: (1) the applicant's credit standing and repayment ability and (2) the value and adequacy of the mortgaged property**

as collateral. On a case-by-case basis, the Originator may determine that, based upon compensating factors, a loan applicant, not strictly qualifying under one of the Risk Categories described below, warrants an exception to the requirements set forth in the Underwriting Guidelines. Compensating factors may include, but are not limited to, loan-to-value ratio, debt-to-income ratio, good credit history, stable employment history, length at current employment and time in residence at the applicant's current address. It is expected that a substantial number of the Mortgage Loans to be included in the mortgage pool will represent such underwriting exceptions.

198. The relevant Offering Documents also made statements of material facts about the Ameriquest Loan Sellers' appraisal standards and practices. For example, the same prospectus supplement stated:

> The Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and requires either (A) (i) an appraisal of the mortgaged property which conforms to the Uniform Standards of Professional Appraisal Practice and are generally on forms similar to those acceptable to Fannie Mae and Freddie Mac and (ii) a review of such appraisal, which review may be conducted by a representative of the Originator or a fee appraiser and may include a desk review of the original appraisal or a drive-by review appraisal of the mortgaged property or (B) an insured automated valuation model. The Underwriting Guidelines permit loans with loan-to-value ratios at origination of up to 95%, subject to certain Risk Category limitations (as further described in that section). The maximum allowable loan-to-value ratio varies based upon the income documentation, property type, creditworthiness, debt service-to-income ratio of the applicant and the overall risks associated with the loan decision. Under the Underwriting Guidelines, the maximum loan-to-value ratio, including any second deeds of trust subordinate to the Originator's first deed of trust, is 100%.

199. These statements are substantially similar, if not identical, to statements concerning the Ameriquest Loan Sellers' underwriting standards and practices found in the other Prospectus Supplements for the Securities whose underlying mortgage loans were originated by Ameriquest and Argent.

200. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 201-210, they failed to disclose that the Ameriquest Loan Sellers: (i) systematically failed to follow their stated underwriting standards; (ii) allowed pervasive exceptions to their stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated their

stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. The Ameriquest Loan Sellers Violated Their Stated Underwriting Standards

201. Defendants Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, J.P. Morgan (as successor-in-interest to Bear Stearns), and UBS offered or sold to Plaintiff Securities containing loans originated by the Ameriquest Loan Sellers and made untrue statements to Plaintiff about the Ameriquest Loan Sellers' underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with the Ameriquest Loan Sellers, had access to the Ameriquest Loan Sellers' mortgage origination personnel and internal information, and conducted due diligence into the Ameriquest Loan Sellers using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into the Ameriquest Loan Sellers, they were or reasonably should have been aware of the untruth of the statements about the Ameriquest Loan Sellers described above.

202. Both of the Ameriquest Loan Sellers appeared in the Comptroller of the Currency's list of the "Worst Ten in the Worst Ten," discussed above.

203. While the Ameriquest Loan Sellers and the Wall Street Banks stated that the Ameriquest Loan Sellers' underwriting of mortgages was designed to ensure a prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral, these statements were untrue. In fact, the Ameriquest Loan Sellers' underwriting practices were designed to originate as many mortgage loans as possible without regard to the ability of the borrowers to repay such mortgages, and the Ameriquest Loan Sellers systematically disregarded or misstated the income, assets, and employment status of borrowers seeking mortgage loans. Indeed, Argent and Ameriquest were the third and ninth among the Comptroller of the Currency's "Worst Ten" Mortgage Originators, respectively, based on the number of foreclosures as of March 22, 2010 on loans originated between 2005 and 2007.

204. According to a December 7, 2008, article in the *Miami Herald*, employees of Argent, including a former vice president named Orson Benn who is currently in prison for his role in the mortgage fraud schemes at Argent, actively assisted mortgage brokers in falsifying borrowers' financial information by "tutoring . . . mortgage brokers in the art of fraud." Employees "taught [brokers] how to doctor credit reports, coached them to inflate [borrower] income on loan applications, and helped them invent phantom jobs for borrowers" so that loans could be approved. According to Mr. Benn himself, "the accuracy of loan applications was not a priority." The *Miami Herald* examined the applications for 129 loans funded by Argent and "found at least 103 that contained false and misleading information" and "red flags: non-existent employers, grossly inflated salaries and sudden, drastic increases in the borrower's net worth." As noted by the article, "[t]he simplest way for a bank to confirm someone's income is to call the employer. But in at least two dozen cases, the applications show bogus telephone numbers for work references . . . ." Argent's lack of verification was so extreme that a "borrower [who] claimed to work a job that didn't exist . . . got enough money to buy four houses." Another borrower "claimed to work for a company that didn't exist – and got a $170,000 loan."

205. Moreover, according to a May 11, 2008 *Cleveland Plain Dealer* article, Jacquelyn Fishwick, who worked for more than two years at an Argent loan processing center near Chicago as an underwriter and account manager, noted that "some Argent employees played fast and loose with the rules" and stated "I personally saw some stuff I didn't agree with." Ms. Fishwick "saw [Argent] account managers remove documents from files and create documents by cutting and pasting them."

206. In the summer of 2007, Citigroup acquired Ameriquest and Argent. Richard Bowen, III, was Citibank's Business Chief Underwriter for correspondent lending who supervised 220 professional underwriters and exercised direct oversight of more than $90 billion of correspondent residential mortgages annually. Mr. Bowen was involved in the due diligence for that acquisition. In his April 7, 2010 testimony before the FCIC, Mr. Bowen testified that he advised against the acquisition because "we sampled loans that were originated by Argent and

we found large numbers that did not – that were not underwritten according to the representations that were there." He further testified that the number of loans that contained untrue representations was significant enough to support his decision to oppose the acquisition (although Citigroup did not follow his recommendation).

207. Argent has been the subject of several lawsuits alleging fraud in its underwriting and lending practices. In January 2010, Argent, along with its parent company, Ameriquest, participated in a $22 million settlement of claims brought in the Northern District of Illinois by those who purchased mortgages after December 14, 2001 and who alleged fraudulent mortgage lending practices.

208. On August 20, 2007, *Business Week* reported in an article titled "Did Big Lenders Cross the Line?" that lawsuits by mortgage borrowers are increasingly blaming lenders' lax underwriting standards for loan delinquency. In one lawsuit against Ameriquest, plaintiff Mary Overton alleges that loan officers at a Brooklyn, New York branch of Ameriquest coerced Overton into signing a loan. Unbeknownst to Ms. Overton, Ameriquest created fake tax returns, employment records, and a 401(k) to make it appear that the loan was affordable. According to other court filings, at least 40 other borrowers allege Ameriquest doctored loan documents or overstated borrowers' income. According to *Business Week*, large lenders, such as Ameriquest, were motivated to engage in these practices to keep up loan volume and generate sales. The nationwide nature of these practices was confirmed by former Ameriquest employees in a National Public Radio broadcast on May 12, 2007. A former Ameriquest loan officer in Tampa, Florida, recalled that in order to sell a loan "at any cost," "managers encouraged loan officers to conceal the actual cost and interest rates on loans," and "would white out numbers on W2s and bank statements and fill in bigger amounts basically to qualify people for loans that they couldn't afford," a practice "called taking the loan to the art department." According to the National Public Radio broadcast, these practices were not isolated and were confirmed by former employees from Ameriquest offices around the country.

209. On October 22, 2007, *Mortgage Daily* reported that Wachovia filed a lawsuit against Ameriquest alleging that Ameriquest had not complied with repurchase requests on loans with fraudulent files. According to Wachovia's complaint, the 135 nonperforming loans sold to Wachovia on December 29, 2005, contained incorrect credit scores, incorrect employment status, and misstatements of the kind of home being financed. In addition, the complaint stated that the loans had not been underwritten pursuant to the underwriting procedures that Ameriquest agreed to apply and thus Ameriquest's representations and warranties regarding the loans were untrue and were breached by Ameriquest. *Mortgage Daily*, "Wachovia v. Ameriquest," October 22, 2007.

210. In her January 14, 2010 testimony before the FCIC, Illinois Attorney General Lisa Madigan explained how a multistate investigation of Ameriquest "revealed that the company engaged in the kinds of fraudulent practices that other predatory lenders subsequently emulated on a wide scale . . . includ[ing]: inflating home appraisals."

g. Option One

1. Defendants Made Untrue Statements of Material Facts About Option One's Underwriting Standards and Practices

211. Option One originated Mortgage Loans that were included in the pools for the following offerings:

Offering	Depositor Defendant	Wall Street Bank Defendant
ABFC 2005-HE1	Asset Backed Funding Certificates NIM	Bank of America
ABFC 2006-OPT2	Asset Backed Funding Corporation	Bank of America
CMLTI 2006-HE1	Citigroup Mortgage Loan Trust	Citigroup
ABSHE 2006-HE3	Asset Backed Securities Corp. Home Equity	Credit Suisse
ACE 2005-HE7	Ace Securities Corp.	Deutsche Bank
ACE 2006-OP1	Ace Securities Corp.	Deutsche Bank
ACE 2007-HE2	Ace Securities Corp.	Deutsche Bank
GSAMP 2006-S1	GS Mortgage Securities Corp.	Goldman Sachs
SVHE 2006-OPT2	SoundView Home Loan Trust	Greenwich Capital
SVHE 2006-OPT5	SoundView Home Loan Trust	Greenwich Capital

Offering	Depositor Defendant	Wall Street Bank Defendant
HASC 2006-OPT3	HSI Asset Securitization Corporation Trust	HSBC
JPMAC 2005-OPT1	J.P. Morgan Mortgage Acquisition Corp.	JP Morgan
JPMAC 2005-OPT2	J.P. Morgan Mortgage Acquisition Corp.	JP Morgan
MLMI 2005-SL2	Merrill Lynch Mortgage Investors	Merrill Lynch
MLMI 2005-SL3	Merrill Lynch Mortgage Investors	Merrill Lynch
MLMI 2006-SL1	Merrill Lynch Mortgage Investors	Merrill Lynch

212. Defendants offered or sold to Plaintiff approximately $137.5 million of Securities for which Option One originated some or all of the underlying mortgage loans.

213. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding Option One's underwriting and appraisal standards and practices. For example, the prospectus supplement for ABSHE 2006-HE3 stated:

> **The Mortgage Loans will have been originated generally in accordance with Option One's Guidelines** (the "Option One Underwriting Guidelines"). The Option One Underwriting Guidelines are primarily intended to assess the value of the mortgaged property, to evaluate the adequacy of such property as collateral for the mortgage loan and to assess the applicant's ability to repay the mortgage loan. The Mortgage Loans were also generally underwritten with a view toward resale in the secondary market. The Mortgage Loans generally bear higher rates of interest than mortgage loans that are originated in accordance with customary Fannie Mae and Freddie Mac standards.
>
> On a case-by-case basis, exceptions to the Option One Underwriting Guidelines are made where compensating factors exist. Except as specifically stated herein, the Option One Underwriting Guidelines are the same for first lien mortgage loans and second lien mortgage loans.
>
> Each mortgage loan applicant completes an application that includes information with respect to the applicant's liabilities, income, credit history, employment history and personal information. The Option One Underwriting Guidelines require a credit report and, if available, a credit score on each applicant from a credit-reporting agency. The credit report typically contains information relating to such matters as credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcies, repossessions or judgments. A credit score is a statistical ranking of likely future credit performance developed by Fair, Isaac and Co., Inc. and made available through the three national credit data repositories—Equifax, TransUnion and Experian.

> Mortgaged properties that are to secure mortgage loans generally are appraised by qualified independent appraisers. Such appraisers inspect and appraise the subject property and verify that such property is in acceptable condition. Following each appraisal, the appraiser prepares a report which includes a market value analysis based on recent sales of comparable homes in the area and, when deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. **All appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are generally on forms acceptable to Fannie Mae and Freddie Mac.**
>
> The Option One Underwriting Guidelines require that mortgage loans be underwritten in a standardized procedure which complies with applicable federal and state laws and regulations and require Option One's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal, supports the loan balance.

214. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 215-223, they failed to disclose that Option One: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. Option One Violated Its Stated Underwriting Standards

215. Defendants Banc of America, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, Greenwich Capital, HSBC, J.P. Morgan, and Merrill Lynch offered or sold to Plaintiff Securities containing loans originated by Option One and made untrue statements to Plaintiff about Option One's underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with Option One, had access to Option One's mortgage origination personnel and internal information, and conducted due diligence into Option One using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into Option One, they were or reasonably should have been aware of the untruth of the statements about Option One described above.

216. Option One was a national mortgage lender formerly owned by H&R Block, Inc., until its assets were sold to American Home Mortgage Servicing, Inc., in April 2008. Option One is the sixth worst mortgage originator, by number of foreclosures as of March 22, 2010, according to the Comptroller of the Currency's "Ten Worst in the Ten Worst" list.

217. Former employees with first-hand knowledge have confirmed that Option One violated its stated standards for underwriting and appraisals. For example, CW 52, a former underwriter at Option One in Atlanta, Georgia from 2005 to 2006, said that if an underwriter denied a loan and an account executive complained, the loan was escalated to the branch manager, who then got in touch with the underwriter. With account executives, "the biggest screamer and shaker of trees gets the most fruit." For a "top-producing" account executive, whatever red flags there were would be "overlooked," and invariably the loan would be pushed through. CW 52 estimated that at least 50% of the total loan volume in Option One's Atlanta branch was approved in this manner. CW 52 also stated that a loan applicant could tell "a straight up lie" about his income, but the untrue information would be overlooked and the loan would be approved, despite CW 52's initial rejection of the application.

218. Similarly, CW 53, an underwriter at Option One's Marietta, Georgia office in 2005, reported that Option One approved stated income loans "knowing good and well that those people did not make that much money in the position they were in." Likewise, CW 54, an underwriter for Option One in Hawaii from November 2004 to January 2006, stated that "the overwhelming majority of stated income loans were crafted," meaning that the borrowers were not making "anywhere near" what they claimed. However, CW 54 stated that he felt pressured to push loans through because every loan generated income and "[i]f you applied any level of rational thought, you were frowned upon."

219. With respect to artificially inflated appraisals, CW 52 stated that "[o]f course they inflated values" and that if an underwriter questioned the appraised value, the account executive and branch manager would override the underwriter's objection, as with any other red flag in a loan file. Similarly, CW 55, a staff review appraiser for Option One working throughout the

western United States from January 2004 to May 2007, stated that the appraisals "were all bad." He considered the appraisals borderline fraudulent, not merely incompetent, but was unable to prevent loans based on the flawed appraisals. He explained, "Our job is supposed to be stopping bad loans, but no one stopped them." When CW 55 objected to loans because of flawed appraisals, the loan officer would complain to the branch manager, who would complain to the Appraisals Department at headquarters in Irvine, California, and on up the chain until someone high enough in the Underwriting and Sales Department said to go forward with the loan.

220. Option One was motivated to violate its underwriting and appraisal standards in order to increase the volume of loans it could sell to Wall Street Banks to be securitized. CW 56, an Assistant Vice President of Option One from 2005 to 2007, worked in the Correspondent Lending department, which purchased loans from small mortgage companies. CW 56 stated that Option One purchased loans that raised concerns under the stated guidelines and that when he raised such concerns he was essentially told, "Shut up, Wall Street will buy it; don't worry about it."

221. Similarly, CW 57, who was an underwriter at Option One in Pleasanton, California from October 2005 to October 2007, stated that "[i]f [a borrower] had a FICO and a pulse, they could get a loan" from Option One. CW 57 also stated that:

> I caught blatant fraud, and the [account executive] would still fight for it. [The account executives and managers] would fight me because they didn't care. They knew they were going to sell it on the secondary market, and they didn't care because it wasn't their money. They were going to get paid regardless. . . . At Option One they didn't have a portfolio; they sold everything, so they didn't care. . . . [Option One] didn't have to worry about it, because once they're done with these crappy loans, they'd sell them off. They were the investors' problem.

222. On June 3, 2008, the Attorney General for the Commonwealth of Massachusetts filed an action against Option One, and its past and present parent companies, for their unfair and deceptive origination and servicing of mortgage loans (the "Massachusetts Option One Complaint"). According to the Attorney General, since 2004, Option One "increasingly disregarded underwriting standards, created incentives for loan officers and brokers to disregard

the interests of the borrowers and steer them into high-cost loans, and originated thousands of loans that [Option One] knew or should have known the borrowers would be unable to pay, all in an effort to increase loan origination volume so as to profit from the practice of packaging and selling the vast majority of [Option One's] residential subprime loans to the secondary market." Massachusetts Option One Complaint, ¶ 4. The Attorney General's complaint alleges that Option One's agents and brokers "frequently overstated an applicant's income and/or ability to pay, and inflated the appraised value of the applicant's home," and that Option One "avoided implementing reasonable measures that would have prevented or limited these fraudulent practices." *Id.*, ¶ 8. Option One's "origination policies . . . employed from 2004 through 2007 have resulted in an explosion of foreclosures." *Id.*, ¶ 10.

223. On June 4, 2008, the *Wall Street Journal* reported that the Massachusetts Attorney General's lawsuit "charges Option One with 'recklessly facilitating the foreclosure of borrowers' homes,'" and that Option One "proposed terms 'that are as unfair and unsustainable as the original loans."

h. Additional Mortgage Originators

224. Other mortgage originators that provided loans for the pools underlying the Securities that the Defendants offered or sold to Plaintiff included Aames, Accredited Home Lenders, Inc. ("Accredited"), DLJ Mortgage Capital, and Equifirst, among others. The Offering Documents for each securitization in which Defendants offered or sold Securities to Plaintiff set forth the underwriting standards for the mortgage originators of the loans included in that securitization. These statements of material facts were untrue and omitted material facts because mortgage originators industry-wide systematically failed to follow their stated underwriting standards.

225. For example, former employees of Accredited confirm the lack of underwriting and appraisal standards. According to CW 58, a Corporate Underwriter at Accredited between June 2004 and March 2005, managers on the sales side frequently overruled underwriting decisions. CW 58 noted such loans were tracked internally, and it was well-known they

performed poorly. Moreover, according to CW 58, in early 2005, Accredited approved risky loans that did not comply with its own underwriting guidelines in an effort to reach monthly production targets.

226. According to CW 59, a Corporate Underwriter at Accredited between August 2003 and February 2006 in Tampa, Florida, Operations Managers and Senior Operations Managers constantly overruled decisions to reject loan applications. According to CW 59, "The problem with the whole system was the overrides. The overrides were rampant. If the borrower breathed, he got the loan."

227. According to CW 60, a Corporate Underwriter at Accredited in San Diego between May 2002 and November 2006, Accredited's underwriters who reviewed and approved or denied loans were being overridden, frequently resulting in loans that did not comply with underwriting guidelines. According to CW 60, the number of overrides grew so large that Accredited was forced to institute a system to track such overrides. The system included a box on the loan file that an underwriter needed to check if a higher-level manager approved the loan "as a business decision" over the recommendation of the underwriter.

228. According to CW 61, a Corporate Underwriter at Accredited between June 2000 and March 2007 in both the San Diego, California, and Austin, Texas, offices, "[a]t the end of the month, we were handed loan files and told to just sign them with no audit."

229. According to CW 62, the Chief Appraiser at Accredited for five years between 2002 and June 2007, Accredited allowed both corporate underwriters and sales managers to override the decisions of licensed property appraisers. In many cases, an appraisal reviewer working for Accredited would reject a loan application after concluding that the appraisal submitted with the application was inflated. According to CW 62, the account executive who submitted the loan application would become annoyed by the rejection and appeal the decision to a sales manager who then would overturn the appraisal reviewer's decision without any valid justification. According to CW 62, overrides of appraisers' decisions were rampant: "As of June 2006, between 12% and 15% of our business was being done through management overrides."

230. On May 1, 2009, Accredited filed for bankruptcy. Accredited faced huge demands from Wall Street Banks to repurchase loans. In bankruptcy filings, Accredited stated that it faces more than $200 million in repurchase claims. The Wall Street Banks assert that certain loans they purchased are defective and violate the purchase agreements they made with Accredited because they contain serious mistakes or borrowers defaulted too quickly.

231. On information and belief, substantially similar violations of underwriting and appraisal standards were commonplace at Aames, DLJ Mortgage Capital, Equifirst, and the other mortgage originators whose loans were included in the securitizations in which Defendants offered or sold Securities to Plaintiff.

VI. DEFENDANTS MADE MATERIAL UNTRUE STATEMENTS AND OMISSIONS

232. The Depositor Defendants acquired mortgage loans and deposited them into issuing trusts, and the Wall Street Bank Defendants offered or sold the Securities to Plaintiff through the Offering Documents, other documents as described herein, and oral statements made directly to Plaintiff. Each Depositor Defendant and Wall Street Bank Defendant participated in drafting the prospectus supplement or private placement memorandum for each securitization issued by that Depositor or underwritten by that Wall Street Bank. In addition, each Depositor Defendant and Wall Street Bank Defendant was identified in these documents as the issuer or underwriter, respectively, of the Securities, and approved the versions of these documents that were delivered by the Wall Street Bank to Plaintiff.

233. The Defendants' Offering Documents contained statements of material facts regarding, *inter alia*, (i) the underwriting process and standards by which the loans held in the issuing trusts were originated; (ii) the standards and guidelines used by the Depositor Defendants and Wall Street Bank Defendants when evaluating and acquiring the loans; and (iii) the value of the underlying real estate securing the loans pooled in the issuing trusts, including the loan-to-value ratios and the appraisal standards by which such real estate values were measured.

234. The Offering Documents emphasized the underwriting standards used to originate the underlying mortgage loans. Indeed, each Prospectus Supplement set forth the underwriting

standards for the Mortgage Originators who originated a substantial portion of the underlying mortgages in that issuing trust. Contrary to these statements of material facts, many of these Mortgage Originators of the underlying mortgages did not originate loans in accordance with their stated underwriting standards. Rather, as set forth above, these Mortgage Originators extended loans that did not comply with their underwriting standards in order to increase loan volume regardless of the borrowers' ability to meet their obligations.

235. Additionally, the Offering Documents often made the statement of material facts, in sum or substance, that "all prospective Mortgage Loans will be subject to the underwriting standards adopted" herein; provided the Wall Street Banks' underwriting standards; or identified significant Mortgage Originators and provided the underwriting standards utilized by those Originators.

236. The written and oral statements of material facts regarding the underwriting and appraisal standards utilized by the Mortgage Originators and the Defendants' own due diligence were untrue and omitted material facts. Indeed, as detailed above, many of the identified Mortgage Originators systematically violated their stated underwriting and appraisal guidelines, and the Wall Street Bank Defendants made untrue statements about their own due diligence.

a. Morgan Stanley's Untrue Statements of Material Facts and Omissions

237. Morgan Stanley offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $219,379,620. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix A.

238. Morgan Stanley sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime lenders to purchase loans, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. According to a December 6, 2007 article in the *New York Times*, "Wary of Risk, Bankers Sold Shaky Mortgage Debt," Morgan Stanley cultivated a relationship

with New Century. As a result of this relationship, Morgan Stanley expanded its subprime underwriting business by 25% from 2004 to 2006. According to a former New Century executive, Morgan Stanley agreed to pay above-market prices for loans in return for a steady supply of mortgages. According to the article, the former New Century executive said: "Morgan would be aggressive and say, 'We want to lock you in for $2 billion a month.'"

239. Through its affiliates and subsidiaries, Morgan Stanley was able to control nearly every step in the mortgage securitization process. For example, Morgan Stanley formed numerous SPVs including: (1) Depositor Defendant Morgan Stanley ABS Capital I Inc., which served as the depositor and issuer for offerings of RMBS; (2) Morgan Stanley Capital I Inc., which served as the depositor and issuer for offerings of RMBS; and (3) Morgan Stanley Mortgage Capital Inc., which originated or otherwise acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant Morgan Stanley offered or sold the Securities to Plaintiff. Morgan Stanley also provided financial research on RMBS and related structured products.

240. In connection with its offer or sale of Securities to Plaintiff, Morgan Stanley sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Morgan Stanley also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Morgan Stanley sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, Morgan Stanley also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting Securities, the data, and Morgan Stanley's due diligence of the Mortgage Originators' underwriting practices. Morgan Stanley did not allow Plaintiff to keep the pitch books.

241. In the Offering Documents, Morgan Stanley made numerous statements of material facts regarding the underwriting standards that had been followed in originating the

underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, Morgan Stanley reprinted New Century's "Underwriting Guidelines," which stated, in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century reviewed not only the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶ 76. Morgan Stanley made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including WMC. *See* ¶ 185.

242. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Morgan Stanley stated, for example, that New Century commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and that were reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶ 78. Morgan Stanley made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including WMC. *See* ¶ 185. In offerings in which a Mortgage Originator was not identified in the Offering Documents, Morgan Stanley stated that "the depositor will not include any loan in the trust fund for any series of securities if anything has come to the depositor's attention that could cause it to believe that the representations and warranties of a seller or originator will not be accurate and complete in all material respects in respect of the loan as of the date of initial issuance of the related series of securities."

243. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Morgan Stanley made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Morgan Stanley's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

244. Morgan Stanley made additional oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Morgan Stanley representatives occurred on or about July 13, July 22, and September 9, 2004 and May 16 and and October 3, 2006. Some of these meetings occurred in Plaintiff's offices in Concord, Massachusetts. During these meetings, Morgan Stanley made statements of material facts regarding Morgan Stanley's upcoming RMBS deals, and assured Plaintiff that Morgan Stanley conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance. Specifically, Morgan Stanley made oral statements of material facts that it performed strong due diligence of New Century, stating to Plaintiff that Morgan Stanley even had an employee on site at New Century to ensure compliance with the underwriting standards described in the Offering Documents.

245. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, the principal Mortgage Originators in the Morgan Stanley deals violated their stated underwriting and appraisal standards. Moreover, Morgan Stanley's statements regarding its own due diligence were untrue and contained material omissions.

246. Morgan Stanley outsourced some due diligence by contracting with external firms including Clayton to review whether the loans included in the RMBS that it underwrote complied with the Mortgage Originators' stated standards. As discussed in ¶¶ 63-66, Clayton

and Bohan have been investigated by the New York Attorney General, SEC, and Massachusetts and Connecticut regulators for engaging in improper underwriting practices, and in January 2008, the New York Attorney General granted Clayton immunity from prosecution in exchange for documents and testimony regarding its due diligence reports.

247. In its most recent annual report, filed on Form 10-K with the SEC on February 26, 2010, Morgan Stanley confirmed that it is under direct investigation and is "responding to subpoenas and requests for information from certain regulatory and Governmental entities concerning the origination, purchase, securitization and servicing of subprime and non-subprime residential mortgages and related issues including collateralized debt obligations and credit default swaps backed by or referencing mortgage pass through certificates."

248. On June 24, 2010, the Massachusetts Attorney General announced that Morgan Stanley had agreed to pay $102 million to the Commonwealth and mortgage borrowers in the Commonwealth to settle charges related to "Morgan Stanley's role in facilitating predatory lending by New Century." Attorney General Coakley stated that:

> Morgan Stanley funded, purchased and securitized New Century loans. Morgan developed an intimate knowledge of New Century's business over time. And they uncovered signals pretty early on that the lending practices of New Century were not sound. Morgan Stanley continued to fund and securitize subprime loans even as New Century's bad loans were causing the lender to collapse . . . .
>
> Morgan knew because as part of its business it had to review New Century's loan portfolio in that relationship. Morgan discovered that New Century was making loans that we allege were designed to fail. They started with low teaser rates, but then they kicked to higher interest rates that borrowers predictably could not afford and borrowers could only repay by financing.
>
> ***
>
> Morgan Stanley had a number of red flags that these practices were unfair. For instance, Morgan Stanley knew that New Century was using what we call "no doc loans," that is no documentation, loans with no paperwork, to the point of abuse. New Century was not following its own underwriting guidelines for these loans and New Century failed to account for whether borrowers could actually make payments after the introductory or the so-called teaser rates on the loans have expired.

> Morgan initially refused to fund these loans, but after New Century threatened to pull their business, a Morgan banker approved hundreds of loans that their own compliance team had rejected and Morgan then softened its oversight to let New Century's business continue. [Morgan Stanley c]ontinued to fund New Century and provided the key financing that was needed to so that New Century could continue to make those loans.
>
> ***
>
> [O]ur investigation revealed that Morgan Stanley backed loans for homeowners that they knew, or should have known, were destined to fail and then they failed to disclose the riskiness of those loans to investors.

249. The Assurance of Discontinuance that the Massachusetts Attorney General filed in Court in connection with the Morgan Stanley settlement specifically identifies untrue statements in the loan tapes Morgan Stanley provided to investors such as Plaintiff:

> On the loan tapes provided to investors in Morgan Stanley securitizations of New Century loans, the DTI ratio was typically calculated based on the teaser rate and did not reflect the Fully Indexed Mortgage Payment. Incorporating the Fully Indexed Mortgage Payment in the DTI ratio using Morgan Stanley's reset DTI analysis described above, the average DTI on the New Century tapes would be substantially higher. A large number of the ARM loans would have Fully Indexed DTI Ratios on this basis that were greater than 55%. Based on Morgan Stanley's analysis described above, such borrowers could not afford to repay these loans in accordance with their terms without refinancing. Such loans comprised a significant portion of the overall loan pools.
>
> ***
>
> As early as October 2005, Morgan Stanley's diligence team determined, in reviewing and rejecting loans for purchase, that the stated income on a number of New Century loans was unreasonable. In early 2006, a Morgan Stanley employee commented that stated income credit was not adequately evaluated by New Century. About 36% of the loans originated by New Century and reviewed by Clayton in the diligence process were stated income loans. On average, the stated income of these borrowers was approximately 42% higher than the income of fully documented borrowers. The average stated income of these borrowers on an annual basis was about $115,000.
>
> Assuming that the stated income was closer to or similar to fully documented income, the average actual DTI ratio for stated income borrowers would be much higher than the DTI ratios reported by New Century in the loan tapes (averaging 41% for stated income loans), and a substantial number of these borrowers would have DTI ratios on this basis exceeding 55%.

250. The statements of material facts in the documents Morgan Stanley sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that New Century made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; New Century management "turned a blind eye" to risky loan originations; and "New Century engaged in a number of significant improper and imprudent practices related to its loan originations." *See* ¶¶ 82-95. Moreover, former New Century employees witnessed firsthand how exceptions to New Century's underwriting became the "norm" because employees had to do whatever was necessary to increase loan originations. *See* ¶¶ 89-91. The SEC recently charged former New Century officers with making untrue assurances to the market about the company's "adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market." *See* ¶ 93. The other Mortgage Originators of loans underlying the Morgan Stanley Securities similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

251. The statements of material facts in the documents Morgan Stanley sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. A former New Century underwriter recently confirmed New Century's use of inflated appraisals in testimony before the FCIC, stating that New Century hired fee appraisers who were "pressured" into inflating property values, at times by tampering with the property, "fearing if they didn't, they would lose future business and their livelihoods." ¶ 54. Another industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007 demonstrated that

90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶ 56.

252. Morgan Stanley's statements of material facts were also untrue because other key data provided to Plaintiff by Morgan Stanley were untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

253. The result of the untrue statements and omissions described above is that the Securities Morgan Stanley offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 48% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Morgan Stanley to Plaintiff.

b. Bear Stearns' Untrue Statements of Material Facts and Omissions

254. Bear Stearns offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $536,398,119. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix J.

255. Bear Stearns was a pioneer in mortgage securitization. Through its affiliates and subsidiaries, Bear Stearns was able to control nearly every step in the mortgage securitization process. For example, to make certain the mortgage pipeline was always full, Bear Stearns owned and operated three mortgage loan origination subsidiaries – EMC Mortgage Corporation ("EMC"), Bear Stearns Residential Mortgage Corporation ("Bear Stearns Mortgage Corp."), and Encore Credit Corp. ("Encore"). EMC originated loans that were securitized by Bear Stearns, served as the sponsor for many of Bear Stearns' offerings, and serviced the loans underlying the offerings after the offerings were complete.

256. Bear Stearns also formed numerous SPVs to facilitate the issuance of RMBS. These entities included Depositor Defendants Structured Asset Mortgage Investments II, Inc. ("SAMI") and Bear Stearns Asset Backed Securities I, LLC ("BSABS"), which served as the depositors and issuers for Bear Stearns' offerings. Bear Stearns offered or sold the Securities to Plaintiff. Bear Stearns also provided financial research on RMBS and related structured products.

257. Bear Stearns profited at every step in the securitization process, as it collected: (1) loan-origination fees; (2) gains on sale of the mortgages to securitization trusts; (3) management fees from hedge funds and other investment vehicles that purchased mortgage-backed structured products; (4) underwriting fees; and (5) servicing fees. Bear Stearns summarized its securitization business as follows: "Our vertically integrated franchise allows us to access every step of the mortgage process, including origination, securitization, distribution and servicing." According to *Inside Mortgage Finance*, a leading trade publication whose data is used by the federal government, from 2004 to 2007 Bear Stearns underwrote more than $97 billion in subprime RMBS.

258. In connection with its offer or sale of Securities to Plaintiff, Bear Stearns sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Bear Stearns also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Bear Stearns sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, Bear Stearns also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Bear Stearns' due diligence of the Mortgage Originators' underwriting practices. Bear Stearns did not allow Plaintiff to keep the pitch books.

259. In the Offering Documents, Bear Stearns made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, Bear Stearns stated that: (1) the Mortgage Originators' underwriting guidelines were intended to assess the borrowers' ability to repay the mortgage loans and considered the borrowers' credit history, repayment ability, debt service-to-income ratio, and other factors; (2) the Mortgage Originators assessed the value of the properties; and (3) exceptions to the Mortgage Originators' underwriting guidelines would only be made where compensating factors existed.

260. Moreover, the Offering Documents included statements of material facts regarding the originators' appraisal guidelines. Bear Stearns stated, for example, that the Mortgage Originators commissioned appraisals by qualified independent appraisers who prepared appraisals that conformed to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

261. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Bear Stearns made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Bear Stearns' due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

262. Bear Stearns made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Bear Stearns representatives occurred on or about March 18, September 22, and November, 14, 2005, and May 25, July 19, and August 3, 2006. Some of these meetings occurred in Plaintiff's offices in Concord, Massachusetts, and others were via teleconference. During these meetings, Bear Stearns employees made statements of material facts regarding upcoming RMBS deals, and assured Plaintiff that Bear Stearns conducted due diligence to ensure that the Mortgage

Originators complied with their stated underwriting guidelines. Among other things, Bear Stearns stated that its due diligence included sampling loans to check underwriting process, documentation, valuations, and compliance.

263. Specifically, Bear Stearns repeatedly stated that it used Clayton to perform due diligence on the mortgage loans and to ensure mortgage originator compliance with stated underwriting standards. In June of 2007, the New York Attorney General subpoenaed documents from Clayton and another due diligence firm, Bohan Group ("Bohan"), seeking information regarding whether Wall Street Banks withheld information that should have been disclosed to investors. Similar subpoenas were issued by the SEC and Massachusetts and Connecticut regulators.

264. On January 27, 2008, the New York Attorney General entered into an agreement with Clayton for immunity from prosecution in exchange for additional documents and testimony regarding its due diligence reports. Both the *New York Times* and *Wall Street Journal* published articles detailing the agreement and Clayton's expected testimony. According to the *New York Times* (J. Anderson and V. Bajaj, "Reviewer of Subprime Loans Agrees to Aid Inquiry of Banks," Jan. 27, 2008), Clayton "communicated daily with bankers putting together securities," and that "starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending exceptions." In response, rather than change the "broad language written in prospectuses" to reflect the environment, "some investment banks directed Clayton to halve the sample of loans it evaluated in each portfolio."

265. An article in the *Los Angeles Times* (E. Reckard, "Sub-prime Mortgage Watchdogs Kept On Leash; Loan Checkers Say Their Warnings of Risk Met With Indifference," March 18, 2008) revealed that Clayton and Bohan employees "raised plenty of red flags about flaws [in subprime home loans] so serious that mortgages should have been rejected outright – such as borrowers' incomes that seemed inflated or documents that looked fake – but the problems were glossed over, ignored, and stricken from the reports."

266. Each of Bear Stearns' statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, the principal Mortgage Originators in the Bear Stearns deals systematically violated their stated underwriting and appraisal standards. Moreover, Bear Stearns' additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

267. In late 2008, Ambac Assurance Corp. ("Ambac") commenced an action against EMC and Bear Stearns in the United States District Court for the Southern District of New York alleging that the companies had built a "house of cards" through rampant misrepresentations in the origination of mortgage loans used in securitizations. *Ambac Assurance Corp. v. EMC Mortgage Corp.*, No. 08-cv-9464 (S.D.N.Y.) (the "Ambac Complaint"). On November 6, 2008, an article in the Associated Press reported the following with respect to the Ambac Complaint:

> Bear Stearns leveraged its reputation and dominance in mortgage finance to entice companies such as Ambac to insure loans plagued by rampant fraud. . . . Bear Stearns promised that its mortgage loans originated through proper means and didn't result from fraud, misrepresentation or gross negligence. Yet . . . Ambac discovered widespread breaches of representations in almost 80 percent of the documents supporting 695 defaulted loans it studied.

Larry Neumeister, *Lawsuit: Bear Stearns Built A 'House of Cards,'* Associated Press, November 6, 2008.

268. According to the Ambac Complaint, after incurring more than $640 million in losses, Ambac conducted a study of 1,486 loans with an aggregate principal of approximately $86.9 million. The results of that review found:

> Of these 1486 loans, 1332, over 89%, breached one or more of the representations and warranties that EMC had made to Ambac. The most prevalent and troubling of the breaches identified by Ambac across all four Transactions involve (1) rampant misrepresentations about borrower income, employment, assets, and intentions to occupy the purchased properties, and (2) the loan originators' abject failures to adhere to proper and prudent mortgage-lending practices, including their own underwriting guidelines.

Ambac Complaint at ¶ 6.

269. The Ambac Complaint lays out, in detail, the Bear Stearns "securitization machine" and EMC's crucial, and damaging, role within that machine:

> [EMC] acted both as an "originator" and an "aggregator" of an enormous volume of residential mortgage loans, "with the ultimate strategy of securitization into an array of Bear Stearns's securitizations." EMC repeatedly executed on that strategy, in many cases retaining the rights to act as servicer of the mortgage loans that it securitized. In its role as aggregator, EMC prescribed loan origination standards and approved the underwriting guidelines of a large number of mortgage lenders…

Id. at ¶ 18.

270. EMC expanded its loan generation to supply Bear Stearns' securitizations and, at the same time, reassured the market that it would maintain the quality of the securitizations. *Id.* at ¶ 26. But, in fact, "EMC's inventory of mortgage loans was replete with loans (i) originated by fraud, material misrepresentations, or omissions and (ii) underwritten without regard to prudent standards or the fundamental principles of mortgage lending, which require a good-faith assessment of the borrower's ability and willingness to repay the loan." *Id.* at ¶ 27. EMC "convince[d] investors that the securities it sold were a safe and profitable investment, despite the fact that, unbeknownst to Ambac and the market at large, those securities were backed by unjustifiably risky loans." *Id.* at ¶ 25.

271. The Ambac Complaint further makes clear that EMC and Bear Stearns expanded acceptance and financing of "no doc" and "low doc" loan products "with a marked and dangerous decline in the rigor and discipline with which [the companies] approached loan origination and underwriting." *Id.* at ¶ 28. Thus, EMC's inventory of mortgage loans "was replete with loans originated by fraud or underwritten pursuant to imprudent or non-existent standards." *Id.* at ¶¶ 29-30.

272. On March 16, 2009, the District Court denied EMC's motion to strike portions of Ambac's Complaint that EMC asserted were "inflammatory" because they portrayed Bear Stearns and EMC as "corporate villains . . . responsible for the mortgage-backed security crisis." In its decision denying EMC's motion, the Court held that allegations such as that "[t]he Bear

Stearns securitization machine was a house of cards, supported not by real value and sound practices but by Bear Stearns' appetite for loans and disregard as to the risks those loans presented" were not unfairly prejudicial, but rather were relevant to whether EMC "'materially breached its representations and warranties' . . . regarding, among other things, 'the origination, underwriting, servicing, and other key attributes of the loans[.]'" (Quoting Ambac's Complaint; alterations in original.) Ambac's action against EMC is ongoing, and the parties are currently engaged in pretrial discovery.

273. Matt Van Leeuwen, a mortgage analyst with EMC between 2004 and 2006, has also confirmed the above allegations of negligent underwriting practices. Van Leeuwen revealed that (a) Bear Stearns pushed EMC analysts to perform their loan analyses of the underlying mortgages in only one to three days so that Bear Stearns would not have to hold the loans on its books; (b) EMC analysts were encouraged to falsify loan data (such as FICO scores) if that information was missing from the loan data and the mortgage originators did not respond to requests for that information; (c) the documentation level (*i.e.*, no documentation, partial documentation) of the loans was often incorrectly identified; and (d) rather than going back to the mortgage originator for clarification, such as verification of income, Bear Stearns would avoid investigating and make the loan "fit." Teri Buhl, "More Corruption: Bear Stearns Falsified Information as Raters Shrugged," *The Atlantic*, May 2010.

274. The statements of material facts in the documents Bear Stearns sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines.

275. The statements of material facts in the documents Bear Stearns sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. An industry insider testified before the FCIC and

stated that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶ 56.

276. Bear Stearns' statements of material facts were also untrue because other key data provided to Plaintiff were untrue and contained material omissions. For example, the data often identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of credit quality and likelihood of default.

277. The result of the untrue statements and omissions described above is that the Securities Bear Stearns offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 47% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Bear Stearns to Plaintiff.

278. Defendant J.P. Morgan is the successor-in-interest to Bear Stearns as a result of the merger of Bear Stearns with and into J.P. Morgan on October 1, 2008, with J.P. Morgan Securities as the surviving entity.

c. Citigroup's Untrue Statements of Material Facts and Omissions

279. Citigroup offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $220,839,945. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix B.

280. Citigroup sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime mortgage originators including New Century, Argent, and WMC for the purchase of subprime loans to be pooled and securitized as Securities, offering to pay more for mortgages than competing Wall Street Banks, and offering to

perform less due diligence than competitors. New Century, Argent and WMC were some of the largest Mortgage Originators in these Citigroup Securities.

281. To facilitate the sale of RMBS, Citigroup formed SPVs including Depositor Defendant Citigroup Mortgage Loan Trust Inc., which originated or otherwise acquired residential mortgage loans to be securitized and served as the sponsor, depositor, and issuer in numerous offerings of RMBS. Defendant Citigroup offered or sold the Securities to Plaintiff. Citigroup also provided financial research on RMBS and related structured products.

282. In connection with its offer or sale of Securities to Plaintiff, Citigroup sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements, and for one deal, a private placement agreement. Citigroup also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Citigroup sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Citigroup also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Citigroup's due diligence of the Mortgage Originators' underwriting practices. Citigroup did not allow Plaintiff to keep the pitch books.

283. In the Offering Documents, Citigroup made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, Citigroup reprinted New Century's "Underwriting Guidelines," which stated in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century not only reviewed the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d)

exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶ 76. Citigroup made similar statements of material facts for loans originated by other Mortgage Originators, including Argent and WMC. *See* Section V.

284. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Citigroup stated, for example, that New Century commissioned an appraisal of mortgaged properties by "qualified independent appraisers" who prepared an appraisal report that is "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and that was reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶ 78. Citigroup made similar statements of material facts for appraisals commissioned by or performed or reviewed by other Mortgage Originators, including Argent and WMC. *See* Section V.

285. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Citigroup made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Citigroup's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

286. Citigroup made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Citigroup occurred on or about September 30, 2004; June 23, October 31, and December 8, 2005; and May 22, August 14, and December 7, 2006. Some of these meetings occurred in Plaintiff's offices in Concord, Massachusetts. During these meetings, Citigroup made statements of material facts regarding Citigroup's upcoming RMBS deals, and assured Plaintiff that Citigroup conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines,

including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

287. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed below, New Century, Argent, and WMC, the principal Mortgage Originators in the Citigroup deals, systematically violated their stated underwriting and appraisal standards. Moreover, Citigroup's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

288. Citigroup stated that it retained external firms, including Clayton and Bohan, to review whether the loans included in the RMBS that Citigroup underwrote complied with the Mortgage Originators' stated standards. As discussed in ¶¶ 63-66, Clayton and Bohan have been investigated by the New York Attorney General, the SEC, and Massachusetts and Connecticut regulators for improper activity in their mortgage due diligence services.

289. In its most recent annual report, filed on Form 10-K with the SEC on February 26, 2010, Citigroup Inc. (the parent company of Defendant Citigroup) confirmed that "beginning in the fourth quarter of 2007, certain of Citigroup's regulators and other state and federal government agencies commenced formal and informal investigations and inquiries, and issued subpoenas and requested information, concerning Citigroup's subprime mortgage-related conduct and business activities."

290. The statements of material facts in the documents Citigroup sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, as described above, New Century's statements that it underwrote loans in accordance with its stated underwriting guidelines were untrue. *See* ¶¶ 82-95. The other two Mortgage Originators underlying the Citigroup Securities, Argent and WMC, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See*

Section V. Citigroup's statements of material facts about the appraisals of the underlying properties were also untrue.

291. Citigroup's statements of material facts were also untrue because other key data provided to Plaintiff by Citigroup was untrue. For example, the data often identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

292. The Financial Crisis Inquiry Commission (the "FCIC") investigated Citigroup as part of its statutory mission to determine "the causes ... of the current financial and economic crisis in the United States." Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 5(a) (May 20, 2009). In connection with its investigation, the FCIC interviewed senior Citigroup executives with direct responsibility for the Company's mortgage operations; subpoenaed and reviewed thousands of internal Citigroup documents concerning those operations; and held hearings on April 7-9, 2010.

293. The FCIC heard testimony from Richard M. Bowen, III, who was the Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for Citifinancial Mortgage (Citigroup's subprime mortgage lending subsidiary) from 2002 through 2005 and was promoted in early 2006 to Business Chief Underwriter for Correspondent Lending in Citigroup's Consumer Lending Group (which included Citigroup's prime mortgage lending, subprime mortgage lending, and prime second lien mortgage businesses). As Business Chief Underwriter for Correspondent Lending, Mr. Bowen was one of Citigroup's most senior mortgage executives, supervising 220 professional underwriters and exercising direct oversight over the underwriting of more than $90 billion of residential mortgages annually.

294. Mr. Bowen testified that each year since 2005, Citigroup's mortgage operation systematically acquired tens of billions of dollars of risky loans that violated Citigroup's own underwriting criteria and were likely to default. He also testified that Citigroup's Wall Street Chief Risk Officer routinely overruled underwriters' rejections of pools of subprime mortgages

that did not satisfy Citigroup's underwriting criteria for purchase by the "Correspondent Wall Street channel," thus causing Citigroup to purchase billions of dollars of loan pools that fell far short of underwriting standards. In sum, Mr. Bowen testified that "[d]uring 2006 and 2007, I witnessed business risk practices which made a mockery of Citi credit policy. . . ."

295. Mr. Bowen also testified that he recommended that Citigroup not purchase Ameriquest, because his due diligence found that Argent's loans did not meet the standards they had represented to Citigroup. Specifically, Mr. Bowen testified that "we sampled the loans that were originated by Argent and we found large numbers that did not – that were not underwritten according to the representations that were there."

296. As a result of the untrue statements and omissions described above, the Securities Citigroup offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, 50% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Citigroup to Plaintiff.

d. Credit Suisse's Untrue Statements of Material Facts and Omissions

297. Credit Suisse offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $387,100,311. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix C.

298. Credit Suisse acquired hundreds of thousands of subprime mortgages and securitized the mortgage loans into billions of dollars of RMBS, some of which were then offered or sold to Plaintiff in a series of offerings containing subprime mortgage loans from several different Mortgage Originators, including New Century, Ameriquest, WMC, Long Beach, Argent, and Option One.

299. To facilitate the sale of RMBS, Credit Suisse's parent company formed SPVs, including Depositor Defendants Credit Suisse First Boston Mortgage Securities Corporation and

Asset Backed Securities Corporation, which issued and were the depositors for numerous offerings of RMBS. Defendant Credit Suisse offered or sold the Securities to Plaintiff. Credit Suisse also provided financial research on RMBS and related structured products.

300. In connection with its offer or sale of Securities to Plaintiff, Credit Suisse sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Credit Suisse also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Credit Suisse sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, Credit Suisse also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Credit Suisse's due diligence of the Mortgage Originators' underwriting practices. Credit Suisse did not allow Plaintiff to keep the pitch books.

301. In the Offering Documents, Credit Suisse made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, Credit Suisse reprinted New Century's "Underwriting Guidelines," which stated in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century reviewed not only the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶ 76. Credit Suisse made similar statements of material facts for Mortgage Loans originated by other mortgage originators, including Ameriquest, Argent, Long Beach, WMC, and Option One. *See* Section V.

302. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Credit Suisse stated, for example, that New Century commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and that were reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶ 78. Credit Suisse made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Argent and WMC. *See* Section V.

303. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Credit Suisse made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities' and Credit Suisse's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

304. Credit Suisse made additional, oral statements of material facts about the Securities to Plaintiff in meetings, including meetings at Plaintiff's offices in Concord, Massachusetts. Some of Plaintiff's meetings with Credit Suisse occurred on or about September 9, 2004; August 29 and October 26, 2005; and March 2, May 17, and December 31, 2006. During these meetings, Credit Suisse made statements of material facts regarding Credit Suisse's upcoming RMBS deals, and assured Plaintiff that Credit Suisse conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by reviewing loans in order to check underwriting process, documentation, valuations, and compliance.

305. For example, Credit Suisse made oral statements of material facts to Plaintiff about the strength and quality of the due diligence Credit Suisse performed on the "HEAT" series of deals, in which Plaintiff purchased over $182,004,054 of Securities on behalf of the Clients between 2005 and 2006. *See* Appendix C. Specifically, Credit Suisse stated to Plaintiff that Credit Suisse performed a valuation review of 100% of the underlying loans, meaning that Credit Suisse should have reviewed the data and documentation for each underlying loan before accepting the loan for inclusion in the pool. In fact, Credit Suisse stated to Plaintiff that the due diligence for the HEAT transactions was "superior" to the due diligence for most other RMBS transactions because of this 100% valuation review.

306. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, Ameriquest, New Century, WMC, Long Beach, Argent, and Option One, the principal Mortgage Originators of loans included in the Credit Suisse deals, systematically violated their stated underwriting and appraisal standards. Moreover, Credit Suisse's statements of material facts regarding its own due diligence were untrue and contained material omissions.

307. Credit Suisse contracted with external firms including Clayton and Bohan to review whether the loans included in the RMBS that Credit Suisse underwrote complied with the Mortgage Originators' stated standards. As discussed in ¶¶ 63-66, Clayton and Bohan have been investigated by the New York Attorney General, SEC, and Massachusetts and Connecticut regulators for engaging in improper underwriting practices. In January 2008, the New York Attorney General granted Clayton immunity from prosecution in exchange for documents and testimony regarding its due diligence reports.

308. The statements of material facts in the documents Credit Suisse sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, investigations and lawsuits have demonstrated that New Century made

frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; New Century management "turned a blind eye" to the risky loan originations; and "New Century engaged in a number of significant improper and imprudent practices related to its loan originations." *See* ¶¶ 82-95. Moreover, former New Century employees witnessed firsthand how exceptions to New Century's underwriting became the "norm" because employees had to do what was necessary to increase loan originations. *See* ¶¶ 89-91. The SEC has charged former New Century officers with making untrue assurances to the market about the company's "adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market." *See* ¶ 93. The other Mortgage Originators underlying the Credit Suisse Securities – Ameriquest, WMC, Long Beach, Argent, and Option One – similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V. Indeed, the Senate Permanent Subcommittee on Investigations recently concluded that "Long Beach . . . was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry." ¶ 102.

309. The statements of material facts in the documents Credit Suisse sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. For example, a former New Century underwriter recently confirmed New Century's use of inflated appraisals in testimony before the FCIC, stating that New Century hired fee appraisers who were "pressured" into inflating property values, at times by tampering with the property, "fearing if they didn't, they would lose future business and their livelihoods." ¶ 54. The Illinois Attorney General testified before the FCIC that a multistate investigation "revealed that [Ameriquest] engaged in the kinds of fraudulent practices that other predatory lenders subsequently emulated on a wide scale . . . includ[ing]: inflating home appraisals." ¶ 210. An industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007

demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶ 56.

310. Credit Suisse's statements were also untrue because other material data provided by Credit Suisse to Plaintiff were untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

311. Credit Suisse is a defendant in numerous lawsuits directly related to its conduct as an underwriter of RMBS. On March 29, 2010, the United States District Court for the Southern District of New York sustained claims against Credit Suisse brought on behalf of a class of investors who purchased subprime RMBS issued in 2006 and 2007 that contained underlying mortgage loans from Mortgage Originators including New Century and WMC. *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc.*, Docket No. 08-CV-5653 (PAC) (S.D.N.Y.) (the "Credit Suisse RMBS Action"). The class's claims in that action under the Securities Act of 1933 are substantially similar legally and factually to Plaintiff's claims in this action.

312. In the Credit Suisse RMBS Action, the District Court held that the plaintiffs adequately alleged that Credit Suisse's offering documents "contain[ed] materially misleading statements and omissions" relating to Credit Suisse's "systematic disregard of loan-approval oversight and control mechanisms as represented in underwriting guidelines by the Originators," which Credit Suisse failed to detect "because of wholly inadequate due diligence procedures." Like Plaintiff here, the plaintiffs in the Credit Suisse RMBS Action, allege that:

> **The [Securities] were issued pursuant to a number of core representations in the Offering Documents each of which contained material misstatements and omissions. It was represented that the home equity loans were originated pursuant to underwriting guidelines detailed in both in the Registration Statement and the Supplemental Prospectuses.** These guidelines required an analysis of borrower creditworthiness (i.e., ability to repay the loan) and an appraisal of the mortgaged property pursuant to standard appraisal practices and procedures. The guidelines also described that when loans were issued with

limited or no borrower documentation there were compensating factors such as the lender's reliance primarily on the valuation of the mortgaged properties.

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The Rating Agencies in downgrading the [Securities] from the highest investment grade to junk bond status specifically attributed their actions to "aggressive underwriting" deployed in originating the loans. **Further, well after the completion of the Offerings, disclosures began to emerge that the principal home equity loan Originators - i.e., New Century, Accredited and WMC - engaged in origination practices which flagrantly violated underwriting guidelines set forth in the Offering Documents.**

Credit Suisse conducted inadequate due diligence to ensure compliance with the underwriting guidelines stated in the Offering Documents. It was incentivized to acquire and securitize as many loans as possible since its profit was achieved upon the sale of the securities. **The due diligence Credit Suisse did perform was in the period when it was acquiring the loans from third parties – not in underwriting the issuance of the [Securities] - when there was a serious disincentive for Credit Suisse to reject loans submitted for auction by originators, for fear that they would be cut-off from access to further loans for future securitization.**

Credit Suisse RMBS Action Complaint, ¶¶ 10-12 (internal citations omitted).

313. As a result of the untrue statements of material facts and omissions described above, the Securities that Credit Suisse offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 42% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Credit Suisse to Plaintiff.

e. <u>Greenwich Capital's Untrue Statements of Material Facts and Omissions</u>

314. Greenwich Capital offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $260,371,635. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix D.

315. Greenwich Capital underwrote more than $180 billion in securities backed by subprime mortgages between 2002 and 2006. In particular, between 2005 and 2006, Greenwich Capital sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime lenders including Long Beach, Argent, Fremont, Option One, and Meritage for the purchase of subprime loans to be pooled and securitized as Securities, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

316. To facilitate the sale of RMBS, Greenwich Capital formed SPVs, including Depositor Defendant Financial Asset Security Corporation, which issued and was the depositor for numerous offerings of RMBS. Defendant Greenwich Capital offered or sold the Securities to Plaintiff. Greenwich Capital also provided financial research on RMBS and related structured products.

317. In connection with its offer or sale of Securities to Plaintiff, Greenwich Capital sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Greenwich Capital also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Greenwich Capital sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, Greenwich Capital also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Greenwich Capital's due diligence of the Mortgage Originators' underwriting practices. Greenwich Capital did not allow Plaintiff to keep the pitch books.

318. In the Offering Documents, Greenwich Capital made numerous statements of material facts regarding the underwriting standards and appraisal practices that had been followed in originating the underlying mortgage loans. For example, for the offerings in which Long Beach originated all or a significant amount of the underlying mortgage loans, Greenwich

Capital reprinted Long Beach's "Underwriting Guidelines," which stated that: (1) Long Beach's guidelines were primarily intended to evaluate the prospective borrower's credit standing and repayment ability as well as the value and adequacy of the mortgaged property as collateral; (2) appraisal of the mortgaged property generally conformed to Fannie Mae and Freddie Mac appraisal standards; (3) appraisals were generally performed by licensed independent appraisers who had satisfied the loan servicer's appraiser screening process; and (4) exceptions were only granted with the approval of an employee with appropriate "risk level authority" and in the presence of compensating factors. *See* ¶ 98.

319. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Greenwich Capital made additional statements of material facts regarding the particular Securities and their underlying data, data quality, the relevant Mortgage Originators' practices and guidelines, and Greenwich Capital's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

320. Greenwich Capital made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff, including during meetings in Plaintiff's offices in Concord, Massachusetts. Some of Plaintiff's meetings with Greenwich Capital occurred on or about May 13 and September 2, 2004; March 2 and August 16, 2006; and January 10, 2007. During these meetings, Greenwich Capital made statements of material facts regarding Greenwich Capital's upcoming RMBS deals, and stated that Greenwich Capital conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

321. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained omissions. As detailed above and below, the principal Mortgage Originators of the underlying loans systematically violated their stated

underwriting and appraisal standards. Moreover, Greenwich Capital's statements of material facts regarding its own due diligence were untrue and contained material omissions.

322. For example, the statements of material facts in the documents Greenwich Capital sent to Plaintiff was untrue because Long Beach violated its stated underwriting guidelines, did not consistently evaluate the borrower's ability to repay, and made exceptions to its underwriting standards in the absence of "compensating factors." Subsequent investigations and lawsuits have demonstrated that Long Beach ignored and made frequent exceptions to its underwriting guidelines. *See* ¶¶ 102-127. Moreover, former Long Beach employees witnessed firsthand how variance from Long Beach's stated underwriting standard became the "norm" because employees were incentivized to increase loan volume. *Id.* The Senate Permanent Subcommittee on Investigations stated: "Long Beach . . . was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry." *See* ¶ 102.

323. Likewise, subsequent investigations and lawsuits have demonstrated that Fremont, another Mortgage Originator whose loans Greenwich Capital securitized, "engage[ed] in unsatisfactory lending practices"; "ma[de] loans based on information that Fremont knew or should have known was inaccurate or false, including, but not limited to, borrowers' income, property appraisals, and credit scores"; purposefully relaxed its underwriting standards and made loans based on documents it knew to be untrue; made "everyday" exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for a loan; and continually ignored fraudulent documents when approving loans. *See* ¶¶ 165-182. The other Mortgage Originators of loans underlying the Greenwich Capital Securities similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

324. The statements of material facts in the documents Greenwich Capital sent to Plaintiff were also untrue because the inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. For example, a former Fremont account manager described how superiors would call appraisers and directly request that they inflate their appraisal values in order to close a deal. ¶ 177. Another Fremont employee audited loans that

the company was asked to repurchase, and found alarming problem with the appraisals, including appraisals that were incomplete, did not match the address of the property, or described the home as owner-occupied when it was rented, on the large majority of the loans. *Id.* An industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶ 56.

325. Greenwich Capital's statements of material facts were also untrue because other material data provided to Plaintiff by Greenwich Capital was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

326. On March 8, 2008, RBS confirmed that its Greenwich Capital unit was subject to an SEC investigation into the collapse of the subprime market and had been ordered to turn over financial documents to the SEC regarding, among other things, the origination of mortgages, accounting, due diligence, sales, and insider trading.

327. As a result of the untrue statements of material facts and omissions described above, the Securities that Greenwich Capital offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, 45% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Greenwich Capital to Plaintiff.

f. Deutsche Bank's Untrue Statements of Material Facts and Omissions

328. Deutsche Bank offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $137,103,585. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and

Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix E.

329. Deutsche Bank acquired and then converted subprime mortgages into billions of dollars of RMBS, some of which Deutsche Bank offered or sold to Plaintiff in a series of offerings and sales pursuant to the relevant Offering Documents and other statements.

330. Deutsche Bank offered or sold Securities to Plaintiff, and Plaintiff purchased Securities on behalf of the Clients from Deutsche Bank, in four offerings and sales containing subprime mortgage loans from several different Mortgage Originators, including Fremont, Long Beach, and Option One.

331. To facilitate the sale of RMBS, Deutsche Bank formed SPVs, including Depositor Defendant Ace Securities Corporation, which issued and was the depositor for numerous offerings of RMBS. Defendant Deutsche Bank offered or sold the Securities to Plaintiff. Deutsche Bank also provided financial research on RMBS and related structured products.

332. In connection with its offer or sale of Securities to Plaintiff, Deutsche Bank sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Deutsche Bank also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Deutsche Bank sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, Deutsche Bank also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Deutsche Bank's due diligence of the Mortgage Originators' underwriting practices. Deutsche Bank did not allow Plaintiff to keep the pitch books.

333. In the Offering Documents, Deutsche Bank made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a

significant amount of the underlying mortgage loans, Credit Suisse reprinted Fremont's "Underwriting Guidelines," which stated in sum or substance, that (a) Fremont's guidelines were "intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan"; (b) "the Fremont mortgage loans were originated in accordance with the[se] underwriting criteria"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based upon compensating factors." *See* ¶ 161. Deutsche Bank made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including Long Beach and Option One. *See* Section V.

334. Deutsche Bank's Offering Documents also made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Deutsche Bank stated, for example, that "Fremont's underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal," and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were reviewed by Fremont. *See* ¶ 161. Deutsche Bank made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Long Beach and Option One. *See* Section V.

335. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Deutsche Bank made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Deutsche Bank's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

336. Deutsche Bank made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in meetings, some of which occurred in Plaintiff's offices

in Concord, Massachusetts. Some of Plaintiff's meetings with Deutsche Bank occurred on or about October 28 and 31, 2005 and November 3 and December 6, 2006. During these meetings, Deutsche Bank made statements of material facts regarding Deutsche Bank's upcoming RMBS deals, and stated that Deutsche Bank conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

337. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, Fremont, Long Beach, and Option One, the principal Mortgage Originators of loans included in the Deutsche Bank deals, violated their stated underwriting and appraisal standards. Moreover, Deutsche Bank's statements of material facts regarding its own due diligence were untrue and contained material omissions.

338. The statements of material facts in the documents Deutsche Bank sent to Plaintiff were also untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, investigations and lawsuits have demonstrated that Fremont "engage[ed] in unsatisfactory lending practices"; "ma[de] loans based on information that Fremont knew or should have known was inaccurate or false, including, but not limited to, borrowers' income, property appraisals, and credit scores"; purposefully relaxed its underwriting standards and made loans based on documents it knew to be untrue; made "everyday" exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; and continually ignored fraudulent documents when approving loans. *See* ¶¶ 165-182. The other two principal Mortgage Originators of loans underlying the Deutsche Bank Securities, Long Beach and Option One, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

339. The statements of material facts in the documents Deutsche Bank sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. For example, a former Fremont account manager described how superiors would call appraisers and directly request that they inflate their appraisal values in order to close a deal. ¶ 177. Another Fremont employee audited loans that the company was asked to repurchase, and found alarming problems with the appraisals on the large majority of the loans, including appraisals that were incomplete, did not match the address of the property, or described the home as owner-occupied when it was rented. *Id.*

340. Deutsche Bank's statements of material facts were also untrue because other key data provided to Plaintiff by Deutsche Bank was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

341. Deutsche Bank is one of eight Wall Street Banks targeted by New York State Attorney General Andrew Cuomo, who, according to a May 12, 2010 article in the *New York Times*, is investigating these Wall Street Banks to determine whether they provided untrue information to rating agencies in order to inflate the ratings of mortgage securities.

342. As a result of the untrue statements of material facts and omissions described above, the Securities that Deutsche Bank offered or sold to the Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 52% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Deutsche Bank to Plaintiff.

g. Merrill Lynch's Untrue Statements of Material Facts and Omissions

343. Merrill Lynch offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $123,888,595. A full list of these offerings and sales, along

with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix F.

344. Merrill Lynch & Co. sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime lenders including Fremont, WMC, and Option One for the purchase of subprime loans to be pooled and securitized as Securities, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

345. To facilitate the sale of RMBS, Merrill Lynch & Co. formed numerous SPVs including: (1) Depositor Defendant Merrill Lynch Mortgage Investors, Inc., which served as the depositor and issuer for offerings of RMBS; and (2) Merrill Lynch Mortgage Lending, Inc., which acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant Merrill Lynch offered or sold the Securities to Plaintiff. Merrill Lynch also provided financial research on RMBS and related structured products.

346. In connection with its offer or sale of Securities to Plaintiff, Merrill Lynch sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Merrill Lynch also sent Plaintiff numerous other documents, including term sheets, collateral and computational materials, and "loan tapes." The loan tapes Merrill Lynch sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, inter alia, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Merrill Lynch also showed Plaintiff "pitch books" promoting, *inter alia*, the quality of the Securities and Merrill Lynch's due diligence of the Mortgage Originators' underwriting practices. Merrill Lynch did not allow Plaintiff to keep the pitch books.

347. In the Offering Documents, Merrill Lynch made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying

mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, Merrill Lynch reprinted Fremont's "Underwriting Guidelines," which stated in sum or substance, that (a) Fremont's guidelines were "intended to assess the borrower's ability and willingness of the borrower to repay the debt"; (b) the "mortgage loans [were] underwritten in accordance with Fremont's current underwriting programs"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based on compensating factors." *See* ¶ 161. Merrill Lynch made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including WMC and Option One. *See* ¶¶ 185, 213.

348. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Merrill Lynch stated, for example, that "underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal" and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers." *See* ¶ 161. Merrill Lynch made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including WMC and Option One. *See* ¶¶ 185, 213.

349. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Merrill Lynch made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to mortgage loans underlying those Securities, and Merrill Lynch's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

350. Merrill Lynch also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Merrill Lynch representatives occurred on or about June 25, 2004 and September 21, 2006. During these

meetings, Merrill Lynch made statements of material facts regarding Merrill Lynch's upcoming RMBS deals, and assured Plaintiff that Merrill Lynch conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

351. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed below, Fremont, Option One, and WMC, the principal Mortgage Originators of loans underlying the Merrill Lynch deals, violated their stated underwriting and appraisal standards. Moreover, Merrill Lynch's statements of material facts regarding its own due diligence were untrue and contained material omissions.

352. Merrill Lynch contracted with external firms including Clayton and Bohan to review whether the loans included in the Securities that Merrill Lynch underwrote complied with the Mortgage Originators' stated standards, as discussed in ¶¶ 63-66.

353. The statements of material facts in the documents Merrill Lynch sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards in the absence of the "compensating factors" required by their guidelines. For example, investigations and lawsuits have demonstrated that Fremont made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; Fremont management encouraged risky loan originations; and Fremont was "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]." *See* ¶¶ 165-182. Moreover, former Fremont employees witnessed firsthand how exceptions to Fremont's underwriting became the "norm" because employees had to do what was necessary to increase loan originations. *Id.* The FDIC ultimately issued a Cease & Desist Order to Fremont for extending subprime credit "in an unsafe and unsound manner" and violating laws and FDIC regulations. *See* ¶¶ 165-166. The other Mortgage Originators of loans underlying the Merrill Lynch Securities, including Option One and WMC, similarly

violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

354. The statements of material facts in the documents Merrill Lynch sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57.

355. Merrill Lynch's statements of material facts were also untrue because other material data provided to Plaintiff by Merrill Lynch was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loan's credit quality and likelihood of default.

356. Merrill Lynch pressured Mortgage Originators to loosen their underwriting practices in order to generate more loans to be securitized. For example, a *New York Times* article titled "East Coast Money Lent Out West," dated May 8, 2007, reported that "William D. Dallas, the founder and chief executive of Ownit [Mortgage Solutions, a Mortgage Originator], acknowledges loosening lending standards but says he did so reluctantly and under pressure from his investors, particularly Merrill Lynch [which purchased a 20 percent stake in Ownit in 2005], which wanted more loans to package into lucrative securities. He recalls being asked to make more 'stated income' loans . . . . The message, he said, was simple: You are leaving money on the table – do more of them."

357. Among other investigations by various State Attorneys General and the SEC, the New York Attorney General initiated an investigation to determine whether Merrill Lynch concealed information, including the warnings it received about exceptions or mortgages that did not meet minimum lending standards, in an effort to bolster ratings of RMBS and make them more attractive to buyers. *See* Kate Kelly, Amir Efrati & Ruth Simon, "State Subprime Probe Takes a New Track," *Wall Street Journal*, Jan. 31, 2008.

358. Merrill Lynch is also a defendant in a number of lawsuits which directly relate to its conduct as an underwriter of RMBS. For example, in December 2008, investors filed a class action alleging violations of the Securities Act of 1933 arising from Merrill Lynch's sale of RMBS using untrue offering documents. *See Public Employees' Retirement System of Mississippi v. Merrill Lynch & Co. Inc., et al.*, 08-cv-10841 (JRS) (S.D.N.Y.). The consolidated complaint in that action alleges that the Merrill Lynch offering documents contained untrue statements related to (1) the underwriting guidelines used to originate the mortgage loans underlying the Securities; (2) the accuracy of the appraisals for the properties underlying the Securities; (3) the maximum LTV ratios used to qualify borrowers; (4) the debt-to-income ratios permitted on the loans underlying the Securities; and (5) the credit ratings of the Securities. On June 1, 2010, the District Court denied motions to dismiss the action and sustained Section 11 claims against Merrill Lynch. Specifically, the Court held that "the alleged repeated deviation from established underwriting standards is enough to render misleading the assertion in the registration statements that underwriting guidelines were generally followed."

359. As a result of Merrill Lynch's untrue statements of material facts and omissions, the Securities that Merrill Lynch offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 50% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Merrill Lynch to Plaintiff.

h. <u>UBS's Untrue Statements of Material Facts and Omissions</u>

360. UBS offered or sold Securities to Plaintiff in Massachusetts during 2005 and 2006 for a total price of $ 55,295,897. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix G.

361. UBS was one of the leading underwriters of RMBS. UBS and its affiliates formed numerous SPVs to facilitate RMBS issuances including: (1) UBS Real Estate Securities Inc., which served as the sponsor and seller for many of UBS's RMBS offerings; and (2) Depositor Defendant Mortgage Asset Securitization Transactions, Inc. ("MASTR"), a wholly owned limited purpose finance subsidiary of UBS, which served as the depositor and issuer for UBS's RMBS offerings. Defendant UBS offered or sold RMBS to Plaintiff. UBS also provided financial research on RMBS and related structured products.

362. In connection with its offer or sale of Securities to Plaintiff, UBS sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. UBS also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes UBS sent consisted of Excel spreadsheets containing dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, UBS also showed Plaintiff "pitch books" and other materials promoting the quality of the Securities and UBS's due diligence of the Mortgage Originators' underwriting practices. UBS did not allow Plaintiff to keep the pitch books.

363. In the Offering Documents, UBS made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, UBS reprinted Fremont's "Underwriting Guidelines," which stated that (a) Fremont's guidelines were "intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan"; (b) "the Fremont mortgage loans were originated in accordance with the[se] underwriting criteria"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based upon compensating factors." *See* ¶ 161. UBS made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including Aames. *See* Section V.

364. Moreover, UBS's Offering Documents made statements of material facts regarding the appraisal guidelines and practices of Fremont and the other relevant Mortgage Originators. UBS stated, for example, that "Fremont's underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal," and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were reviewed by Fremont. *See* ¶ 161. UBS made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Aames. *See* Section V.

365. In the other documents including term sheets, loan tapes, and pitch books UBS sent or showed to Plaintiff, UBS made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to the loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

366. UBS made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with UBS representatives occurred on or about July 12, July 14, and November 3, 2004; April 11, November 30, and December 5, 2005; May 18, September 28, and November 21, 2006; and March 12, April 11, April 16, July 18, and August 3, 2007. During these meetings, UBS made statements of material facts regarding upcoming RMBS deals, and assured Plaintiff that UBS conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines.

367. On March 5, 2008, investors commenced an action against UBS relating to mortgage-related securities purchases. *Pursuit Partners, LLC v. UBS AG, et al.*, 05-CV-08-4013452 (Conn. Super Ct.). The plaintiffs in that action alleged that UBS marketed junk Securities as investment-grade. Between July and October 2007, the plaintiffs in that action purchased more than $50 million of mortgage-related Securities from UBS, and on October 10,

2007, the securities were downgraded to junk status. On September 8, 2009, the Connecticut Superior Court ordered UBS to set aside $35.5 million to cover a potential judgment against it, finding that plaintiffs had "presented sufficient evidence to satisfy the probable cause standard." The court summarized the case as follows: "Through direct and circumstantial evidence, Pursuit has established probable cause to sustain the validity of a claim that the UBS defendants were in possession of material nonpublic information regarding imminent ratings downgrades on the Notes it sold to the Plaintiffs, information UBS withheld from the Plaintiffs."

368. On February 22, 2010, a pension fund commenced an action against UBS in the United States District Court for the District of New Jersey regarding the issuance of RMBS. *Local 302 & 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust v. Mortgage Asset Securitization Transactions, Inc. et al.*, 10-cv-00898-DMC (D.N.J.). The pension fund plaintiff in that case alleges that the Offering Documents pursuant to which UBS offered RMBS contained misstatements and material omissions regarding: (1) the underwriting standards pursuant to which the underlying mortgage collateral was originated; (2) the Securities' true investment risk and credit ratings; and (3) the amount and quality of the credit enhancement or credit support. The plaintiff in that case also alleges that UBS failed to conduct adequate, or in many cases any, due diligence on the mortgage loan applications and mortgaged properties before or during the securitization process. The mortgage loans underlying the Securities in that case were principally originated by Countrywide and IndyMac Bank, F.S.B. ("IndyMac").

369. According to a May 12, 2010 article in the *New York Times*, UBS received a subpoena from the New York State Attorney General in connection with an investigation into whether UBS provided untrue information to rating agencies in order to inflate ratings of RMBS.

370. Each of the statements of material facts identified above made by UBS regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, Fremont and the other Mortgage Originators of loans underlying the UBS Securities systematically violated their stated underwriting and appraisal standards. Moreover, UBS's

statements of material facts regarding its own due diligence were untrue and contained material omissions.

371. The statements of material facts in the documents UBS sent to Plaintiff were untrue because Fremont and the other relevant Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that Fremont made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; Fremont management encouraged risky loan originations; and Fremont was "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]." *See* ¶¶ 165-182. Moreover, former Fremont employees witnessed firsthand how exceptions to Fremont's underwriting became the "norm" because employees had to do whatever was necessary to increase loan originations. *Id.* The FDIC ultimately issued a Cease & Desist Order to Fremont for extending subprime credit "in an unsafe and unsound manner" and violating laws and FDIC regulations. *See* ¶¶ 165-166. The other Mortgage Originators of loans underlying the UBS Securities, including Aames, similarly violated their stated underwriting guidelines in order to increase loan volume. *See* SectionV.

372. The statements of material facts in the documents UBS sent to Plaintiff were also untrue because the appraisals of the mortgaged properties were systematically inflated, which caused the listed LTV ratios and credit enhancement levels to be untrue. *See, e.g.*, ¶¶ 52-57.

373. UBS's statements of material facts were also untrue because other material data provided to Plaintiff by UBS was untrue. For example, the data often identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loan's credit quality and likelihood of default. *See* Section V.

374. As a result of the untrue statements of material facts and omissions described above, all of the Securities that UBS offered or sold to Plaintiff have been downgraded, and their value has collapsed. As of June 25, 2010, over 49% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by UBS to Plaintiff.

i. Goldman Sachs' Untrue Statements of Material Facts and Omissions

375. Goldman Sachs offered or sold Securities to Plaintiff in Massachusetts in 2005 and 2006 for a total price of $50,792,745. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix H.

376. Goldman Sachs had several trading desks responsible for purchasing and selling mortgage-related assets, including RMBS. From 2004 through 2007, Goldman Sachs actively participated in the securitization markets and worked extensively with subprime Mortgage Originators Long Beach, Fremont, and New Century.

377. To facilitate the sale of RMBS, Goldman Sachs formed numerous SPVs including: (1) Goldman Sachs Mortgage Company, which served as the sponsor for many of Goldman Sachs' offerings; and (2) Depositor Defendant GS Mortgage Securities Corp., which served as the depositor and issuer for Goldman Sachs' offerings. Goldman Sachs offered or sold the Securities to Plaintiff. Goldman Sachs also provided financial research on RMBS and related structured products.

378. In connection with its offer or sale of Securities to Plaintiff, Goldman Sachs sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements that were, or would become, publicly available when filed with the SEC. Goldman Sachs also sent Plaintiff other documents, including term sheets and "loan tapes." The loan tapes Goldman Sachs sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual

loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often, Goldman Sachs also showed Plaintiff "pitch books" and other materials promoting the quality of the Securities and Goldman Sachs' due diligence of the Mortgage Originators' underwriting practices. Goldman Sachs did not allow Plaintiff to keep the pitch books.

379. In the Offering Documents, Goldman Sachs made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, Long Beach originated all or a significant amount of the underlying mortgage loans in the Goldman Sachs offerings Plaintiff purchased on behalf of the Clients. In the Offering Documents, Goldman Sachs reprinted Long Beach's "Underwriting Guidelines," which stated that: (1) Long Beach's guidelines were primarily intended to evaluate the prospective borrowers' credit standing and repayment ability as well as the value and adequacy of the mortgaged properties as collateral; (2) appraisals of the mortgaged properties generally conformed to Fannie Mae and Freddie Mac standards; (3) appraisals were generally performed by licensed independent appraisers who had satisfied the loan servicer's appraiser screening process; and (4) exceptions were only granted with the approval of an employee with appropriate "risk level authority" and in the presence of compensating factors. *See* ¶ 98.

380. In the other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Goldman Sachs made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Long Beach's practices and guidelines, and Goldman Sachs' due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

381. The statements of material facts in the documents Goldman Sachs sent to Plaintiff were untrue because Long Beach violated its stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay, and made exceptions to its underwriting standards in the

absence of "compensating factors." Subsequent investigations and lawsuits have demonstrated that Long Beach ignored and made frequent exceptions to its underwriting guidelines. *See* ¶¶ 102-127. Moreover, former Long Beach employees witnessed firsthand how variance from Long Beach's stated underwriting standard became the "norm" because employees were incentivized to increase loan volume. *Id.* The PSI summed up Long Beach's conduct by stating: "Long Beach...was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry." *See* ¶ 102.

382. The statements of material facts in the documents Goldman Sachs sent to Plaintiff were also untrue because inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. An industry insider who testified before the FCIC stated that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶ 56.

383. Goldman Sachs' statements of material facts were also untrue because other material data provided to Plaintiff by Goldman Sachs was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

384. Goldman Sachs also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. For example, in connection with the sale of the LBMLT 2005-2 deal, Goldman Sachs stated that in the 18 months before the deal, Long Beach had shifted to significantly higher-quality collateral. Goldman Sachs also stated to Plaintiff that Long Beach had stopped originating mortgages on mobile homes and that the concentrations of loan balances in the pools below $50,000 were very small. Plaintiff met with Goldman Sachs representatives on or about April 6 and June 15, 2004. During these meetings, Goldman Sachs representatives made statements of material facts regarding upcoming RMBS deals, and assured

Plaintiff that Goldman Sachs conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines. Among other things, Goldman Sachs stated that its due diligence included sampling loans to check underwriting process, documentation, valuations, and compliance. Specifically, Goldman Sachs repeatedly stated that it performed due diligence on the mortgage loans and to ensure Mortgage Originator compliance with stated underwriting standards.

385. Goldman Sachs' oral statements of material facts were untrue for the same reasons listed in ¶ 381, above. Moreover, the statements of material facts were untrue because Goldman Sachs failed to conduct adequate due diligence on the Mortgage Originators and the mortgage loans underlying the Securities in accordance with its statements.

386. The PSI investigated Goldman Sachs and concluded that from 2004 to 2007, Goldman Sachs "helped lenders like Long Beach, Fremont, and New Century, securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting [RMBS], and sell the [RMBS] to investors, pushing billions of dollars of risky mortgages into the financial system."

387. The PSI specifically profiled Goldman Sachs' relationship with Long Beach, which originated all the mortgages in the LBMLT 2005-2 deal Plaintiff purchased on behalf of the Clients. A PSI exhibit showed that WaMu (Long's Beach's parent company), Long Beach, and Goldman Sachs collaborated on at least $14 billion in loan sales and securitizations. The PSI also stated that in 2005 and 2006, Long Beach's RMBS were among the worst performing in the market.

388. The PSI highlighted one example of how Goldman Sachs securitized Long Beach mortgage loans, despite the fact that Long Beach was "one of the nation's worst mortgage lenders." In May 2006, Goldman Sachs, along with its co-lead underwriter WaMu, sold $495 million in Securities backed by Long Beach loans. In less than a year, delinquencies and defaults on the underlying loans began to skyrocket. By May 2007, the cumulative net loss on the underlying mortgage pool was over 12 percent, erasing the deal's loss protection and causing downgrades of 6 out of 7 of the mezzanine tranches. By May 2008 – only two years later – even

the AAA securities in the May 2006 deal had been downgraded to "default," and by March 2010 the securities had recorded a cumulative net loss of over 66 percent.

389. Massachusetts Attorney General Martha Coakley recently investigated Goldman Sachs' role in securitizing loans in the Commonwealth. The investigation examined whether Goldman Sachs engaged in the following practices:

- Failing to ascertain whether loans purchased from originators complied with the originators' stated underwriting guidelines;
- Failing to take sufficient steps to avoid placing problem loans in securitization pools;
- Failing to correct inaccurate information in securitization trustee reports concerning repurchases of loans; and
- Failing to make available to potential investors certain information concerning allegedly unfair or problem loans, including information obtained during loan due diligence and the pre-securitization process, as well as information concerning Goldman Sachs' practices in making repurchase claims relating to loans both in and out of securitizations.

390. On May 7, 2009, Goldman Sachs entered into a settlement agreement with the Massachusetts Attorney General in order "[t]o resolve any potential claims stemming from the Attorney General's investigation . . . ." Under the agreement, among other things, Goldman Sachs paid $10 million to the Commonwealth.

391. As a result of the untrue statements of material facts and omissions described above, the Securities that Goldman Sachs offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, 50% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Goldman Sachs to Plaintiff.

j. J.P. Morgan's Untrue Statements of Material Facts and Omissions

392. J.P. Morgan offered or sold Securities to Plaintiff in Massachusetts in 2005 and 2006 for a total price of $41,802,784. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage

Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix I.

393. J.P. Morgan, seeking to compete with its Wall Street peers, formed numerous entities to facilitate the sale of RMBS, including: (1) J.P. Morgan Chase Bank ("Chase Bank"), which originated various types of mortgage loans to various types of borrowers, and also acted as the servicers of the mortgage loans following their securitization; (2) Depositor Defendant J.P. Morgan Acceptance Corporation I, which served as the depositor and issuer for offerings of RMBS; and (3) J.P. Morgan Mortgage Acquisition Corporation, which acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant J.P. Morgan offered or sold the Securities to Plaintiff. J.P. Morgan also provided financial research on RMBS and related structured products.

394. In connection with its offer or sale of Securities to Plaintiff, J.P. Morgan sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. J.P. Morgan also sent Plaintiff numerous other documents, including term sheets, collateral and computational materials, and "loan tapes." The loan tapes J.P. Morgan sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. J.P. Morgan also showed Plaintiff "pitch books" promoting, *inter alia*, the quality of the Securities and J.P. Morgan's due diligence of the Mortgage Originators' underwriting practices. J.P. Morgan did not allow Plaintiff to keep the pitch books.

395. In the Offering Documents, J.P. Morgan made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Option One originated all or a significant amount of the underlying mortgage loans, J.P. Morgan reprinted Option One's "Underwriting Guidelines," which stated that (a) Option One's guidelines were "intended to assess the value of the mortgaged property, to evaluate the adequacy of such property as collateral for the mortgage

loan and to assess the applicant's ability to repay the mortgage loan"; (b) the "Mortgage Loans [were] originated generally in accordance with Option One's [Underwriting] Guidelines"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See*, ¶ 213. The Offering Documents for Securities that J.P. Morgan offered or sold to Plaintiff made similar statements of material facts regarding mortgage loans originated by Countrywide, WMC, Chase Bank and Fieldstone Mortgage Company ("Fieldstone"). *See* Section V.

396. Moreover, the Offering Documents for Securities that J.P. Morgan offered or sold to Plaintiff contained statements of material facts regarding appraisal guidelines and practices. For example, the Offering Documents for the JPMAC 2006-CW2 Trust stated that Countrywide's underwriting standards "require an independent appraisal of the mortgaged property" and the Offering Documents for the JPMAC 2005-WMC1 stated that WMC's underwriting standards required an appraisal of the mortgaged property "which conforms to Uniform Standards of Professional Appraisal Practice." The Offering Documents made similar statements of material facts regarding appraisals for loans originated by Option One, Chase Bank and Fieldstone. *See* Section V.

397. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," J.P. Morgan made additional statements of material facts regarding the particular Securities and their underlying data, Mortgage Originator practices and guidelines, and J.P. Morgan's due diligence of those practices and guidelines. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

398. J.P. Morgan also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with J.P. Morgan representatives occurred on or about April 13, April 28, September 29, and November 7, 2005, and May 3 and November 7, 2006. During these meetings, J.P. Morgan made statements of material facts regarding J.P. Morgan's upcoming RMBS deals and assured Plaintiff that J.P.

Morgan conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans to check underwriting process, documentation, valuations, and compliance.

399. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. Option One, WMC, Countrywide, Chase Bank, and Fieldstone, the principal Mortgage Originators of loans underlying the J.P. Morgan deals, violated their stated underwriting and appraisal standards. Moreover, J.P. Morgan's statements of material facts regarding its own due diligence were untrue and contained material omissions.

400. The statements of material facts in the documents J.P. Morgan sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards in the absence of the "compensating factors" required by their guidelines. For example, the Massachusetts Attorney General brought a lawsuit against Option One charging that the company "increasingly disregard[ed] underwriting standards, creat[ed] incentives for loan officers and brokers to disregard the interests of the borrowers and steer them into high-cost loans, and originated thousands of loans that [Option One] knew or should have known the borrowers would be unable to pay, all in an effort to increase loan origination volume so as to profit from the practice of packaging and selling the vast majority of [Option One's] residential subprime loans to the secondary market." The other Mortgage Originators of loans underlying the J.P. Morgan Securities, WMC, Countrywide, Chase Bank and Fieldstone, similarly violated their stated underwriting guidelines in an effort to increase loan production. *See* Section V.

401. The statements of material facts in the documents J.P. Morgan sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57.

402. J.P. Morgan's statements of material facts were also untrue because other material data provided to Plaintiff by J.P. Morgan was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loan's credit quality and likelihood of default.

403. According to a May 13, 2010 Reuters news article, the SEC and "U.S. prosecutors are conducting a broad criminal investigation of six major Wall Street Banks, including J.P. Morgan" about whether they misled investors about mortgage-securities deals.

404. As a result of J.P. Morgan's untrue statements of material facts and omissions, the Securities that J.P. Morgan offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 45% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by J.P. Morgan to Plaintiff.

k. Countrywide's Untrue Statements of Material Facts and Omissions

405. Countrywide offered or sold Securities to Plaintiff in Massachusetts in 2005 and 2006 for a total price of $93,807,045. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix K.

406. As one of the nation's largest subprime Mortgage Originators, Countrywide Financial was able to buy and sell vast amounts of subprime loans which were pooled and securitized as Securities. In 2005 and 2006 alone, Countrywide Financial originated in excess of $850 billion in home loans throughout the United States.

407. Through its affiliates and subsidiaries, Countrywide Financial was able to control nearly every step in the mortgage securitization process. To facilitate the sale of RMBS, Countrywide Financial formed numerous SPVs including: (1) Depositor Defendants CWABS, Inc. and CWALT, Inc., which served as the depositors and issuers for offerings of Securities; and

(2) Countrywide Home Loans, Inc. ("Countrywide Home"), which originated or otherwise acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of Securities. Defendant Countrywide offered or sold Securities containing loans originated by these SPEs to Plaintiff. Countrywide also offered or sold to Plaintiff Securities containing loans originated by other mortgage originators such as Aames Investment Corporation. Countrywide also provided financial research on RMBS and related structured products.

408. In connection with its offer or sale of Securities to Plaintiff, Countrywide sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements, and other documents that were, or would become, publicly available when filed with the SEC. Countrywide also sent Plaintiff numerous other documents, including term sheets, loan tapes, collateral tables, and summaries of loans reports. The "loan tapes" Countrywide sent to Plaintiff consisted of Excel spreadsheets that contained over 100 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Countrywide also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Countrywide's due diligence of the Mortgage Originators' underwriting practices. Countrywide did not allow Plaintiff to keep the pitch books.

409. In the Offering Documents, Countrywide made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Countrywide Home originated all or a significant amount of the underlying mortgage loans, Countrywide reprinted Countrywide Home's "Underwriting Guidelines," which stated, in sum or substance, that (a) Countrywide Home's guidelines were "intended to evaluate the value and adequacy of the mortgaged property as collateral for the proposed mortgage loan and the borrower's credit standing and repayment ability"; (b) Countrywide Home reviewed not only the value of the property, but also considered

"applicant's assets, liabilities, income and employment history, as well as certain other personal information"; (c) the mortgage loans were originated in accordance with the underwriting guidelines; and (d) exceptions to these guidelines would only be made "[o]n a case by case basis . . . based upon compensating factors." CWL 2005-11 Prospectus Supplement. Countrywide made similar statements with respect to loans originated by other mortgage originators, including Aames Home Loan.

410. Moreover, the Offering Documents made statements of material facts regarding the Mortgage Originators' appraisal guidelines. Countrywide stated, for example, that the Mortgage Originators commissioned appraisals by qualified independent appraisers who prepared appraisals that conformed to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

411. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Countrywide made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Countrywide's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

412. Countrywide also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. For example, on April 4, 2006, Plaintiff made a due diligence visit to Countrywide's offices to meet with Countrywide's origination and servicing staff. During these meetings, Countrywide representatives made statements of material facts regarding Countrywide's upcoming RMBS deals, and assured Plaintiff that Countrywide conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

413. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The principal Mortgage Originators in the Countrywide deals systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines, and either knew of or participated in the inflated appraisals of the mortgaged properties. Moreover, Countrywide's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

414. Countrywide's statements of material facts were also untrue because other material data provided to Plaintiff by Countrywide was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

415. Countrywide Financial's lending practices, including the subjects of the untrue statements of material facts and omissions in the Offering Documents, are currently the target of multiple state and federal investigations and proceedings. Various State Attorneys General, including those from Massachusetts, California, Connecticut, Illinois, Florida, and Indiana, have brought lawsuits or initiated investigations against Countrywide based on its lending, underwriting, and appraisal practices for mortgage loans.

416. On March 24, 2010, Massachusetts Attorney General Coakley filed a Complaint and Final Judgment by Consent against Countrywide's parent, Countrywide Financial Corporation, and its affiliates Countrywide Home Loans, Inc., Countrywide Mortgage Ventures LLC, and Full Spectrum Lending, Inc. The Attorney General's Complaint alleged that:

> During 2006 and 2007, Countrywide was the largest lender in Massachusetts and the nation and the largest subprime lender in Massachusetts. In originating residential mortgage loans in Massachusetts from 2005 to 2007 ("loans"), Countrywide engaged in unfair loan origination practices including approving risk-layered loans that, at times, led to predictable borrower "payment shock" -- that is, a significant increase in a borrower's payment based on changes to the

> calculation of a monthly payment, frequently attributable to a change in interest rate for an adjustable rate mortgage ("ARM") or the deferral of the payment of principal on interest only or Pay Option ARMs. When originating these loans, Countrywide knew or should have known that a substantial number of its borrowers could not reasonably repay these loans according to the loans' terms and that the loans would be subject to predictable delinquency and default.

417. The Attorney General's Complaint quotes emails sent by the Chairman of Countrywide, Angelo Mozilo, in March and April 2006 in which Mozilo referred to Countrywide's 100% LTV subprime loans as "the most dangerous product in existence and there can be nothing more toxic," and "[i]n all my years in the business, I have never seen a more toxic pr[o]duct." Despite Mozilo's awareness in early 2006 that such loans were toxic, the Attorney General's Complaint alleges that Countrywide continued to make such loans through 2007 and into 2008.

418. The Attorney General's settlement with Countrywide Financial Corporation, in combination with settlements by other State Attorneys General, provides for $18 million in loan modifications for Massachusetts homeowners, $3 billion in loan modifications for homeowners across the country, and a $4.1 million payment by Countrywide Financial Corporation to the Commonwealth.

419. Countrywide's underwriting standards are also the subject of an investigation by the Federal Bureau of Investigation ("FBI"), which was first reported on March 8, 2008 by *The Wall Street Journal* in an article entitled "FBI Investigates Countrywide -- U.S. Scrutinizes Filings on Financial Strength, Loan Quality for Fraud." The FBI investigation is focused on "whether company officials made misrepresentations about the company's financial position and the quality of its mortgage loans in securities filings."

420. On March 11, 2008, the *Wall Street Journal* published another article detailing the FBI's investigation of Countrywide's lending practices. According to the sources interviewed by the *Wall Street Journal*, federal investigators found that "Countrywide's loan documents often were marked by dubious or erroneous information about its mortgage clients, according to people involved in the matter. The company packaged many of those mortgages into securities

and sold them to investors, raising the additional question of whether Countrywide understated the risks such investments carried."

421. As a result of the untrue statements of material facts and omissions described above, the Securities that Countrywide offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 57% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Countrywide to Plaintiff.

l. FBR's Untrue Statements of Material Facts and Omissions

422. FBR offered or sold Securities to Plaintiff in Massachusetts in 2005 for a total price of $22,149,863. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix L.

423. FBR sought to expand its share of the RMBS market by aggressively pursuing subprime mortgage originators including Aames, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. In an effort to expand its subprime origination, servicing, and securitization business, FBR acquired First NLC Financial Services, a mortgage originator headquartered in Florida, in 2005.

424. To facilitate the sale of RMBS, FBR formed SPVs, including Depositor Defendant FBR Securitization, Inc., which served as the depositor and issuer for many of FBR's offerings. FBR offered or sold the Securities to Plaintiff. FBR also provided financial research on RMBS and related structured products.

425. In connection with its offer or sale of Securities to Plaintiff, FBR sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. FBR also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The loan tapes FBR sent to

Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the data, the mortgage originators' underwriting practices and guidelines for the mortgages supporting the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. FBR also showed Plaintiff "pitch books" promoting, *inter alia*, the mortgage originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and FBR's due diligence of the mortgage originators' underwriting practices. FBR did not allow Plaintiff to keep the pitch books.

426. In the Offering Documents, FBR made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in an offering for which Aames originated all of the underlying mortgage loans, FBR stated, in sum or substance, that (a) Aames' guidelines were intended to assess the borrower's ability and willingness to repay the debt; (b) the mortgage loans underwritten in accordance with Aames' underwriting standards; and (c) exceptions to these standards would only be made on a case-by-case basis based on compensating factors. FBR made similar statements of material facts for mortgage loans originated by other mortgage originators.

427. Moreover, the Offering Documents made statements of material facts regarding the relevant mortgage originators' compliance with their appraisal guidelines.

428. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," FBR made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and mortgage originator practices and guidelines applicable to mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

429. FBR also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in meetings, some of which were at Plaintiff's offices in Concord,

Massachusetts on or about August 9 and 11, 2004. Among other things, FBR stated that it retained Clayton to conduct due diligence for credit, compliance, and appraisals on 100% of the loans in FBRSI 2005-5, a securitization for which Aames originated all the loans.

430. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The mortgage originators in the FBR deals systematically violated their stated underwriting and appraisal standards. Moreover, FBR's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

431. The statements of material facts in the documents FBR sent to Plaintiff were untrue because the mortgage originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines.

432. The statements of material facts in the documents FBR sent to Plaintiff were also untrue because of the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue.

433. FBR's statements of material facts were also untrue because other material data provided to Plaintiff by FBR was untrue. For example, the data incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

434. As a result of FBR's untrue statements of material facts and omissions, the Securities that FBR offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 47% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by FBR to Plaintiff.

m. HSBC's Untrue Statements of Material Facts and Omissions

435. HSBC offered or sold Securities to Plaintiff in Massachusetts in 2005 and 2006 for a total price of $64,313,293. A full list of these offerings and sales, including the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix M.

436. To facilitate the sale of RMBS, HSBC formed other special-purpose entities including Depositor Defendant HSI Asset Securitization Corporation, which acquired residential mortgage loans to be securitized and served as the depositor and issuer in numerous offerings of RMBS. The Defendant HSBC offered or sold the Securities to Plaintiff. HSBC also provided financial research on RMBS and related structured products.

437. In connection with its offer or sale of Securities to Plaintiff, HSBC sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements and, for FFML 2006-FF5, a Confidential Offering Memorandum, prospectus, and prospectus supplement. HSBC also sent Plaintiff other documents, including term sheets and "loan tapes." The loan tapes HSBC sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. HSBC also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting Securities, the data, and HSBC's due diligence of the Mortgage Originators' underwriting practices. HSBC did not allow Plaintiff to keep the pitch books.

438. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

439. As discussed further below, the Offering Documents and other documents provided by HSBC to Plaintiff contained statements of material facts regarding underwriting and

appraisal standards applicable to the mortgage loans underlying the Securities. These statements of material facts were untrue and contained material omissions. As detailed below, the principal Mortgage Originators of loans underlying the HSBC deals violated their stated underwriting and appraisal standards.

440. HSBC's statements of material facts were also untrue because other material data provided to Plaintiff by HSBC was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

441. HSBC met with Plaintiff on or about December 5, 2005 and November 22, 2006. During the meetings, HSBC reiterated many of the statements of material facts in the documents provided to Plaintiff. In addition, HSBC stated that HSBC conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

442. These oral statements of material facts were untrue for the same reasons listed in ¶¶ 446-47. In addition, the statements of material facts were untrue because HSBC failed to conduct adequate due diligence on the Mortgage Originators and the mortgage loans underlying the Securities in accordance with its statements.

1. HASC 2005-NC2

443. The HASC 2005-NC2 Securities were offered or sold to Plaintiff pursuant to a Registration Statement, a Prospectus Supplement, and a term sheet, and the M-10 class of HASC 2005-NC2 Securities was also offered or sold to Plaintiff pursuant to a private placement agreement.

444. In the Offering Documents, HSBC made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans, most of which were originated by New Century. For example, HSBC reprinted

New Century's "Underwriting Guidelines," which stated, in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century reviewed not only the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶ 76. HSBC made similar statements of material facts for Mortgage Loans originated by other Mortgage Originators.

445. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. HSBC stated, for example, that New Century commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and that were reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶ 78. HSBC made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators.

446. The statements of material facts in the documents HSBC sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that New Century made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; New Century management "turned a blind eye" to risky loan originations; and "New Century engaged in a number of significant improper and imprudent practices related to its loan originations." *See* ¶¶ 82-95. Moreover, former New Century employees witnessed firsthand how exceptions to New Century's underwriting became the "norm" because employees

had to do what was necessary to increase loan originations. *See* ¶¶ 89-91. The SEC has recently charged former New Century officers with making untrue assurances to the market about the company's "adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market." *See* ¶ 93. The other Mortgage Originators underlying the HSBC Securities similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production.

447. The statements of material facts in the documents HSBC sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57. A former New Century underwriter recently confirmed New Century's use of inflated appraisals in testimony before the FCIC, stating that New Century hired fee appraisers who were "pressured" into inflating property values, at times by tampering with the property, "fearing if they didn't, they would lose future business and their livelihoods." ¶ 54. Another industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶ 56.

2. FFML 2006-FF5

448. In the Offering Documents for FFML 2006-FF5, HSBC made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans, substantially all of which were originated by First Franklin, a division of National City Bank of Indiana ("First Franklin"), and were sold by First Franklin to its affiliate First Franklin Financial Corporation (the "Mortgage Loan Seller"), which in turn sold the mortgage loans to HSBC to be securitized.

449. HSBC stated that First Franklin originated the mortgage loans in accordance with the underwriting criteria described in the Offering Documents, which stated that:

> The Mortgage Loan Seller's acquisition underwriting standards are primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan. The standards established by the Mortgage Loan Seller require that the mortgage loans of a type similar to the Mortgage Loans were underwritten by the third party originators [*i.e.*, primarily First Franklin] with a view toward the resale of the mortgage loans in the secondary mortgage market. In accordance with the Mortgage Loan Seller's guidelines for acquisition, the third party originators must consider, among other things, a mortgagor's credit history, repayment ability and debt service to income ratio ("Debt Ratio"), as well as the value, type and use of the mortgaged property.
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> * * * *
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> In accordance with the Mortgage Loan Seller's guidelines for acquisition, all of the mortgage loans of a type similar to the Mortgage Loans were required to be underwritten by the third party originator's underwriters having the appropriate signature authority. Each underwriter is granted a level of authority commensurate with their proven judgment, maturity and credit skills. On a case by case basis, a third party originator may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category guidelines described below warrants an underwriting exception. Compensating factors may include, but are not limited to, low loan-to-value ratio, low Debt Ratio, substantial liquid assets, good credit history, stable employment and time in residence at S-42 the applicant's current address. It is expected that a substantial portion of the Mortgage Loans may represent such underwriting exceptions.

450. Moreover, the Offering Documents made statements of material facts regarding First Franklin's appraisal guidelines and practices. HSBC stated, for example, that:

> In accordance with the Mortgage Loan Seller's guidelines for acquisition, the third party originators [i.e., primarily First Franklin] are required to comply with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards; and if appropriate, a review appraisal. Generally, appraisals are provided by appraisers approved by the Mortgage Loan Seller. Review appraisals may only be provided by appraisers approved by the Mortgage Loan Seller. In some cases, the third party originator may rely on a statistical appraisal methodology provided by a third party.
>
> Qualified independent appraisers must meet minimum standards of licensing and provide errors and omissions insurance in states where it is required to become approved to do business with the third party originators. Each Uniform Residential Appraisal Report includes a market data analysis based on recent sales of comparable homes in the area and, where deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. The review

> appraisal may be an enhanced desk, field review or an automated valuation report that confirms or supports the original appraiser's value of the mortgaged premises.

451. The statements of material facts in the documents HSBC sent to Plaintiff were untrue because First Franklin violated its stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to its underwriting standards absent the "compensating factors" required by the guidelines.

452. The statements of material facts in the documents HSBC sent to Plaintiff were also untrue because of inflated appraisals for the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. CW 63, a Corporate Underwriter at First Franklin from 2006 until June 2007 who audited appraisals, estimated that one in four appraisals reviewed at First Franklin was inflated. CW 63 stated that most lenders maintained blacklists for appraisers who submitted appraisals with inflated values or unsupported comparables. First Franklin, however, maintained no such lists. Frequently CW 63 rejected loans with overinflated appraisals, only to have them approved by managers.

453. In December 2006, Merrill Lynch purchased First Franklin from National City Corporation ("National City") for $1.3 billion. In April 2007, National City received a dispute notice from Merrill Lynch asserting that the closing date net asset values and related purchase price were overstated by $67 million. Merrill Lynch's dispute notice alleged that National City had breached representations or warranties concerning First Franklin's alleged losses associated with its obligation to repurchase defective loans. In May 2008, Merrill Lynch announced that it would stop funding loans at First Franklin and explore selling the company. Thereafter, in June 2008, National City was notified that the SEC was investigating National City, and the SEC requested documents concerning National City's loan underwriting experience and the sale of First Franklin. In November 2008, after Bank of America had agreed to acquire Merrill Lynch, Bank of America determined that Merrill Lynch would have to take a goodwill charge of $2.3 billion, due in part to the failure of First Franklin.

454. As a result of the untrue statements of material facts and omissions described above, the Securities that HSBC offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 46% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by HSBC to Plaintiff.

n. Banc of America's Untrue Statements of Material Facts and Omissions

455. Banc of America Securities, LLC offered or sold Securities to Plaintiff in Massachusetts in 2005 and 2006 for a total price of $50,407,959. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix N.

456. Banc of America sought to expand its share of the mortgage securities market by aggressively pursuing subprime Mortgage Originators including Option One, Accredited, and GMAC Mortgage, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. Option One was one of the the largest Mortgage Originators in the Banc of America Securities.

457. To facilitate the sale of mortgage-backed securities, Banc of America's parent company formed SVPs, including Depositor Defendants Asset Backed Funding Corporation ("ABFC") and Banc of America Mortgage Securities, Inc., which served as the depositors and issuers for many of its offerings. Banc of America offered or sold the Securities to Plaintiff. Banc of America also provided financial research on RMBS and related structured products.

458. In connection with its offer or sale of Securities to Plaintiff, Banc of America sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Banc of America also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The

loan tapes Banc of America sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Banc of America also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Banc of America's due diligence of the Mortgage Originators' underwriting practices. Banc of America did not allow Plaintiff to keep the pitch books.

459. In the Offering Documents, Banc of America made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Option One originated all or a significant amount of the underlying mortgage loans, Banc of America reprinted Option One's "Underwriting Guidelines," which stated that (a) Option One's guidelines were "intended to assess the value of the mortgaged property, to evaluate the adequacy of such property as collateral for the mortgage loan and to assess the applicant's ability to repay the mortgage loan"; (b) the "Mortgage Loans [were] originated generally in accordance with Option One's [Underwriting] Guidelines"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See*, ¶ 213. Banc of America made similar statements of material facts for mortgage loans originated by other mortgage originators, including Accredited and GMAC Mortgage. *See* Section V.

460. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Banc of America stated, for example that Option One's guidelines required that "[a]ll appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are generally on forms acceptable to Fannie Mae and Freddie Mac," and that Option One commissioned an appraisal of mortgaged properties by "qualified independent appraisers" and "require[d] that mortgage loans be underwritten in a standardized procedure which complies with applicable federal and state laws and regulations

and require Option One's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal, supports the loan balance." *See* ¶ 213. Banc of America made similar statements of material facts for appraisals commissioned, performed, or reviewed by other mortgage originators, including Accredited and GMAC Mortgage. *See* Section V.

461. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Banc of America made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to the mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

462. Banc of America also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in calls and meetings, some of which took place in Plaintiff's Massachusetts offices. Some of Plaintiff's meetings with Banc of America representatives occurred on or about September 15, 2004; April 4, June 2, November 28, November 29, and December 5, 2005; January 2, January 31, May 23, and October 10, 2006; and January 4, 2007. During these meetings, Banc of America's employees made statements of material facts regarding Banc of America's upcoming RMBS deals, and assured Plaintiff that Banc of America conducted its own due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

463. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed above, Option One, the principal Mortgage Originator in the Banc of America deals, systematically violated its stated underwriting and appraisal standards. Moreover, Banc of America's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

464. The statements of material facts in the documents Banc of America sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, a subsequent lawsuit brought by the Attorney General for the Commonwealth of Massachusetts against Option One, and its past and present parent companies, alleged that Option One "increasingly disregard[ed] underwriting standards, creat[ed] incentives for loan officers and brokers to disregard the interests of the borrowers and steer them into high-cost loans, and originated thousands of loans that [Option One] knew or should have known the borrowers would be unable to pay, all in an effort to increase loan origination volume so as to profit from the practice of packaging and selling the vast majority of [Option One's] residential subprime loans to the secondary market." The other Mortgage Originators of loans underlying the Banc of America Securities, including Accredited and GMAC Mortgage, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production.

465. The statements of material facts in the documents Banc of America sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57.

466. Banc of America's statements of material facts were also untrue because other material data provided to Plaintiff by Banc of America was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

467. As a result of Banc of America's untrue statements of material facts and omissions, the Securities that Banc of America offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 42% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or

repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Banc of America to Plaintiff.

o. **GMAC's Untrue Statements of Material Facts and Omissions**

468. GMAC offered or sold Securities to Plaintiff in Massachusetts in 2005 and 2006 for a total price of $11,350,513. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix O.

469. GMAC sought to expand its share of the RMBS market by aggressively pursuing subprime mortgage originators, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

470. To facilitate the sale of RMBS, GMAC formed SPVs, including Depositor Defendants Residential Asset Securities Corporation ("RASC"), Residential Accredit Loans, Inc., and Residential Asset Mortgage Products Inc. ("RAMP"), which served as the depositors and issuers for many of GMAC's offerings. GMAC offered or sold the Securities to Plaintiff. GMAC also provided financial research on RMBS and related structured products.

471. In connection with its offer or sale of Securities to Plaintiff, GMAC sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. GMAC also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The loan tapes GMAC sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the data, the mortgage originators' underwriting practices and guidelines for the mortgages supporting the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. GMAC also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities,

the data, and GMAC's due diligence of the Mortgage Originators' underwriting practices. GMAC did not allow Plaintiff to keep the pitch books.

472. In the Offering Documents, GMAC made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in an offering for which Equifirst originated all of the underlying mortgage loans, GMAC stated, in sum or substance, that (a) Equifirst's guidelines were intended to assess the borrower's ability and willingness to repay the debt; (b) the mortgage loans underwritten in accordance with Equifirst's underwriting standards; and (c) exceptions to these standards would only be made on a case-by-case basis based on compensating factors.

473. Moreover, the Offering Documents made statements of material facts regarding the relevant Mortgage Originators' compliance with their appraisal guidelines.

474. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," GMAC made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

475. GMAC also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in a meeting at Plaintiff's offices in Massachusetts on or about August 17, 2005. Among other things, GMAC stated that it performed due diligence on 100% of the loans it purchased from Equifirst for the RAMP 05-EFC4 securitization.

476. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The Mortgage Originators in the GMAC deals systematically violated their stated underwriting and appraisal standards. Moreover, GMAC's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

477. The statements of material facts in the documents GMAC sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines.

478. The statements of material facts in the documents GMAC sent to Plaintiff were also untrue because of the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue.

479. GMAC's statements of material facts were also untrue because other material data provided to Plaintiff by GMAC was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

480. As a result of GMAC's untrue statements of material facts and omissions, the Securities that GMAC offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 40% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by GMAC to Plaintiff.

p. Barclays' Untrue Statements of Material Facts and Omissions

481. Barclays offered or sold Securities to Plaintiff in Massachusetts in 2005, 2006 and 2007 for a total price of $141,298,323. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, and the amounts invested is contained in the attached Appendix P.

482. Barclays sought to expand its share of the RMBS market by aggressively pursuing subprime Mortgage Originators including Fremont, WMC, Decision One, Option One, and Encore, offering to pay more for their mortgages than competing Wall Street Banks, and offering

to perform less due diligence than competitors. Fremont was one of the largest Mortgage Originators of loans underlying the Barclays Securities. In an effort to expand its subprime origination, servicing, and securitization business in the United States, Barclays acquired two large U.S.-based mortgage companies: HomEq Servicing Corporation in June 2006, and EquiFirst Corporation in 2007.

483. To facilitate the sale of RMBS, Barclays' parent company formed SPVs, including Depositor Defendant Securitized Asset Backed Receivables LLC ("SABR"), which served as the depositor and issuer for many of Barclays' offerings. Barclays offered or sold the Securities to Plaintiff. Barclays also provided financial research on RMBS and related structured products.

484. In connection with its offer or sale of Securities to Plaintiff, Barclays sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Barclays also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The loan tapes Barclays sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the data, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Barclays also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Barclays' due diligence of the Mortgage Originators' underwriting practices. Barclays did not allow Plaintiff to keep the pitch books.

485. In the Offering Documents, Barclays made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, Barclays reprinted Fremont's "Underwriting Guidelines," which stated, in sum or substance, that (a) Fremont's guidelines were "intended to

assess the borrower's ability and willingness of the borrower to repay the debt"; (b) the "mortgage loans [were] underwritten in accordance with Fremont's current underwriting programs"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based on compensating factors." *See*, ¶ 161. Barclays made similar statements of material facts for Mortgage Loans originated by other Mortgage Originators, including WMC. *See* ¶ 185.

486. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Barclays stated, for example, that "underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal" and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers." *See* ¶ 161. Barclays made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including WMC. *See* ¶ 185.

487. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Barclays made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

488. Barclays also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Barclays occurred on or about July 13 and October 27, 2004; January 19, 2005; and March 14 and November 6, 2006. During these meetings, Barclays representatives made statements of material facts regarding Barclays' upcoming RMBS deals, and assured Plaintiff that Barclay conducted its own due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance. For example, Plaintiff met with Barclays at the ABS East industry

conference during November 2006. At this meeting, Barclays stated that Barclays employees were on-site with the largest Mortgage Originators, "QCing" (*i.e.*, quality controlling) the underwriting and pool construction process, and that every exception to the Mortgage Originators' underwriting standards was supposed to be QC'ed by a Barclays employee.

489. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed below, Fremont, the principal Mortgage Originator in the Barclays deals, systematically violated its stated underwriting and appraisal standards. Moreover, Barclays' additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

490. The statements of material facts in the documents Barclays sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that Fremont made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for a loan; Fremont management encouraged risky loan originations; and Fremont was "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]." *See* ¶¶ 165-182. Moreover, former Fremont employees witnessed firsthand how exceptions to Fremont's underwriting became the "norm" because employees had to do what was necessary to increase loan originations. *Id.* The FDIC ultimately issued a Cease & Desist Order to Fremont for extending subprime credit "in an unsafe and unsound manner" and committing violations of laws and FDIC regulations. *See* ¶¶ 165-166. The other Mortgage Originators of loans underlying the Barclays Securities, including WMC, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

491. The statements of material facts in the documents Barclays sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated

appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57.

492. Barclays' statements of material facts were also untrue because other material data provided to Plaintiff by Barclays was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

493. As a result of Barclay's untrue statements of material facts and omissions, the Securities that Barclays offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of June 25, 2010, over 52% of the mortgage loans underlying the Securities are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities offered or sold by Barclays to Plaintiff.

q. The Depositor Defendants' Untrue Statements of Material Facts and Omissions

494. For their securitization businesses, financial institutions created SPVs, wholly-owned subsidiaries, to serve as depositors that purchased or acquired the loans for securitization and sale to investors. The limited corporate purpose of depositors was to package and sell loans for the benefit of their parent banks. Revenues from the depositors' securitization activities were passed up to the parent banks.

495. Each of the Depositor Defendants served as a "depositor" for the sale of the Securities. The Depositor Defendants, as "issuers" under Regulation AB (17 CFR § 230.191), were sellers of the Securities and made false statements of material facts in the Offering Documents.

496. Prior to issuing the Securities, the Depositor Defendants prepared and filed with the SEC on Form S-3 registration statements under the Securities Act of 1933, 15 U.S.C § 77k, indicating their intention to sell the Securities. The Depositors then issued the Securities pursuant to the registration statements, accompanying prospectuses, and subsequent prospectus

supplements, or private placement memoranda. The Depositor Defendants and the Wall Street Banks drafted the prospectus supplements or private placement memoranda and circulated these documents to investors, including Plaintiff. The Depositor Defendants filed the prospectus supplements with the SEC.

497. As alleged above, the prospectus supplements or private placement memoranda purported to describe the mortgage pools underlying the Securities that the Depositor Defendants offered and sold, making statements about the loan origination process, the quality of the loans, and the adequacy of the collateral. Each prospectus supplement or private placement memorandum included tables with data concerning the loans underlying the Securities, including (but not limited to) the type of loans, the number of loans, the mortgage rate and net mortgage rate, the aggregate scheduled principal balance of the loans, the purported weighted average of original combined LTV ratios, the occupancy status of the mortgaged properties, and the geographic concentration of the properties.

498. The prospectus supplements or private placement memoranda contained the untrue statements of material facts set forth above in Section VI concerning the Securities, including untrue statements regarding: (1) the Mortgage Originators' underwriting guidelines that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal guidelines that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; and (4) various forms of credit enhancement applicable to certain tranches of Securities.

499. As detailed above, these statements of material facts concerning the Securities were untrue because: (1) the Mortgage Originators violated their stated underwriting guidelines and did not consistently evaluate the borrowers' ability to repay the loans; (2) inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be inaccurate; and (3) the stated numbers of riskier "second home" and "investment property" mortgagees were lower than the

actual numbers, and the stated numbers of less risky "owner occupied" mortgage loans were higher than the actual numbers. In addition, metrics such as debt-to-income ratios were untrue as a result of the Mortgage Originators' acceptance of untrue information from mortgage applicants.

VII. THE PERFORMANCE AND VALUE OF THE SECURITIES

500. The rates of delinquency, foreclosure, and real estate owned (*i.e.*, foreclosed and not yet sold) on the Securities' underlying mortgages have soared since issuance. As reflected in the charts below (in which all figures are expressed as percentages), as of May 2010, the percentage of those underlying loans that are currently either 60 days or more delinquent, in foreclosure, or real estate owned exceeds 38%, on average, for the Securities offered or sold to Plaintiff by each Wall Street Bank Defendant. These data provide a snapshot of the pools as currently constituted and do not include loans that have been liquidated out of the original pools. The pools and the related Securities suffered significant additional losses as a result of the liquidation of defaulted loans that are not included in the tables below.

501. **Morgan Stanley Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
ACCR 2005-3	2.39	19.45	9.34	3.73	34.91
AMIT 2005-4	2.26	22.20	11.04	4.94	40.44
IXIS 2005-HE2	1.72	8.62	39.58	5.15	55.07
IXIS 2005-HE3	1.85	9.03	34.11	4.98	49.97
IXIS 2006-HE3	1.75	31.89	15.61	3.71	52.96
MSAC 2005-HE4	2.15	22.97	14.83	5.41	45.36
MSAC 2005-NC2	2.66	25.60	10.45	3.99	42.70
MSAC 2005-WMC2	2.65	28.42	17.06	2.74	50.87
MSAC 2005-WMC3	3.17	25.31	17.93	5.71	52.12
MSAC 2005-WMC5	2.83	31.79	14.19	3.97	52.78
MSAC 2005-WMC6	2.03	32.35	12.78	3.83	50.99
MSAC 2006-HE1	1.93	13.97	26.76	1.49	44.15
MSAC 2006-HE3	2.36	17.74	18.63	7.97	46.70
MSAC 2007-HE3	2.44	27.72	16.03	4.34	50.53
MSHEL 2005-1	2.24	7.19	13.17	2.70	25.30
MSHEL 2006-1	2.83	13.30	11.99	5.67	33.79
NCHET 2005-3	2.30	13.47	12.41	7.94	36.12
NCHET 2005-B	1.91	7.65	12.15	6.62	28.33
NCHET 2005-C	1.86	9.69	23.99	1.33	36.87
NCHET 2005-D	2.89	11.44	23.51	1.78	39.62
NTIX 2007-HE2	2.66	27.98	17.76	4.10	52.50
SAST 2006-3	1.88	14.76	20.46	4.96	42.06
				Average Delinquency for Morgan Stanley	**43.82**

502. **Bear Stearns Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
AABST 2005-5	2.68	8.17	13.88	5.52	30.25
AMIT 2005-1	2.75	13.75	20.81	8.19	45.50
BSABS 2005-AQ2	2.10	38.31	16.89	3.08	60.38
BSABS 2005-HE10	3.31	38.96	10.02	1.72	54.01
BSABS 2005-HE4	2.56	31.63	8.01	2.84	45.04
BSABS 2005-HE8	2.18	29.13	8.75	1.92	41.98
BSABS 2005-HE9	2.22	33.69	8.21	2.07	46.19
BSABS 2006-EC1	3.73	42.97	9.24	1.57	57.51
BSABS 2006-EC2	2.09	46.70	9.59	2.75	61.13
BSABS 2006-HE1	2.43	37.55	8.54	0.95	49.47
BSABS 2006-HE10	2.13	40.97	11.51	1.83	56.44
BSABS 2006-HE3	2.10	33.97	14.16	3.78	54.01
BSABS 2006-HE4	2.47	21.93	18.85	5.17	48.42
BSABS 2006-HE7	2.05	40.94	9.84	1.71	54.54

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
BSABS 2006-PC1	2.99	37.42	8.03	0.62	49.06
BSABS 2007-FS1	2.75	37.74	7.99	2.59	51.07
BSMF 2007-SL2	4.73	23.86	0.00	0.00	28.59
BSSLT 2007-SV1A	1.73	5.35	1.37	0.15	8.60
CARR 2005-NC4	2.08	8.78	11.34	24.92	47.12
CARR 2006-RFC1	2.07	15.87	12.86	17.72	48.52
GPMF 2007-HE1	2.68	8.49	0.00	0.00	11.17
IRWHE 2005-A	0.37	1.90	0.00	0.00	2.27
PCHLT 2005-2	2.82	15.59	18.27	8.54	45.22
PCHLT 2005-4	3.25	16.14	22.52	10.46	52.37
SACO 2004-3A	2.24	8.88	0.00	0.00	11.12
SACO 2005-1	2.09	9.49	0.00	0.00	11.58
SACO 2005-2	2.24	9.27	0.00	0.00	11.51
SACO 2005-3	2.67	11.86	0.14	0.00	14.67
SACO 2005-4	2.18	10.45	0.12	0.00	12.75
SACO 2005-5	2.24	10.76	0.19	0.00	13.19
SACO 2005-7	2.41	13.18	0.05	0.00	15.64
SACO 2005-8	2.60	11.73	0.15	0.00	14.48
SACO 2005-WM3	5.12	8.76	0.00	0.00	13.88
SACO 2007-2	3.96	9.72	0.31	0.00	13.99
SAMI 2005-AR6	1.92	19.94	9.79	2.26	33.91
				Average Delinquency for Bear Stearns	**34.73**

503. **Citigroup Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
AMIT 2005-2	0.73	5.13	27.06	11.92	44.84
ARSI 2005-W2	2.25	5.63	20.30	3.53	31.71
ARSI 2006-W1	2.41	6.63	27.83	5.00	41.87
CARR 2005-NC3	1.77	10.87	11.82	16.92	41.38
CARR 2005-NC5	1.62	12.03	12.50	28.08	54.23
CARR 2006-NC2	1.97	12.29	12.22	27.17	53.65
CARR 2006-NC4	1.98	13.39	13.54	21.78	50.69
CMLTI 2005-9	1.59	5.02	4.72	1.38	12.71
CMLTI 2005-HE1	2.67	7.55	20.12	5.90	36.24
CMLTI 2005-HE3	1.71	28.81	18.11	6.79	55.42
CMLTI 2006-HE1	2.27	12.83	16.44	5.20	36.74
CMLTI 2006-WFH3	2.49	14.61	12.59	6.30	35.99
CMLTI 2007-AMC2	2.21	18.60	18.42	5.61	44.84
CMLTI 2007-FS1	2.30	21.72	14.89	3.84	42.75
				Average Delinquency for Citigroup	**41.65**

504. **Credit Suisse Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
AABST 2005-4	2.32	6.63	11.88	4.67	25.50
ABSHE 2005-HE1	1.40	12.70	16.21	4.30	34.61
ABSHE 2005-HE3	1.93	33.76	16.05	3.43	55.17
ABSHE 2005-HE4	2.34	10.82	11.93	1.48	26.57
ABSHE 2005-HE5	1.18	25.77	24.87	3.27	55.09
ABSHE 2006-HE3	1.79	11.04	19.57	2.20	34.60
ABSHE 2006-HE6	2.68	13.24	15.26	4.63	35.81
ABSHE 2006-HE7	2.72	20.61	13.46	4.30	41.09
AMSI 2005-R6	2.28	5.73	16.78	2.39	27.18
AMSI 2005-R8	1.52	3.87	17.91	4.45	27.75
AMSI 2006-R2	1.99	7.16	18.80	3.47	31.42
FHLT 2005-A	2.89	16.84	19.16	9.19	48.08
FMIC 2007-1	3.30	14.59	13.35	6.96	38.20
HEAT 2005-1	2.21	11.94	12.11	5.40	31.66
HEAT 2005-2	1.65	12.13	9.85	5.46	29.09
HEAT 2005-3	2.81	14.41	15.10	6.65	38.97
HEAT 2005-4	2.10	10.82	10.93	5.72	29.57
HEAT 2005-5	2.40	12.83	10.32	4.59	30.14
HEAT 2005-6	3.32	11.55	11.96	3.93	30.76
HEAT 2005-7	2.02	15.64	15.30	5.03	37.99
HEAT 2005-8	2.67	16.51	11.72	5.21	36.11
HEAT 2005-9	3.19	15.23	13.63	5.83	37.88

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
HEAT 2006-4	1.96	15.34	19.81	5.43	42.54
HEAT 2006-7	2.85	24.23	14.81	6.27	48.16
HEMT 2005-5	2.21	7.92	0.32	0.00	10.45
HEMT 2006-2	2.47	5.49	1.46	0.00	9.42
LBMLT 2005-WL2	2.91	25.05	13.44	4.20	45.60
PPSI 2005-WHQ3	1.72	7.09	9.88	4.45	23.14
SAST 2005-2	2.34	9.56	14.59	4.02	30.51
				Average Delinquency for Credit Suisse	**34.24**

505. **Greenwich Capital Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
AHMA 2007-3	1.41	5.36	24.07	13.40	44.24
ARSI 2006-W5	2.38	7.24	27.24	5.13	41.99
EMLT 2005-1	1.59	11.03	12.77	1.86	27.25
FFML 2006-FF8	2.31	14.07	17.69	4.79	38.86
FHLT 2005-1	2.99	19.89	17.57	5.82	46.27
HELT 2007-FRE1	2.09	8.78	16.63	5.88	33.38
LBMLT 2005-1	2.75	20.98	10.72	2.51	36.96
LBMLT 2005-WL1	3.60	26.94	14.77	5.32	50.63
MMLT 2005-2	1.75	13.35	21.32	3.83	40.25
NAA 2007-S1	3.14	9.24	0.45	0.00	12.83
NHEL 2005-1	2.04	9.55	20.67	4.32	36.58
NHEL 2005-3	2.17	9.85	24.99	6.01	43.02
SVHE 2005-1	3.61	14.25	6.50	3.66	28.02
SVHE 2005-A	3.99	10.76	0.08	0.00	14.83
SVHE 2005-B	3.23	8.45	0.16	0.00	11.84
SVHE 2005-DO1	2.30	27.99	13.05	3.06	46.40
SVHE 2006-OPT2	2.85	7.29	22.61	3.80	36.55
SVHE 2006-OPT5	2.55	8.76	22.62	3.35	37.28
WAMU 2005-AR2	3.72	10.15	16.56	2.15	32.58
				Average Delinquency for Greenwich Capital	**34.72**

506. **Deutsche Bank Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
ACE 2005-HE2	2.16	6.11	13.61	5.89	27.77
ACE 2005-HE5	2.87	18.66	21.46	7.67	50.66
ACE 2005-HE6	1.95	10.16	15.12	8.02	35.25
ACE 2005-HE7	1.34	17.31	23.65	7.31	49.61
ACE 2006-FM2	2.16	34.03	29.98	5.77	71.94
ACE 2006-HE1	1.96	18.64	22.74	7.58	50.92
ACE 2006-NC1	2.18	9.88	22.27	2.69	37.02
ACE 2006-NC2	2.23	41.35	20.43	4.56	68.57
ACE 2006-OP1	2.58	7.51	20.25	3.40	33.74
ACE 2006-SL1	2.64	7.07	0.29	0.00	10.00
ACE 2006-SL2	3.26	8.51	0.36	0.00	12.13
ACE 2007-HE2	2.52	10.79	14.46	7.94	35.71
ALBT 2007-S1	6.14	15.70	0.00	0.00	21.84
NCHET 2005-4	1.85	12.11	12.12	11.17	37.25
				Average Delinquency for Deutsche Bank	**38.74**

507. **Merrill Lynch Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
FFMER 2007-H1	2.29	20.27	20.70	6.03	49.29
MLMI 2005-AR1	2.29	25.40	20.99	4.83	53.51
MLMI 2005-NCB	5.46	3.47	0.48	0.00	9.41
MLMI 2005-SL2	5.93	5.81	0.00	0.00	11.74
MLMI 2005-SL3	2.38	5.00	0.00	0.02	7.40
MLMI 2005-WMC1	3.94	12.20	14.35	1.84	32.33
MLMI 2006-HE4	3.58	24.90	30.78	4.36	63.62
MLMI 2006-HE5	3.08	22.73	27.41	3.58	56.80
MLMI 2006-SL1	1.86	4.72	0.00	0.00	6.58
PPSI 2005-WHQ1	2.75	7.93	13.13	4.04	27.85
RALI 2006-QS17	3.01	7.65	15.78	3.10	29.54
SURF 2005-BC1	4.56	13.10	11.92	4.65	34.23
				Average Delinquency for Merrill Lynch	**31.86**

508. **UBS Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
AMSI 2005-R7	1.35	4.10	15.94	4.14	25.53
ARSI 2006-W3	2.07	8.08	28.62	4.97	43.74
FFML 2005-FF7	2.46	26.07	18.03	4.56	51.12
MABS 2005-FRE1	3.31	11.56	15.53	7.54	37.94
MABS 2005-NC1	1.87	5.96	9.28	5.29	22.40
MABS 2006-AM2	2.48	18.82	27.77	7.67	56.74
MABS 2006-FRE2	1.08	19.90	22.14	9.16	52.28
MABS 2006-HE1	2.33	20.31	17.28	6.41	46.33
MABS 2006-NC2	3.19	14.35	15.60	6.95	40.09
MABS 2006-WMC4	2.55	27.28	15.84	2.43	48.10
				Average Delinquency for UBS	**42.43**

509. **Goldman Sachs Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
CBASS 2006-SL1	3.46	15.96	-0.00	0.00	19.42
GSAMP 2005-HE6	2.13	7.36	14.65	6.16	30.30
GSAMP 2006-HE6	3.56	17.50	23.26	7.07	51.39
GSAMP 2006-S1	6.21	18.39	0.08	0.00	24.68
IXIS 2005-HE4	2.90	25.64	13.98	5.42	47.94
LBMLT 2005-2	2.16	23.23	11.61	4.43	41.43
LBMLT 2006-7	3.00	28.40	13.78	3.26	48.44
LBMLT 2006-WL1	2.92	24.47	14.78	3.67	45.84
				Average Delinquency for Goldman Sachs	**38.68**

510. **J.P. Morgan Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
JPMAC 2005-FLD1	2.07	10.69	22.69	1.58	37.03
JPMAC 2005-OPT1	5.12	7.90	14.58	2.05	29.65
JPMAC 2005-OPT2	2.91	7.56	14.15	1.52	26.14
JPMAC 2005-WMC1	2.13	11.39	24.73	1.75	40.00
JPMAC 2006-CH1	1.67	11.01	18.96	1.00	32.64
JPMAC 2006-CW2	2.20	22.94	26.74	5.10	56.98
JPMAC 2006-WMC1	2.26	12.35	25.21	1.79	41.61
RASC 2006-KS6	2.83	12.77	17.03	3.33	35.96
				Average Delinquency for J.P. Morgan	**37.50**

511. **Countrywide Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
CWALT 2005-82	4.61	22.05	18.35	3.04	48.05
CWALT 2005-J6	1.48	2.28	3.58	0.83	8.17
CWL 2005-11	3.09	28.96	8.64	1.99	42.68
CWL 2006-17	2.89	38.18	15.17	2.83	59.07
CWL 2006-18	3.19	37.13	15.54	3.36	59.22
				Average Delinquency for Countrywide	**43.44**

512. **FBR Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
FBRSI 2005-5	1.37	20.11	19.06	3.73	44.27
POPLR 2005-5	2.66	13.22	15.74	5.80	37.42
				Average Delinquency for FBR	**40.85**

513. **HSBC Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
FFML 2006-FF5	2.66	12.14	20.03	4.22	39.05
HASC 2005-NC2	3.05	29.43	13.6	2.64	48.72
HASC 2006-OPT3	2.70	7.33	17.91	3.38	31.32
				Average Delinquency for HSBC	**39.70**

514. **Banc of America Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
ABFC 2005-HE1	2.58	6.58	16.7	3.88	29.74
ABFC 2006-OPT2	3.1	6.97	27.02	4.63	41.72
BOAA 2006-6	2.3	10.44	10.41	1.04	24.19
RAMP 2006-RZ3	2.55	11.71	18.40	1.34	34.00
				Average Delinquency for Banc of America	**32.41**

515. **GMAC Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
RAMP 2005-EFC4	2.77	10.7	19.45	0.87	33.79
RASC 2006-KS2	2.50	14.93	19.82	1.28	38.53
				Average Delinquency for GMAC	**36.16**

516. **Barclays Performance**

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
ARSI 2005-W3	2.2	6.25	22.22	4.16	34.83
BCAP 2006-AA2	2.13	9.34	19.8	6.29	37.56
CARR 2006-FRE1	2.28	16.18	18.04	23.03	59.53
CARR 2006-FRE2	2.11	16.23	17.44	20.21	55.99
EQLS 2007-1	2.64	10.25	13.01	4.48	30.38
RASC 2006-KS9	2.07	12.57	27.88	1.61	44.13
SABR 2005-FR4	2.95	10.06	37.61	6.46	57.08
SABR 2005-FR5	1.67	11.05	40.59	12.84	66.15
SABR 2006-FR1	1.53	10.97	21.03	5.51	39.04

SABR 2006-WM2	3.26	7.43	28.12	2	40.81
SAST 2007-2	2.43	22.48	13.60	3.16	41.67
				Average Delinquency for Barclays	**46.11**

VIII. COUNT I AGAINST THE WALL STREET BANK DEFENDANTS: VIOLATION OF MASSACHUSETTS UNIFORM SECURITIES ACT, MASS. GEN. LAWS CH. 110A § 410(A)(2)

517. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 516.

518. Each of the Securities was offered or sold to the Plaintiff in Massachusetts and purchased directly or for the benefit of the Clients. Each Wall Street Bank Defendant offered or sold Securities to Plaintiff in Massachusetts.

519. Massachusetts General Laws Chapter 110A, § 101 provides that "it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

520. Massachusetts General Laws Chapter 110A, § 410(a)(2) provides for civil liability in the event of any offer or sale of securities by means of an untrue statement or material omission.

521. Each Wall Street Bank Defendant made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made not misleading, in connection with the offer or sale of the Securities to Plaintiff.

522. In connection with the offer or sale of the Securities to Plaintiff, each Wall Street Bank Defendant violated § 410(a)(2) by making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made not misleading, concerning, *inter alia*, (1) the Mortgage Originators' underwriting standards that were

purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Bank Defendants' due diligence of the loans and the Mortgage Originators' underwriting practices; and (5) various forms of credit enhancement applicable to certain tranches of Securities. Plaintiff made the decision to purchase the Securities on behalf of the Clients not knowing of the Defendants' untruths or omissions.

523. The Wall Street Bank Defendants' actions and conduct violated Massachusetts General Laws Ch. 110A.

524. Plaintiff has been damaged by the Wall Street Bank Defendants' violations of the Massachusetts Securities Act.

IX. COUNT II AGAINST THE DEPOSITOR DEFENDANTS: VIOLATION OF MASSACHUSETTS UNIFORM SECURITIES ACT, MASS. GEN. LAWS CH. 110A § 410(A)(2)

525. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 524.

526. Each of the Securities was offered or sold to the Plaintiff in Massachusetts and purchased directly or for the benefit of the Clients. Each Depositor Defendant offered or sold Securities to Plaintiff in Massachusetts.

527. Massachusetts General Laws Chapter 110A, § 101 provides that "it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

528. Massachusetts General Laws Chapter 110A, § 410(a)(2) provides for civil liability in the event of any offer or sale of securities by means of an untrue statement or material omission.

529. Each Depositor Defendant made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made not misleading, in connection with the offer or sale of the Securities to Plaintiff.

530. In connection with the offer or sale of the Securities to Plaintiff, each Depositor Defendant violated § 410(a)(2) by making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made not misleading, concerning, *inter alia*, (1) the Mortgage Originators' underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Bank Defendants' due diligence of the loans and the Mortgage Originators' underwriting practices; and (5) various forms of credit enhancement applicable to certain tranches of Securities. Plaintiff made the decision to purchase the Securities on behalf of the Clients not knowing of the Defendants' untruths or omissions.

531. The Depositor Defendants' actions and conduct violated Massachusetts General Laws Ch. 110A.

532. Plaintiff has been damaged by the Depositor Defendants' violations of the Massachusetts Securities Act.

X. COUNT III AGAINST THE WALL STREET BANK DEFENDANTS: VIOLATION OF MASSACHUSETTS UNIFORM SECURITIES ACT, MASS. GEN. LAWS CH. 110A § 410(B)

533. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 532.

534. Each of the Securities was offered or sold to the Plaintiff in Massachusetts and purchased directly or for the benefit of the Clients. Each Wall Street Bank Defendant offered or sold Securities to Plaintiff in Massachusetts.

535. Massachusetts General Laws Chapter 110A, § 101 provides that "it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

536. Massachusetts General Laws Chapter 110A, § 410(b) provides that "every broker-dealer or agent who materially aids in the sale [of securities by a seller liable under subsection (a) is] also liable jointly and severally with and to the same extent as the seller . . . ."

537. Each Wall Street Bank Defendant materially aided in the offer or sale of Securities to Plaintiff pursuant to an untrue statement of a material fact or omission to state a material fact necessary in order to make the statements made not misleading, in connection with the offer or sale of the Securities to Plaintiff.

538. In connection with the offer or sale of the Securities to Plaintiff, each Wall Street Bank Defendant violated § 410(b) by materially aiding the offer or sale of Securities pursuant to an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made not misleading, concerning, *inter alia*, (1) the Mortgage Originators' underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Bank Defendants' due diligence of the loans and the Mortgage Originators' underwriting practices; and (5) various forms of credit enhancement applicable to

certain tranches of Securities. Plaintiff made the decision to purchase the Securities on behalf of the Clients not knowing of the Defendants' untruths or omissions.

539. The Wall Street Bank Defendants' actions and conduct violated Massachusetts General Laws Ch. 110A.

540. Plaintiff has been damaged by the Wall Street Bank Defendants' violations of the Massachusetts Securities Act.

XI. RELIEF REQUESTED

WHEREFORE, Plaintiff requests entry of final judgment, as expressly provided by Mass. Gen. Laws Ch. 110A, § 410, as follows: (i) recovery of the consideration paid for the Securities, together with statutory interest from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the Securities, upon the tender of the Securities, or (ii) damages in the amount that would be recoverable upon a tender of the Securities less the value of the Securities when the buyer disposed of them, statutory interest from the date of disposition, costs, and reasonable attorneys' fees. In addition, Plaintiff requests such other and further relief as the Court deems just and proper.

XII. JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

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Dated: July 9, 2010.

CAMBRIDGE PLACE INVESTMENT MANAGEMENT INC.

By its attorneys,

T. Christopher Donnelly
(BBO # 129930)
Michael S. D'Orsi
(BBO # 566960)
DONNELLY, CONROY & GELHAAR, LLP
One Beacon Street, 33d Floor
Boston, MA 02108
Tel: (617) 720-2880
Fax: (617) 720-3554
tcd@dcglaw.com
msd@dcglaw.com

Of Counsel *(pro hac vice* applications forthcoming):

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Gerald H. Silk
David L. Wales
Jai K. Chandrasekhar
Lauren A. McMillen
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444
jerry@blbglaw.com
dwales@blbglaw.com
jai@blbglaw.com
lauren@blbglaw.com

-and-

David R. Stickney
Timothy A. Delange
Takeo Kellar
Matthew Jubenville
12481 High Bluff Drive, Suite 300
San Diego, CA 92130

Tel: (858) 793-0070
Fax: (858) 793-0323
davids@blbglaw.com
timothyd@blbglaw.com
takeok@blbglaw.com
matthewj@blbglaw.com

Exhibit 3

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION NO.

11 0555

CAMBRIDGE PLACE INVESTMENT MANAGEMENT INC.,

Plaintiff,

v.

MORGAN STANLEY & CO., INC.; CITIGROUP GLOBAL MARKETS INC.; CREDIT SUISSE SECURITIES (USA) LLC; RBS SECURITIES, INC.; DEUTSCHE BANK SECURITIES, INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.; UBS SECURITIES LLC; GOLDMAN, SACHS & CO.; J.P. MORGAN SECURITIES INC.; COUNTRYWIDE SECURITIES CORPORATION; FBR CAPITAL MARKETS & CO.; HSBC SECURITIES (USA), INC.; BANC OF AMERICA SECURITIES LLC; RESIDENTIAL FUNDING SECURITIES, LLC; BARCLAYS CAPITAL INC.; ACE SECURITIES CORPORATION; AMERIQUEST MORTGAGE SECURITIES INC.; ARGENT SECURITIES INC.; ASSET BACKED FUNDING CORPORATION; ASSET BACKED SECURITIES CORPORATION; BEAR STEARNS ASSET BACKED SECURITIES I LLC; CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP.; CWABS, INC.; FBR SECURITIZATION, INC.; FINANCIAL ASSET SECURITIES CORP.; FREMONT MORTGAGE SECURITIES CORPORATION; GS MORTGAGE SECURITIES CORP.; HSI ASSET SECURITIZATION CORPORATION; LONG BEACH SECURITIES CORP.;

COMPLAINT and
JURY DEMAND



[CAPTION CONTINUED ON NEXT PAGE]

MERRILL LYNCH MORTGAGE INVESTORS, INC.; MORGAN STANLEY ABS CAPITAL I INC.; MORGAN STANLEY CAPITAL I INC.; MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC.; NEW CENTURY MORTGAGE SECURITIES, INC.; NOVASTAR MORTGAGE FUNDING CORPORATION; PARK PLACE SECURITIES, INC.; POPULAR ABS, INC.; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; RESIDENTIAL ASSET SECURITIES CORPORATION; SAXON ASSET SECURITIES COMPANY; SECURITIZED ASSET BACKED RECEIVABLES LLC; and STANWICH ASSET ACCEPTANCE COMPANY, L.L.C.,

Defendants.

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I. NATURE OF THE ACTION

1. Cambridge Place Investment Management Inc. ("Plaintiff") alleges the following for its Complaint for damages and additional relief for the Wall Street Bank Defendants and Depositor Defendants (defined below) violations of the Massachusetts Securities Act arising from their offers to sell and sales of the residential mortgaged-backed securities set forth in Appendix A (the "Securities") and for materially aiding such sales.[1] The Defendants identified below in ¶¶ 15-32 offered or sold approximately $825 million of residential mortgage-backed securities to the investor Plaintiff (as defined in ¶¶ 11-13), by means of untrue statements of material facts and omissions of material fact. As a result of Defendants' untrue statements to Plaintiff in Massachusetts, Plaintiff has incurred losses exceeding $260 million. Defendants' written and oral untrue statements concerned: (1) the mortgage originators' underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the loan-to-value ("LTV") ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Bank Defendants' due diligence of the loans and the mortgage originators' underwriting practices; (5) various forms of credit enhancement applicable to certain tranches of Securities; and (6) whether the issuing trust for each offering had obtained good title to the mortgage loans comprising the pool for the offering.

---

[1] In a separate complaint, Plaintiff asserts additional and related claims for Defendants' offers to sell and sales of additional securities. *See Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc.*, No. 10-2741 (Mass. Super. Ct. Suffolk Cty filed July 9, 2010). Certain of the Defendants removed that action to the United States District Court for the District of Massachusetts, and Plaintiff moved to remand. On December 28, 2010, Chief Magistrate Judge Judith Dein issued a Report and Recommendation recommending that Plaintiff's motion to remand be granted. On January 18, 2011, Defendants filed an objection to the Chief Magistrate Judge's Report and Recommendation, and Plaintiff replied to Defendants' objection on February 1, 2011. As of the date of this Complaint, Defendants' objection is *sub judice*.

2. Defendants statements of material facts were not true. In reality, each of the Defendants offered to sell and sold Securities backed by mortgages that came from a small group of now notorious subprime mortgage originators that violated their own underwriting standards, used faulty appraisals that overvalued the mortgaged properties, and accepted untrue information in loan applications.

3. The Wall Street Bank Defendants were complicit in creating an environment of improper lending practices by the mortgage originators; indeed, in many instances the Wall Street Banks had personnel on site at the mortgage originators to monitor their loan underwriting practices. The Wall Street Bank Defendants also fostered the environment for, permitted, and profited from the mortgage originators rampant violations of sound lending practices. Driven to profit from the lucrative securitization business, the Wall Street Bank Defendants demanded enormous volumes of loans to securitize and sell to investors in the form of residential mortgage backed securities (RMBS), leading to erosion in lending standards.

4. As a result of the relationships between mortgage originators and the Wall Street Bank Defendants, the Wall Street Banks had superior access to material adverse information about the business and lending practices of the mortgage originators and data about the loans, such as loan attributes, beyond what was conveyed to investors in the offering documents for the RMBS. Nevertheless, the Wall Street Bank Defendants repeated the untrue information from the mortgage originators in the offering documents used to sell the RMBS to investors.

5. While the Wall Street Banks stated to Plaintiff that they performed careful due diligence into the loans and the mortgage originators underwriting practices, the Wall Street Banks conducted inadequate due diligence, ignored material adverse due diligence findings, and failed to satisfy their own responsibilities to investors. Thus, the statements of material facts that these Wall Street Banks made to Plaintiff in Massachusetts while offering or selling the Securities were untrue and omitted material information.

6. In addition, the Wall Street Banks materially aided the Depositor Defendants, who also offered or sold the Securities to the Plaintiff. The Depositor Defendants are Special Purpose

Vehicles ("SPVs") that were created as part of the securitization process to acquire and securitize the loans for sale to investors. Working together with the Wall Street Banks, the Depositor Defendants drafted the offering documents that contained the untrue statements of material facts and circulated them to investors.

7. The Plaintiff brings this action to recover damages incurred as a result of the Defendants' offer or sale of securities in Massachusetts by means of untrue statements of material facts or omissions of material facts in violation of Mass. Gen. Laws Ch. 110A, § 410 (the "Massachusetts Securities Act").

8. Plaintiff alleges the following upon personal knowledge as to itself and its own acts and upon information and belief as to all other matters. Plaintiff's information and belief are based on the investigation conducted by and through counsel. The investigation included interviews with confidential witnesses; documents filed in connection with investigations and actions brought by the United States Securities and Exchange Commission (the "SEC"), the Attorneys General of Massachusetts, New York, and California, and private litigants; testimony before the Federal Financial Crisis Inquiry Commission; a report of a court-appointed bankruptcy trustee; news reports; interviews published in the financial press; Congressional testimony; and other available information. Some of the facts related to Plaintiff's allegations are known only by the Defendants named herein, or are exclusively within their custody or control. Plaintiff believes that additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.

II. JURISDICTION AND VENUE

9. Jurisdiction is proper because the offer or sale of the Securities by the Defendants occurred in Massachusetts (see Mass. Gen. Laws Ch. 110A, § 414). In addition, Plaintiff's principal place of business is located in the Commonwealth of Massachusetts, and many of the Defendants have offices in Massachusetts. The amount in controversy exceeds $25,000.

10. Venue is proper pursuant to Mass. Gen. Laws Ch. 223, § 1 and Superior Court Administrative Directive No. 09-01 because many of the Defendants have usual places of business in Suffolk County.

III. THE PARTIES

a. Plaintiff

11. Cambridge Place Investment Management Inc. (□CPIM□) is a Delaware corporation with its principal place of business in Concord, Massachusetts.

12. CPIM was responsible for the sourcing, review, analysis, and purchase decisions for U.S. investments for its clients, including Caliber Global Investment Ltd., CAMBER 3 PLC, CAMBER 4 PLC, CAMBER 5 Ltd, CAMBER 7 PLC, CPIM Structured Credit Fund 20 LP, CPIM Structured Credit Fund 500 LP, CPIM Structured Credit Fund 1000 LP, and CPIM Structured Credit Fund 1500 LP (collectively, the □Clients□).

13. CPIM is the exclusive assignee of, and the exclusive attorney-in-fact for and with respect to, all of the Clients□ claims relating to the offer and sale of Securities that are the subject of this Complaint. CPIM, as such exclusive assignee and attorney-in-fact of the Clients, is referred to herein as the □Plaintiff.□

14. Plaintiff was solicited in Massachusetts by investment firms, underwriters, and dealers (the □Wall Street Bank Defendants□) and by the Depositor Defendants (as defined in □31), who offered or sold the Securities to Plaintiff.

b. The Wall Street Bank Defendants

15. **Morgan Stanley & Co., Inc.**: Defendant Morgan Stanley & Co. Incorporated (□Morgan Stanley□) is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 1585 Broadway, New York, New York 10036 and an office located at 1 International Place, Boston, Massachusetts 02110. The Defendant Morgan Stanley is the broker-dealer subsidiary of Morgan Stanley, a Delaware corporation headquartered in New York, New York. Defendant Morgan Stanley offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls

and sending documents to Plaintiff in Massachusetts. Morgan Stanley is licensed to sell securities in Massachusetts. The Securities that Morgan Stanley offered or sold to Plaintiff are listed in Appendix A.

16. **Citigroup Global Markets, Inc.**: Defendant Citigroup Global Markets, Inc. ("Citigroup") is a New York corporation and an SEC-registered broker-dealer with its principal place of business located at 388 Greenwich Street, New York, New York. Citigroup representatives from Citigroup's office located at 2 International Place, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Citigroup is licensed to sell securities in Massachusetts. The Securities that Citigroup offered or sold to Plaintiff are listed in Appendix A.

17. **Credit Suisse Securities (USA) LLC**: Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at 11 Madison Avenue, New York, New York. Credit Suisse representatives from Credit Suisse's office located at 1 Federal Street, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Credit Suisse is licensed to sell securities in Massachusetts. The Securities that Credit Suisse offered or sold to Plaintiff are listed in Appendix A.

18. **RBS Securities, Inc., f/k/a Greenwich Capital Markets, Inc.**: Defendant RBS Securities, Inc., f/k/a Greenwich Capital Markets, Inc. ("Greenwich Capital"), is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 600 Washington Boulevard, Stamford, Connecticut. Greenwich Capital representatives from Greenwich Capital's office located at 28 State Street, Boston, Massachusetts 02109, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Greenwich

Capital is licensed to sell securities in Massachusetts. The Securities that Greenwich Capital offered or sold to Plaintiff are listed in Appendix A.

19. **Deutsche Bank Securities Inc.**: Defendant Deutsche Bank Securities Inc. ("Deutsche Bank") is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 60 Wall Street, New York, New York. Deutsche Bank representatives from Deutsche Bank's office located at 225 Franklin Street, Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Deutsche Bank is licensed to sell securities in Massachusetts. The Securities that Deutsche Bank offered or sold to Plaintiff are listed in Appendix A.

20. **Merrill Lynch, Pierce, Fenner & Smith, Inc.**: Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at One Bryant Park, New York, New York. Merrill Lynch is a wholly owned subsidiary of Merrill Lynch & Co., which became a wholly owned subsidiary of Bank of America Corporation on January 1, 2009. Merrill Lynch representatives from Merrill Lynch's office located at 1 Financial Center, Boston, Massachusetts 02111, offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Merrill Lynch is licensed to sell securities in Massachusetts. The Securities that Merrill Lynch offered or sold to Plaintiff are listed in Appendix A.

21. **UBS Securities LLC**: Defendant UBS Securities LLC ("UBS") is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at 677 Washington Boulevard, Stamford, Connecticut 06901 and an office located at 1 International Place, Boston, Massachusetts 02110. UBS offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. UBS is licensed to

sell securities in Massachusetts. The Securities that UBS offered or sold to Plaintiff are listed in Appendix A.

22. **Goldman, Sachs & Co.**: Defendant Goldman, Sachs & Co. ("Goldman Sachs") is a New York partnership and an SEC-registered broker-dealer with its principal place of business located at 200 West Street, New York, NY 10282. Goldman Sachs maintains an office at 125 High Street, Boston, Massachusetts 02110. Goldman Sachs offered or sold the Securities to Plaintiff in at least one face-to-face meeting and by making telephone calls and sending documents to Plaintiff in Massachusetts. Goldman Sachs is licensed to sell securities in Massachusetts. The Securities that Goldman Sachs offered or sold to Plaintiff are listed in Appendix A.

23. **J.P. Morgan Securities Inc.:** Defendant J.P. Morgan Securities Inc. ("J.P. Morgan") is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 383 Madison Avenue, New York, New York 10179. J.P. Morgan is a wholly owned subsidiary of JPMorgan Chase & Co., a financial holding company with its principal place of business located at 270 Park Avenue, New York, New York 10017. J.P. Morgan maintains an office at 2 International Place, Boston, Massachusetts 02110. J.P. Morgan offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. J.P. Morgan is licensed to sell securities in Massachusetts. The Securities that J.P. Morgan offered or sold to Plaintiff are listed in Appendix A.

24. **J.P. Morgan, successor to Bear Stearns:** In addition to Plaintiff's claims based on J.P. Morgan's own offers or sales of Securities to Plaintiff, Plaintiff also brings claims against J.P. Morgan as successor-in-interest to Bear Stearns & Co., Inc. ("Bear Stearns"), which was a Delaware corporation and was an SEC-registered broker-dealer with its principal place of business located at 383 Madison Avenue, New York, New York 10179. On October 1, 2008, J.P. Morgan merged with and into Bear Stearns, with the surviving entity being Defendant J.P. Morgan. Bear Stearns representatives from Bear Stearns' office located at 1 Federal Street,

Boston, Massachusetts 02110, offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Bear Stearns was licensed to sell securities in Massachusetts. The Securities that Bear Stearns offered or sold to Plaintiff are listed in Appendix A.

25. **Countrywide Securities Corporation**: Defendant Countrywide Securities Corporation ("Countrywide") is a California corporation with its principal place of business located at 4500 Park Granada, Calabasas, California. Countrywide was an SEC-registered broker-dealer during the relevant period. Countrywide was a subsidiary of Countrywide Financial Corporation, which merged on July 1, 2008 with a wholly owned subsidiary of Bank of America Corporation, making Countrywide an indirect wholly owned subsidiary of Bank of America. Countrywide offered or sold the Securities to Plaintiff in Massachusetts by making telephone calls and sending documents to Plaintiff in Massachusetts. The Securities that Countrywide offered or sold to Plaintiff are listed in Appendix A.

26. **FBR Capital Markets & Co., f/k/a/ Friedman, Billings, Ramsey & Co., Inc.**: Defendant FBR Capital Markets & Co., formerly known as Friedman, Billings, Ramsey & Co., Inc. ("FBR"), is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 1001 Nineteenth Street North, Arlington, Virginia 22209. FBR maintains an office at 100 Federal Street, Boston, Massachusetts 02110. FBR offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. FBR is licensed to sell securities in Massachusetts. The Securities that FBR offered or sold to Plaintiff are listed in Appendix A.

27. **HSBC Securities (USA), Inc.**: Defendant HSBC Securities (USA), Inc. ("HSBC") is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business located at 452 Fifth Avenue, New York, New York. HSBC offered or sold the Securities to Plaintiff in Massachusetts by making telephone calls and sending documents to

Plaintiff in Massachusetts. HSBC is licensed to sell securities in Massachusetts. The Securities that HSBC offered or sold to Plaintiff are listed in Appendix A.

28. **Banc of America Securities LLC**: Defendant Banc of America Securities LLC (□Banc of America□) is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at One Bryant Park, New York, New York 10036. Banc of America offered or sold the Securities to Plaintiff at face-to-face meetings, including meetings in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Banc of America is licensed to sell securities in Massachusetts. The Securities that Banc of America offered or sold to Plaintiff are listed in Appendix A.

29. **Residential Funding Securities, LLC, d/b/a GMAC RFC Securities**: Defendant Residential Funding Securities, LLC, f/k/a Residential Funding Securities Corporation (□GMAC□), is a Delaware limited liability company and an SEC-registered broker-dealer with its principal place of business located at One Meridan Crossings, Richfield, Minnesota 55423. Representatives of GMAC offered or sold the Securities to Plaintiff in at least one meeting in Massachusetts and by making telephone calls and sending documents to Plaintiff in Massachusetts. The Securities that GMAC offered or sold to Plaintiff are listed in Appendix A.

30. **Barclays Capital Inc.**: Defendant Barclays Capital Inc. (□Barclays□) is a Connecticut corporation and an SEC-registered broker-dealer with its principal place of business located at 745 Seventh Avenue, New York, New York 10019, and an office at 125 High Street, Boston, Massachusetts 02110. Barclays offered or sold the Securities to Plaintiff at face-to-face meetings, including at least one meeting in Massachusetts, and by making telephone calls and sending documents to Plaintiff in Massachusetts. Barclays is licensed to sell securities in Massachusetts. The Securities that Barclays offered or sold to Plaintiff are listed in Appendix A.

c. The Depositor Defendants

31. To securitize and sell mortgage loans to investors, financial institutions created SPVs to serve various roles in the securitization process. □Depositors□purchased or acquired the

mortgage loans, securitized them, and were the "issuers" of the Securities. *See* 17 CFR § 230.191. Working together with the Wall Street Banks, the Depositor Defendants set forth in the table below prepared and circulated the registration statements, accompanying prospectuses, and subsequent prospectus supplements, or private placement memoranda, through which the Depositor Defendants and the Wall Street Bank Defendants offered and sold the Securities and filed the registration statements, prospectuses, and prospectus supplements with the SEC.

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
a	**Ace Securities Corporation**, 6525 Morrison Blvd., Ste. 318, Charlotte, NC 28211 (Delaware)	ACE 2005-HE7, ACE 2006-NC1
b	**Ameriquest Mortgage Securities Inc.**, 1100 Town & Country Road, Orange, CA 92868 (Delaware)	AMSI 2003-AR2, AMSI 2004-R7, AMSI 2005-R1, AMSI 2005-R9
c	**Argent Securities Inc.**, 1100 Town & Country Rd, Orange, CA 92868 (Delaware)	ARSI 2004-W7, ARSI 2004-W9, ARSI 2005-W2, ARSI 2005-W5
d	**Asset Backed Funding Corp.**, 214 North Tryon St, Charlotte, NC 28255 (Delaware)	ABFC 2005-HE1, ABFC 2005-HE2
e	**Asset Backed Securities Corporation**, 11 Madison Ave., New York, NY 10010 (Delaware)	ABSHE 2004-HE1, ABSHE 2004-HE7, ABSHE 2004-HE8
f	**Bear Stearns Asset Backed Securities I LLC**, 383 Madison Ave, New York, NY 10179 (Delaware)	AMIT 2005-1, BSABS 2004-FR3, BSABS 2005-EC1, BSABS 2005-HE1, BSABS 2005-HE11, BSABS 2005-HE4, BSABS 2005-HE7, BSABS 2005-HE9, BSABS 2006-HE2, BSABS 2006-HE3, BSNIM 2004-HE5N, CARR 2005-NC2, IRWHE 2005-A, SACO 2005-8, SACO 2006-5,
g	**Bear Stearns Asset Backed Securities LLC**, 383 Madison Ave, New York, NY 10179 (Delaware)	BSABS 2004-HE3

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
h	**Credit Suisse First Boston Mortgage Securities Corp.**, 11 Madison Ave., New York, NY 10010 (Delaware)	HEAT 2004-3, HEAT 2004-5, HEAT 2004-7, HEAT 2005-2, HEAT 2005-8, HEAT 2005-9,
i	**CWABS, Inc.**, 4500 Park Granada, Calabasas, CA 91302 (Delaware)	CWL 2004-BC4, CWL 2005-BC5, CWL 2006-6, CWL 2007-2, AMIT 2005-2
j	**CWHEQ, Inc.**, 4500 Park Granada, Calabasas, CA 91302 (Delaware)	CWL 2006-S10
k	**FBR Securitization, Inc.**, 1001 Nineteenth St. North, Arlington, VA 22209 (Delaware)	FBRSI 2005-5
l	**Financial Asset Securities Corp.**, 600 Steamboat Road, Greenwich, CT 06830 (Delaware)	AMIT 2006-1, EMLT 2005-1, MMLT 2005-1, NCMT 2006-1, SVHE 2005-1, SVHE 2005-4, SVHE 2005-B
m	**Fremont Mortgage Securities Corp.**, 2727 East Imperial Highway, Brea, CA 92821 (Delaware)	FHLT 2004-C, FHLT 2005-E, FHLT 2006-B, FHLT 2006-C
n	**Greenwich Capital Acceptance, Inc.** 600 Steamboat Road, Greenwich, CT 06830 (Delaware)	LUM 2006-2
o	**GS Mortgage Securities Corp.**, 85 Broad St, New York, NY 10004 (Delaware)	GPMF 2006-OH1
p	**HSI Asset Securitization Corporation**, 452 Fifth Ave, New York, NY 10018 (Delaware)	HASC 2005-NC1
q	**Long Beach Securities Corp.**, 1100 Town & Country Road, Orange, CA 92868 (Delaware)	LBMLT 2003-4, LBMLT 2005-WL2, LBMLT 2005-1, LBMLT 2005-WL1
r	**Merrill Lynch Mortgage Investors, Inc.**, 250 Vesey Street, 4 World Financial Center, 10 Fl. New York, NY 10080 (Delaware)	MLMI 2004-SL1, MLMI 2004-WMC1, MLMI 2005-FM1, MLMI 2005 WMC-1

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
s	**Morgan Stanley ABS Capital I Inc.**, 1585 Broadway, New York, NY 10036 (Delaware)	AMIT 2005-4, IXIS 2006-HE2, MSAC 2004-HE4, MSAC 2004-NC3, MSAC 2004-NC4, MSAC 2005-NC2, MSAC 2005-WMC2, MSM 2005-10
t	**Mortgage Asset Securitization Transactions, Inc.**, 1285 Ave of the Americas, New York, NY 10019 (Delaware)	MABS 2004-WMC3
u	**New Century Mortgage Securities LLC**, 18400 Von Karman, Irvine, CA 92612 (Delaware)	NCHET 2004-4, NCHET 2005-3
v	**New Century Mortgage Securities, Inc.**, 18400 Von Karman, Irvine, CA 92612 (Delaware)	NCHET 2003-6, NCHET 2005-D
w	**NovaStar Mortgage Funding Corporation**, 8140 Ward Parkway, Ste. 300, Kansas City, MO 64114 (Delaware)	NHEL 2004-4
x	**Option One Mortgage Acceptance Corporation** 3 Ada Irvine, CA 92618 (Delaware)	OOMLT 2005-4, OOMLT 2006-1
y	**Park Place Securities, Inc.**, 1100 Town & Country Rd., Orange, CA 92868 (Delaware)	PPSI 2005-WHQ4, PPSI 2004-WCW2, PPSI 2004-WCW1, PPSI 2004-WHQ2, PPSI 2004-MHQ1, PPSI 2005-WCH1, PPSI 2005-WCW1, PPSI 2005-WHQ1
z	**Popular ABS, Inc.**, 103 Springer Building, 3411 Silverside Road, Wilmington, DE 19810 (Delaware)	POPLR 2007-A
aa	**Residential Asset Mortgage Products, Inc.**, 8400 Normandale Lake Boulevard Ste 250, Minneapolis, MN 55437 (Delaware)	RAMP 2006-NC2

	Depositor Defendant, Principal Place of Business (State of Incorporation)	Offerings
bb	**Residential Asset Securities Corporation**, 8400 Normandale Lake Boulevard Ste 250, Minneapolis, MN 55437 (Delaware)	RASC 2004-KS12, RASC 2005-KS9
cc	**Saxon Asset Securities Company**, 4860 Cox Rd., Ste. 300, Glen Allen, VA 23060 (Virginia)	SAST 2005-2, SAST 2006-3
dd	**Securitized Asset Backed Receivables LLC**, 200 Park Avenue, New York, NY 10166 (Delaware)	FFML 2004-FF8, SABR 2004-OP1, SABR 2004-OP2
ee	**Stanwich Asset Acceptance Company, L.L.C.**, 9 Greenwich Office Park, Greenwich, CT 06831 (Delaware)	CARR 2005-NC4, CARR 2006-NC1, CARR 2006-NC3

32. The Defendants identified in ¶ 31 are collectively referred to herein as the "Depositor Defendants."

IV. FACTUAL BACKGROUND

a. The Mechanics Of Mortgage Securitization

33. Mortgage pass-through securities represent interests in a pool of mortgages; the securities are shares in the pool that are sold to investors. The securities represent an equity interest in the "issuing trust" that holds the pool. The pass-through securities entitle the holder to payments from the pool of mortgage loans. Although the structure and underlying collateral of the mortgages may vary, the basic principle of pass-through securities remains the same: The cash flow from the pool of mortgages is "passed through" to the securities holders when payments are made by the underlying mortgage borrowers.

34. The first step in creating a mortgage pass-through security is the acquisition by a "depositor" of an inventory of loans from a "sponsor" or "seller," which either originates the loans or acquires the loans from other mortgage originators, in exchange for cash. The type of loans in the inventory may vary, including conventional, fixed-rate or adjustable-rate mortgage

loans (or mortgage participations), secured by first liens, junior liens, or a combination of first and junior liens, with various lifetimes to maturity. The depositor then transfers, or deposits, the acquired pool of loans to an "issuing trust."

35. The depositor then securitizes the pool of loans in the issuing trust so that the rights to the cash flows from the inventory can be sold to investors. The securitization transactions are structured such that the risk of loss is divided among different levels of investment, or "tranches." Tranches consist of multiple series of related RMBS offered as part of the same offering, each with a different level of risk and reward. Any losses on the underlying loans - whether due to default, delinquency, or otherwise - are generally applied in reverse order of seniority. As such, the most senior tranches of pass-through securities are rated as the best quality, or "AAA/Aaa." Junior tranches, which usually obtained lower ratings, ranging from "AA/Aa" to "BB/Bb," are less insulated from risk, but offer greater potential returns.

36. Once the tranches are established, the issuing trust passes the securities back to the depositor, who becomes the issuer of those securities, like the Depositor Defendants herein. The depositor then passes the securities to one or more Wall Street banks, who offer and sell the securities to investors in exchange for cash that is passed back to the depositor, minus any fees owed to the Wall Street banks.

37. Wall Street banks play a critical role in the securitization process. They underwrite the sale of the securities, that is, they purchase the securities from the issuing trust through a depositor and then sell them to investors. Importantly, the Wall Street banks provide the information that potential investors use to decide whether to purchase the securities.

38. Because the cash flow from the loans in the collateral pool of a securitization is the source of funds to pay the holders of the securities issued by the trust, the credit quality of the securities depends upon the credit quality of the loans in the collateral pool. The most important information about the credit quality of the loans is contained in the "loan files" that the mortgage originator develops while making the loans. For residential mortgage loans, each loan file normally contains documents including the borrower's application for the loan; verification of

the borrower's income, assets, and employment; references; credit reports on the borrower; an appraisal of the property that will secure the loan and provide the basis for important measures of credit quality, such as loan-to-value ratios; and a statement of the occupancy status of the property.

39. The collateral pool of loans for each securitization usually includes thousands of loans. Instead of each potential investor reviewing thousands of loan files, the Wall Street banks that underwrite the sale of the securities in a securitization are responsible for gathering, verifying, and presenting to potential investors accurate and complete information about the credit quality and characteristics of the loans that are deposited into the trust.

b. Securitization Of Mortgage Loans: The Traditional Model

40. In the 1980s and 1990s, mortgage originators and Wall Street banks fulfilled their respective obligations to comply with underwriting standards and provide accurate information to investors. The mortgage securitization business, therefore, functioned well, to the benefit of home buyers, financial institutions, and investors. For the securitization model to work properly, the mortgage originators and the Wall Street banks must perform their roles properly. In particular, it is necessary for the mortgage originators to underwrite loans and appraise properties in accordance with their stated standards and to assure accurate information is obtained from loan applicants. Likewise, it is necessary for the Wall Street banks to perform adequate due diligence into the loan pools and to provide accurate information to investors.

41. In the traditional mortgage model, a mortgage originator originated loans to borrowers, held the loans to maturity, and therefore retained the credit (default) risk. As such, under the traditional model, the mortgage originator had a financial incentive to ensure that (1) the borrowers had the financial ability to repay the loans, and (2) the underlying properties had sufficient value to enable the mortgage originator to recover its principal and interest if the borrowers defaulted on the loans.

42. Traditionally, mortgage originators financed their mortgage business primarily using funds from depositors, retained ownership of the mortgage loans they originated, and

received a direct benefit from the income flowing from the mortgages. When a mortgage originator held a mortgage through the term of the loan, the mortgage originator received revenue from the borrower's payment of interest and fees. The mortgage originator also bore the risk of loss if the borrower defaulted and the value of the collateral was not sufficient to repay the loan. As a result, the mortgage originator had an economic incentive to verify the borrower's creditworthiness through prudent underwriting and to obtain an accurate appraisal of the value of the underlying property before issuing the mortgage loan.

43. With the advent of securitization, the traditional "originate to hold" model gave way to the "originate to distribute" model, in which mortgage originators sell the mortgages and transfer credit risk to investors through the issuance and sale of RMBS. Through securitization, mortgage originators no longer hold the mortgage loans to maturity. By selling the mortgages to investors through Wall Street banks, the mortgage originators obtain funds, enabling them to make more loans. Securitization also enables mortgage originators to earn most of their income from transaction and loan-servicing fees, rather than from the spread between interest rates paid on deposits and interest rates received on mortgage loans as in the traditional model. Thus, securitization gives the mortgage originators an incentive to increase the number of mortgages they issue and reduces their incentive to ensure the mortgages' credit quality. However, the contractual terms of the securitization transactions and good business practices obligate mortgage originators to underwrite loans in accordance with their stated policies and to obtain accurate appraisals of the mortgaged properties.

44. During the 1980s and 1990s, the mortgage securitization business grew rapidly, making it possible for mortgage originators to make more loans than would have been possible using only the traditional primary source of funds from deposits. During that period, mortgage originators made loans in accordance with their stated underwriting and appraisal standards and provided accurate information about the loans, borrowers, and mortgaged properties to the Wall Street banks that securitized the loans. In turn, the Wall Street banks provided accurate information about the loans, borrowers, and properties to investors in the RMBS. In the 1980s

and 1990s, most mortgage securitizations were conducted through the major Government Sponsored Enterprises (the "Agencies"), *i.e.*, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Government National Mortgage Association ("Ginnie Mae"). The Agencies purchased loans from mortgage originators and securitized the loans. These Agency securitizations had high credit quality because the Agencies required the underlying loans to be originated in accordance with strict underwriting guidelines. Most non-Agency mortgage securitizations during this period also complied with the Agencies' underwriting standards.

c. The Systemic Violation Of Underwriting And Appraisal Standards In The Mortgage Securitization Industry

45. The securitization of mortgage loans fundamentally shifts the risk of loss from the mortgage originator to the investors who purchase RMBS. As discussed in Section IV.b above, traditionally, the mortgage originator had an economic incentive to verify mortgage borrowers' creditworthiness and obtain accurate appraisals of the value of the underlying properties before issuing mortgage loans because the mortgage originator held the loans to maturity. In securitizations where the mortgage originator instead sells the loans to Wall Street banks, the mortgage originator does not have the same economic interest in verifying borrowers' creditworthiness or obtaining accurate appraisals in the loan origination process. Nevertheless, the mortgage securitization process worked well during the 1980s and 1990s because both mortgage originators and Wall Street banks played by the rules and complied with their obligations to underwrite loans responsibly and provide accurate information to investors in RMBS.

46. Mortgage originators began systematically to violate their stated underwriting and appraisal standards, made loans with little or no documentation, and accepted untrue information from loan applicants. The mortgage originators also began to provide untrue information about their underwriting practices and about the borrowers, loans, appraisals, and mortgaged properties in connection with the securitization of the loans. As a result of this pervasive breakdown of

compliance with proper practices among the mortgage originators, the Wall Street Banks that securitized mortgages provided Plaintiff with untrue information about the mortgage originators' practices and about the underlying mortgage borrowers, loans, and properties. The Wall Street Banks also provided Plaintiff with untrue information about their own due diligence of the mortgage originators and underlying loans.

47. To fund their loans, the mortgage originators maintained credit facilities with warehouse lenders, including the Wall Street Banks. The Wall Street Banks loaned money to the mortgage originators pursuant to "warehouse agreements," so that the mortgage originators could continue to make loans to home buyers. The mortgage originators borrowed from these credit facilities to fund their loans, until the loans were sold and the warehouse agreement was repaid. When loans serving as collateral lost value, the Wall Street Banks made margin calls requiring the mortgage originators to pay cash back to the Wall Street Banks. As a result of the warehouse arrangements between the mortgage originators and the Wall Street Banks, the Wall Street Banks had superior access to information about the mortgage originators' business and lending practices and the mortgage loans' characteristics and performance, including early warning signs of poor credit quality in loans before the loans were securitized.

48. Fannie Mae and Freddie Mac provided investors in Agency-sponsored RMBS with protection by guaranteeing that the investors would receive timely payments of principal and interest. If the borrower for one of the underlying mortgages failed to make scheduled principal or interest payments, the Agency that issued the RMBS would make the payments to the trust. Because the Agencies were perceived to be backed by the federal government, investors viewed their guarantees as essentially removing the credit risk from Agency-sponsored RMBS.

49. Between 2001 and 2006, non-Agency loan originations and securitizations increased dramatically, while Agency loan originations and securitizations decreased moderately, as summarized in the following table:

	2001	**2006**
Agency loan originations	$1.433 trillion	$1.040 trillion
Agency securitizations	$1.087 trillion	$904 billion
Non-Agency loan originations	$680 billion	$1.480 trillion
Non-Agency securitizations	$240 billion (including $87.1 billion of subprime securitizations)	$1.033 trillion (including $448 billion of subprime securitizations)

Source: *Inside Mortgage Finance* (2007).

50. Thus, from 2001 to 2006, non-Agency loan originations grew by approximately 115%; non-Agency securitizations grew by approximately 330%; and non-Agency securitizations of subprime loans grew by approximately 415%. According to *Inside Mortgage Finance* (2009), non-Agency RMBS more than trebled in market share between 2003 and 2007, peaking at about 38% of the market in 2006, from 6% in 2003. Another measure of the dramatic growth of the non-Agency RMBS market is that "[t]he amount of all outstanding mortgages held in non-[Agency] MBS rose notably from only $670 billion in 2004 to over $2,000 billion in 2006." Financial Crisis Inquiry Commission ("FCIC"), "Preliminary Staff Report: Securitization and the Mortgage Crisis," April 7, 2010.

51. Starting in or about 2005, the growth in non-Agency mortgage securitizations was accompanied by widespread violation by the mortgage originators of their stated underwriting and appraisal standards. According to Ben S. Bernanke, Chairman of the Federal Reserve Board, in a March 2008 speech, "[t]he deterioration in underwriting standards that appears to have begun in late 2005 is another important factor underlying the current crisis. A large share of subprime loans that were originated during this time feature high combined loan-to-value ratios and, in some cases, layers of additional risk factors, such as a lack of full documentation or the acceptance of very high debt-to-income ratios." The loan-to-value ("LTV") ratio is a significant measure of credit risk, because both the likelihood of default and the severity of loss are higher when borrowers have less equity to protect in the event of foreclosure. The debt-to-income ratio

is also a significant measure of credit risk, because borrowers who incur debt that is relatively high compared to their income are more likely to default on their loans. In its March 2008 Policy Statement on Financial Market Developments, the President's Working Group on Financial Markets concluded that "[t]he turmoil in financial markets clearly was triggered by a *dramatic weakening of underwriting standards for U.S. subprime mortgages, beginning* in late 2004 and extending into early 2007." (Emphasis in original.) As U.S. housing prices subsequently declined, the delinquency rates for such mortgages soared.

52. An important aspect of the mortgage originators' violation of their stated underwriting standards was their reliance on faulty appraisals. According to the April 7, 2010 FCIC testimony of Richard Bitner, a former executive of a subprime mortgage originator for 15 years and the author of the book *Confessions of a Subprime Lender*, "the appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted, [and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value." He continued:

> To put things in perspective, during my company's history, half of all the loans we underwrote were overvalued by as much 10%. This meant one out of two appraisals were still within an acceptable tolerance for our end investors. Our experience showed that 10% was the most an appraisal could be overvalued and still be purchased by these investors. Another quarter that we reviewed were overvalued by 11-20%. These loans were either declined or we reduced the property value to an acceptable tolerance level. The remaining 25% of appraisals that we initially underwrote were so overvalued they defied all logic. ***Throwing a dart at a board while blindfolded would've produced more accurate results.***[2]

53. Mr. Bitner testified about the implications of inflated appraisals:

> If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals. The process then repeats itself. We saw it on several occasions. We'd close a loan in January and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. Of course, demand is a key component to driving value, but the defective nature of the appraisal process served as an accelerant. In the end, the subprime industry's willingness to

[2] Throughout this Complaint, emphasis in quotations is added except where otherwise noted.

> consistently accept overvalued appraisals significantly contributed to the run-up in property values experienced throughout the country.
>
> * * *
>
> If the appraisal process had worked correctly, a significant percentage of subprime borrowers would've been denied due to a lack of funds. Inevitably, this would have forced sellers to drop their exorbitant asking prices to more reasonable levels. The rate of property appreciation experienced on a national basis from 1998 to 2006 was not only a function of market demand, but was due, in part, to the subprime industry's acceptance of overvalued appraisals, coupled with a high percentage of credit-challenged borrowers who financed with no money down.
>
> Mr. Bitner testified that the engine behind the increased malfeasance was the Wall Street Banks: "[T]he demand from Wall Street investment banks to feed the securitization machines coupled with an erosion in credit standards led the industry to drive itself off the proverbial cliff."

54. Patricia Lindsay, a wholesale underwriter for 10 years at New Century Financial Corporation, testified before the FCIC on April 7, 2010, about the fraudulent practices of New Century's appraisers:

> The role and practices of appraisers in subprime mortgage origination:
>
> Properly valuing a property . . . is one of the most important components in a loan. In my experience at New Century, fee appraisers hired to go to the properties were often times pressured into coming in "at value", fearing if they didn't, they would lose future business and their livelihoods. They would charge the same fees as usual, but would find properties that would help support the needed value rather than finding the best comparables to come up with the most accurate value. Some appraisers would take boards off boarded up windows, to take the needed photos, then board the properties back up once the shots were taken. Or they would omit certain important elements of a property by angling the camera a certain way or zooming close in to make the property look the best possible. This level of appraiser activism compromises their objectivity.

55. Alan Hummel, Chair of the Appraisal Institute, testified before the Senate Committee on Banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraisers "experience[d] systemic problems of coercion" and were "ordered to doctor their reports" or they might be "placed on exclusionary or "do-not-use" lists."

56. A 2007 survey of 1,200 appraisers conducted by October Research Corp., which publishes *Valuation Review*, found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through. This figure was nearly double the findings of a similar study conducted just three years earlier. The 2007 study also found that 75% of appraisers reported "negative ramifications" if they did not cooperate, alter their appraisal, and provide a higher valuation." Adding to these problems was the fact that lenders were generally unable to assess the accuracy of the appraisals for loans originated by mortgage brokers, since the lenders were typically located far from the properties and knew little about the properties' neighborhoods.

57. In addition, the mortgage securitization process was undermined by the widespread industry practice of originating types of loans that were inherently risky and extremely susceptible to delinquencies and default, including (1) stated income loans, where both the income and assets of the borrower were taken as stated on the credit application without verification; (2) "NINA" or No Income, No Asset loans, which were made without any disclosure of the borrower's income or assets; and (3) "No Doc" loans, which were made to borrowers who did not disclose their income, assets, or employment history.

d. The Wall Street Banks Conduct Less Due Diligence

58. As the Wall Street Banks that profited from securitizations sought increasing volumes of mortgage loans from mortgage originators, the mortgage originators gained bargaining power over the terms on which they would sell the loans. Mortgage originators demanded that the Wall Street Banks limit quality control reviews (*i.e.*, due diligence) to smaller percentages of loans prior to purchase. Additionally, if a Wall Street Bank chose to "kick out" a large number of loans from a pool – because the loans failed to conform to the mortgage originators' underwriting guidelines or did not contain adequate documentation – the Wall Street Bank risked being excluded from future loan purchases. As a result, the Wall Street Banks performed increasingly cursory due diligence on the mortgage loans they securitized. The sheer volume and pace of the securitization business during this period exacerbated such failures.

59. The Wall Street Banks often acquired large quantities of loans for securitization from "loan auctions." There, mortgage originators provided the Wall Street Banks with Bid Stipulation Sheets ("Bid Sheets") which stated the times and dates of the auctions and described the general characteristics of the loan pools. The Bid Sheets also dictated: (1) the percentage of the pool on which the Wall Street Banks would be permitted to conduct due diligence (*e.g.*, 25%); and (2) the number of loans the Wall Street Banks could "kick-out" due to borrower deficiencies, payment delinquencies, early payment defaults, lack of requisite legal documentation, and similar deficiencies. Prior to bid submission, mortgage originators also sent the Wall Street Banks spreadsheets known as "Loan Tapes" which typically contained 50 to 100 columns of data regarding the loans. The Wall Street Banks were supposed to "crack" the Loan Tapes, analyze them, and determine what prices to bid for the loan pools. Once this "bid package" analysis was complete, the Wall Street Banks submitted their bids.

60. If the mortgage originator accepted a bid, the Wall Street Bank typically had a short period of time prior to the settlement date (when cash was paid to the mortgage originator for the loans) to conduct due diligence on the loans. The Wall Street Banks generally used their own investment bankers to conduct due diligence. Many of the Wall Street Banks also hired third-party due diligence firms such as Clayton Holdings, Inc. ("Clayton") or the Bohan Group ("Bohan") to conduct this review under the supervision of the Wall Street Banks' investment bankers. Clayton's Form 10-K filed March 14, 2008 identified Wall Street Bank Defendants Morgan Stanley and Deutsche Bank among its clients, and a Clayton document made public by the Financial Crisis Inquiry Commission identified those two Wall Street Banks as well as Banc of America, Barclays, Bear Stearns (predecessor-in-interest to Wall Street Bank Defendant J.P. Morgan Securities), Citigroup, Credit Suisse, Goldman Sachs, Greenwich Capital, HSBC, J.P. Morgan Securities, Merrill Lynch, and UBS as Clayton clients. Bohan's clients included Bear Stearns and Wall Street Bank Defendant Merrill Lynch.

61. For each loan pool, Clayton and Bohan reviewed the percentage of loans designated in the Bid Sheet to ensure, *inter alia*, that the loans: (1) conformed to the mortgage

originators underwriting guidelines; (2) contained loan data matching the loan data in the Loan Tape; and (3) contained the appropriate mortgage documents. Upon completion of the review, Clayton and Bohan sent the Wall Street Bank a due diligence report, which it was supposed to use to decide which loans should be kicked out of the pool prior to the settlement date. Wall Street Banks, however, were incentivized to kick-out as few loans as possible because, as explained above, (1) mortgage originators would not invite Wall Street Banks that consistently kicked out large numbers of loans to future auctions; and (2) the securitization became smaller as loans were kicked out, thus decreasing the underwriting fee.

62. As a result, the percentage of loans per pool that Clayton and Bohan were instructed to review declined with time. Frank P. Filipps, Clayton's chairman and CEO, stated that [e]arly in the decade, a securities firm might have asked Clayton to review 25% to 40% of the sub-prime loans in a pool, compared with typically 10% in 2006. Bohan President Mark Hughes stated, [b]y contrast, loan buyers who kept the mortgages as an investment instead of packaging them into securities would have 50% to 100% of the loans examined.

63. In June 2007, New York Attorney General Andrew Cuomo (NYAG) subpoenaed documents from Clayton and Bohan related to their due diligence efforts. The NYAG's investigation focused on whether Wall Street banks failed to adequately disclose the warnings they received regarding the number of loans that failed to meet lending guidelines. Clayton also received an information request from the SEC and information subpoenas from the Massachusetts and Connecticut Attorneys General.

64. On January 12, 2008, in an article entitled Inquiry Focuses on Withholding of Data on Loans, the *New York Times* reported:

> An investigation into the mortgage crisis by New York State prosecutors is now focusing on whether Wall Street banks withheld crucial information about the risks posed by investments linked to subprime loans. Reports commissioned by the banks raised red flags about high-risk loans known as exceptions, which failed to meet even the lax credit standards of subprime mortgage companies and the Wall Street firms. *But the banks did not disclose the details of these reports to credit-rating agencies or investors.* The inquiry, which was opened last summer by New York's attorney general, Andrew M. Cuomo, centers on how the banks

bundled billions of dollars of exception loans and other subprime debt into complex mortgage investments.

65. On January 27, 2008, Clayton revealed that it had entered into an agreement with the NYAG for immunity from civil and criminal prosecution in New York in exchange for providing documents and testimony regarding its due diligence reports. That same day, in an article entitled "Loan Reviewer Aiding Inquiry Into Big Banks," the *New York Times* reported that a person familiar with the NYAG's investigation stated that as demand for loans surged, mortgage originators were in a superior bargaining position and required that Wall Street Banks have Clayton and other consultants review fewer loans. Incredibly, "investment banks directed Clayton *to halve the sample of loans it evaluated in each portfolio*." On March 17, 2008, in an article entitled "Sub-Prime mortgage watchdogs kept on leash; loan checkers say their warnings of risk were met with indifference," the *Los Angeles Times* reported that Clayton and Bohan employees (including eight former loan reviewers who were interviewed for the article) "raised plenty of red flags a*bout flaws [in* subprime home loans] so serious that mortgages should have been rejected outright – such as borrowers' incomes that seemed inflated or documents that looked fake – but the problems were glossed over, ignored or stricken from reports."

66. Testimony by Keith Johnson, Clayton's former President and Chief Op*erating Officer, before the Financial Crisis Inquiry Commis*sion and a Clayton document made p*ublic by the Commis*sion demonstrate that during 2006 and the first half of 2007, only 54% of all mortgage loans reviewed by Clayto*n for its Wall St*reet Bank clients me*t all applicabl*e underwriting guidelines; 18% did not satisfy the applicable underwriting guidelines but had purported compensating factors; and 28% did not satisfy the applicable underwriting guidelines and had no compensating factors. The Wall Street Bank Defendants nevertheless waived the applicable underwriting *guidelines for many of the loans that they knew did not s*atisfy the applicable underwriting guidelines and had no compensating factors, and the Defendants securitized those loans without disclosing to investors that the l*oans violated the* disclosed underwriting guidelines and had no compensating factors. During 2006 and the first half of

2007, Banc of America securitized 27% of the loans Clayton told it violated the applicable underwriting guidelines and had no compensating factors; Barclays securitized 28% of such loans; Bear Stearns securitized 42% of such loans; Credit Suisse securitized 33% of such loans; Citigroup securitized 31% of such loans; Deutsche Bank securitized 50% of such loans; Greenwich Capital securitized 53% of such loans; Goldman Sachs securitized 29% of such loans; HSBC securitized 62% of such loans; J.P. Morgan Securities securitized 51% of such loans; Merrill Lynch securitized 32% of such loans; Morgan Stanley securitized 56% of such loans; and UBS securitized 33% of such loans.

e. Defendants Failed To Ensure That Title To The Underlying Loans Was Effectively Transferred

67. An essential aspect of the mortgage securitization process is that the issuing trust for each RMBS offering must obtain good title to the mortgage loans comprising the pool for that offering. This is necessary in order for the RMBS holders to be legally entitled to receive cash payments from the pass-through of the mortgage borrowers payments of interest and principal, and for the trustee to be legally entitled to enforce the mortgage loans in case of default. Two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process a promissory note and a security instrument (either a mortgage or a deed of trust). Without the note, the mortgage loan is unenforceable, and without the security instrument, the note is simply an unsecured debt obligation.

68. The rules for these transfers are governed by the law of the state where the property is located, by the terms of the pooling and servicing agreement (PSA) for each securitization, and by the law governing the issuing trust (with respect to matters of trust law). Generally, state laws and the PSA require the promissory note and security instrument to be transferred by endorsement, in the same way that a check can be transferred by endorsement, or by sale. In addition, state laws generally require that the trustee have physical possession of the original, manually signed note in order for the loan to be enforceable by the trustee against the borrower in case of default.

69. In order to preserve the bankruptcy-remote status of the issuing trusts in RMBS transactions, the notes and security instruments are generally not transferred directly from the mortgage loan originator to the trust. Rather, the notes and security instruments are generally initially transferred from the originator to the depositor, either directly or via one or more special-purpose entities established by the Wall Street Bank Defendant sponsoring the transaction. After this initial transfer to the depositor, the depositor transfers the notes and security interests to the issuing trust for the particular securitization. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

70. In addition, the PSA generally requires the transfers of the mortgage loans to the trust to be completed within a strict time limit after formation of the trust in order to ensure that the trust qualifies as a tax-free real estate mortgage investment conduit ("REMIC").

71. The applicable state trust law generally requires strict compliance with the trust documents, including the PSA, so that failure to comply strictly with the timeliness, endorsement, physical delivery, and other requirements of the PSA with respect to the transfers of the notes and security instruments means that the transfers would be void and the trust would not have good title to the mortgage loans.

72. The Offering Documents for each offering of Securities represented in substance that the issuing trust for that offering had obtained good title to the mortgage loans comprising the pool for the offering. In reality, however, as has been established by evidence in actions involving Defendants Countrywide, Banc of America Securities, and Asset Backed Funding Corporation that are summarized below, Defendants routinely failed to comply with the requirements of applicable state laws and the PSAs for valid transfers of the notes and security instruments to the issuing trusts. On information and belief, the Defendants other than Countrywide, Banc of America Securities, and Asset Backed Funding Corporation also routinely failed to comply with these requirements. Indeed, a Countrywide employee testifying in the action involving Countrywide answered "yes" when asked whether noncompliance with these requirements was "standard operating procedure in the mortgage banking business."

73. In *Kemp v. Countrywide Home Loans, Inc.*, Bkrtcy. No. 08-18700 (D.N.J.), Countrywide sought to prove that the Bank of New York, as trustee for an RMBS issuing trust that purportedly held Mr. Kemp's mortgage, was entitled to enforce the mortgage. Countrywide presented testimony by Linda DeMartini, who had been employed by Countrywide for almost ten years as of August 2009 and was then a supervisor and operational team leader for the Litigation Management Department of Countrywide's mortgage loan servicing business. Ms. DeMartini testified that, in her extensive career in the mortgage loan servicing business of Countrywide, "I had to know about everything . . . ." She testified that Countrywide originated Kemp's loan in 2006 and transferred it to the Bank of New York as trustee for the issuing trust, but that Countrywide retained the original note in its own possession and never delivered it to the Bank of New York because Countrywide was the servicer for the loan.

74. Even though DeMartini was presented by Countrywide as a witness in an attempt to prove that the loan documents had been validly transferred to the issuing trust, her testimony actually proved that the loan documents were never validly transferred. She testified that an allonge to the promissory note, which purported to transfer the note to the trust by endorsement, was prepared only in preparation for the litigation in 2009, long after the purported transfer of the note to the trust in 2006, and was never delivered to the trustee. Indeed, she testified that there was not an ordinary business practice of signing an allonge at the time a note was purportedly transferred.

75. DeMartini also testified that the original note was retained by Countrywide and was never delivered to the trustee. Most significantly, she testified on direct examination that not delivering the original note to the trustee was Countrywide's standard practice:

> Q. Ms. DeMartini, is it generally the custom to "for your investor [*i.e.*, the issuing trust] to hold the documents?
>
> A. No. They would stay with us as the servicer.
>
> Q. And are documents ever transferred to the investor?
>
> A. If we service-release them they would be transferred to whomever we're service-releasing them to.

Q. So I believe you testified Countrywide was the originator of this loan?

A. Yes.

Q. So Countrywide had possession of the documents from the outset?

A. Yes.

Q. And subsequently did Countrywide transfer these documents by assignment or an allonge?

A. Yes.

Q. And □

A. Well, transferred the rights, yes, transferred the ownership, not the physical documents.

Q. So the physical documents were retained within the corporate entity Countrywide or Bank of America?

A. Correct.

Q. Okay. And would you say that this is standard operating procedure in the mortgage banking business?

A. Yes. It would be normal □the normal course of business as the reason that we are the servicer, as we□re the ones that are doing all the servicing, and that would include retaining the documents.

76. In response to questioning by the Bankruptcy Judge, DeMartini again testified that □I do know that it is our normal course of action with the loans that we service that we are the ones that retain the □that we retain those documents.□ In response to the Court□s question whether the documents are □ever moved to follow the transfer of ownership,□DeMartini testified that □it is not customary for them to move.□

77. At a subsequent hearing in September 2009, Countrywide□s counsel stated that

> [A]lthough . . . the UCC and the Master Servicing Agreement apparently requires that, procedure seems to indicate that they don□t physically move documents from place to place because of the fear of loss and the trouble involved and the people handling them. They basically execute the necessary documents and retain them as long as servicing□s retained. The documents only leave when servicing is released.

78. Based on the evidence quoted above, Chief Bankruptcy Judge Judith H. Wizmur held in November 2010 that the Bank of New York, as trustee for the issuing trust, could not enforce the mortgage loan for two reasons:

> First, under New Jersey's Uniform Commercial Code ("UCC") provisions, the fact that the owner of the note, the Bank of New York, never had possession of the note, is fatal to its enforcement. Second, upon the sale of the note and mortgage to the Bank of New York, the fact that the note was not properly indorsed to the new owner also defeats the enforceability of the note.

Kemp v. Countrywide Home Loans, Inc., No. 08-18700-JHW, Slip Op., at *10-11 (Bkrtcy. D.N.J. Nov. 16, 2010). Judge Wizmur further held that Countrywide also could not enforce the mortgage loan, because as a loan servicing agent for the owner of the note, Countrywide had no more authority to enforce the note than its principal, the Bank of New York. *Id.* at *21.

79. As DeMartini testified, Countrywide routinely did not transfer the original mortgage loan documents to the issuing trusts for RMBS transactions, but rather retained the original documents itself, and this was standard operating procedure in the mortgage banking business. Thus, Countrywide and, on information and belief, the other Defendants failed to validly transfer the promissory notes and security instruments for many of the mortgage loans underlying the Securities purchased by Plaintiff to the issuing trusts for the Securities.

80. Additional evidence that failure to validly transfer mortgage loans to the issuing trusts for RMBS was common among the Wall Street Bank Defendants and Depositor Defendants comes from *U.S. Bank National Association v. Ibanez*, No. SJC-10694 (Mass. Jan. 7, 2011), in which the Supreme Judicial Court of Massachusetts held that the trustees for two RMBS issuing trusts did not have valid assignments of two mortgages originated by Option One (one of which was securitized by Banc of America Securities and Asset Backed Funding Corporation) at the time the trustees published notices of foreclosure and foreclosed on the homes. The Court therefore held that the foreclosures were invalid and the trustees did not have valid title to the properties. The notes for the loans had been assigned to the trustees, but the related mortgages had only been assigned "in blank" without naming the trustees as the

assignees, and Option One and the trustees later tried to fix the problem by executing post-foreclosure assignments. The Court held that assignments in blank cannot validly convey title to a mortgage; that assignment only of a note does not carry with it assignment of the related mortgage; and that post-foreclosure assignments could not retroactively validate the foreclosures, rejecting the banks argument that the use of postsale assignments was customary in the industry . . . .

81. The Court rebuked the banks for their cavalier attitude towards the legal requirements for proper foreclosures:

> Where . . . mortgage loans are pooled together in a trust and converted into mortgage-backed securities, the underlying promissory notes serve as financial instruments generating a potential income stream for investors, but the mortgages securing these notes are still legal title to someone s home or farm and must be treated as such. . . . The legal principles and requirements we set forth are well established in our case law and our statutes. All that has changed is the [banks] apparent failure to abide by those principles and requirements in the rush to sell mortgage-backed securities.

82. Two judges concurring in the Supreme Judicial Court s unanimous decision in *Ibanez* wr[o]te separately only to underscore that what is surprising about these cases is not the statement of principles articulated by the court regarding title law and the law of foreclosure in Massachusetts, but rather the utter carelessness with which the plaintiff banks documented the titles to their assets.

f. Plaintiff's Acquisition Of The Securities

83. Plaintiff, located in Massachusetts, was responsible for the sourcing, review, analysis, and purchase decisions for the U.S. investments for the Clients, and made the decision in Massachusetts to purchase the Securities on behalf of the Clients. At all relevant times, Plaintiff had numerous employees in Concord, Massachusetts, and Plaintiff continues to have employees in Concord.

84. Plaintiff decided to purchase each Security that was purchased in the initial offering of that Security on behalf of the Clients on the basis of the information contained in the applicable registration statement, prospectus, and prospectus supplements filed with the SEC or

the applicable private placement memorandum (the "Offering Documents"), as identified in Appendix A, and based on additional information provided to Plaintiff by the Wall Street Bank Defendants, as described below. In connection with their offers or sales of the Securities to Plaintiff, the Wall Street Bank Defendants sent to Plaintiff's office in Massachusetts the Offering Documents and additional documents, such as statistical tables to be included in the prospectus supplements. These documents included term sheets, pooling and servicing agreements, data, computational material, data regarding the LTV and debt-to-income ratios of the pools, computer models of the financial structures of the securitizations, tabular sensitivity data, loan tapes, rating agency expected loss levels, emails, sampling data regarding credit/compliance/appraisal and due diligence, "kickout" criteria and data, and collateral characteristics. ("Kickout" refers to the mortgage originator's contractual obligation under the terms of the securitization transaction documents to repurchase or replace any mortgage loan that had deficient documentation, an uncured material breach of a representation or warranty, a payment default within a specified time period, or other specified deficiencies.)

85. These documents contained numerous statements of material facts about the Securities, including statements concerning: (1) the mortgage originators' underwriting guidelines that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal guidelines that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt to income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Banks' due diligence of the loans and the mortgage originators' underwriting practices; and (5) various forms of credit enhancement applicable to certain tranches of Securities. For example, one form of credit enhancement is overcollateralization, which means that the total principal balance of the mortgage loans in the pool for a securitization (and therefore presumably the total value of the underlying properties) exceeds the aggregate amount of Securities issued and sold in the securitization. Another example of credit enhancement is

excess interest, which means that the amount of interest collected on the mortgage loans underlying a securitization for each payment period is expected to be higher than the interest distributable on the Securities and fees and expenses payable by the trust for that period; excess interest may be applied both to absorb any interest shortfalls and to pay principal on the Securities to the extent needed to maintain the required level of overcollateralization.

86. These statements of material facts were untrue because: (1) the mortgage originators violated their stated underwriting guidelines and did not consistently evaluate the borrowers ability to repay the loans; (2) inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue; and (3) the actual numbers of riskier second home and investment property mortgagees were higher than the stated numbers. In addition, metrics such as debt-to-income ratios were untrue as a result of the mortgage originators acceptance of untrue information from mortgage applicants. For example, the mortgage originators allowed applicants for stated income loans to provide untrue income information and did not verify the applicants purported income. Stated income loans were therefore widely known among personnel of the mortgage originators as liar loans.

87. Often at meetings regarding initial offerings of Securities, including meetings in Massachusetts, the Wall Street Bank Defendants also showed Plaintiff pitch books and other materials regarding the credit quality of the Securities and the Wall Street Banks due diligence of the mortgage originators underwriting practices. Plaintiff, however, was not allowed to keep the pitch books. These pitch books and other materials contained untrue statements similar to those described above. In addition to the untrue statements and omissions in the documents provided or shown to Plaintiff, the Wall Street Bank Defendants made additional untrue oral statements to Plaintiff during face-to-face meetings and by telephone between 2005 and 2007. The representatives of the Wall Street Bank Defendants who offered or sold the Securities to Plaintiff received compensation based, directly or indirectly, on the volume of Securities they sold to investors, including the Clients on whose behalf Plaintiff purchased Securities.

88. For purchases exclusively in the secondary market, Plaintiff purchased each Security based on the same types of information as described in ¶¶ 84-87. When making secondary market purchases, Plaintiff reviewed and analyzed the documents relating to the initial offering of the Security as described above, particularly the prospectus supplements. Plaintiff also reviewed and analyzed publicly-available data regarding the performance of the mortgage loans included in the pool for the Security (such as delinquencies, prepayments, and defaults) and of the Security (such as payments on the Security and any changes in credit enhancement). Plaintiff purchased Securities in the secondary market either from the same Wall Street Bank Defendant that underwrote the initial offering of the particular Securities, or from another Wall Street Bank Defendant or other broker-dealer, as indicated for each Security in Appendix A.

V. THE OFFERING DOCUMENTS CONTAINED UNTRUE STATEMENTS OF MATERIAL FACTS AND OMISSIONS ABOUT THE MORTGAGE ORIGINATORS' UNDERWRITING STANDARDS AND PRACTICES

89. Most of the mortgage loans underlying the Securities purchased by Plaintiff on behalf of the Clients came from the following seven mortgage originators (the "Mortgage Originators"): New Century Mortgage Corp. ("New Century"), Long Beach Mortgage Company ("Long Beach"), Fremont Investment & Loan ("Fremont"), WMC Mortgage Corporation ("WMC"), Argent Mortgage Company ("Argent"), Ameriquest Mortgage ("Ameriquest"), and Option One Mortgage Corporation ("Option One"). Together with Defendant Countrywide, which originated most of its own mortgage loans through its affiliates, these seven Mortgage Originators accounted for approximately 79.5% of the loans underlying the Securities purchased by Plaintiff on behalf of the Clients. The remaining 20.54% of the loans were originated by approximately 45 other mortgage originators. On information and belief, the types of violations of underwriting and appraisal standards that are alleged below specifically with respect to each of the seven larger Mortgage Originators were also prevalent among the other, smaller mortgage originators.

90. All seven of these large Mortgage Originators have now failed, and numerous consumer and securities fraud cases – both private and regulatory – have been lodged against

them. In an April 8, 2010 statement by John C. Dugan, Comptroller of the Currency, before the FCIC, these Mortgage Originators were identified among the "Worst Ten in the Worst Ten," a list of the worst mortgage originators based on the number of foreclosures in the nation's worst ten metro areas. During the time that Plaintiff, on the Clients' behalf, was purchasing Securities from the Wall Street Banks that contained mortgage loans provided by these Mortgage Originators, (1) the Mortgage Originators violated their stated underwriting standards when issuing loans to borrowers; (2) the underlying mortgages were based on appraisals that overstated the value of the mortgaged properties and therefore understated the LTV ratios of the mortgage loans; and (3) these underwriting deficiencies rendered the mortgage loans far less valuable and far riskier than disclosed. As a result, the Securities that were issued by the Depositor Defendants and offered or sold by the Wall Street Bank Defendants were backed by mortgage collateral that was much less valuable and posed a significantly greater risk of delinquencies, foreclosures, and other forms of default than the Wall Street Banks stated to Plaintiff.

a. New Century Mortgage Corporation

1. Defendants Made Untrue Statements Of Material Facts About New Century's Underwriting Standards And Practices

91. New Century originated Mortgage Loans that were included in the pools for the following offerings:

Deal	Depositor Defendant	Direct Seller Bank Defendant
ABSHE 2004-HE1	Asset Backed Securities Corporation	Credit Suisse First Boston
ABSHE 2004-HE7	Asset Backed Securities Corporation	Bank of America
ABSHE 2004-HE8	Asset Backed Securities Corporation	Greenwich Capital
ACE 2006-NC1	ACE Securities Corp.	Citigroup
CARR 2005-NC2	Bear Stearns & Co. Inc. Asset Backed Securities I LLC	Citigroup
CARR 2005-NC4	Stanwich Asset Acceptance Company, LLC	Citigroup

Deal	Depositor Defendant	Direct Seller Bank Defendant
CARR 2006-NC1	Stanwich Asset Acceptance Company LLC	Citigroup
CARR 2006-NC3	Stanwich Asset Acceptance Company, L.L.C.	Deutsche Bank
HASC 2005-NC1	HSI Asset Securitization Corporation	HSBC
MSAC 2004-HE4	Morgan Stanley ABS Capital I Inc	Citigroup
MSAC 2004-NC3	Morgan Stanley ABS Capital I Inc	UBS
MSAC 2004-NC4	Morgan Stanley ABS Capital I Inc	Citigroup
MSAC 2005-NC2	Morgan Stanley ABS Capital I Inc	Barclays
NCHET 2003-6	New Century Mortgage Securities, Inc.	Citigroup
NCHET 2004-4	New Century Mortgage Securities LLC	Deutsche Bank, Credit Suisse
NCHET 2005-3	New Century Mortgage Securities LLC	Morgan Stanley
NCHET 2005-D	New Century Mortgage Securities, Inc.	Bank of America, Deutsche Bank
RAMP 2006-NC2	Residential Asset Mortgage Products, Inc.	Bear Stearns & Co. Inc.
SVHE 2005-B	Financial Asset Securities Corp.	Greenwich Capital

92. New Century originated some or all of the loans underlying $93,492,992 million of the Securities in Appendix A that Defendants offered or sold to Plaintiff.

93. The Offering Documents for these Securities all contained substantially similar, if not identical, statements of material fact regarding New Century s underwriting standards and practices. For example, the prospectus supplement for New Century Home Equity Loan Trust Series 2005-Dstated:

> The Underwriting Guidelines are primarily intended to assess the borrower s ability to repay the mortgage loan, to assess the value of the mortgaged property and to evaluate the adequacy of the property as collateral for the mortgage loan. All of the mortgage loans in the mortgage pool were also underwritten with a view toward the resale of the mortgage loans in the secondary mortgage market.

> ***While the originator's primary consideration in underwriting a mortgage loan is the value of the mortgaged property, the originators also consider, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type and use of the mortgaged property.***
>
> * * *
>
> ***The mortgage loans will have been originated in accordance with the underwriting guidelines.*** On a case by case basis, exceptions to the underwriting guidelines are made where compensating factors exist. It is expected that a substantial portion of the mortgage loans in the mortgage pool that were originated by the originators will represent these exceptions.
>
> * * *
>
> *Exceptions*. As described above, the foregoing categories and criteria are guidelines only. On a case by case basis, it may be determined that an applicant warrants a debt service-to-income ratio exception, a pricing exception, a loan-to-value ratio exception, an exception from certain requirements of a particular risk category, etc. **An exception may be allowed if the application reflects compensating factors, such as:** low loan-to-value ratio; pride of ownership; a maximum of one 30 day late payment on all mortgage loans during the last 12 months; and stable employment or ownership of current residence of four or more years. An exception may also be allowed if the applicant places a down payment through escrow of at least 20% of the purchase price of the mortgaged property or if the new loan reduces the applicant s monthly aggregate mortgage payment by 25% or more. Accordingly, a mortgagor may qualify in a more favorable risk category than, in the absence of compensating factors, would satisfy only the criteria of a less favorable risk category. It is expected that a substantial portion of the mortgage loans will represent these kinds of exceptions.

94. The relevant Offering Documents also contained statements of material fact about the information contained in New Century s loan files. For example, the same prospectus supplement stated:

> Each applicant completes an application which includes information with respect to the applicant s liabilities, income, credit history, employment history and personal information. The underwriting guidelines require a credit report on each applicant from a credit reporting company. The report typically contains information relating to matters such as credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcies, repossessions or judgments.

95. The relevant Offering Documents also contained statements of material fact about New Century's appraisal standards and practices. For example, the same prospectus supplement stated:

> Mortgaged properties that are to secure mortgage loans are appraised by qualified independent appraisers. These appraisers inspect and appraise the subject property and verify that the property is in acceptable condition. Following each appraisal, the appraiser prepares a report which includes a market value analysis based on recent sales of comparable homes in the area and, when deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. ***All appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac.*** The underwriting guidelines require a review of the appraisal by a qualified employee of the originator or by an appraiser retained by that originator.

96. These statements are substantially similar, if not identical, to statements concerning New Century's appraisal standards and practices found in the other Prospectus Supplements for the Securities whose underlying mortgage loans were originated by New Century.

97. The above statements of material facts were untrue when made because, as explained below in ¶¶98-112, they failed to disclose that New Century: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgaged properties in the loan origination and underwriting process.

2. New Century Violated Its Stated Underwriting Standards

98. Defendants Banc of America, J.P. Morgan (itself and as successor-in-interest to Bear Stearns), Citigroup, Credit Suisse, Deutsche Bank, Greenwich Capital, HSBC, and Morgan Stanley underwrote, offered or sold to Plaintiff Securities containing loans originated by New Century and made untrue statements to Plaintiff about New Century's underwriting and appraisal standards and practices and the loans underlying the Securities. These Wall Street Banks had

extensive business relationships with New Century, had access to New Century's mortgage origination personnel and internal information, and conducted due diligence into New Century using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into New Century, they were or reasonably should have been aware of the untruth of the statements about New Century described above.

99. The court-appointed Bankruptcy Examiner issued a detailed report explaining how New Century's "brazen obsession" with loan originations undermined sound underwriting standards. Moreover, New Century's officers are the targets of both a civil class action and a regulatory action brought by the SEC based on their knowledge of and perpetuation of these practices, and allegations of New Century's deficient underwriting practices have been endorsed by several courts. New Century topped the Comptroller of the Currency's list of the "Worst Ten in the Worst Ten," discussed above.

100. Once one of the nation's largest mortgage origination companies, New Century collapsed and filed for bankruptcy on April 2, 2007. Formed in 1996, New Century grew rapidly to become one of the country's largest subprime lenders, reporting $56.1 billion of total mortgage originations and purchases in 2005 alone. Beginning in 2003, New Century secretly loosened its own underwriting standards and made unjustified exceptions to those already severely weakened standards. These allegations have been substantiated by many sources, as discussed below.

101. On February 29, 2008, following New Century's bankruptcy, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a detailed report on the various deficiencies at New Century, including lax mortgage origination standards. The Examiner's report detailed "serious loan quality issues at [New Century] beginning as early as 2004"; numerous "red flags" relating to loan quality; and the failure of New Century's senior management and board of directors to devote sufficient attention to improving loan quality until it "was too late to prevent the consequences of longstanding loan quality problems in an adversely changing market."

102. During the course of his investigation, the Examiner conducted 110 interviews of 85 witnesses and reviewed millions of pages of documents from New Century, its outside auditors, and others. In his 550-page Final Report, the Examiner concluded that:

- "New Century had a brazen obsession with increasing loan originations, without due regard to the risks associated with that business strategy. Loan originations rose dramatically in recent years, from approximately $14 billion in 2002 to approximately $60 billion in 2006. The Loan Production Department was the dominant force within the Company and trained mortgage brokers to originate New Century loans in the aptly named "CloseMore University." Although a primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately fatal levels." (Examiner's Report, at 3.)

- "The increasingly risky nature of New Century's loan originations created a ticking time bomb that detonated in 2007. Subprime loans can be appropriate for a large number of borrowers. New Century, however, layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers." *Id.*

- "New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the "number one issue is exceptions to guidelines." Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies. Of the New Century loans rejected by investors, issues with appraisals were the cause of more than 25% of these "kick-outs." *Id.* at 3-4.

- "Senior Management turned a blind eye to the increasing risks of New Century's loan originations and did not take appropriate steps to manage those risks. . . ." *Id.* at 4.

- "Senior Management was aware of an alarming and steady increase in early payment defaults ("EPD") on loans originated by New Century, beginning no later than mid- 2004. The surge in real estate prices slowed and then began to decrease, and interest rates started to rise. The changing market conditions exacerbated the risks embedded in New Century's products, yet Senior Management continued to feed eagerly the wave of investor demands without anticipating the inevitable requirement to repurchase an increasing number of bad loans. Unfortunately, this wave turned into a tsunami of impaired and defaulted mortgages." *Id.* at 4.

103. The Examiner highlighted the severity of New Century's improper conduct: "The Examiner recognizes that the subprime mortgage market collapsed with great speed and

unprecedented severity, resulting in all of the largest subprime lenders either ceasing operations or being absorbed by larger financial institutions. Taking these events into consideration and attempting to avoid inappropriate hindsight, the Examiner concludes that New Century engaged in a number of significant improper and imprudent practices related to its loan originations, operations, accounting and financial reporting processes.

104. According to Confidential Witness ("CW") 1, a former New Century fraud investigator and senior loan underwriter employed from January 1999 until April 2007 and who examined numerous New Century mortgage loans, New Century's problems began when it "started to abandon prudent underwriting guidelines" at the end of 2003 in order to "push more loans through" the system. According to CW 1, New Century, in effect, "stopped underwriting" and adopted an approach that the Company would be "okay if [it] could out run [its] delinquency rate."

105. According to CW 2, a former New Century Senior Vice President employed from July 2005 until April 2006 in Irvine, California, New Century could only meet its increasing year-over-year sales projections by reducing the underwriting standards. According to CW 2, in his position as Senior Vice President of New Century, he would approve just about any loan under New Century's "weak" underwriting standards.

106. According to CW 3, a former New Century underwriting unit manager employed from 1998 through October 2006, underwriting standards were loosened in order to increase sales volume. According to CW 3, exceptions to New Century's underwriting standards were "the norm" and employees were told to make loans "work." At one meeting in the late spring of 2006, CW 3 and other underwriters were told by their operations manager that the underwriters had to do what was necessary to increase volume.

107. Many lenders across the country allowed the sales personnel or account executives at their retail or in-house origination facilities to order and control appraisals and the appraisal process. According to CW 4, a former New Century underwriter employed by the Company from May 2005 to March 2006 in Itasca, Illinois and, previously, from 2000 until 2003

in Cincinnati, Ohio, as an underwriter for New Century, he could not recall the last loan that he looked at that did not have an exception; he handled close to 200 loans a month; and nearly every loan had an exception such as debt ratio exceptions or loan-to-value exceptions. According to CW 4, "the guidelines were thrown against a wall," underwriters were instructed to "dig deep" in order to make loans work, and all decisions were volume driven. According to CW 4, appraisals even if turned down, were often accepted later as branch or regional sales managers "gave them hell" for rejecting appraisals. According to CW 4, he was told by his superiors that New Century was a volume based company and that New Century needed to increase its volume to outrun "shrinkages" in the secondary market.

108. On May 7, 2007, the front page of the *Washington Post* reported "Pressure at Mortgage Firm Led to Mass Approval of Bad Loans." The *Washington Post* reported that a former New Century appraiser Maggie Hardiman recounted that "[y]ou didn't want to turn away a loan because all hell would break loose," and when she did reject a loan, "her bosses often overruled her and found another appraiser to sign off on it."

109. On March 12, 2007, *USA Today* reported that, one day after New Century "said its lenders were cutting off financing because it didn't have enough money, or prospects of new assistance, to cover billions of dollars in obligations," New Century disclosed that the SEC was investigating the company. *USA Today* also reported that "New Century also said Tuesday that it has received a grand jury subpoena requesting documents. The request is part of the U.S. Attorney in Los Angeles' criminal probe into the company." On May 1, 2007, the *New York Times* (Today in Business) reported that New Century was facing investigations by both federal prosecutors and securities regulators, and on July 6, 2007, *Reuters* reported that the SEC had elevated its investigation of New Century to "formal status" which "gives the SEC subpoena power."

110. On December 7, 2009, the SEC charged three of New Century's top officers with violations of the federal securities laws, and claimed that "New Century's business was anything but 'good' and it soon became evident that its lending practices, far from being 'responsible,'

were the recipe for financial disaster." SEC Complaint, ¶3. The SEC Complaint further details the falsity of New Century's assurances to the market about its "adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market," and its policy to "only approve subprime loan applications that evidence a borrower's ability to repay the loan." *Id.*, ¶¶ 19-20.

111. New Century's systematic disregard for its underwriting guidelines led to dramatic downgrades of the value of the Securities in which New Century acted as a mortgage originator. On December 6, 2007, the *New York Times* reported that "[l]oans made by New Century, which filed for bankruptcy protection ... , have some of the highest default rates in the industry. . . , according to data from Moody's Investor Services."

112. Allegations of New Century's dismal underwriting have been sustained by Courts in similar actions. For example, in *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc., et al.*, an investor brought class claims against the dealer, issuer, and underwriter of RMBS containing collateral loans underwritten by New Century, alleging that New Century failed to comply with its "loan-approval oversight and control mechanisms as represented in [its] underwriting guidelines." The court substantially denied defendants' motion to dismiss, holding that the complaint properly alleged "systemic borrower defaults, complete lack of controls and oversight, and flagrant violations of the Guidelines," and that New Century, along with the dealer and issuer defendants, "acted with reckless abandon in their zeal to generate loan volume and profits."

b. Long Beach Mortgage Company

1. Defendants Made Untrue Statements Of Material Facts About Long Beach's Underwriting Standards And Practices

113. Long Beach Mortgage Company ("Long Beach") originated mortgage loans that were included in the pools for the following offerings:

Deal	Depositor Defendant	Direct Seller Bank Defendant
LBMLT 2003-4	Long Beach Securities Corp.	Credit Suisse First Boston
LBMLT 2005-1	Long Beach Securities Corp.	Bank of America, Deutsche Bank, Citigroup, Merrill Lynch
LBMLT 2005-WL1	Long Beach Securities Corp.	Citigroup
LBMLT 2005-WL2	Long Beach Securities Corp.	
SVHE 2005-B	Financial Asset Securities Corp.	Greenwich Capital

114. Long Beach originated some or all of the loans underlying $61,039,861 million of the Securities in Appendix A that Defendants offered or sold to Plaintiff.

115. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding Long Beach's underwriting standards and practices. For example, prospectus supplement Soundview Home Loan Trust 2005-B stated:

> The Long Beach Mortgage Loans were originated, acquired or re-underwritten upon acquisition by Long Beach generally in accordance with the underwriting guidelines described below.
>
> The Long Beach Mortgage Loans were originated or re-underwritten, in the case of Long Beach Mortgage Loans acquired by Long Beach, generally in accordance with guidelines established by Long Beach under its Full Documentation ("Full Doc"), Limited Documentation ("Limited Doc") or State Income Documentation ("Stated Income") residential loan programs. Long Beach's underwriting guidelines are primarily intended to evaluate the mortgagor's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral. On a case-by-case basis and only with the approval of a lending officer with appropriate risk level authority, Long Beach may determine that, based upon compensating factors, a prospective borrower not strictly qualifying under its underwriting risk category guidelines warrants an underwriting exception.
>
> * * *
>
> The mortgaged properties are appraised by licensed independent appraisers who have satisfied WMB's appraiser screening process. . . . Each appraisal includes a market data analysis based on recent sales of comparable homes in the area and, where deemed appropriate, replacement cost analysis based on the current cost of

> constructing a similar home. Every independent appraisal is reviewed by a representative of Long Beach or WMB before the loan is funded or re-underwritten.

116. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 117-143, they failed to disclose that Long Beach: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. Long Beach Violated Its Stated Underwriting Standards

117. Defendant Greenwich Capital underwrote, offered or sold to Plaintiff Securities containing loans originated by Long Beach and made untrue statements to Plaintiff about Long Beach's underwriting and appraisal standards and practices and the loans underlying the Securities. Greenwich Capital had extensive business relationships with Long Beach, had access to Long Beach's mortgage origination personnel and internal information, and conducted due diligence into Long Beach using its own personnel and third-party loan review firms. As a result of Greenwich Capital's access to and due diligence into Long Beach, it was or reasonably should have been aware of the untruth of the statements about Long Beach described above.

118. In 1999, Long Beach was acquired by Washington Mutual ("WaMu"), a Washington corporation headquartered at 1301 Second Avenue, Seattle, Washington 98101. WaMu was founded in 1889 and, before its bankruptcy, was the largest savings and loan association in the country. Long Beach served as WaMu's subprime loan origination division until January 1, 2006 and was thereafter known as WaMu's "specialty mortgage lending" channel. According to CW 5, who served as a Long Beach Senior Underwriter in the Chicago area from 2004 through September 2007, WaMu sold subprime loans with interest-only and negative-amortization features, increasing the riskiness of these loans.

119. The Senate Permanent Subcommittee on Investigations ("PSI"), after investigating and holding hearings on Long Beach's role in the recent financial crisis, concluded the following about the company:

> Subprime lending can be a responsible business. Most subprime borrowers pay their loans on time and in full. Long Beach, however, was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry.

120. Long Beach financially rewarded its employees for closing higher-risk loans and instituted loan sales quotas. Long Beach loan officers, for example, received more money per loan for originating higher-risk loans and for exceeding established loan targets. Loan processing personnel were compensated according to the speed and number of the loans they processed. Loan officers and their sales associates received still more compensation if they charged borrowers higher interest rates or points than required in bank rate sheets specifying loan prices, or included prepayment penalties in the loan agreements. That added compensation created incentives to increase loan profitability, but not loan quality. Accordingly, Long Beach's employees targeted more and more borrowers who were less able to afford the loan payments they would have to make, and many of whom had no realistic ability to meet the obligations incident to the loans they were sold.

121. According to CW 6, a First Vice President in the Capital Markets Group and Director of Investor Relations at WaMu Capital Corp. in New York, New York, from October 2004 until December 2007, Long Beach compensated its account executives and underwriters based on the volume of loans that they brought in and closed, and their compensation structure gave no consideration to the quality of those loans.

122. CW 7, an Account Executive for Long Beach in New Jersey from 1998 until October 2007, noted a shift in underwriting philosophy in 2005 toward increasing loan volume at all costs. When CW 7 first joined the subprime business, Long Beach relied on "common sense underwriting" and was not exclusively focused on credit scores. CW 7 noted the change away from a "know your borrower" focus beginning in the 2005 timeframe, with Long Beach relying

more on credit scores and less on common sense. The borrower needed to produce less and less documentation, and Fair Isaac Credit Organization ("FICO") credit scores became more important than verifying income for Long Beach. In response, "volume really went through the roof."

123. Long Beach pushed through every loan it could close, through whatever means necessary. CW 8, a Senior Underwriter for Long Beach in Dallas, Texas, from 2004 through April 2007, reported that on occasion CW 8 would express concerns to her manager over funding some of the loans underwritten, but the manager's "direction from corporate" was simply to fund loans. CW 8 also reported that at month-end team meetings, it was often discussed that the Company was trying to increase volume by getting more "borrowers to fit."

124. CW 8 recalled that some of the "crazier" programs at Long Beach included stated-income loans for W-2 wage earners, a program that started in 2005. Stated-income programs, to the extent that lenders accepted them, were traditionally reserved for self-employed borrowers with significant assets. At Long Beach, however, these "liar's loans" were common, even for those borrowers who were not self-employed. Long Beach would also approve 100% financing for stated-income borrowers with FICO scores as low as 500.

125. CW 8 also described a "three letters of reference" program for self-employed borrowers, where a borrower only had to submit three letters of reference from anyone for whom they supposedly worked. CW 8 said no attempt was made to verify the information in the letters. CW 8 related that some of the accepted letters included statements such as: "So-and-so cuts my lawn and does a good job." At Long Beach, FICO scores ranged from 500-620, but CW 8 said that if Long Beach salespeople had a borrower with a 620, they were "hooping and hollering" about having a borrower with good credit.

126. CW 8 also relayed that borrowers could get a loan with no established FICO score merely by providing "three alternative trade lines." An "alternative trade line" was anything that did not appear on the borrower's credit report, including documentation of car insurance payments, verification of rent payment, or a note from a person claiming the borrower had repaid

a personal debt. CW 8 said that Long Beach originated "a significant amount" of these types of problematic loans. CW 8 commented: "It was just a disaster." Furthermore, CW 8 said that these loans made up the majority of first payment defaults – *i.e.*, loans on which the borrower failed to make even the first payment – in the end of 2006.

127. CW 9 was a Wholesale Mortgage Underwriter at the Long Beach loan processing center located in Lake Oswego, Oregon from August 2005 until December 2006. CW 9 first joined WaMu in Lake Oswego in 2003 as a Senior Credit Analyst and subsequently joined Long Beach in 2004 as a Senior Loan Coordinator, ultimately becoming a Wholesale Mortgage Underwriter. CW 9 said that at Long Beach there was always a sense of "working the underwriting guidelines" to close loans, rather than to mitigate Long Beach's credit risk. CW 9 said that there was simply an environment in the loan processing center to "approve, approve, approve" and that any exception that was needed to approve a loan was not only done, but was "sought after." CW 9 felt that Long Beach consistently pressured its underwriters to "find a way to make it work."

128. According to CW 5, even the few loans that Long Beach underwriters refused to approve were regularly pushed through by Long Beach management by granting exceptions to the guidelines. According to CW 5, "There were so many exceptions." Long Beach allowed LTV ratio exceptions, and the "rate exceptions were ridiculous." According to CW 5, WaMu allowed even the salespeople to give interest-rate exceptions to borrowers to push loans through. CW 5 explained: "There were really no restrictions to approve a loan," and some "really bad loans" went through the office. The attitude at WaMu was "push, push, push."

129. Numerous other Long Beach employees agreed that exceptions to Long Beach's guidelines were commonplace. CW 10, a Senior Underwriter with WaMu in Livermore, California from 2003 through September 2007, said that if Long Beach's competitors could not approve a loan, it was known to send the loan to Long Beach and they would make an exception to get the loan through. CW 10 said that guidelines were "loose to the point of disbelief." CW

10 described Long Beach's lending approach as follows: "If [potential borrowers] were breathing and had a heart beat, you could probably get the loan done."

130. CW 9 stated that many employees at Long Beach were disappointed about the decisions that were being made about loan quality, but they were resigned to simply "keep their heads down." According to CW 5, several WaMu employees contacted corporate headquarters about the incessant underwriting exceptions, including issuing loans to unqualified borrowers. CW 5 stated, "[w]e did a lot of underhanded stuff." CW 5 stated that if an underwriter at Long Beach refused to force a file through, they would be written up, not because they made a bad decision but because the sales team did not like their decision. CW 5 said: "Basically, sales is what ran Long Beach Mortgage, it wasn't the Operations part."

131. CW 11 served as a Quality Assurance Manager in the Long Beach Loan Fulfillment Center ("LFC") in Dallas, Texas from November 2005 until his termination in August 2007. CW 11 explained that the Quality Assurance group in Dallas performed a monthly audit on a random selection of subprime loans from the various loan origination centers around the country. This analysis was not focused on loan-specific issues, but instead concerned WaMu/Long Beach-wide trends that might suggest necessary changes in underwriting guidelines, compliance standards, or other systems.

132. CW 11 observed that, despite the extensive analysis that the group performed to determine the causes for WaMu/Long Beach-wide loan problems, WaMu/Long Beach ignored the results. CW 11's group continued to identify the same problematic trends again and again without WaMu/Long Beach taking any steps to address the causes. According to CW 11, although WaMu/Long Beach was "going through the motions" to present a façade of legitimate quality control, in reality there was nothing but a "free for all to approve loans by the thousands."

133. According to CW 12, an employee of Long Beach from 2001 until October 2006, serving as an underwriter and later becoming a Quality Assurance Manager, a group of WaMu employees regularly reviewed a percentage (typically around 20%) of Long Beach's loans to monitor Long Beach's underwriting. CW 12 forwarded the report to Long Beach's Loan

Servicing Center managers. The Long Beach managers receiving the reports had a certain number of days to go through the loan files in question and respond to the findings in the reports.

134. According to CW 13, a Senior Default Foreclosure Loan Specialist with Long Beach in Chatsworth, California from 2002 to September 2006, her department received statistics every month that showed the number of first payment defaults from the prior month. According to CW 13, at the end of 2004, the default numbers were at 6-7% and, "although they may have increased slightly, did not go over 9%." Suddenly, however, they increased "all at once" to as high as 14%. According to CW 13, first payment defaults just "seemed to go up and up."

135. In his opening statement at the first PSI hearing on Wall Street and the Financial Crisis (related to the role of high risk home loans), Senator Carl Levin noted that an internal WaMu audit of Long Beach in 2005 found that "relaxed credit guidelines, breakdowns in manual underwriting processes, and inexperienced subprime personnel . . . coupled with a push to increase loan volume and the lack of an automated fraud monitoring tool" led to deteriorating loans. Many of the loans defaulted within three months of being sold to investors. Investors demanded that Long Beach repurchase them. Long Beach had to repurchase over $875 million in loans in 2005 and 2006, lost over $107 million from the defaults, and had to cover a $75 million shortfall in its repurchase reserves.

136. Senator Levin also noted that in response to the repurchase requests, WaMu "fired Long Beach's senior management and moved the company under the direct supervision of the President of WaMu's Home Loans Division, David Schneider" and that "WaMu promised its regulator that Long Beach would improve. But it didn't." In April 2006, WaMu's President, Steve Rotella, emailed the CEO, Kerry Killinger, that Long Beach's "delinquencies are up 140% and foreclosures close to 70%. . . . It is ugly." Five months later, in September, he emailed that Long Beach is "terrible. . . . Repurchases, [early payment defaults], manual underwriting, very weak servicing/collections practices and a weak staff." Two months after that, in November

2006, the head of WaMu Capital Markets in New York, David Beck, wrote to Mr. Schneider that "LBMC [Long Beach] paper is among the worst performing in the [market]."

137. In June 2007, WaMu shut down Long Beach and took over its subprime lending operations. Currently, Long Beach RMBS report loan delinquency rates in excess of 40%. At the end of 2007, a Long Beach employee was indicted for having taken kickbacks to process fraudulent or substandard loans.

138. In April 2010, the Senate Permanent Subcommittee on Investigations ("PSI") held a series of hearings "to examine some of the causes and consequences of the crisis." The goals of the hearings were threefold: (1) to construct a public record of the facts to deepen public understanding of what happened and to try to hold some of the perpetrators accountable; (2) to inform the legislative debate about the need for financial reform; and (3) to provide a foundation for building better defenses to protect Main Street from the excesses of Wall Street.

139. The hearings were based on an in-depth bipartisan investigation that began in November 2008. The PSI conducted over 100 detailed interviews and depositions, consulted with dozens of experts, and collected and reviewed millions of pages of documents. Given the extent of the economic damage and the complexity of its root causes, the Subcommittee's approach has been to develop detailed case studies to examine each stage of the crisis.

140. On April 13, 2010, the PSI held a hearing that focused on the role high risk loans played in the financial crisis, using WaMu as a case history. It showed how WaMu originated and sold hundreds of billions of dollars in high risk loans to Wall Street Banks in return for big fees, polluting the financial system with toxic mortgages.

141. The PSI reached the following findings of fact following the April 13, 2010 hearing:

> **1. High Risk Lending Strategy**. Washington Mutual ("WaMu") executives embarked upon a high risk lending strategy and increased sales of high risk home loans to Wall Street, because they projected that high risk home loans, which generally charged higher rates of interest, would be more profitable for the bank than low risk home loans.

2. Shoddy Lending Practices. WaMu and its affiliate, Long Beach Mortgage Company ("Long Beach"), used shoddy lending practices riddled with credit, compliance, and operational deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.

3. Steering Borrowers to High Risk Loans. WaMu and Long Beach too often steered borrowers into home loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans or sell their homes before the payments shot up.

4. Polluting the Financial System. WaMu and Long Beach securitized over $77 billion in subprime home loans and billions more in other high risk home loans, used Wall Street firms to sell the securities to investors worldwide, and ***polluted the financial system with mortgage backed securities which later incurred high rates of delinquency and loss.***

5. Securitizing Delinquency-Prone and Fraudulent Loans. At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.

6. Destructive Compensation. WaMu's compensation system rewarded loan officers and loan processors for originating large volumes of high risk loans, paid extra to loan officers who overcharged borrowers or added stiff prepayment penalties, and gave executives millions of dollars even when its high risk lending strategy placed the bank in financial jeopardy.

142. The PSI also concluded that "from 2004 to 2007, in exchange for lucrative fees, Goldman Sachs helped lenders like Long Beach, Fremont, and New Century, securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting residential mortgage backed securities (RMBS), and sell the RMBS securities to investors, pushing billions of dollars of risky mortgages into the financial system."

143. Long Beach and WaMu's appraisal practices have also been the target of governmental investigations. On November 1, 2007, New York State Attorney General Andrew Cuomo announced that he was suing eAppraiseIT and its parent company First American Corporation, charging them with caving into pressure from WaMu to use a list of preferred "Proven Appraisers" who provided inflated appraisals on homes. *People of the State of New York*

v. First Am. Corp. and First Am. eAppraiseIT, Index No. 406796/2007 (N.Y. Sup. Ct.). Cuomo's suit alleged that eAppraiseIT colluded with WaMu (the parent of Mortgage Originator Long Beach) to inflate the appraisal values of homes. According to Cuomo, between April 2006 and October 2007, First American performed 262,000 appraisals for WaMu. When WaMu loan officers began complaining that valuations by eAppraiseIT's independent roster were coming in too low, WaMu allegedly pressured First American to assign only appraisers on WaMu's approved list when appraising WaMu mortgage-related properties. WaMu allegedly threatened to take its business elsewhere, and dangled the prospect of greater use of First American's other settlement services, to convince eAppraiseIT to accede to its demands. In a press release that accompanied the suit, Cuomo stated:

> The independence of the appraiser is essential to maintaining the integrity of the mortgage industry. First American and eAppraiseIT violated that independence when Washington Mutual strong-armed them into a system designed to ripoff homeowners and investors alike . . . . The blatant actions of First American and eAppraiseIT have contributed to the growing foreclosure crisis and turmoil in the housing market. By allowing Washington Mutual to hand-pick appraisers who inflated values, First American helped set the current mortgage crisis in motion.

144. On June 8, 2010, the New York State Appellate Division, First Department, issued a decision upholding Attorney General Cuomo's complaint.

c. Fremont Investment & Loan

1. Defendants Made Untrue Statements Of Material Facts About Fremont's Underwriting Standards And Practices

145. Fremont Investment & Loan ("Fremont") originated mortgage loans that were included in the pools for the following offerings:

Deal	Depositor Defendant	Direct Seller Bank Defendant
BSABS 2004-FR3	Bear Stearns & Co. Inc. Asset Backed Securities I LLC	Citigroup
FHLT 2004-C	Fremont Mortgage Securities Corporation	Lehman Brothers
FHLT 2005-E	Fremont Mortgage Securities Corporation	Credit Suisse First Boston, Deutsche Bank
FHLT 2006-B	Fremont Mortgage Securities Corporation	Greenwich Capital, BNP Paribas
FHLT 2006-C	Fremont Mortgage Securities Corporation	Merrill Lynch
MLMI 2004-SL1	Merrill Lynch Mortgage Investors, Inc.	Merrill Lynch
MLMI 2005-FM1	Merrill Lynch Mortgage Investors, Inc.	Merrill Lynch
SVHE 2005-B	Financial Asset Securities Corp.	Greenwich Capital

146. Fremont originated some or all of the loans underlying $125,873,239 million of the Securities in Appendix A that Defendants offered or sold to Plaintiff.

147. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding Fremont's underwriting and appraisal standards and practices. For example, the prospectus supplement for Fremont Home Loan Trust 2004-C stated:

> Mortgage loans are underwritten in accordance with Fremont's current underwriting programs, referred to as the Scored Programs ("Scored Programs"), subject to various exceptions as described in this section. Fremont's underwriting guideliness are primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan. The Scored Programs assess the risk of default by using Credit Scores obtained from third-party credit repositories along with, but not limited to, past mortgage payment history, seasoning on bankruptcy and/or foreclosure and loan-to-value ratio as an aid to, not a substitute for, the underwriter's judgment. All of the mortgage loans in the mortgage pool were underwritten with a view toward the resale of the mortgage loans in the secondary mortgage market.

* * *

All of the mortgage loans were underwritten by Fremont's underwriters having the appropriate approval authority. Each underwriter is granted a level of authority commensurate with their proven judgment, experience and credit skills. **On a case by case basis, Fremont may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category guidelines described below is nonetheless qualified to receive a loan, i.e., an underwriting exception. Compensating factors may include, but are not limited to, low loan-to-value ratio**, low debt to income ratio, substantial liquid assets, good credit history, stable employment and time in residence at the applicant's current address. It is expected that a substantial portion of the mortgage loans may represent such underwriting exceptions.

There are the three documentation types, Full Documentation ("Full Documentation"), Easy Documentation ("Easy Documentation") and Stated Income ("Stated Income"). Fremont's underwriters verify the income of each applicant under various documentation types as follows: under Full Documentation, applicants are generally required to submit verification of stable income for the periods of one to two years preceding the application dependent on credit profile; under Easy Documentation, the borrower is qualified based on verification of adequate cash flow by means of personal or business bank statements; under Stated Income, applicants are qualified based on monthly income as stated on the mortgage application. The income is not verified under the Stated Income program; however, the income stated must be reasonable and customary for the applicant's line of work.

Fremont originates loans secured by 1-4 unit residential properties made to eligible borrowers with a vested fee simple (or in some cases a leasehold) interest in the property. **Fremont's underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal**. Generally, initial appraisals are provided by qualified independent appraisers licensed in their respective states. Review appraisals may only be provided by appraisers approved by Fremont. In some cases, Fremont relies on a statistical appraisal methodology provided by a third-party. Qualified independent appraisers must meet minimum standards of licensing and provide errors and omissions insurance in states where it is required to become approved to do business with Fremont. Each uniform residential appraisal report includes a market data analysis based on recent sales of comparable homes in the area and, where deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. The review appraisal may be a desk review, field review or an automated valuation report that confirms or supports the original appraiser's value of the mortgaged premises.

148. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶149-168, they failed to disclose that Fremont: (i) systematically failed

to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. Fremont Violated Its Stated Underwriting Standards

149. Defendants Barclays, J.P. Morgan (as successor-in-interest to Bear Stearns), Credit Suisse, Greenwich Capital, Merrill Lynch, and UBS underwrote, offered or sold to Plaintiff Securities containing loans originated by Fremont and made untrue statements to Plaintiff about Fremont's underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with Fremont, had access to Fremont's mortgage origination personnel and internal information, and conducted due diligence into Fremont using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into Fremont, they were or reasonably should have been aware of the untruth of the statements about Fremont described above.

150. Fremont originated subprime residential real estate loans nationwide on a wholesale basis through independent loan brokers in nearly all 50 states. Fremont was one of the country's largest subprime lenders until March 2007, when the Federal Deposit Insurance Corporation ("FDIC") effectively forced Fremont out of the subprime lending business for extending subprime credit "in an unsafe and unsound manner" and committing violations of law and FDIC regulations. Fremont later filed for bankruptcy.

151. On March 7, 2007, following an extensive investigation, the FDIC issued a Cease & Desist Order to Fremont, concluding that Fremont was, in fact, "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]," "operating with a large volume of poor quality loans," and "engaging in unsatisfactory lending practices."

152. According to the FDIC's March 7, 2007 press release:

> In taking this action, the FDIC found that [Fremont] was operating without effective risk management policies and procedures in place in relation to its subprime mortgage and commercial real estate lending operations. The FDIC determined, among other things, that the bank had been operating without adequate subprime mortgage loan underwriting criteria, and that it was marketing and extending subprime mortgage loans in a way that substantially increased the likelihood of borrower default or other loss to the bank.

153. In response to Fremont's dangerous subprime lending practices, on October 4, 2007, the Commonwealth of Massachusetts, through its Attorney General, brought an enforcement action against Fremont for an array of "unfair and deceptive business conduct," "on a broad scale." *Massachusetts v. Fremont Investment & Loan and Fremont General Corp.*, No. 07-4373 (Sup. Ct. Mass.) (the "Massachusetts Action"). Specifically, the Massachusetts Action alleged that Fremont abdicated its underwriting standards, provided misleading or incomplete information to borrowers, made subprime loans that it knew would fail, and participated in predatory lending.

154. According to the Massachusetts Attorney General's complaint, Fremont's loans were "structurally unfair due to their multiple layers of risk with no meaningful consideration whether borrowers [could] afford to pay the loans." Fremont "approv[ed] borrowers without considering or verifying the relevant documentation related to the borrower's credit qualifications, including the borrower's income"; "approv[ed] borrowers for loans with inadequate debt-to-income analyses that do not properly consider the borrowers' ability to meet their overall level of indebtedness and common housing expenses"; "failed to meaningfully account for [ARM] payment adjustments in approving and selling loans"; "approved borrowers for these ARM loans based only on the initial fixed 'teaser' rate, without regard for borrowers' ability to pay after the initial two year period"; "consistently failed to monitor or supervise brokers' practices or to independently verify the information provided to Fremont by brokers"; and "ma[de] loans based on information that Fremont knew or should have known was inaccurate or false, including, but not limited to, borrowers' income, property appraisals, and credit scores."

155. On December 9, 2008, the Supreme Judicial Court of Massachusetts affirmed a preliminary injunction obtained in conjunction with the Massachusetts Action that prevented Fremont from foreclosing on thousands of its loans issued to Massachusetts residents. As a basis for its unanimous ruling, the Supreme Judicial Court found evidence that "Fremont made no effort to determine whether borrowers could make the scheduled payments under the terms of the loan," and that "Fremont knew or should have known that [its lending practices and loan terms] would operate in concert essentially to guarantee that the borrower would be unable to pay and default would follow."

156. In reaching its decision, the Supreme Judicial Court relied in part on the affidavits of two outside account executives who marketed Fremont's loan products to brokers in Massachusetts. Once loans were produced, these account executives worked with Fremont employees, such as underwriters and account managers, to process and close the loans. According to their affidavits filed in the Massachusetts Action, both outside account executives attested that Fremont purposefully relaxed its underwriting standards and made loans based on documents known to be untrue.

157. The terms of the preliminary injunction were made permanent by a settlement of the Massachusetts Action, reached on June 9, 2009. In addition to agreeing to the protections for borrowers that would prevent Fremont from foreclosing on "unfair" loans, Fremont agreed to pay the Commonwealth of Massachusetts $10 million in consumer relief, penalties, and costs.

158. Numerous confidential witnesses interviewed by Plaintiff's counsel also corroborate the findings of the FDIC and the Massachusetts Action. According to CW 37, an Assistant Vice President, Regulatory Risk Examiner at Fremont, who was involved in the FDIC's investigation of Fremont, Fremont's Regulatory Risk Management group (of which CW 37 was a member) submitted numerous, repeated adverse written findings to senior Fremont executives in 2005 and 2006, which "mirrored" the FDIC's eventual Cease & Desist Order, one to two years later. CW 37 stated that these repeated adverse reports specifically highlighted, among other things, unfair and deceptive acts in which Fremont was engaging, "pretty obvious" poor

underwriting, and problematic incentive compensation. CW 37 stated that these reports were based on reviews performed by the Regulatory Risk Management group, including interviews of underwriters, quality control, and other Fremont personnel. CW 37 stated that Fremont filed repeated Suspicious Activity Reports ("SARs") regarding broker fraud as to the same brokers, but Fremont executives would not end relationships with the identified brokers. CW 37 stated that some of the fraud was "so egregious" including "ridiculous" stated income applications, yet nothing was being done about "obvious problems" including repeated broker fraud.

159. The personal accounts of other former employee confidential witnesses confirm that Fremont failed to adhere to its established underwriting guidelines and promoted the wide use of exceptions to Fremont's underwriting standards in order to drive loan quantity at the expense of quality. For example, Fremont underwriters were instructed that Fremont's guidelines and underwriting policies were a mere "guide," and that they were to "think outside the box" (according to CW 38, a senior underwriter from 2004 through March 2007 at Fremont's Downers Grove, Illinois center), "make it work" (according to CW 39, an underwriter at Fremont's Downers Grove center from August 2002 to January 2007, and CW 40, an assistant operations manager at Fremont's Anaheim, California center from October 2003 to January 2007), or "massage the file" (according to CW 41, a senior account manager at Fremont's Downers Grove, Illinois center from July 2001 to February 2007) to get loans approved.

160. As explained by CW 42, a former Fremont sales manager from August 1998 through March 2007, not only were Fremont's guidelines loose, but there were frequent granted exceptions to the guidelines. Underwriters made several types of exceptions "everyday," according to CW 43, an operations manager at Fremont's Anaheim, California center from April 2004 to January 2007, and a lot of them were not warranted, according to CW 40. Indeed, an estimated 30% of Fremont's loans had some sort of exception, partly because anyone from an assistant manager on up had the authority to sign off on exceptions, according to CW 44, an underwriter at Fremont's Anaheim, California center from May 2005 to March 2007.

161. According to CW 44 and CW 45 (an account manager at Fremont's Downers Grove, Illinois center from August 2005 to January 2007), when borrowers were rejected for failing to meet Fremont's underwriting criteria for fully documented loans, the loans were simply converted to "stated income" loans "with a higher reported income than previously documented" and approved. According to the separate accounts of CW 39 and CW 41, Fremont approved loans with unrealistic stated incomes, including "pizza delivery men" with reported monthly income of $5,000 or $6,000. Fremont accepted claims that "landscapers and housekeepers" earned $10,000 in monthly income, according to CW 46 (a former senior underwriter at Fremont's Anaheim and Ontario, California centers from 2002 to 2007), and that "window washers" made $75,000 per year, according to CW 41. In addition, Fremont continually ignored obviously fraudulent documents when approving loans, according to CW 47, an account manager from 2005 through May 2007. By way of specific example, Fremont ignored a case where 40 loan files from the same broker had the exact same banking statements, according to CW 48, a former quality control investigator at Fremont from 2002 until March 2007. Indeed, fraudulent bank statements and W2s were discovered and ignored every day, according to CW 49, a quality control auditor with Fremont from May 2005 to February 2007. And, when Fremont could not ignore fraudulent information, such as a false pay stub, Fremont simply removed the information from the file or replaced it, according to CW 40.

162. According to CW 50, a senior underwriter at Fremont's Anaheim, California center from 1997 to September 2007, Fremont also loosened its debt-to-income-ratio requirements. Before 2004, Fremont generally did not approve loans with more than a 50% debt-to-income ratio. Thereafter, according to CW 50, Fremont approved loans with a 55% debt-to-income ratio. And when CW 50 reviewed the loan files, he often determined that the debt-to-income ratios actually were between 65% or 70%, or even up to 90%. In addition, CW 50 stated that Fremont routinely approved stated-income loans with claimed incomes that were simply "off the wall figures."

163. In addition, according to CW 51, an account manager at Fremont's Downers Grove, Illinois center from January 2002 to July 2006, CW 51's superiors would call property appraisers and request that they inflate their appraisal values by at least a few thousand dollars, and the appraisers would do so. According to CW 51, while auditing loans in the Due Diligence Department and later, in connection with CW 51's review of investor repurchase claims, CW 51 discovered, among other things, incomplete appraisals, appraisals that did not match the address of the property, and appraisals that described the home as owner-occupied when it was rented, on the large majority of the loans.

164. Further corroborating Fremont's poor underwriting practices, Fremont's business partners have alleged that Fremont originated and sold large amounts of loans that were terribly underwritten. In October of 2007, Morgan Stanley Mortgage Capital Holdings LLC sued Fremont for breach of contract for Fremont's failure to repurchase loans that Fremont sold from May of 2005 through December of 2006 to Morgan Stanley's predecessor-in-interest, Morgan Stanley Mortgage Capital, Inc. (referred to collectively with Morgan Stanley Mortgage Capital Holdings LLC as "Morgan Stanley"). That action was captioned *Morgan Stanley Mortgage Capital Holdings LLC, as Successor-in-Interest to Morgan Stanley Mortgage Capital Inc. v. Fremont Investment & Loan*, No. 07-Civ.-9457 (S.D.N.Y.). According to the complaint, when Fremont sold the loans at issue, Fremont warranted, among other things, that the loans met its underwriting criteria and that Fremont had adequately verified the underlying information, such as the borrowers' income, credit history, and assets. Further, according to the complaint, Fremont agreed to repurchase any loans that materially violated the warranties and indemnify Morgan Stanley for any damages it suffered due to the defective loans.

165. Morgan Stanley alleged that it discovered "hundreds" of improperly underwritten loans shortly after they were purchased. In particular, Morgan Stanley alleged that the "loans fail[ed] to meet Fremont's underwriting guidelines" because Fremont had "fail[ed] to verify assets prior to closing," performed "defective verification of rent, fail[ed] to obtain the minimum credit history information, and [made] loans . . . to borrowers that did not have the requisite

credit score. Morgan Stanley also alleged, consistent with the statements of former Fremont employees set forth herein, that the loan documents contained misrepresentations of the income or employment of the borrower and misrepresentations concerning appraisal values. Morgan Stanley further alleged that the loans contained misrepresentations of the occupancy of the residence, misrepresentations of the assets of the borrower, and misrepresentations of the condition of the property.

166. Morgan Stanley is not the only one of Fremont's business partners to sue the Company for its improper underwriting. In June of 2007, Lehman Brothers Holdings, Inc. and Lehman Brothers Bank, FSB (collectively, Lehman Brothers) also sued Fremont for breach of contract and unjust enrichment for Fremont's failure to repurchase loans that Lehman Brothers had purchased beginning in March of 2004. That action was captioned *Aurora Loan Services LLC, et al. v. Fremont Investment & Loan Corp.*, No. 07-cv-01284-RPM (D. Colo.).

167. In that case, Lehman Brothers, just like Morgan Stanley, alleged that when Fremont sold the loans at issue, Fremont warranted that the loans met its underwriting criteria and that the underlying documentation was accurate as to the borrowers identity, income, employment, credit history, and assets, among other things. Furthermore, Fremont agreed to repurchase those loans that violated the warranties and indemnify Lehman Brothers for any damages it suffered due to the defective loans.

168. After Lehman Brothers purchased the loans, according to its complaint, loan servicers and other third parties notified Lehman Brothers of certain issues concerning the loans. When Lehman Brothers conducted further due diligence, it confirmed that Fremont breached one or more representations and/or warranties concerning the loans. According to the Lehman complaint, the breached warranties included [t]he conformance of the Mortgage Loans with applicable underwriting guidelines and loan program requirements; [t]he accuracy and integrity of all information and documentation regarding borrower identity, income, employment, credit, assets, and liabilities used to originate the Mortgage Loans; [t]he validity of all Mortgage Loan documentation; [t]he ownership, nature, condition, and value of the real

property securing the respective Mortgage Loans□; and □[b]orrower occupancy of the property securing the Mortgage Loans.□

d. WMC Mortgage Corporation

1. Defendants Made Untrue Statements Of Material Facts About WMC's Underwriting Standards And Practices

169. WMC originated Mortgage Loans that were included in the pools for the following offerings:

Deal	Depositor Defendant	Direct Seller Bank Defendant
ABFC 2005-HE2	Asset Backed Funding Corporation	Bank of America
ABSHE 2004-HE7	Asset Backed Securities Corporation	Bank of America
ACE 2005-HE7	ACE Securities Corp.	Deutsche Bank
ACE 2005-HE7	ACE Securities Corp.	Deutsche Bank, Goldman Sachs
MABS 2004-WMC3	Mortgage Asset Securitization Transactions, Inc.	Deutsche Bank
MLMI 2004-WMC1	Merrill Lynch Mortgage Investors, Inc.	Merrill Lynch
MLMI 2005 WMC-1	Merrill Lynch Mortgage Investors, Inc.	Merrill Lynch, UBS, Bear Stearns & Co. Inc., Morgan Stanley
MSAC 2005-WMC2	Morgan Stanley ABS Capital I Inc	JP Morgan
SVHE 2005-1	Financial Asset Securities, Corp.	Merrill Lynch
SVHE 2005-4	Financial Asset Securities Corp.	Greenwich Capital
SVHE 2005-B	Financial Asset Securities Corp.	Greenwich Capital

170. WMC originated some or all of the loans underlying $62,999,403 million of the Securities in Appendix A that Defendants offered or sold to Plaintiff.

171. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding WMC's underwriting and appraisal standards and practices. For example, the prospectus supplement for ABFC Asset-Backed Certificates 2005-HE2 stated:

> *WMC Mortgage Corp. Underwriting Guidelines*. The WMC Mortgage Loans have been originated generally in accordance with the underwriting guidelines established by WMC Mortgage Corp. (collectively, the "WMC Underwriting Guidelines"). **WMC Mortgage Corp. also originates certain other mortgage loans that are underwritten to the guidelines of specific investors, which mortgage loans are not included among those sold to the Trust as described herein. The WMC Underwriting Guidelines are primarily intended to (a) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (b) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults. On a case-by-case basis WMC Mortgage Corp. may determine that, based upon compensating factors, a prospective mortgagor not strictly qualifying under the underwriting risk category or other guidelines described below warrants an underwriting exception. Compensating factors may include, but are not limited to, low debt-to-income ratio**, good mortgage payment history, an abundance of cash reserves, excess disposable income, stable employment and time in residence at the applicant's current address. It is expected that a substantial number of the WMC Mortgage Loans will represent such underwriting exceptions.
>
> The WMC Mortgage Loans will fall within the following documentation categories established by WMC Mortgage Corp.: Full Documentation, Full-Alternative Documentation, Limited Documentation, Lite Documentation, Stated Income Documentation and Stated Income/Verified Assets (Streamlined) Documentation. In addition to single-family residences, certain of the WMC Mortgage Loans will have been underwritten (in many cases, as described above, subject to exceptions for compensating factors) in accordance with programs established by WMC Mortgage Corp. for the origination of mortgage loans secured by mortgages on condominiums, vacation and second homes, manufactured housing, two- to four-family properties and other property types. In addition, WMC Mortgage Corp. has established specific parameters for jumbo loans, which are designated in the WMC Underwriting Guidelines as mortgage loans with original principal balances in excess of $650,000. However, WMC Mortgage Corp. sometimes increases the original principal balance limits if borrowers meet other compensating credit factors.
>
> Under the WMC Underwriting Guidelines, WMC Mortgage Corp. verifies the loan applicant's eligible sources of income for all products, calculates the amount of income from eligible sources indicated on the loan application, reviews the credit and mortgage payment history of the applicant and calculates the debt-to-

> income ratio to determine the applicant's ability to repay the loan, and reviews the mortgaged property for compliance with the WMC Underwriting Guidelines. **The WMC Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require, among other things, (1) an appraisal of the mortgaged property which conforms to Uniform Standards of Professional Appraisal Practice and (2) an audit of such appraisal by a WMC Mortgage Corp.-approved appraiser or by WMC Mortgage Corp.'s in-house collateral auditors (who may be licensed appraisers), which audit may in certain circumstances consist of a second appraisal, a field review, a desk review or an automated valuation model.**

172. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶173-179, they failed to disclose that WMC: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. WMC Violated Its Stated Underwriting Standards

173. Defendants Banc of America, Credit Suisse, Deutsche Bank, Greenwich Capital, Merrill Lynch, and UBS underwrote, offered or sold to Plaintiff Securities containing loans originated by WMC and made untrue statements to Plaintiff about WMC's underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with WMC, had access to WMC's mortgage origination personnel and internal information, and conducted due diligence into WMC using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into WMC, they were or reasonably should have been aware of the untruth of the statements about WMC described above.

174. According to Reuters, WMC originated "some of the worst-performing loans in the . . . $575 billion market for home equity asset-backed securities." According to a lawsuit filed in September 2009, a review of WMC's mortgage loan files showed that "in reality [WMC]

followed few, if any, objective standards or criteria in underwriting [mortgage loans] and showed little concern if any, for any borrower's ability to repay." WMC's reckless underwriting standards and practices resulted in a huge amount of foreclosures, ranking WMC fourth in the Comptroller of the Currency's "Worst Ten of the Worst Ten" list presented in April 2010 to the FCIC.

175. In 2004, WMC, then the sixth-largest subprime lender in the nation, was purchased by General Electric from private equity firm Apollo Management. WMC's concentration was in nonprime loans and jumbo loans up to $1 million dollars. According to a March 2007 article published by *MortgageDaily.com*, WMC was faced with growing delinquencies, and announced that it would no longer write mortgages with no down payments. Soon after, on September 20, 2007, General Electric closed WMC's operations, taking a $400 million charge as a result.

176. The market has now become aware of WMC's reckless loan originating practices. For example, on September 2, 2009, PMI Mortgage Insurance Co. ("PMI") sued WMC in California state court for misrepresentations and failure to adhere to its contractual repurchase obligations relating to the securitization of a pool of certain subprime mortgage loans originated by WMC ("PMI Complaint"). PMI alleged that WMC "made extensive representations and warranties" about the underwriting of its mortgage loans and the accuracy of the information underlying such loans. PMI Complaint, ¶¶21, 33. According to PMI, an external investigation by Clayton into a sample of some of the thousands of WMC-originated loans revealed that WMC "breached various representations and warranties . . . because, *inter alia*, the loan-to-value ratio at the time of origination was greater than 100%; fraud, errors, misrepresentations, or gross negligence took place on the part of WMC . . . ; the loans did not comply with WMC's own underwriting standards at the time of origination; certain documents were missing; and/or WMC had failed to utilize a methodology in underwriting the loans that employed objective mathematical principles designed to determine that, at the time of origination, the borrower had the reasonable ability to make timely payments on the [m]ortgage [l]oans." *Id.*, ¶35.

177. According to the PMI Complaint, the Clayton investigation "demonstrate[d] a systemic failure by WMC to apply sound underwriting standards and practices which cuts across all of the [loans in the securitization]." In the defective loans, "Clayton discovered unreasonable stated income and/or misrepresentations of income and/or employment by the borrower, the large majority of which could have been discovered by WMC prior to transfer via simple diligence procedures." ¶36. Moreover, nearly a quarter of the loans sampled by Clayton were shown to contain "misrepresentations of occupancy by the borrower, another factor that could have easily been verified by WMC." *Id*.

178. WMC's reckless loan originating practices were noticed by the regulatory authorities as well. In June 2008, the Washington State Department of Financial Institutions, Division of Consumer Services filed a Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Prohibit From Industry, Impose Fine, Order Restitution and Collect Investigation Fees against WMC Mortgage and its principal owners individually: Amy C. Brandt, WMC's CEO and President; Mark Walter, WMC's executive vice president; and Marc Becker, WMC's Director. The Statement of Charges was the result of a lengthy investigation in which WMC's and its business partners' books were subpoenaed. The investigation found that WMC had originated loans with unlicensed or unregistered mortgage brokers, understated amounts of finance charges on multiple loans, understated amounts of payments made to escrow companies, understated annual percentage rates by almost one-half of 1%, and committed many other violations of Washington State deceptive and unfair practices laws. This investigation is ongoing.

179. In January 2009, WMC Mortgage was sued in the United States District Court for the Eastern District of California for violations of the Truth In Lending Act, 15 U.S.C. § 1601, *et seq*. The plaintiff in that action is a mortgage borrower who alleges that, in an effort to maximize the number of loans sold to consumers and to maximize WMC's profits, WMC assured the plaintiff throughout the loan application process that the plaintiff would have low mortgage payments and failed to disclose the correct payment amounts or finance charges.

e. The Ameriquest Loan Sellers

1. Defendants Made Untrue Statements Of Material Facts About The Ameriquest Loan Sellers' Underwriting Standards And Practices

180. ACC Capital Holdings ("ACC Capital") was the nation's largest subprime lender. Argent was a wholly owned mortgage subsidiary of ACC Capital. Citigroup purchased Argent on August 31, 2007. Ameriquest Mortgage Company ("Ameriquest") was ACC Capital's wholly owned retail lending subsidiary. On August 1, 2007, Ameriquest announced that it would no longer be accepting loan applications. Ameriquest and Argent are, at times, collectively referred to herein as the "Ameriquest Loan Sellers."

181. Together, the Ameriquest Loan Sellers originated mortgage loans that were included in the pools for the following offerings:

Deal	Depositor Defendant	Direct Seller Bank Defendant
AMSI 2004-R7	Ameriquest Mortgage Securities Inc.	UBS
AMSI 2005-R1	Ameriquest Mortgage Securities Inc.	Deutsche Bank
AMSI 2005-R9	Ameriquest Mortgage Securities Inc.	Countrywide Securities Corporation
ARSI 2004-W7	Argent Securities Inc.	
ARSI 2005-W2	Argent Securities, Inc.	Merrill Lynch
BSABS 2005-HE11	Bear Stearns & Co. Inc. Asset Backed Securities I LLC	Bear Stearns & Co. Inc.
BSABS 2006-HE2	Bear Stearns & Co. Inc. Asset Backed Securities I LLC	Morgan Stanley
MSWFT 2003-MSA		Bank of America
PPSI 2004-MHQ1	Park Place Securities, Inc.	Goldman Sachs, Citigroup

182. The Ameriquest Loan Sellers originated some or all of the loans underlying $56,865,537 million of the Securities in Appendix A that Defendants offered or sold to Plaintiff.

183. The Offering Documents for all these Securities contained substantially if not exactly the same statements of material facts regarding the Ameriquest Loan Sellers'

underwriting standards and practices. For example, the prospectus supplement for AMSI 2004-R7 stated:

> The Mortgage Loans were originated generally in accordance with guidelines (the "Underwriting Guidelines") established by the Originators with one of the following income documentation types: "Full Documentation," "Limited Documentation" or "Stated Income." **The Underwriting Guidelines are primarily intended to evaluate: (1) the applicant's credit standing and repayment ability and (2) the value and adequacy of the mortgaged property as collateral. On a case-by-case basis, the Originators may determine that, based upon compensating factors, a loan applicant, not strictly qualifying under one of the Risk Categories described below, warrants an exception to the requirements set forth in the Underwriting Guidelines**. Compensating factors may include, but are not limited to, loan-to-value ratio, debt-to-income ratio, good credit history, stable employment history, length at current employment and time in residence at the applicant's current address. It is expected that a substantial number of the Mortgage Loans to be included in the mortgage pool will represent such underwriting exceptions.

184. The relevant Offering Documents also made statements of material facts about the Ameriquest Loan Sellers' appraisal standards and practices. For example, the same prospectus supplement stated:

> The Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and requires either (A) (i) an appraisal of the mortgaged property which conforms to the Uniform Standards of Professional Appraisal Practice and are generally on forms similar to those acceptable to Fannie Mae and Freddie Mac and (ii) a review of such appraisal, which review may be conducted by a representative of the applicable Originator or a fee appraiser and may include a desk review of the original appraisal or a drive-by review appraisal of the mortgaged property or (B) an insured automated valuation model. The Underwriting Guidelines permit loans with loan-to-value ratios at origination of up to 95%, subject to certain Risk Category limitations (as further described in that section). The maximum allowable loan-to-value ratio varies based upon the income documentation, property type, creditworthiness, debt service-to-income ratio of the applicant and the overall risks associated with the loan decision. Under the Underwriting Guidelines, the maximum loan-to-value ratio, including any second deeds of trust subordinate to the applicable Originator's first deed of trust, is 100%.

185. These statements are substantially similar, if not identical, to statements concerning the Ameriquest Loan Sellers' underwriting standards and practices found in the other

Prospectus Supplements for the Securities whose underlying mortgage loans were originated by Ameriquest and Argent.

186. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶187-196, they failed to disclose that the Ameriquest Loan Sellers: (i) systematically failed to follow their stated underwriting standards; (ii) allowed pervasive exceptions to their stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated their stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. The Ameriquest Loan Sellers Violated Their Stated Underwriting Standards

187. Defendants Banc of America, Barclays, Citigroup, Credit Suisse, J.P. Morgan (itself and as successor-in-interest to Bear Stearns), Greenwich Capital, Merrill Lynch, Morgan Stanley, and UBS underwrote, offered or sold to Plaintiff Securities containing loans originated by the Ameriquest Loan Sellers and made untrue statements to Plaintiff about the Ameriquest Loan Sellers' underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with the Ameriquest Loan Sellers, had access to the Ameriquest Loan Sellers' mortgage origination personnel and internal information, and conducted due diligence into the Ameriquest Loan Sellers using their own personnel and third-party loan review firms. As a result of the Wall Street Banks' access to and due diligence into the Ameriquest Loan Sellers, they were or reasonably should have been aware of the untruth of the statements about the Ameriquest Loan Sellers described above.

188. Both of the Ameriquest Loan Sellers appeared in the Comptroller of the Currency's list of the "Worst Ten in the Worst Ten," discussed above.

189. While the Ameriquest Loan Sellers and the Wall Street Banks stated that the Ameriquest Loan Sellers' underwriting of mortgages was designed to ensure a prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged

property as collateral, these statements were untrue. In fact, the Ameriquest Loan Sellers' underwriting practices were designed to originate as many mortgage loans as possible without regard to the ability of the borrowers to repay such mortgages, and the Ameriquest Loan Sellers systematically disregarded or misstated the income, assets, and employment status of borrowers seeking mortgage loans. Indeed, Argent and Ameriquest were the third and ninth among the Comptroller of the Currency's "Worst Ten" Mortgage Originators, respectively, based on the number of foreclosures as of March 22, 2010 on loans originated between 2005 and 2007.

190. According to a December 7, 2008, article in the *Miami Herald*, employees of Argent, including a former vice president named Orson Benn who is currently in prison for his role in the mortgage fraud schemes at Argent, actively assisted mortgage brokers in falsifying borrowers' financial information by "tutoring . . . mortgage brokers in the art of fraud." Employees "taught [brokers] how to doctor credit reports, coached them to inflate [borrower] income on loan applications, and helped them invent phantom jobs for borrowers" so that loans could be approved. According to Mr. Benn himself, "the accuracy of loan applications was not a priority." The *Miami Herald* examined the applications for 129 loans funded by Argent and "found at least 103 that contained false and misleading information" and "red flags: non-existent employers, grossly inflated salaries and sudden, drastic increases in the borrower's net worth." As noted by the article, "[t]he simplest way for a bank to confirm someone's income is to call the employer. But in at least two dozen cases, the applications show bogus telephone numbers for work references . . . ." Argent's lack of verification was so extreme that a "borrower [who] claimed to work a job that didn't exist . . . got enough money to buy four houses." Another borrower "claimed to work for a company that didn't exist" and got a $170,000 loan."

191. Moreover, according to a May 11, 2008 *Cleveland Plain Dealer* article, Jacquelyn Fishwick, who worked for more than two years at an Argent loan processing center near Chicago as an underwriter and account manager, noted that "some Argent employees played fast and loose with the rules" and stated "I personally saw some stuff I didn't agree with." Ms. Fishwick

saw [Argent] account managers remove documents from files and create documents by cutting and pasting them.

192. In the summer of 2007, Citigroup acquired Ameriquest and Argent. Richard Bowen, III, was Citibank s Business Chief Underwriter for correspondent lending who supervised 220 professional underwriters and exercised direct oversight of more than $90 billion of correspondent residential mortgages annually. Mr. Bowen was involved in the due diligence for that acquisition. In his April 7, 2010 testimony before the FCIC, Mr. Bowen testified that he advised against the acquisition because we sampled loans that were originated by Argent and we found large numbers that did not that were not underwritten according to the representations that were there. He further testified that the number of loans that contained untrue representations was significant enough to support his decision to oppose the acquisition (although Citigroup did not follow his recommendation).

193. Argent has been the subject of several lawsuits alleging fraud in its underwriting and lending practices. In January 2010, Argent, along with its parent company, Ameriquest, participated in a $22 million settlement of claims brought in the Northern District of Illinois by those who purchased mortgages after December 14, 2001 and who alleged fraudulent mortgage lending practices.

194. On August 20, 2007, *Business Week* reported in an article titled Did Big Lenders Cross the Line? that lawsuits by mortgage borrowers are increasingly blaming lenders lax underwriting standards for loan delinquency. In one lawsuit against Ameriquest, plaintiff Mary Overton alleges that loan officers at a Brooklyn, New York branch of Ameriquest coerced Overton into signing a loan. Unbeknownst to Ms. Overton, Ameriquest created fake tax returns, employment records, and a 401(k) to make it appear that the loan was affordable. According to other court filings, at least 40 other borrowers allege Ameriquest doctored loan documents or overstated borrowers income. According to *Business Week*, large lenders, such as Ameriquest, were motivated to engage in these practices to keep up loan volume and generate sales. The nationwide nature of these practices was confirmed by former Ameriquest employees in a

National Public Radio broadcast on May 12, 2007. A former Ameriquest loan officer in Tampa, Florida, recalled that in order to sell a loan "at any cost," managers encouraged loan officers to conceal the actual cost and interest rates on loans, and "would white out numbers on W2s and bank statements and fill in bigger amounts basically to qualify people for loans that they couldn't afford," a practice "called taking the loan to the art department." According to the National Public Radio broadcast, these practices were not isolated and were confirmed by former employees from Ameriquest offices around the country.

195. On October 22, 2007, *Mortgage Daily* reported that Wachovia filed a lawsuit against Ameriquest alleging that Ameriquest had not complied with repurchase requests on loans with fraudulent files. According to Wachovia's complaint, the 135 nonperforming loans sold to Wachovia on December 29, 2005, contained incorrect credit scores, incorrect employment status, and misstatements of the kind of home being financed. In addition, the complaint stated that the loans had not been underwritten pursuant to the underwriting procedures that Ameriquest agreed to apply and thus Ameriquest's representations and warranties regarding the loans were untrue and were breached by Ameriquest. *Mortgage Daily*, "Wachovia v. Ameriquest," October 22, 2007.

196. In her January 14, 2010 testimony before the FCIC, Illinois Attorney General Lisa Madigan explained how a multistate investigation of Ameriquest "revealed that the company engaged in the kinds of fraudulent practices that other predatory lenders subsequently emulated on a wide scale . . . includ[ing]: inflating home appraisals."

f. Option One

1. Defendants Made Untrue Statements Of Material Facts About Option One's Underwriting Standards And Practices

197. Option One originated Mortgage Loans that were included in the pools for the following offerings:

Deal	Depositor Defendant	Direct Seller Bank Defendant
ABFC 2005-HE1	Asset Backed Funding Corporation	Bank of America
OOMLT 2005-4	Option One Mortgage Acceptance Corporation	JP Morgan
OOMLT 2006-1	Option One Mortgage Acceptance Corporation	JP Morgan, Goldman Sachs
SABR 2004-OP1	Securitized Asset Backed Receivables LLC	Bank of America
SABR 2004-OP2	Securitized Asset Backed Receivables LLC	Citigroup, Goldman Sachs

198. Option One originated some or all of the loans underlying $25,558,371 million of the Securities in Appendix A that Defendants offered or sold to Plaintiff.

199. The Offering Documents all contained substantially similar, if not identical, statements of material facts regarding Option One's underwriting and appraisal standards and practices. For example, the prospectus supplement for Option One Mortgage Loan Trust 2006-1 stated:

> **The Mortgage Loans will have been originated generally in accordance with Option One's Guidelines** (the "Option One Underwriting Guidelines"). The Option One Underwriting Guidelines are primarily intended to assess the value of the mortgaged property, to evaluate the adequacy of such property as collateral for the mortgage loan and to assess the applicant's ability to repay the mortgage loan. The Mortgage Loans were also generally underwritten with a view toward resale in the secondary market. The Mortgage Loans generally bear higher rates of interest than mortgage loans that are originated in accordance with customary Fannie Mae and Freddie Mac standards.
>
> On a case-by-case basis, exceptions to the Option One Underwriting Guidelines are made where compensating factors exist. Except as specifically stated herein, the Option One Underwriting Guidelines are the same for first lien mortgage loans and second lien mortgage loans.
>
> Each mortgage loan applicant completes an application that includes information with respect to the applicant's liabilities, income, credit history, employment history and personal information. The Option One Underwriting Guidelines require a credit report and, if available, a credit score on each applicant from a credit-reporting agency. The credit report typically contains information relating to such matters as credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcies, repossessions

> or judgments. A credit score is a statistical ranking of likely future credit performance developed by Fair, Isaac and Co., Inc. and made available through the three national credit data repositories—Equifax, TransUnion and Experian.
>
> Mortgaged properties that are to secure mortgage loans generally are appraised by qualified independent appraisers. Such appraisers inspect and appraise the subject property and verify that such property is in acceptable condition. Following each appraisal, the appraiser prepares a report which includes a market value analysis based on recent sales of comparable homes in the area and, when deemed appropriate, replacement cost analysis based on the current cost of constructing a similar home. **All appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are generally on forms acceptable to Fannie Mae and Freddie Mac.**
>
> The Option One Underwriting Guidelines require that mortgage loans be underwritten in a standardized procedure which complies with applicable federal and state laws and regulations and require Option One's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal supports the loan balance.

200. The above statements of material facts were untrue when made because, as demonstrated below in ¶¶ 201-209, they failed to disclose that Option One: (i) systematically failed to follow its stated underwriting standards; (ii) allowed pervasive exceptions to its stated underwriting standards in the absence of compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume; and (iv) violated its stated appraisal standards and in many instances materially inflated the values of the underlying mortgage properties in the loan origination and underwriting process.

2. Option One Violated Its Stated Underwriting Standards

201. Defendants Banc of America and Barclays underwrote, offered or sold to Plaintiff Securities containing loans originated by Option One and made untrue statements to Plaintiff about Option One's underwriting and appraisal standards and practices and the loans. These Wall Street Banks had extensive business relationships with Option One, had access to Option One's mortgage origination personnel and internal information, and conducted due diligence into Option One using their own personnel and third-party loan review firms. As a result of the Wall

Street Banks' access to and due diligence into Option One, they were or reasonably should have been aware of the untruth of the statements about Option One described above.

202. Option One was a national mortgage lender formerly owned by H&R Block, Inc., until its assets were sold to American Home Mortgage Servicing, Inc., in April 2008. Option One is the sixth worst mortgage originator, by number of foreclosures as of March 22, 2010, according to the Comptroller of the Currency's "Ten Worst in the Ten Worst" list.

203. Former employees with first-hand knowledge have confirmed that Option One violated its stated standards for underwriting and appraisals. For example, CW 52, a former underwriter at Option One in Atlanta, Georgia from 2005 to 2006, said that if an underwriter denied a loan and an account executive complained, the loan was escalated to the branch manager, who then got in touch with the underwriter. With account executives, "the biggest screamer and shaker of trees gets the most fruit." For a "top-producing" account executive, whatever red flags there were would be "overlooked," and invariably the loan would be pushed through. CW 52 estimated that at least 50% of the total loan volume in Option One's Atlanta branch was approved in this manner. CW 52 also stated that a loan applicant could tell "a straight up lie" about his income, but the untrue information would be overlooked and the loan would be approved, despite CW 52's initial rejection of the application.

204. Similarly, CW 53, an underwriter at Option One's Marietta, Georgia office in 2005, reported that Option One approved stated income loans "knowing good and well that those people did not make that much money in the position they were in." Likewise, CW 54, an underwriter for Option One in Hawaii from November 2004 to January 2006, stated that "the overwhelming majority of stated income loans were crafted," meaning that the borrowers were not making "anywhere near" what they claimed. However, CW 54 stated that he felt pressured to push loans through because every loan generated income and "[i]f you applied any level of rational thought, you were frowned upon."

205. With respect to artificially inflated appraisals, CW 52 stated that "[o]f course they inflated values" and that if an underwriter questioned the appraised value, the account executive

and branch manager would override the underwriter's objection, as with any other red flag in a loan file. Similarly, CW 55, a staff review appraiser for Option One working throughout the western United States from January 2004 to May 2007, stated that the appraisals "were all bad." He considered the appraisals borderline fraudulent, not merely incompetent, but was unable to prevent loans based on the flawed appraisals. He explained, "Our job is supposed to be stopping bad loans, but no one stopped them." When CW 55 objected to loans because of flawed appraisals, the loan officer would complain to the branch manager, who would complain to the Appraisals Department at headquarters in Irvine, California, and on up the chain until someone high enough in the Underwriting and Sales Department said to go forward with the loan.

206. Option One was motivated to violate its underwriting and appraisal standards in order to increase the volume of loans it could sell to Wall Street Banks to be securitized. CW 56, an Assistant Vice President of Option One from 2005 to 2007, worked in the Correspondent Lending department, which purchased loans from small mortgage companies. CW 56 stated that Option One purchased loans that raised concerns under the stated guidelines and that when he raised such concerns he was essentially told, "Shut up, Wall Street will buy it; don't worry about it."

207. Similarly, CW 57, who was an underwriter at Option One in Pleasanton, California from October 2005 to October 2007, stated that "[i]f [a borrower] had a FICO and a pulse, they could get a loan" from Option One. CW 57 also stated that:

> I caught blatant fraud, and the [account executive] would still fight for it. [The account executives and managers] would fight me because they didn't care. They knew they were going to sell it on the secondary market, and they didn't care because it wasn't their money. They were going to get paid regardless. . . . At Option One they didn't have a portfolio; they sold everything, so they didn't care. . . . [Option One] didn't have to worry about it, because once they're done with these crappy loans, they'd sell them off. They were the investors' problem.

208. On June 3, 2008, the Attorney General for the Commonwealth of Massachusetts filed an action against Option One, and its past and present parent companies, for their unfair and deceptive origination and servicing of mortgage loans (the "Massachusetts Option One

Complaint"). According to the Attorney General, since 2004, Option One "increasingly disregarded underwriting standards, created incentives for loan officers and brokers to disregard the interests of the borrowers and steer them into high-cost loans, and originated thousands of loans that [Option One] knew or should have known the borrowers would be unable to pay, all in an effort to increase loan origination volume so as to profit from the practice of packaging and selling the vast majority of [Option One's] residential subprime loans to the secondary market." Massachusetts Option One Complaint, ¶ 4. The Attorney General's complaint alleges that Option One's agents and brokers "frequently overstated an applicant's income and/or ability to pay, and inflated the appraised value of the applicant's home," and that Option One "avoided implementing reasonable measures that would have prevented or limited these fraudulent practices." *Id.*, ¶ 8. Option One's "origination policies . . . employed from 2004 through 2007 have resulted in an explosion of foreclosures." *Id.*, ¶ 10.

209. On June 4, 2008, the *Wall Street Journal* reported that the Massachusetts Attorney General's lawsuit "charges Option One with 'recklessly facilitating the foreclosure of borrowers' homes,'" and that Option One "proposed terms 'that are as unfair and unsustainable as the original loans.'"

g. Additional Mortgage Originators

210. Other mortgage originators that provided loans for the pools underlying the Securities that the Defendants underwrote, offered or sold to Plaintiff included Aames, Accredited Home Lenders, Inc. ("Accredited"), and Equifirst, among others. The Offering Documents for each securitization underwritten, offered or sold to Plaintiff by the Defendants set forth the underwriting standards for the mortgage originators of the loans included in that securitization. These statements of material facts were untrue and omitted material facts because mortgage originators industry-wide systematically failed to follow their stated underwriting standards.

211. For example, former employees of Accredited confirm the lack of underwriting and appraisal standards. According to CW 58, a Corporate Underwriter at Accredited between

June 2004 and March 2005, managers on the sales side frequently overruled underwriting decisions. CW 58 noted such loans were tracked internally, and it was well-known they performed poorly. Moreover, according to CW 58, in early 2005, Accredited approved risky loans that did not comply with its own underwriting guidelines in an effort to reach monthly production targets.

212. According to CW 59, a Corporate Underwriter at Accredited between August 2003 and February 2006 in Tampa, Florida, Operations Managers and Senior Operations Managers constantly overruled decisions to reject loan applications. According to CW 59, "The problem with the whole system was the overrides. The overrides were rampant. If the borrower breathed, he got the loan."

213. According to CW 60, a Corporate Underwriter at Accredited in San Diego between May 2002 and November 2006, Accredited's underwriters who reviewed and approved or denied loans were being overridden, frequently resulting in loans that did not comply with underwriting guidelines. According to CW 60, the number of overrides grew so large that Accredited was forced to institute a system to track such overrides. The system included a box on the loan file that an underwriter needed to check if a higher-level manager approved the loan "as a business decision" over the recommendation of the underwriter.

214. According to CW 61, a Corporate Underwriter at Accredited between June 2000 and March 2007 in both the San Diego, California, and Austin, Texas, offices, "[a]t the end of the month, we were handed loan files and told to just sign them with no audit."

215. According to CW 62, the Chief Appraiser at Accredited for five years between 2002 and June 2007, Accredited allowed both corporate underwriters and sales managers to override the decisions of licensed property appraisers. In many cases, an appraisal reviewer working for Accredited would reject a loan application after concluding that the appraisal submitted with the application was inflated. According to CW 62, the account executive who submitted the loan application would become annoyed by the rejection and appeal the decision to a sales manager who then would overturn the appraisal reviewer's decision without any valid

justification. According to CW 62, overrides of appraisers decisions were rampant: As of June 2006, between 12% and 15% of our business was being done through management overrides.

216. On May 1, 2009, Accredited filed for bankruptcy. Accredited faced huge demands from Wall Street Banks to repurchase loans. In bankruptcy filings, Accredited stated that it faces more than $200 million in repurchase claims. The Wall Street Banks assert that certain loans they purchased are defective and violate the purchase agreements they made with Accredited because they contain serious mistakes or borrowers defaulted too quickly.

217. On information and belief, substantially similar violations of underwriting and appraisal standards were commonplace at Aames, Equifirst, and the other mortgage originators whose loans were included in the securitizations in which Defendants offered or sold Securities to Plaintiff.

VI. DEFENDANTS MADE MATERIAL UNTRUE STATEMENTS AND OMISSIONS

218. The Depositor Defendants acquired mortgage loans and deposited them into issuing trusts, and the Wall Street Bank Defendants offered or sold the Securities to Plaintiff through the Offering Documents, other documents as described herein, and oral statements made directly to Plaintiff. Each Depositor Defendant and Wall Street Bank Defendant participated in drafting the prospectus supplement or private placement memorandum for each securitization issued by that Depositor or underwritten by that Wall Street Bank. Each Wall Street Bank Defendant circulated the prospectus supplement or private placement memorandum for each securitization underwritten by that Wall Street Bank to the market. In addition, each Depositor Defendant and Wall Street Bank Defendant was identified in these documents as the issuer or underwriter, respectively, of the Securities, and approved the versions of these documents that were circulated to the market and delivered to Plaintiff by the Wall Street Bank. In instances when Plaintiff purchased Securities from Wall Street Bank Defendants or other broker-dealers that did not underwrite the initial offering of the Securities, the selling Wall Street Bank Defendant or other broker-dealer provided Plaintiff copies of the offering materials from the initial offering that had been prepared by the underwriting Wall Street Bank Defendants. The

Wall Street Bank Defendants that underwrote each offering of Securities actively encouraged secondary market transactions in those Securities by disseminating the applicable prospectus supplements and other offering materials to the market, acting as de facto market makers in the secondary market for those Securities, and providing price quotes for those Securities.

219. The Defendants' Offering Documents contained statements of material facts regarding, *inter alia*, (i) the underwriting process and standards by which the loans held in the issuing trusts were originated; (ii) the standards and guidelines used by the Depositor Defendants and Wall Street Bank Defendants when evaluating and acquiring the loans; and (iii) the value of the underlying real estate securing the loans pooled in the issuing trusts, including the loan-to-value ratios and the appraisal standards by which such real estate values were measured.

220. The Offering Documents emphasized the underwriting standards used to originate the underlying mortgage loans. Indeed, each Prospectus Supplement set forth the underwriting standards for the Mortgage Originators who originated a substantial portion of the underlying mortgages in that issuing trust. Contrary to these statements of material facts, many of these Mortgage Originators of the underlying mortgages did not originate loans in accordance with their stated underwriting standards. Rather, as set forth above, these Mortgage Originators extended loans that did not comply with their underwriting standards in order to increase loan volume regardless of the borrowers' ability to meet their obligations.

221. Additionally, the Offering Documents often made the statement of material facts, in sum or substance, that "all prospective Mortgage Loans will be subject to the underwriting standards adopted" herein; provided the Wall Street Banks' underwriting standards; or identified significant Mortgage Originators and provided the underwriting standards utilized by those Originators.

222. The written and oral statements of material facts regarding the underwriting and appraisal standards utilized by the Mortgage Originators and the Defendants' own due diligence were untrue and omitted material facts. Indeed, as detailed above, many of the identified

Mortgage Originators systematically violated their stated underwriting and appraisal guidelines, and the Wall Street Bank Defendants made untrue statements about their own due diligence.

a. Morgan Stanley's Untrue Statements Of Material Facts And Omissions

223. Morgan Stanley offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $98,559,337. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Banks, is contained in the attached Appendix A.

224. Morgan Stanley sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime lenders to purchase loans, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. According to a December 6, 2007 article in the *New York Times*, "Wary of Risk, Bankers Sold Shaky Mortgage Debt," Morgan Stanley cultivated a relationship with New Century. As a result of this relationship, Morgan Stanley expanded its subprime underwriting business by 25% from 2004 to 2006. According to a former New Century executive, Morgan Stanley agreed to pay above-market prices for loans in return for a steady supply of mortgages. According to the article, the former New Century executive said: "Morgan would be aggressive and say, 'We want to lock you in for $2 billion a month.'"

225. Through its affiliates and subsidiaries, Morgan Stanley was able to control nearly every step in the mortgage securitization process. For example, Morgan Stanley formed numerous SPVs including: (1) Depositor Defendant Morgan Stanley ABS Capital I Inc., which served as the depositor and issuer for offerings of RMBS; (2) Morgan Stanley Capital I Inc., which served as the depositor and issuer for offerings of RMBS; and (3) Morgan Stanley Mortgage Capital Inc., which originated or otherwise acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant Morgan

Stanley offered or sold the Securities to Plaintiff. Morgan Stanley also provided financial research on RMBS and related structured products.

226. In connection with its offer or sale of Securities to Plaintiff, Morgan Stanley sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Morgan Stanley also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Morgan Stanley sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Morgan Stanley also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting Securities, the data, and Morgan Stanley's due diligence of the Mortgage Originators' underwriting practices. Morgan Stanley did not allow Plaintiff to keep the pitch books.

227. In the Offering Documents, Morgan Stanley made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, Morgan Stanley reprinted New Century's "Underwriting Guidelines," which stated, in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century reviewed not only the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶¶93-95. Morgan Stanley made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including Aames and the Ameriquest Loan Sellers. *See* ¶¶183-186, 217.

228. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Morgan Stanley stated, for example, that New Century commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and that were reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶ 95. Morgan Stanley made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Aames and the Ameriquest Loan Sellers. *See* ¶¶ 183-186, 217. In offerings in which a Mortgage Originator was not identified in the Offering Documents, Morgan Stanley stated that "the depositor will not include any loan in the trust fund for any series of securities if anything has come to the depositor's attention that could cause it to believe that the representations and warranties of a seller or originator will not be accurate and complete in all material respects in respect of the loan as of the date of initial issuance of the related series of securities."

229. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Morgan Stanley made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Morgan Stanley's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

230. Morgan Stanley made additional oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Morgan Stanley representatives occurred on or about July 13, July 22, and September 9, 2004 and May 16 and October 3, 2006. Some of these meetings occurred in Plaintiff's offices in Concord,

Massachusetts. During these meetings, Morgan Stanley made statements of material facts regarding Morgan Stanley's upcoming RMBS deals, and assured Plaintiff that Morgan Stanley conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance. Specifically, Morgan Stanley made oral statements of material facts that it performed strong due diligence of New Century, stating to Plaintiff that Morgan Stanley even had an employee on site at New Century to ensure compliance with the underwriting standards described in the Offering Documents.

231. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, the principal Mortgage Originators in the Morgan Stanley deals violated their stated underwriting and appraisal standards. Moreover, Morgan Stanley's statements regarding its own due diligence were untrue and contained material omissions.

232. Morgan Stanley outsourced some due diligence by contracting with external firms including Clayton to review whether the loans included in the RMBS that it underwrote complied with the Mortgage Originators' stated standards. As discussed in ¶¶ 60-66, Clayton and Bohan have been investigated by the New York Attorney General, SEC, and Massachusetts and Connecticut regulators for engaging in improper underwriting practices, and in January 2008, the New York Attorney General granted Clayton immunity from prosecution in exchange for documents and testimony regarding its due diligence reports.

233. In its most recent annual report, filed on Form 10-K with the SEC on February 26, 2010, Morgan Stanley confirmed that it is under direct investigation and is "responding to subpoenas and requests for information from certain regulatory and Governmental entities concerning the origination, purchase, securitization and servicing of subprime and non-subprime residential mortgages and related issues including collateralized debt obligations and credit default swaps backed by or referencing mortgage pass through certificates."

234. On June 24, 2010, the Massachusetts Attorney General announced that Morgan Stanley had agreed to pay $102 million to the Commonwealth and mortgage borrowers in the Commonwealth to settle charges related to "Morgan Stanley's role in facilitating predatory lending by New Century." Attorney General Coakley stated that:

> Morgan Stanley funded, purchased and securitized New Century loans. Morgan developed an intimate knowledge of New Century's business over time. And they uncovered signals pretty early on that the lending practices of New Century were not sound. Morgan Stanley continued to fund and securitize subprime loans even as New Century's bad loans were causing the lender to collapse . . . .
>
> Morgan knew because as part of its business it had to review New Century's loan portfolio in that relationship. Morgan discovered that New Century was making loans that we allege were designed to fail. They started with low teaser rates, but then they kicked to higher interest rates that borrowers predictably could not afford and borrowers could only repay by financing.
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> ***
>
> Morgan Stanley had a number of red flags that these practices were unfair. For instance, Morgan Stanley knew that New Century was using what we call "no doc loans," that is no documentation, loans with no paperwork, to the point of abuse. New Century was not following its own underwriting guidelines for these loans and New Century failed to account for whether borrowers could actually make payments after the introductory or the so-called teaser rates on the loans have expired.
>
> Morgan initially refused to fund these loans, but after New Century threatened to pull their business, a Morgan banker approved hundreds of loans that their own compliance team had rejected and Morgan then softened its oversight to let New Century's business continue. [Morgan Stanley c]ontinued to fund New Century and provided the key financing that was needed to so that New Century could continue to make those loans.
>
> ***
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> [O]ur investigation revealed that Morgan Stanley backed loans for homeowners that they knew, or should have known, were destined to fail and then they failed to disclose the riskiness of those loans to investors.

235. The Assurance of Discontinuance that the Massachusetts Attorney General filed in Court in connection with the Morgan Stanley settlement specifically identifies untrue statements in the loan tapes Morgan Stanley provided to investors such as Plaintiff:

> On the loan tapes provided to investors in Morgan Stanley securitizations of New Century loans, the DTI ratio was typically calculated based on the teaser rate and did not reflect the Fully Indexed Mortgage Payment. Incorporating the Fully Indexed Mortgage Payment in the DTI ratio using Morgan Stanley's reset DTI analysis described above, the average DTI on the New Century tapes would be substantially higher. A large number of the ARM loans would have Fully Indexed DTI Ratios on this basis that were greater than 55%. Based on Morgan Stanley's analysis described above, such borrowers could not afford to repay these loans in accordance with their terms without refinancing. Such loans comprised a significant portion of the overall loan pools.
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> ***
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> As early as October 2005, Morgan Stanley's diligence team determined, in reviewing and rejecting loans for purchase, that the stated income on a number of New Century loans was unreasonable. In early 2006, a Morgan Stanley employee commented that stated income credit was not adequately evaluated by New Century. About 36% of the loans originated by New Century and reviewed by Clayton in the diligence process were stated income loans. On average, the stated income of these borrowers was approximately 42% higher than the income of fully documented borrowers. The average stated income of these borrowers on an annual basis was about $115,000.
>
> Assuming that the stated income was closer to or similar to fully documented income, the average actual DTI ratio for stated income borrowers would be much higher than the DTI ratios reported by New Century in the loan tapes (averaging 41% for stated income loans), and a substantial number of these borrowers would have DTI ratios on this basis exceeding 55%.

236. The statements of material facts in the documents Morgan Stanley sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that New Century made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; New Century management "turned a blind eye" to risky loan originations; and "New Century engaged in a number of significant improper and imprudent practices related to its loan originations." *See* ¶¶ 98-112. Moreover, former New Century employees witnessed firsthand how exceptions to New Century's underwriting became the "norm" because employees had to do whatever was necessary to increase loan originations. *See* ¶¶ 106-108. The SEC

recently charged former New Century officers with making untrue assurances to the market about the company's "adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market." *See* ¶110. The other Mortgage Originators of loans underlying the Securities initially offered by Morgan Stanley similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

237. The statements of material facts in the documents Morgan Stanley sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶51-57. A former New Century underwriter recently confirmed New Century's use of inflated appraisals in testimony before the FCIC, stating that New Century hired fee appraisers who were "pressured" into inflating property values, at times by tampering with the property, "fearing if they didn't, they would lose future business and their livelihoods." ¶54. Another industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶56.

238. Morgan Stanley's statements of material facts were also untrue because other key data provided to Plaintiff by Morgan Stanley were untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

239. In sum or substance, Morgan Stanley stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as

required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

240. The result of the untrue statements and omissions described above is that the Securities Morgan Stanley underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Morgan Stanley to Plaintiff.

b. Bear Stearns' Untrue Statements Of Material Facts Aand Omissions

241. Bear Stearns offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $125,395,473. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

242. Bear Stearns was a pioneer in mortgage securitization. Through its affiliates and subsidiaries, Bear Stearns was able to control nearly every step in the mortgage securitization process. For example, to make certain the mortgage pipeline was always full, Bear Stearns owned and operated three mortgage loan origination subsidiaries – EMC Mortgage Corporation ("EMC"), Bear Stearns Residential Mortgage Corporation ("Bear Stearns Mortgage Corp."), and Encore Credit Corp. ("Encore"). EMC originated loans that were securitized by Bear Stearns,

served as the sponsor for many of Bear Stearns offerings, and serviced the loans underlying the offerings after the offerings were complete.

243. Bear Stearns also formed numerous SPVs to facilitate the issuance of RMBS. These entities included Depositor Defendant Bear Stearns Asset Backed Securities I, LLC (BSABS), which served as the depositor and issuer for Bear Stearns offerings. Bear Stearns offered or sold the Securities to Plaintiff. Bear Stearns also provided financial research on RMBS and related structured products.

244. Bear Stearns profited at every step in the securitization process, as it collected: (1) loan-origination fees; (2) gains on sale of the mortgages to securitization trusts; (3) management fees from hedge funds and other investment vehicles that purchased mortgage-backed structured products; (4) underwriting fees; and (5) servicing fees. Bear Stearns summarized its securitization business as follows: Our vertically integrated franchise allows us to access every step of the mortgage process, including origination, securitization, distribution and servicing. According to *Inside Mortgage Finance*, a leading trade publication whose data is used by the federal government, from 2004 to 2007 Bear Stearns underwrote more than $97 billion in subprime RMBS.

245. In connection with its offer or sale of Securities to Plaintiff, Bear Stearns sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Bear Stearns also sent Plaintiff numerous other documents, including term sheets and loan tapes. The loan tapes Bear Stearns sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Bear Stearns also showed Plaintiff pitch books and other materials promoting the Mortgage Originators underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Bear Stearns due diligence of the

Mortgage Originators' underwriting practices. Bear Stearns did not allow Plaintiff to keep the pitch books.

246. In the Offering Documents, Bear Stearns made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, Bear Stearns stated that: (1) the Mortgage Originators' underwriting guidelines were intended to assess the borrowers' ability to repay the mortgage loans and considered the borrowers' credit history, repayment ability, debt service-to-income ratio, and other factors; (2) the Mortgage Originators assessed the value of the properties; and (3) exceptions to the Mortgage Originators' underwriting guidelines would only be made where compensating factors existed.

247. Moreover, the Offering Documents included statements of material facts regarding the originators' appraisal guidelines. Bear Stearns stated, for example, that the Mortgage Originators commissioned appraisals by qualified independent appraisers who prepared appraisals that conformed to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

248. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Bear Stearns made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Bear Stearns' due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

249. Bear Stearns made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Bear Stearns representatives occurred on or about March 18, September 22, and November, 14, 2005, and May 25, July 19, and August 3, 2006. Some of these meetings occurred in Plaintiff's offices in Concord, Massachusetts, and others were via teleconference. During these meetings, Bear

Stearns employees made statements of material facts regarding upcoming RMBS deals, and assured Plaintiff that Bear Stearns conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines. Among other things, Bear Stearns stated that its due diligence included sampling loans to check underwriting process, documentation, valuations, and compliance.

250. Specifically, Bear Stearns repeatedly stated that it used Clayton to perform due diligence on the mortgage loans and to ensure mortgage originator compliance with stated underwriting standards. In June of 2007, the New York Attorney General subpoenaed documents from Clayton and another due diligence firm, Bohan Group ("Bohan"), seeking information regarding whether Wall Street Banks withheld information that should have been disclosed to investors. Similar subpoenas were issued by the SEC and Massachusetts and Connecticut regulators.

251. On January 27, 2008, the New York Attorney General entered into an agreement with Clayton for immunity from prosecution in exchange for additional documents and testimony regarding its due diligence reports. Both the *New York Times* and *Wall Street Journal* published articles detailing the agreement and Clayton's expected testimony. According to the *New York Times* (J. Anderson and V. Bajaj, "Reviewer of Subprime Loans Agrees to Aid Inquiry of Banks," Jan. 27, 2008), Clayton "communicated daily with bankers putting together securities," and that "starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending exceptions." In response, rather than change the "broad language written in prospectuses" to reflect the environment, "some investment banks directed Clayton to halve the sample of loans it evaluated in each portfolio."

252. An article in the *Los Angeles Times* (E. Reckard, "Sub-prime Mortgage Watchdogs Kept On Leash; Loan Checkers Say Their Warnings of Risk Met With Indifference," March 18, 2008) revealed that Clayton and Bohan employees "raised plenty of red flags about flaws [in subprime home loans] so serious that mortgages should have been rejected outright "

such as borrowers incomes that seemed inflated or documents that looked fake but the problems were glossed over, ignored, and stricken from the reports.

253. Each of Bear Stearns statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, the principal Mortgage Originators in the Bear Stearns deals systematically violated their stated underwriting and appraisal standards. Moreover, Bear Stearns additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

254. In late 2008, Ambac Assurance Corp. (Ambac) commenced an action against EMC and Bear Stearns in the United States District Court for the Southern District of New York alleging that the companies had built a house of cards through rampant misrepresentations in the origination of mortgage loans used in securitizations. *Ambac Assurance Corp. v. EMC Mortgage Corp.*, No. 08-cv-9464 (S.D.N.Y.) (the Ambac Complaint). On November 6, 2008, an article in the Associated Press reported the following with respect to the Ambac Complaint:

> Bear Stearns leveraged its reputation and dominance in mortgage finance to entice companies such as Ambac to insure loans plagued by rampant fraud. . . . Bear Stearns promised that its mortgage loans originated through proper means and didn t result from fraud, misrepresentation or gross negligence. Yet . . . Ambac discovered widespread breaches of representations in almost 80 percent of the documents supporting 695 defaulted loans it studied.

Larry Neumeister, *Lawsuit: Bear Stearns Built A 'House of Cards,'* Associated Press, November 6, 2008.

255. According to the Ambac Complaint, after incurring more than $640 million in losses, Ambac conducted a study of 1,486 loans with an aggregate principal of approximately $86.9 million. The results of that review found:

> Of these 1486 loans, 1332, over 89%, breached one or more of the representations and warranties that EMC had made to Ambac. The most prevalent and troubling of the breaches identified by Ambac across all four Transactions involve (1) rampant misrepresentations about borrower income, employment, assets, and intentions to occupy the purchased properties, and (2) the loan originators abject failures to adhere to proper and prudent mortgage-lending practices, including their own underwriting guidelines.

Ambac Complaint at ¶6.

256. The Ambac Complaint lays out, in detail, the Bear Stearns "securitization machine" and EMC's crucial, and damaging, role within that machine:

> [EMC] acted both as an "originator" and an "aggregator" of an enormous volume of residential mortgage loans, "with the ultimate strategy of securitization into an array of Bear Stearns's securitizations." EMC repeatedly executed on that strategy, in many cases retaining the rights to act as servicer of the mortgage loans that it securitized. In its role as aggregator, EMC prescribed loan origination standards and approved the underwriting guidelines of a large number of mortgage lenders"

Id. at ¶18.

257. EMC expanded its loan generation to supply Bear Stearns' securitizations and, at the same time, reassured the market that it would maintain the quality of the securitizations. *Id.* at ¶26. But, in fact, "EMC's inventory of mortgage loans was replete with loans (i) originated by fraud, material misrepresentations, or omissions and (ii) underwritten without regard to prudent standards or the fundamental principles of mortgage lending, which require a good-faith assessment of the borrower's ability and willingness to repay the loan." *Id.* at ¶27. EMC "convince[d] investors that the securities it sold were a safe and profitable investment, despite the fact that, unbeknownst to Ambac and the market at large, those securities were backed by unjustifiably risky loans." *Id.* at ¶25.

258. The Ambac Complaint further makes clear that EMC and Bear Stearns expanded acceptance and financing of "no doc" and "low doc" loan products "with a marked and dangerous decline in the rigor and discipline with which [the companies] approached loan origination and underwriting." *Id.* at ¶28. Thus, EMC's inventory of mortgage loans "was replete with loans originated by fraud or underwritten pursuant to imprudent or non-existent standards." *Id.* at ¶¶29-30.

259. On March 16, 2009, the District Court denied EMC's motion to strike portions of Ambac's Complaint that EMC asserted were "inflammatory" because they portrayed Bear Stearns and EMC as "corporate villains . . . responsible for the mortgage-backed security crisis."

In its decision denying EMC's motion, the Court held that allegations such as that "[t]he Bear Stearns securitization machine was a house of cards, supported not by real value and sound practices but by Bear Stearns' appetite for loans and disregard as to the risks those loans presented" were not unfairly prejudicial, but rather were relevant to whether EMC "materially breached its representations and warranties" . . . regarding, among other things, "the origination, underwriting, servicing, and other key attributes of the loans[.]" (Quoting Ambac's Complaint; alterations in original.) Ambac's action against EMC is ongoing, and the parties are currently engaged in pretrial discovery.

260. Matt Van Leeuwen, a mortgage analyst with EMC between 2004 and 2006, has also confirmed the above allegations of negligent underwriting practices. Van Leeuwen revealed that (a) Bear Stearns pushed EMC analysts to perform their loan analyses of the underlying mortgages in only one to three days so that Bear Stearns would not have to hold the loans on its books; (b) EMC analysts were encouraged to falsify loan data (such as FICO scores) if that information was missing from the loan data and the mortgage originators did not respond to requests for that information; (c) the documentation level (*i.e.,* no documentation, partial documentation) of the loans was often incorrectly identified; and (d) rather than going back to the mortgage originator for clarification, such as verification of income, Bear Stearns would avoid investigating and make the loan "fit." Teri Buhl, "More Corruption: Bear Stearns Falsified Information as Raters Shrugged," *The Atlantic*, May 2010.

261. The statements of material facts in the documents Bear Stearns sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines.

262. The statements of material facts in the documents Bear Stearns sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit

enhancement to be untrue. *See, e.g.*, ¶¶51-57. An industry insider testified before the FCIC and stated that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶56.

263. Bear Stearns' statements of material facts were also untrue because other key data provided to Plaintiff were untrue and contained material omissions. For example, the data often identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of credit quality and likelihood of default.

264. In sum or substance, Bear Stearns stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

265. The result of the untrue statements and omissions described above is that the Securities Bear Stearns underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or

repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Bear Stearns to Plaintiff.

266. Defendant J.P. Morgan is the successor-in-interest to Bear Stearns as a result of the merger of Bear Stearns with and into J.P. Morgan on October 1, 2008, with J.P. Morgan Securities as the surviving entity.

c. Citigroup's Untrue Statements Of Material Facts And Omissions

267. Citigroup offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $209,970,924. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

268. Citigroup sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime mortgage originators including New Century and the Ameriquest Loan Sellers for the purchase of subprime loans to be pooled and securitized as RMBS, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. New Century and the Ameriquest Loan Sellers were some of the largest Mortgage Originators in the Securities underwritten, offered, or sold by Citigroup to Plaintiff.

269. To facilitate the sale of RMBS, Citigroup formed SPVs that originated or otherwise acquired residential mortgage loans to be securitized and served as the sponsor, depositor, and issuer in numerous offerings of RMBS. Defendant Citigroup offered or sold the Securities to Plaintiff. Citigroup also provided financial research on RMBS and related structured products.

270. In connection with its offer or sale of Securities to Plaintiff, Citigroup sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements, and for one deal, a private placement agreement. Citigroup also sent Plaintiff numerous other documents, including term sheets and

"loan tapes." The loan tapes Citigroup sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Citigroup also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Citigroup's due diligence of the Mortgage Originators' underwriting practices. Citigroup did not allow Plaintiff to keep the pitch books.

271. In the Offering Documents, Citigroup made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, Citigroup reprinted New Century's "Underwriting Guidelines," which stated in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century not only reviewed the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶¶93-95. Citigroup made similar statements of material facts for loans originated by other Mortgage Originators, including the Ameriquest Loan Sellers. *See* Section V.

272. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Citigroup stated, for example, that New Century commissioned an appraisal of mortgaged properties by "qualified independent appraisers" who prepared an appraisal report that is "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and

that was reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶ 95. Citigroup made similar statements of material facts for appraisals commissioned by or performed or reviewed by other Mortgage Originators, including the Ameriquest Loan Sellers. *See* Section V.

273. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Citigroup made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Citigroup's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

274. Citigroup made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Citigroup occurred on or about September 30, 2004; June 23, October 31, and December 8, 2005; and May 22, August 14, and December 7, 2006. Some of these meetings occurred in Plaintiff's offices in Concord, Massachusetts. During these meetings, Citigroup made statements of material facts regarding Citigroup's upcoming RMBS deals, and assured Plaintiff that Citigroup conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

275. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed below, New Century and the Ameriquest Loan Sellers, the principal Mortgage Originators in the Citigroup deals, systematically violated their stated underwriting and appraisal standards. Moreover, Citigroup's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

276. Citigroup stated that it retained external firms, including Clayton and Bohan, to review whether the loans included in the RMBS that Citigroup underwrote complied with the Mortgage Originators' stated standards. As discussed in ¶¶ 60-66, Clayton and Bohan have been investigated by the New York Attorney General, the SEC, and Massachusetts and Connecticut regulators for improper activity in their mortgage due diligence services.

277. In its most recent annual report, filed on Form 10-K with the SEC on February 26, 2010, Citigroup Inc. (the parent company of Defendant Citigroup) confirmed that "beginning in the fourth quarter of 2007, certain of Citigroup's regulators and other state and federal government agencies commenced formal and informal investigations and inquiries, and issued subpoenas and requested information, concerning Citigroup's subprime mortgage-related conduct and business activities."

278. The statements of material facts in the documents Citigroup sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, as described above, New Century's statements that it underwrote loans in accordance with its stated underwriting guidelines were untrue. *See* ¶¶ 98-112. The Ameriquest Loan Sellers similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V. Citigroup's statements of material facts about the appraisals of the underlying properties were also untrue.

279. Citigroup's statements of material facts were also untrue because other key data provided to Plaintiff by Citigroup was untrue. For example, the data often identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

280. The Financial Crisis Inquiry Commission (the "FCIC") investigated Citigroup as part of its statutory mission to determine "the causes . . . of the current financial and economic

crisis in the United States. Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 5(a) (May 20, 2009). In connection with its investigation, the FCIC interviewed senior Citigroup executives with direct responsibility for the Company's mortgage operations; subpoenaed and reviewed thousands of internal Citigroup documents concerning those operations; and held hearings on April 7-9, 2010.

281. The FCIC heard testimony from Richard M. Bowen, III, who was the Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for Citifinancial Mortgage (Citigroup's subprime mortgage lending subsidiary) from 2002 through 2005 and was promoted in early 2006 to Business Chief Underwriter for Correspondent Lending in Citigroup's Consumer Lending Group (which included Citigroup's prime mortgage lending, subprime mortgage lending, and prime second lien mortgage businesses). As Business Chief Underwriter for Correspondent Lending, Mr. Bowen was one of Citigroup's most senior mortgage executives, supervising 220 professional underwriters and exercising direct oversight over the underwriting of more than $90 billion of residential mortgages annually.

282. Mr. Bowen testified that each year since 2005, Citigroup's mortgage operation systematically acquired tens of billions of dollars of risky loans that violated Citigroup's own underwriting criteria and were likely to default. He also testified that Citigroup's Wall Street Chief Risk Officer routinely overruled underwriters' rejections of pools of subprime mortgages that did not satisfy Citigroup's underwriting criteria for purchase by the "Correspondent Wall Street channel," thus causing Citigroup to purchase billions of dollars of loan pools that fell far short of underwriting standards. In sum, Mr. Bowen testified that "[d]uring 2006 and 2007, I witnessed business risk practices which made a mockery of Citi credit policy. . . ."

283. Mr. Bowen also testified that he recommended that Citigroup not purchase Ameriquest, because his due diligence found that Argent's loans did not meet the standards they had represented to Citigroup. Specifically, Mr. Bowen testified that "we sampled the loans that were originated by Argent and we found large numbers that did not – that were not underwritten according to the representations that were there."

284. In sum or substance, Citigroup stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in □□ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers□ payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

285. The result of the untrue statements and omissions described above is that the Securities Citigroup underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Citigroup to Plaintiff.

d. Credit Suisse's Untrue Statements of Material Facts and Omissions

286. Credit Suisse offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $137,658,731. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

287. Credit Suisse acquired hundreds of thousands of subprime mortgages and securitized the mortgage loans into billions of dollars of RMBS, some of which were then

offered or sold to Plaintiff in a series of offerings containing subprime mortgage loans from several different Mortgage Originators, including New Century, Argent, WMC, and Fremont.

288. To facilitate the sale of RMBS, Credit Suisse's parent company formed SPVs, including Depositor Defendants Credit Suisse First Boston Mortgage Securities Corporation and Asset Backed Securities Corporation, which issued and were the depositors for numerous offerings of RMBS. Defendant Credit Suisse offered or sold the Securities to Plaintiff. Credit Suisse also provided financial research on RMBS and related structured products.

289. In connection with its offer or sale of Securities to Plaintiff, Credit Suisse sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Credit Suisse also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Credit Suisse sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Credit Suisse also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Credit Suisse's due diligence of the Mortgage Originators' underwriting practices. Credit Suisse did not allow Plaintiff to keep the pitch books.

290. In the Offering Documents, Credit Suisse made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, Credit Suisse reprinted New Century's "Underwriting Guidelines," which stated in sum or substance, that (a) New Century's guidelines were "intended to assess the borrower's ability to repay the mortgage loan"; (b) New Century reviewed not only the value of the property, but also considered "the mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type of use of the mortgaged property"; (c) "the

mortgage loans [were] originated in accordance with the underwriting guidelines"; and (d) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶¶93-95. Credit Suisse made similar statements of material facts for Mortgage Loans originated by other mortgage originators, including Argent, WMC, and Fremont. *See* Section V.

291. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Credit Suisse stated, for example, that New Century commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were "required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are on forms acceptable to Fannie Mae and Freddie Mac," and that were reviewed "by a qualified employee" of New Century or by an appraiser retained by New Century. *See* ¶95. Credit Suisse made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Argent, WMC and Fremont. *See* Section V.

292. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Credit Suisse made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities and Credit Suisse's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

293. Credit Suisse made additional, oral statements of material facts about the Securities to Plaintiff in meetings, including meetings at Plaintiff's offices in Concord, Massachusetts. Some of Plaintiff's meetings with Credit Suisse occurred on or about September 9, 2004; August 29 and October 26, 2005; and March 2, May 17, and December 31, 2006. During these meetings, Credit Suisse made statements of material facts regarding Credit Suisse's

upcoming RMBS deals, and assured Plaintiff that Credit Suisse conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by reviewing loans in order to check underwriting process, documentation, valuations, and compliance.

294. For example, Credit Suisse made oral statements of material facts to Plaintiff about the strength and quality of the due diligence Credit Suisse performed on the "HEAT" series of deals. *See* Appendix A. Specifically, Credit Suisse stated to Plaintiff that Credit Suisse performed a valuation review of 100% of the underlying loans, meaning that Credit Suisse should have reviewed the data and documentation for each underlying loan before accepting the loan for inclusion in the pool. In fact, Credit Suisse stated to Plaintiff that the due diligence for the HEAT transactions was "superior" to the due diligence for most other RMBS transactions because of this 100% valuation review.

295. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, Argent, New Century, WMC, and Fremont, the principal Mortgage Originators of loans included in the Credit Suisse deals, systematically violated their stated underwriting and appraisal standards. Moreover, Credit Suisse's statements of material facts regarding its own due diligence were untrue and contained material omissions.

296. Credit Suisse contracted with external firms including Clayton and Bohan to review whether the loans included in the RMBS that Credit Suisse underwrote complied with the Mortgage Originators' stated standards. As discussed in ¶¶60-66, Clayton and Bohan have been investigated by the New York Attorney General, SEC, and Massachusetts and Connecticut regulators for engaging in improper underwriting practices. In January 2008, the New York Attorney General granted Clayton immunity from prosecution in exchange for documents and testimony regarding its due diligence reports.

297. The statements of material facts in the documents Credit Suisse sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting

guidelines, did not consistently evaluate the borrowers ability to repay the loans, and made exceptions to their underwriting standards absent the compensating factors required by their guidelines. For example, investigations and lawsuits have demonstrated that New Century made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; New Century management turned a blind eye to the risky loan originations; and New Century engaged in a number of significant improper and imprudent practices related to its loan originations. *See* 98-112. Moreover, former New Century employees witnessed firsthand how exceptions to New Century s underwriting became the norm because employees had to do what was necessary to increase loan originations. *See* 106-108. The SEC has charged former New Century officers with making untrue assurances to the market about the company s adhere[nce] to high origination standards in order to sell [its] loan products in the secondary market. *See* 110. The other Mortgage Originators underlying the Credit Suisse Securities Ameriquest, WMC, Long Beach, Argent, and Option One similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V. Indeed, the Senate Permanent Subcommittee on Investigations recently concluded that Long Beach . . . was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry. 119.

298. The statements of material facts in the documents Credit Suisse sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, 51-57. For example, a former New Century underwriter recently confirmed New Century s use of inflated appraisals in testimony before the FCIC, stating that New Century hired fee appraisers who were pressured into inflating property values, at times by tampering with the property, fearing if they didn t, they would lose future business and their livelihoods. 55. The Illinois Attorney General testified before the FCIC that a multistate investigation revealed that [Ameriquest] engaged in the kinds of fraudulent practices that other predatory lenders subsequently emulated on a wide scale . . . includ[ing]:

inflating home appraisals. ¶ 196. An industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶ 52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶56.

299. Credit Suisse's statements were also untrue because other material data provided by Credit Suisse to Plaintiff were untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

300. Credit Suisse is a defendant in numerous lawsuits directly related to its conduct as an underwriter of RMBS. On March 29, 2010, the United States District Court for the Southern District of New York sustained claims against Credit Suisse brought on behalf of a class of investors who purchased subprime RMBS issued in 2006 and 2007 that contained underlying mortgage loans from Mortgage Originators including New Century and WMC. *New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc.*, Docket No. 08-CV-5653 (PAC) (S.D.N.Y.) (the "Credit Suisse RMBS Action"). The class's claims in that action under the Securities Act of 1933 are substantially similar legally and factually to Plaintiff's claims in this action.

301. In the Credit Suisse RMBS Action, the District Court held that the plaintiffs adequately alleged that Credit Suisse's offering documents "contain[ed] materially misleading statements and omissions" relating to Credit Suisse's "systematic disregard of loan-approval oversight and control mechanisms as represented in underwriting guidelines by the Originators," which Credit Suisse failed to detect "because of wholly inadequate due diligence procedures." Like Plaintiff here, the plaintiffs in the Credit Suisse RMBS Action, allege that:

> **The [securities] were issued pursuant to a number of core representations in the Offering Documents each of which contained material misstatements and omissions. It was represented that the home equity loans were originated**

> **pursuant to underwriting guidelines detailed in both in the Registration Statement and the Supplemental Prospectuses.** These guidelines required an analysis of borrower creditworthiness (i.e., ability to repay the loan) and an appraisal of the mortgaged property pursuant to standard appraisal practices and procedures. The guidelines also described that when loans were issued with limited or no borrower documentation there were compensating factors such as the lender s reliance primarily on the valuation of the mortgaged properties.
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> ***
>
> The Rating Agencies in downgrading the [securities] from the highest investment grade to junk bond status specifically attributed their actions to aggressive underwriting deployed in originating the loans. **Further, well after the completion of the Offerings, disclosures began to emerge that the principal home equity loan Originators - i.e., New Century, Accredited and WMC - engaged in origination practices which flagrantly violated underwriting guidelines set forth in the Offering Documents**.
>
> **Credit Suisse conducted inadequate due diligence to ensure compliance with the underwriting guidelines stated in the Offering Documents.** It was incentivized to acquire and securitize as many loans as possible since its profit was achieved upon the sale of the securities. **The due diligence Credit Suisse did perform was in the period when it was acquiring the loans from third parties – not in underwriting the issuance of the [securities] - when there was a serious disincentive for Credit Suisse to reject loans submitted for auction by originators, for fear that they would be cut-off from access to further loans for future securitization.**

Credit Suisse RMBS Action Complaint, ¶¶10-12 (internal citations omitted).

302. In sum or substance, Credit Suisse stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers payments of interest and principal to

be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

303. The result of the untrue statements of material facts and omissions described above is that the Securities that Credit Suisse underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Credit Suisse to Plaintiff.

e. Greenwich Capital's Untrue Statements Of Material Facts And Omissions

304. Greenwich Capital offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $214,301,456. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

305. Greenwich Capital underwrote more than $180 billion in RMBS backed by subprime mortgages between 2002 and 2006. In particular, between 2005 and 2006, Greenwich Capital sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime lenders including Aames, Accredited, Argent, Countrywide, Fremont, Long Beach, New Century, and WMC for the purchase of subprime loans to be pooled and securitized as RMBS, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

306. To facilitate the sale of RMBS, Greenwich Capital formed SPVs, including Depositor Defendant Financial Asset Security Corporation, which issued and was the depositor for numerous offerings of RMBS. Defendant Greenwich Capital offered or sold the Securities to

Plaintiff. Greenwich Capital also provided financial research on RMBS and related structured products.

307. In connection with its offer or sale of Securities to Plaintiff, Greenwich Capital sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Greenwich Capital also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Greenwich Capital sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Greenwich Capital also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Greenwich Capital's due diligence of the Mortgage Originators' underwriting practices. Greenwich Capital did not allow Plaintiff to keep the pitch books.

308. In the Offering Documents, Greenwich Capital made numerous statements of material facts regarding the underwriting standards and appraisal practices that had been followed in originating the underlying mortgage loans. For example, for the offerings in which Long Beach originated all or a significant amount of the underlying mortgage loans, Greenwich Capital reprinted Long Beach's "Underwriting Guidelines," which stated that: (1) Long Beach's guidelines were primarily intended to evaluate the prospective borrower's credit standing and repayment ability as well as the value and adequacy of the mortgaged property as collateral; (2) appraisal of the mortgaged property generally conformed to Fannie Mae and Freddie Mac appraisal standards; (3) appraisals were generally performed by licensed independent appraisers who had satisfied the loan servicer's appraiser screening process; and (4) exceptions were only granted with the approval of an employee with appropriate "risk level authority" and in the presence of compensating factors. *See* ¶115.

309. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Greenwich Capital made additional statements of material facts regarding the particular Securities and their underlying data, data quality, the relevant Mortgage Originators' practices and guidelines, and Greenwich Capital's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

310. Greenwich Capital made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff, including during meetings in Plaintiff's offices in Concord, Massachusetts. Some of Plaintiff's meetings with Greenwich Capital occurred on or about May 13 and September 2, 2004; March 2 and August 16, 2006; and January 10, 2007. During these meetings, Greenwich Capital made statements of material facts regarding Greenwich Capital's upcoming RMBS deals, and stated that Greenwich Capital conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

311. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained omissions. As detailed above and below, the principal Mortgage Originators of the underlying loans systematically violated their stated underwriting and appraisal standards. Moreover, Greenwich Capital's statements of material facts regarding its own due diligence were untrue and contained material omissions.

312. For example, the statements of material facts in the documents Greenwich Capital sent to Plaintiff were untrue because Long Beach violated its stated underwriting guidelines, did not consistently evaluate the borrower's ability to repay, and made exceptions to its underwriting standards in the absence of "compensating factors." Subsequent investigations and lawsuits have demonstrated that Long Beach ignored and made frequent exceptions to its underwriting guidelines. *See* ¶¶119-143. Moreover, former Long Beach employees witnessed firsthand how

variance from Long Beach's stated underwriting standard became the "norm" because employees were incentivized to increase loan volume. *Id.* The Senate Permanent Subcommittee on Investigations stated: "Long Beach . . . was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry." *See* ¶119.

313. Likewise, subsequent investigations and lawsuits have demonstrated that Fremont, another Mortgage Originator whose loans Greenwich Capital securitized, "engag[ed] in unsatisfactory lending practices"; "ma[de] loans based on information that Fremont knew or should have known was inaccurate or false, including, but not limited to, borrowers' income, property appraisals, and credit scores"; purposefully relaxed its underwriting standards and made loans based on documents it knew to be untrue; made "everyday" exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for a loan; and continually ignored fraudulent documents when approving loans. *See* ¶¶149-168. The other Mortgage Originators of loans underlying the Securities initially offered by Greenwich Capital similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

314. The statements of material facts in the documents Greenwich Capital sent to Plaintiff were also untrue because the inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶51-57. For example, a former Fremont account manager described how superiors would call appraisers and directly request that they inflate their appraisal values in order to close a deal. ¶164. Another Fremont employee audited loans that the company was asked to repurchase, and found alarming problem with the appraisals, including appraisals that were incomplete, did not match the address of the property, or described the home as owner-occupied when it was rented, on the large majority of the loans. *Id*. An industry insider testified before the FCIC that, in his experience, subprime appraisals were so overvalued that "throwing a dart at a board while blindfolded would've produced more accurate results." ¶52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. ¶56.

315. Greenwich Capital's statements of material facts were also untrue because other material data provided to Plaintiff by Greenwich Capital was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

316. On March 8, 2008, RBS confirmed that its Greenwich Capital unit was subject to an SEC investigation into the collapse of the subprime market and had been ordered to turn over financial documents to the SEC regarding, among other things, the origination of mortgages, accounting, due diligence, sales, and insider trading.

317. In sum or substance, Greenwich Capital stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

318. The result of the untrue statements of material facts and omissions described above is that the Securities that Greenwich Capital underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Greenwich Capital to Plaintiff.

f. Deutsche Bank's Untrue Statements Of Material Facts And Omissions

319. Deutsche Bank offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $127,779,742. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

320. Deutsche Bank acquired and then converted subprime mortgages into billions of dollars of RMBS, some of which Deutsche Bank offered or sold to Plaintiff in a series of offerings and sales pursuant to the relevant Offering Documents and other statements.

321. Deutsche Bank offered or sold Securities to Plaintiff, and Plaintiff purchased Securities on behalf of the Clients from Deutsche Bank, in offerings and sales containing subprime mortgage loans from several different Mortgage Originators, including Countrywide and New Century.

322. To facilitate the sale of RMBS, Deutsche Bank formed SPVs, including Depositor Defendant Ace Securities Corporation, which issued and was the depositor for numerous offerings of RMBS. Defendant Deutsche Bank offered or sold the Securities to Plaintiff. Deutsche Bank also provided financial research on RMBS and related structured products.

323. In connection with its offer or sale of Securities to Plaintiff, Deutsche Bank sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Deutsche Bank also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes Deutsche Bank sent to Plaintiff consisted of Excel spreadsheets that contained dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Deutsche Bank also showed Plaintiff "pitch books" and other materials promoting the Mortgage Originators' underwriting practices

and guidelines for the mortgages supporting the Securities, the data, and Deutsche Bank's due diligence of the Mortgage Originators' underwriting practices. Deutsche Bank did not allow Plaintiff to keep the pitch books.

324. In the Offering Documents, Deutsche Bank made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, Credit Suisse reprinted Fremont's "Underwriting Guidelines," which stated in sum or substance, that (a) Fremont's guidelines were "intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan"; (b) "the Fremont mortgage loans were originated in accordance with the[se] underwriting criteria"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based upon compensating factors." *See* ¶¶ 147-148. Deutsche Bank made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including Long Beach and Option One. *See* Section V.

325. Deutsche Bank's Offering Documents also made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Deutsche Bank stated, for example, that "Fremont's underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal," and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were reviewed by Fremont. *See* ¶¶ 147-148. Deutsche Bank made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Long Beach and Option One. *See* Section V.

326. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes" and "pitch books," Deutsche Bank made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices

and guidelines applicable to the loans underlying those Securities, and Deutsche Bank's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

327. Deutsche Bank made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in meetings, some of which occurred in Plaintiff's offices in Concord, Massachusetts. Some of Plaintiff's meetings with Deutsche Bank occurred on or about October 28 and 31, 2005 and November 3 and December 6, 2006. During these meetings, Deutsche Bank made statements of material facts regarding Deutsche Bank's upcoming RMBS deals, and stated that Deutsche Bank conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

328. Each of the statements of material facts identified above regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed in Section V, Countrywide and New Century, which originated loans included in the Deutsche Bank deals, violated their stated underwriting and appraisal standards did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. Moreover, Deutsche Bank's statements of material facts regarding its own due diligence were untrue and contained material omissions.

329. The statements of material facts in the documents Deutsche Bank sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶51-57.

330. Deutsche Bank's statements of material facts were also untrue because other key data provided to Plaintiff by Deutsche Bank was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment

properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

331. Deutsche Bank is one of eight Wall Street Banks targeted by New York State Attorney General Andrew Cuomo, who, according to a May 12, 2010 article in the *New York Times*, is investigating these Wall Street Banks to determine whether they provided untrue information to rating agencies in order to inflate the ratings of RMBS.

332. In sum or substance, Deutsche Bank stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

333. The result of the untrue statements of material facts and omissions described above is that the Securities that Deutsche Bank underwrote, offered or sold to the Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Deutsche Bank to Plaintiff.

g. Merrill Lynch's Untrue Statements Of Material Facts And Omissions

334. Merrill Lynch offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $126,740,462.

A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

335. Merrill Lynch & Co. sought to compete with its Wall Street peers and to expand its share of the RMBS market by aggressively pursuing subprime lenders including Accredited, Fremont, and WMC for the purchase of subprime loans to be pooled and securitized as RMBS, offering to pay more for mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

336. To facilitate the sale of RMBS, Merrill Lynch & Co. formed numerous SPVs including: (1) Depositor Defendant Merrill Lynch Mortgage Investors, Inc., which served as the depositor and issuer for offerings of RMBS; and (2) Merrill Lynch Mortgage Lending, Inc., which acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant Merrill Lynch offered or sold the Securities to Plaintiff. Merrill Lynch also provided financial research on RMBS and related structured products.

337. In connection with its offer or sale of Securities to Plaintiff, Merrill Lynch sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Merrill Lynch also sent Plaintiff numerous other documents, including term sheets, collateral and computational materials, and "loan tapes." The loan tapes Merrill Lynch sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, inter alia, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Merrill Lynch also showed Plaintiff "pitch books" promoting, *inter alia*, the quality of the Securities and Merrill Lynch's due diligence of the Mortgage Originators' underwriting practices. Merrill Lynch did not allow Plaintiff to keep the pitch books.

338. In the Offering Documents, Merrill Lynch made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, Merrill Lynch reprinted Fremont's "Underwriting Guidelines," which stated in sum or substance, that (a) Fremont's guidelines were "intended to assess the borrower's ability and willingness of the borrower to repay the debt"; (b) the "mortgage loans [were] underwritten in accordance with Fremont's current underwriting programs"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based on compensating factors." *See* ¶¶ 147-148. Merrill Lynch made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including Accredited and WMC. *See* ¶¶171, 210.

339. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Merrill Lynch stated, for example, that "underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal" and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers." *See* ¶¶ 147-148. Merrill Lynch made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Accredited and WMC. *See* ¶¶171, 210.

340. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Merrill Lynch made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to mortgage loans underlying those Securities, and Merrill Lynch's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

341. Merrill Lynch also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Merrill Lynch representatives occurred on or about June 25, 2004 and September 21, 2006. During these meetings, Merrill Lynch made statements of material facts regarding Merrill Lynch's upcoming RMBS deals, and assured Plaintiff that Merrill Lynch conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

342. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed below, Accredited, Fremont, and WMC, the principal Mortgage Originators of loans underlying the Securities initially offered by Merrill Lynch, violated their stated underwriting and appraisal standards. Moreover, Merrill Lynch's statements of material facts regarding its own due diligence were untrue and contained material omissions.

343. Merrill Lynch contracted with external firms including Clayton and Bohan to review whether the loans included in the Securities that Merrill Lynch underwrote complied with the Mortgage Originators' stated standards, as discussed in ¶¶60-66.

344. The statements of material facts in the documents Merrill Lynch sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards in the absence of the "compensating factors" required by their guidelines. For example, investigations and lawsuits have demonstrated that Fremont made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; Fremont management encouraged risky loan originations; and Fremont was "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]." *See* ¶¶149-168. Moreover, former Fremont employees witnessed firsthand how exceptions to Fremont's underwriting became the "norm" because employees had to do what was necessary to increase loan originations. *Id.* The FDIC ultimately issued a Cease

& Desist Order to Fremont for extending subprime credit "in an unsafe and unsound manner" and violating laws and FDIC regulations. *See* ¶¶ 153-154. The other Mortgage Originators of loans underlying the Securities initially offered by Merrill Lynch, including Accredited and WMC, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

345. The statements of material facts in the documents Merrill Lynch sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶ 51-57.

346. Merrill Lynch's statements of material facts were also untrue because other material data provided to Plaintiff by Merrill Lynch was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loan's credit quality and likelihood of default.

347. Merrill Lynch pressured Mortgage Originators to loosen their underwriting practices in order to generate more loans to be securitized. For example, a *New York Times* article titled "East Coast Money Lent Out West," dated May 8, 2007, reported that "William D. Dallas, the founder and chief executive of Ownit [Mortgage Solutions, a Mortgage Originator], acknowledges loosening lending standards but says he did so reluctantly and under pressure from his investors, particularly Merrill Lynch [which purchased a 20 percent stake in Ownit in 2005], which wanted more loans to package into lucrative securities. He recalls being asked to make more 'stated income' loans . . . . The message, he said, was simple: You are leaving money on the table – do more of them."

348. Among other investigations by various State Attorneys General and the SEC, the New York Attorney General initiated an investigation to determine whether Merrill Lynch concealed information, including the warnings it received about exceptions or mortgages that did not meet minimum lending standards, in an effort to bolster ratings of RMBS and make them

more attractive to buyers. *See* Kate Kelly, Amir Efrati & Ruth Simon, "State Subprime Probe Takes a New Track," *Wall Street Journal*, Jan. 31, 2008.

349. Merrill Lynch is also a defendant in a number of lawsuits which directly relate to its conduct as an underwriter of RMBS. For example, in December 2008, investors filed a class action alleging violations of the Securities Act of 1933 arising from Merrill Lynch's sale of RMBS using untrue offering documents. *See Public Employees' Retirement System of Mississippi v. Merrill Lynch & Co. Inc., et al.*, 08-cv-10841 (JRS) (S.D.N.Y.). The consolidated complaint in that action alleges that the Merrill Lynch offering documents contained untrue statements related to (1) the underwriting guidelines used to originate the mortgage loans underlying the RMBS; (2) the accuracy of the appraisals for the properties underlying the RMBS; (3) the maximum LTV ratios used to qualify borrowers; (4) the debt-to-income ratios permitted on the loans underlying the RMBS; and (5) the credit ratings of the RMBS. On June 1, 2010, the District Court substantially denied motions to dismiss the action and sustained Section 11 claims against Merrill Lynch. Specifically, the Court held that "the alleged repeated deviation from established underwriting standards is enough to render misleading the assertion in the registration statements that underwriting guidelines were generally followed." On December 1, 2010, the Court substantially denied motions to dismiss an amended complaint in the action, again holding that the plaintiff adequately alleged false statements in the offering documents for the Merrill Lynch RMBS.

350. In sum or substance, Merrill Lynch stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts

therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

351. The result of Merrill Lynch's untrue statements of material facts and omissions is that the Securities that Merrill Lynch underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Merrill Lynch to Plaintiff.

h. UBS's Untrue Statements Of Material Facts Aand Omissions

352. UBS offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $134,397,098. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

353. UBS was one of the leading underwriters of RMBS. UBS and its affiliates formed numerous SPVs to facilitate RMBS issuances including: (1) UBS Real Estate Securities Inc., which served as the sponsor and seller for many of UBS's RMBS offerings; and (2) Depositor Defendant Mortgage Asset Securitization Transactions, Inc. ("MASTR"), a wholly owned limited purpose finance subsidiary of UBS, which served as the depositor and issuer for UBS's RMBS offerings. Defendant UBS offered or sold the Securities to Plaintiff. UBS also provided financial research on RMBS and related structured products.

354. In connection with its offer or sale of Securities to Plaintiff, UBS sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. UBS also sent Plaintiff numerous other documents, including term sheets and "loan tapes." The loan tapes UBS sent consisted of Excel spreadsheets

containing dozens of categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, UBS also showed Plaintiff "pitch books" and other materials promoting the quality of the Securities and UBS's due diligence of the Mortgage Originators' underwriting practices. UBS did not allow Plaintiff to keep the pitch books.

355. In the Offering Documents, UBS made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, UBS reprinted Fremont's "Underwriting Guidelines," which stated that (a) Fremont's guidelines were "intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan"; (b) "the Fremont mortgage loans were originated in accordance with the[se] underwriting criteria"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . based upon compensating factors." *See* ¶¶ 147-148. UBS made similar statements of material facts for mortgage loans originated by other Mortgage Originators, including WMC. *See* Section V.

356. Moreover, UBS's Offering Documents made statements of material facts regarding the appraisal guidelines and practices of Fremont and the other relevant Mortgage Originators. UBS stated, for example, that "Fremont's underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal," and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers" who prepared appraisal reports that were reviewed by Fremont. *See* ¶¶ 147-148. UBS made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including WMC. *See* Section V.

357. In the other documents including term sheets, loan tapes, and pitch books UBS sent or showed to Plaintiff, UBS made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to the loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

358. UBS made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with UBS representatives occurred on or about July 12, July 14, and November 3, 2004; April 11, November 30, and December 5, 2005; May 18, September 28, and November 21, 2006; and March 12, April 11, April 16, July 18, and August 3, 2007. During these meetings, UBS made statements of material facts regarding upcoming RMBS deals, and assured Plaintiff that UBS conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines.

359. On March 5, 2008, investors commenced an action against UBS relating to mortgage-related securities purchases. *Pursuit Partners, LLC v. UBS AG, et al.*, 05-CV-08-4013452 (Conn. Super Ct.). The plaintiffs in that action alleged that UBS marketed junk securities as investment-grade. Between July and October 2007, the plaintiffs in that action purchased more than $50 million of mortgage-related securities from UBS, and on October 10, 2007, the securities were downgraded to junk status. On September 8, 2009, the Connecticut Superior Court ordered UBS to set aside $35.5 million to cover a potential judgment against it, finding that plaintiffs had "presented sufficient evidence to satisfy the probable cause standard." The court summarized the case as follows: "Through direct and circumstantial evidence, Pursuit has established probable cause to sustain the validity of a claim that the UBS defendants were in possession of material nonpublic information regarding imminent ratings downgrades on the Notes it sold to the Plaintiffs, information UBS withheld from the Plaintiffs."

360. On February 22, 2010, a pension fund commenced an action against UBS in the United States District Court for the District of New Jersey regarding the issuance of RMBS.

Local 302 & 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust v. Mortgage Asset Securitization Transactions, Inc. et al., 10-cv-00898-DMC (D.N.J.). The pension fund plaintiff in that case alleges that the offering documents pursuant to which UBS offered RMBS contained misstatements and material omissions regarding: (1) the underwriting standards pursuant to which the underlying mortgage collateral was originated; (2) the RMBS' true investment risk and credit ratings; and (3) the amount and quality of the credit enhancement or credit support. The plaintiff in that case also alleges that UBS failed to conduct adequate, or in many cases any, due diligence on the mortgage loan applications and mortgaged properties before or during the securitization process. The mortgage loans underlying the RMBS in that case were principally originated by Countrywide and IndyMac Bank, F.S.B. ("IndyMac").

361. According to a May 12, 2010 article in the *New York Times*, UBS received a subpoena from the New York State Attorney General in connection with an investigation into whether UBS provided untrue information to rating agencies in order to inflate ratings of RMBS.

362. Each of the statements of material facts identified above made by UBS regarding underwriting and appraisal standards was untrue and contained material omissions. As detailed below, Fremont and the other Mortgage Originators of loans underlying the Securities initially offered by UBS systematically violated their stated underwriting and appraisal standards. Moreover, UBS's statements of material facts regarding its own due diligence were untrue and contained material omissions.

363. The statements of material facts in the documents UBS sent to Plaintiff were untrue because Fremont and the other relevant Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that Fremont made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for loans; Fremont management encouraged risky

loan originations; and Fremont was "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]." *See* ¶¶149-168. Moreover, former Fremont employees witnessed firsthand how exceptions to Fremont's underwriting became the "norm" because employees had to do whatever was necessary to increase loan originations. *Id.* The FDIC ultimately issued a Cease & Desist Order to Fremont for extending subprime credit "in an unsafe and unsound manner" and violating laws and FDIC regulations. *See* ¶¶153-154. The other Mortgage Originators of loans underlying the Securities initially offered by UBS, including WMC, similarly violated their stated underwriting guidelines in order to increase loan volume. *See* SectionV.

364. The statements of material facts in the documents UBS sent to Plaintiff were also untrue because the appraisals of the mortgaged properties were systematically inflated, which caused the listed LTV ratios and credit enhancement levels to be untrue. *See, e.g.*, ¶¶51-57.

365. UBS's statements of material facts were also untrue because other material data provided to Plaintiff by UBS was untrue. For example, the data often identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loan's credit quality and likelihood of default. *See* Section V.

366. In sum or substance, UBS stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to

be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

367. The result of the untrue statements of material facts and omissions described above is that all of the Securities that UBS underwrote, offered or sold to Plaintiff have been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by UBS to Plaintiff.

i. Goldman Sachs' Untrue Statements of Material Facts and Omissions

368. Goldman Sachs offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $177,043,516. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

369. Goldman Sachs had several trading desks responsible for purchasing and selling mortgage-related assets, including RMBS. From 2004 through 2007, Goldman Sachs actively participated in the securitization markets and worked extensively with subprime Mortgage Originators Long Beach, Fremont, and New Century.

370. To facilitate the sale of RMBS, Goldman Sachs formed numerous SPVs including: (1) Goldman Sachs Mortgage Company, which served as the sponsor for many of Goldman Sachs offerings; and (2) Depositor Defendant GS Mortgage Securities Corp., which served as the depositor and issuer for Goldman Sachs offerings. Goldman Sachs offered or sold the Securities to Plaintiff. Goldman Sachs also provided financial research on RMBS and related structured products.

371. In connection with its offer or sale of Securities to Plaintiff, Goldman Sachs sent numerous documents to Plaintiff in Massachusetts. These documents included registration

statements, prospectuses, and prospectus supplements that were, or would become, publicly available when filed with the SEC. Goldman Sachs also sent Plaintiff other documents, including term sheets and loan tapes. The loan tapes Goldman Sachs sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Goldman Sachs also showed Plaintiff pitch books and other materials promoting the quality of the Securities and Goldman Sachs due diligence of the Mortgage Originators underwriting practices. Goldman Sachs did not allow Plaintiff to keep the pitch books.

372. In the Offering Documents, Goldman Sachs made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, Long Beach originated all or a significant amount of the underlying mortgage loans in the Goldman Sachs offerings Plaintiff purchased on behalf of the Clients. In the Offering Documents, Goldman Sachs reprinted Long Beach s Underwriting Guidelines, which stated that: (1) Long Beach s guidelines were primarily intended to evaluate the prospective borrowers credit standing and repayment ability as well as the value and adequacy of the mortgaged properties as collateral; (2) appraisals of the mortgaged properties generally conformed to Fannie Mae and Freddie Mac standards; (3) appraisals were generally performed by licensed independent appraisers who had satisfied the loan servicer s appraiser screening process; and (4) exceptions were only granted with the approval of an employee with appropriate risk level authority and in the presence of compensating factors. *See* 115.

373. In the other documents sent or shown to Plaintiff, including term sheets, loan tapes and pitch books, Goldman Sachs made additional statements of material facts regarding the particular Securities and their underlying data, data quality, the Mortgage Originators practices and guidelines, and Goldman Sachs due diligence of the Mortgage Originators underwriting practices. This information was material as it allowed Plaintiff to perform sensitive

calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

374. The statements of material facts in the documents Goldman Sachs sent to Plaintiff were untrue because the Mortgage Originators violated their stated underwriting guidelines, did not consistently evaluate the borrowers ability to repay, and made exceptions to their underwriting standards in the absence of compensating factors. Subsequent investigations and lawsuits have demonstrated that Long Beach ignored and made frequent exceptions to its underwriting guidelines. *See* 119-144. Moreover, former Long Beach employees witnessed firsthand how variance from Long Beach s stated underwriting standard became the norm because employees were incentivized to increase loan volume. *Id.* The PSI summed up Long Beach s conduct by stating: Long Beach was not a responsible lender. Its loans and mortgage backed securities were among the worst performing in the subprime industry. *See* 119.

375. The statements of material facts in the documents Goldman Sachs sent to Plaintiff were also untrue because inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, 51-57. An industry insider who testified before the FCIC stated that, in his experience, subprime appraisals were so overvalued that throwing a dart at a board while blindfolded would ve produced more accurate results. 52. Surveys performed in 2007 demonstrated that 90% of appraisers felt pressured to raise property values in order to enable deals to go through. 56.

376. Goldman Sachs statements of material facts were also untrue because other material data provided to Plaintiff by Goldman Sachs was untrue. For example, the data often incorrectly identified properties as owner occupied when they were really second homes or investment properties. The untruth of this information was material to Plaintiff s analysis of the loans credit quality and likelihood of default.

377. Goldman Sachs also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. For example, Goldman Sachs represented to Plaintiff in 2005 that in the prior 18 months, Long Beach had shifted to significantly higher-quality

collateral. Goldman Sachs also stated to Plaintiff that Long Beach had stopped originating mortgages on mobile homes and that the concentrations of loan balances in the pools below $50,000 were very small. Plaintiff met with Goldman Sachs representatives on or about April 6 and June 15, 2004. During these meetings, Goldman Sachs representatives made statements of material facts regarding upcoming RMBS deals, and assured Plaintiff that Goldman Sachs conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines. Among other things, Goldman Sachs stated that its due diligence included sampling loans to check underwriting process, documentation, valuations, and compliance. Specifically, Goldman Sachs repeatedly stated that it performed due diligence on the mortgage loans and to ensure Mortgage Originator compliance with stated underwriting standards.

378. Goldman Sachs oral statements of material facts were untrue for the same reasons listed above. Moreover, the statements of material facts were untrue because Goldman Sachs failed to conduct adequate due diligence on the Mortgage Originators and the mortgage loans underlying the Securities in accordance with its statements.

379. The PSI investigated Goldman Sachs and concluded that from 2004 to 2007, Goldman Sachs helped lenders like Long Beach, Fremont, and New Century, securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting [RMBS], and sell the [RMBS] to investors, pushing billions of dollars of risky mortgages into the financial system.

380. The PSI specifically profiled Goldman Sachs relationship with Long Beach. A PSI exhibit showed that WaMu (Long s Beach s parent company), Long Beach, and Goldman Sachs collaborated on at least $14 billion in loan sales and securitizations. The PSI also stated that in 2005 and 2006, Long Beach s RMBS were among the worst performing in the market.

381. The PSI highlighted one example of how Goldman Sachs securitized Long Beach mortgage loans, despite the fact that Long Beach was one of the nation s worst mortgage lenders. In May 2006, Goldman Sachs, along with its co-lead underwriter WaMu, sold $495 million in RMBS backed by Long Beach loans. In less than a year, delinquencies and defaults

on the underlying loans began to skyrocket. By May 2007, the cumulative net loss on the underlying mortgage pool was over 12 percent, erasing the deal's loss protection and causing downgrades of 6 out of 7 of the mezzanine tranches. By May 2008 – only two years later – even the AAA securities in the May 2006 deal had been downgraded to "default," and by March 2010 the securities had recorded a cumulative net loss of over 66 percent.

382. Massachusetts Attorney General Martha Coakley recently investigated Goldman Sachs' role in securitizing loans in the Commonwealth. The investigation examined whether Goldman Sachs engaged in the following practices:

- Failing to ascertain whether loans purchased from originators complied with the originators' stated underwriting guidelines;
- Failing to take sufficient steps to avoid placing problem loans in securitization pools;
- Failing to correct inaccurate information in securitization trustee reports concerning repurchases of loans; and
- Failing to make available to potential investors certain information concerning allegedly unfair or problem loans, including information obtained during loan due diligence and the pre-securitization process, as well as information concerning Goldman Sachs' practices in making repurchase claims relating to loans both in and out of securitizations.

383. On May 7, 2009, Goldman Sachs entered into a settlement agreement with the Massachusetts Attorney General in order "[t]o resolve any potential claims stemming from the Attorney General's investigation . . . ." Under the agreement, among other things, Goldman Sachs paid $10 million to the Commonwealth.

384. In sum or substance, Goldman Sachs stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the

purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

385. The result of the untrue statements of material facts and omissions described above is that the Securities that Goldman Sachs underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Goldman Sachs to Plaintiff.

j. J.P. Morgan's Untrue Statements Of Material Facts And Omissions

386. J.P. Morgan offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $117,146,975. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

387. J.P. Morgan, seeking to compete with its Wall Street peers, formed numerous entities to facilitate the sale of RMBS, including: (1) J.P. Morgan Chase Bank ("Chase Bank"), which originated various types of mortgage loans to various types of borrowers, and also acted as the servicers of the mortgage loans following their securitization; and (2) J.P. Morgan Mortgage Acquisition Corporation, which acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant J.P. Morgan offered or sold the Securities to Plaintiff. J.P. Morgan also provided financial research on RMBS and related structured products.

388. In connection with its offer or sale of Securities to Plaintiff, J.P. Morgan sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. J.P. Morgan also sent Plaintiff numerous other documents, including term sheets, collateral and computational materials, and "loan tapes." The loan tapes J.P. Morgan sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, J.P. Morgan also showed Plaintiff "pitch books" promoting, *inter alia*, the quality of the Securities and J.P. Morgan's due diligence of the Mortgage Originators' underwriting practices. J.P. Morgan did not allow Plaintiff to keep the pitch books.

389. In the Offering Documents, J.P. Morgan made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which New Century originated all or a significant amount of the underlying mortgage loans, J.P. Morgan represented that New Century's underwriting standards assessed "the creditworthiness of a mortgagor," "the income sufficiency of a mortgagor's projected family income relative to the mortgage payment and to other fixed obligations," and "the adequacy of the mortgaged property expressed in terms of loan-to-value ratio, or LTV ratio, to serve as the collateral for a mortgage loan." The Offering Documents for Securities that J.P. Morgan offered or sold to Plaintiff made similar statements of material facts regarding mortgage loans originated by the Ameriquest Loan Sellers. *See* Section V.

390. Moreover, the Offering Documents for Securities that J.P. Morgan offered or sold to Plaintiff contained statements of material facts regarding appraisal guidelines and practices. For example, the Offering Documents for the 2005-WCH1 Securities stated that the relevant originator's underwriting guidelines required "an appraisal of the mortgaged property which conforms to the Uniform Standards of Professional Appraisal Practice and are [sic] generally on forms similar to those acceptable to Fannie Mae and Freddie Mac . . . ." *See* Section V.

391. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," J.P. Morgan made additional statements of material facts regarding the particular Securities and their underlying data, Mortgage Originator practices and guidelines, and J.P. Morgan's due diligence of those practices and guidelines. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

392. J.P. Morgan also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with J.P. Morgan representatives occurred on or about April 13, April 28, September 29, and November 7, 2005, and May 3 and November 7, 2006. During these meetings, J.P. Morgan made statements of material facts regarding J.P. Morgan's upcoming RMBS deals and assured Plaintiff that J.P. Morgan conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans to check underwriting process, documentation, valuations, and compliance.

393. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The Ameriquest Loan Sellers, New Century, and the other originators of loans underlying the Securities initially offered by J.P. Morgan violated their stated underwriting and appraisal standards, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards in the absence of the "compensating factors" required by their guidelines. *See* Section V. Moreover, J.P. Morgan's statements of material facts regarding its own due diligence were untrue and contained material omissions.

394. The statements of material facts in the documents J.P. Morgan sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶51-57.

395. J.P. Morgan's statements of material facts were also untrue because other material data provided to Plaintiff by J.P. Morgan was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loan's credit quality and likelihood of default.

396. According to a May 13, 2010 Reuters news article, the SEC and "U.S. prosecutors are conducting a broad criminal investigation of six major Wall Street Banks, including J.P. Morgan" about whether they misled investors about mortgage-securities deals.

397. In sum or substance, J.P. Morgan stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

398. The result of J.P. Morgan's untrue statements of material facts and omissions is that the Securities that J.P. Morgan underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by J.P. Morgan to Plaintiff.

k. Countrywide's Untrue Statements Of Material Facts And Omissions

399. Countrywide offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $154,995,802. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

400. As one of the nation's largest subprime Mortgage Originators, Countrywide Financial was able to buy and sell vast amounts of subprime loans which were pooled and securitized as RMBS. In 2005 and 2006 alone, Countrywide Financial originated in excess of $850 billion in home loans throughout the United States.

401. Through its affiliates and subsidiaries, Countrywide Financial was able to control nearly every step in the mortgage securitization process. To facilitate the sale of RMBS, Countrywide Financial formed numerous SPVs including: (1) Depositor Defendant CWABS, Inc., which served as the depositor and issuer for offerings of RMBS; and (2) Countrywide Home Loans, Inc. ("Countrywide Home"), which originated or otherwise acquired residential mortgage loans to be securitized and served as the sponsor in numerous offerings of RMBS. Defendant Countrywide underwrote, offered or sold Securities containing loans originated by these SPVs to Plaintiff. Countrywide also underwrote, offered or sold to Plaintiff Securities containing loans originated by other mortgage originators such as Aames Investment Corporation. Countrywide also provided financial research on RMBS and related structured products.

402. In connection with its offer or sale of Securities to Plaintiff, Countrywide sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements, and other documents that were, or would become, publicly available when filed with the SEC. Countrywide also sent Plaintiff numerous other documents, including term sheets, loan tapes, collateral tables, and summaries of loans

reports. The "loan tapes" Countrywide sent to Plaintiff consisted of Excel spreadsheets that contained over 100 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Countrywide also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Countrywide's due diligence of the Mortgage Originators' underwriting practices. Countrywide did not allow Plaintiff to keep the pitch books.

403. In the Offering Documents, Countrywide made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Countrywide Home originated all or a significant amount of the underlying mortgage loans, Countrywide reprinted Countrywide Home's "Underwriting Guidelines," which stated, in sum or substance, that (a) Countrywide Home's guidelines were "intended to evaluate the value and adequacy of the mortgaged property as collateral for the proposed mortgage loan and the borrower's credit standing and repayment ability"; (b) Countrywide Home reviewed not only the value of the property, but also considered "applicant's assets, liabilities, income and employment history, as well as certain other personal information"; (c) the mortgage loans were originated in accordance with the underwriting guidelines; and (d) exceptions to these guidelines would only be made "[o]n a case by case basis . . . based upon compensating factors." CWL 2007-2 Prospectus Supplement. Countrywide made similar statements with respect to loans originated by other mortgage originators, including Aames Home Loan.

404. Moreover, the Offering Documents made statements of material facts regarding the Mortgage Originators' appraisal guidelines. Countrywide stated, for example, that the Mortgage Originators commissioned appraisals by qualified independent appraisers who prepared appraisals that conformed to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

405. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Countrywide made additional statements of material facts regarding the particular Securities and their underlying data, data quality, Mortgage Originator practices and guidelines applicable to the loans underlying those Securities, and Countrywide's due diligence of the Mortgage Originators' underwriting practices. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

406. Countrywide also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. For example, on April 4, 2006, Plaintiff made a due diligence visit to Countrywide's offices to meet with Countrywide's origination and servicing staff. During these meetings, Countrywide representatives made statements of material facts regarding Countrywide's upcoming RMBS deals, and assured Plaintiff that Countrywide conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

407. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The principal Mortgage Originators in the Countrywide deals systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines, and either knew of or participated in the inflated appraisals of the mortgaged properties. Moreover, Countrywide's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

408. Countrywide's statements of material facts were also untrue because other material data provided to Plaintiff by Countrywide was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or

investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

409. Countrywide Financial's lending practices, including the subjects of the untrue statements of material facts and omissions in the Offering Documents, are currently the target of multiple state and federal investigations and proceedings. Various State Attorneys General, including those from Massachusetts, California, Connecticut, Illinois, Florida, and Indiana, have brought lawsuits or initiated investigations against Countrywide based on its lending, underwriting, and appraisal practices for mortgage loans.

410. On March 24, 2010, Massachusetts Attorney General Coakley filed a Complaint and Final Judgment by Consent against Countrywide's parent, Countrywide Financial Corporation, and its affiliates Countrywide Home Loans, Inc., Countrywide Mortgage Ventures LLC, and Full Spectrum Lending, Inc. The Attorney General's Complaint alleged that:

> During 2006 and 2007, Countrywide was the largest lender in Massachusetts and the nation and the largest subprime lender in Massachusetts. In originating residential mortgage loans in Massachusetts from 2005 to 2007 ("loans"), Countrywide engaged in unfair loan origination practices including approving risk-layered loans that, at times, led to predictable borrower "payment shock" -- that is, a significant increase in a borrower's payment based on changes to the calculation of a monthly payment, frequently attributable to a change in interest rate for an adjustable rate mortgage ("ARM") or the deferral of the payment of principal on interest only or Pay Option ARMs. When originating these loans, Countrywide knew or should have known that a substantial number of its borrowers could not reasonably repay these loans according to the loans' terms and that the loans would be subject to predictable delinquency and default.

411. The Attorney General's Complaint quotes emails sent by the Chairman of Countrywide, Angelo Mozilo, in March and April 2006 in which Mozilo referred to Countrywide's 100% LTV subprime loans as "the most dangerous product in existence and there can be nothing more toxic," and "[i]n all my years in the business, I have never seen a more toxic pr[o]duct." Despite Mozilo's awareness in early 2006 that such loans were toxic, the Attorney General's Complaint alleges that Countrywide continued to make such loans through 2007 and into 2008.

412. The Attorney General's settlement with Countrywide Financial Corporation, in combination with settlements by other State Attorneys General, provides for $18 million in loan modifications for Massachusetts homeowners, $3 billion in loan modifications for homeowners across the country and a $4.1 million payment by Countrywide Financial Corporation to the Commonwealth.

413. Countrywide's underwriting standards are also the subject of an investigation by the Federal Bureau of Investigation ("FBI"), which was first reported on March 8, 2008 by *The Wall Street Journal* in an article entitled "FBI Investigates Countrywide; U.S. Scrutinizes Filings on Financial Strength, Loan Quality for Fraud." The FBI investigation is focused on "whether company officials made misrepresentations about the company's financial position and the quality of its mortgage loans in securities filings."

414. On March 11, 2008, the *Wall Street Journal* published another article detailing the FBI's investigation of Countrywide's lending practices. According to the sources interviewed by the *Wall Street Journal*, federal investigators found that "Countrywide's loan documents often were marked by dubious or erroneous information about its mortgage clients, according to people involved in the matter. The company packaged many of those mortgages into securities and sold them to investors, raising the additional question of whether Countrywide understated the risks such investments carried."

415. In sum or substance, Countrywide stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to

receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

416. The result of the untrue statements of material facts and omissions described above is that the Securities that Countrywide underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Countrywide to Plaintiff.

l. FBR's Untrue Statements Of Material Facts And Omissions

417. FBR offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $7,267,040. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Banks, is contained in the attached Appendix A.

418. FBR sought to expand its share of the RMBS market by aggressively pursuing subprime mortgage originators including Aames, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. In an effort to expand its subprime origination, servicing, and securitization business, FBR acquired First NLC Financial Services, a mortgage originator headquartered in Florida, in 2005.

419. To facilitate the sale of RMBS, FBR formed SPVs, including Depositor Defendant FBR Securitization, Inc., which served as the depositor and issuer for many of FBR's offerings. FBR offered or sold the Securities to Plaintiff. FBR also provided financial research on RMBS and related structured products.

420. In connection with its offer or sale of Securities to Plaintiff, FBR sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. FBR also sent Plaintiff numerous other documents,

including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The loan tapes FBR sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the data, the mortgage originators' underwriting practices and guidelines for the mortgages supporting the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, FBR also showed Plaintiff "pitch books" promoting, *inter alia*, the mortgage originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and FBR's due diligence of the mortgage originators' underwriting practices. FBR did not allow Plaintiff to keep the pitch books.

421. In the Offering Documents, FBR made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in an offering for which Aames originated all of the underlying mortgage loans, FBR stated, in sum or substance, that (a) Aames' guidelines were intended to assess the borrower's ability and willingness to repay the debt; (b) the mortgage loans underwritten in accordance with Aames' underwriting standards; and (c) exceptions to these standards would only be made on a case-by-case basis based on compensating factors. FBR made similar statements of material facts for mortgage loans originated by other mortgage originators.

422. Moreover, the Offering Documents made statements of material facts regarding the relevant mortgage originators' compliance with their appraisal guidelines.

423. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," FBR made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and mortgage originator practices and guidelines applicable to mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

424. FBR also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in meetings, some of which were at Plaintiff's offices in Concord, Massachusetts on or about August 9 and 11, 2004.

425. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The mortgage originators in the FBR deals systematically violated their stated underwriting and appraisal standards. Moreover, FBR's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

426. The statements of material facts in the documents FBR sent to Plaintiff were untrue because the mortgage originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines.

427. The statements of material facts in the documents FBR sent to Plaintiff were also untrue because of the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue.

428. FBR's statements of material facts were also untrue because other material data provided to Plaintiff by FBR was untrue. For example, the data incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

429. In sum or substance, FBR stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because

Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

430. The result of FBR's untrue statements of material facts and omissions is that the Securities that FBR underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by FBR to Plaintiff.

m. HSBC's Untrue Statements Of Material Facts And Omissions

431. HSBC offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $8,264,895. A full list of these offerings and sales, including the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

432. To facilitate the sale of RMBS, HSBC formed other special-purpose entities including Depositor Defendant HSI Asset Securitization Corporation, which acquired residential mortgage loans to be securitized and served as the depositor and issuer in numerous offerings of RMBS. The Defendant HSBC underwrote, offered or sold the Securities to Plaintiff. HSBC also provided financial research on RMBS and related structured products.

433. In connection with its offer or sale of Securities to Plaintiff, HSBC sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. HSBC also sent Plaintiff other documents, including term sheets and "loan tapes." The loan tapes HSBC sent to Plaintiff consisted of Excel

spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, HSBC also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting Securities, the data, and HSBC's due diligence of the Mortgage Originators' underwriting practices. HSBC did not allow Plaintiff to keep the pitch books.

434. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flows, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

435. The Offering Documents and other documents provided by HSBC to Plaintiff contained statements of material facts regarding underwriting and appraisal standards applicable to the mortgage loans underlying the Securities. These statements of material facts were untrue and contained material omissions. As detailed in ¶¶ 98-112, New Century, the principal Mortgage Originator of loans underlying the Securities initially offered by HSBC, violated its stated underwriting and appraisal standards.

436. HSBC's statements of material facts were also untrue because other material data provided to Plaintiff by HSBC was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

437. HSBC met with Plaintiff on or about December 5, 2005 and November 22, 2006. During the meetings, HSBC reiterated many of the statements of material facts in the documents provided to Plaintiff. In addition, HSBC stated that HSBC conducted due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

438. These oral statements of material facts were untrue because HSBC failed to conduct adequate due diligence on the Mortgage Originators and the mortgage loans underlying the Securities in accordance with its statements.

439. The statements of material facts in the documents HSBC sent to Plaintiff were also untrue because New Century violated its stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to its underwriting standards absent the "compensating factors" required by the guidelines.

440. The statements of material facts in the documents HSBC sent to Plaintiff were also untrue because of inflated appraisals for the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See* ¶¶51-57.

441. In sum or substance, HSBC stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

442. The result of the untrue statements of material facts and omissions described above is that the Securities that HSBC underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default,

foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by HSBC to Plaintiff.

n. Banc of America's Untrue Statements Of Material Facts And Omissions

443. Banc of America Securities, LLC offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $77,065,662. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

444. Banc of America sought to expand its share of the RMBS market by aggressively pursuing subprime Mortgage Originators including Option One, Accredited, the Ameriquest Loan Sellers, New Century, and WMC, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

445. To facilitate the sale of RMBS, Banc of America's parent company formed SVPs, including Depositor Defendant Asset Backed Funding Corporation ("ABFC"), which served as the depositor and issuer for many of its offerings. Banc of America offered or sold the Securities to Plaintiff. Banc of America also provided financial research on RMBS and related structured products.

446. In connection with its offer or sale of Securities to Plaintiff, Banc of America sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Banc of America also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The loan tapes Banc of America sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO

scores. Often for Securities that Plaintiff purchased in the initial offering, Banc of America also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Banc of America's due diligence of the Mortgage Originators' underwriting practices. Banc of America did not allow Plaintiff to keep the pitch books.

447. In the Offering Documents, Banc of America made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Option One originated all or a significant amount of the underlying mortgage loans, Banc of America reprinted Option One's "Underwriting Guidelines," which stated that (a) Option One's guidelines were "intended to assess the value of the mortgaged property, to evaluate the adequacy of such property as collateral for the mortgage loan and to assess the applicant's ability to repay the mortgage loan"; (b) the "Mortgage Loans [were] originated generally in accordance with Option One's [Underwriting] Guidelines"; and (c) exceptions to these guidelines would only be made "on a case-by-case basis . . . where compensating factors exist." *See* ¶199. Banc of America made similar statements of material facts for mortgage loans originated by other mortgage originators, including Accredited, the Ameriquest Loan Sellers, New Century, and WMC. *See* Section V.

448. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Banc of America stated, for example that Option One's guidelines required that "[a]ll appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and are generally on forms acceptable to Fannie Mae and Freddie Mac," and that Option One commissioned an appraisal of mortgaged properties by "qualified independent appraisers" and "require[d] that mortgage loans be underwritten in a standardized procedure which complies with applicable federal and state laws and regulations and require Option One's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal, supports the loan balance." *See* ¶199. Banc of America

made similar statements of material facts for appraisals commissioned, performed, or reviewed by other mortgage originators, including Accredited, the Ameriquest Loan Sellers, New Century, and WMC. *See* Section V.

449. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Banc of America made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to the mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

450. Banc of America also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in calls and meetings, some of which took place in Plaintiff's Massachusetts offices. Some of Plaintiff's meetings with Banc of America representatives occurred on or about September 15, 2004; April 4, June 2, November 28, November 29, and December 5, 2005; January 2, January 31, May 23, and October 10, 2006; and January 4, 2007. During these meetings, Banc of America's employees made statements of material facts regarding Banc of America's upcoming RMBS deals, and assured Plaintiff that Banc of America conducted its own due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance.

451. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. For example, as detailed above, Option One systematically violated its stated underwriting and appraisal standards. Moreover, Banc of America's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

452. The statements of material facts in the documents Banc of America sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated

underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, a subsequent lawsuit brought by the Attorney General for the Commonwealth of Massachusetts against Option One, and its past and present parent companies, alleged that Option One "increasingly disregard[ed] underwriting standards, creat[ed] incentives for loan officers and brokers to disregard the interests of the borrowers and steer them into high-cost loans, and originated thousands of loans that [Option One] knew or should have known the borrowers would be unable to pay, all in an effort to increase loan origination volume so as to profit from the practice of packaging and selling the vast majority of [Option One's] residential subprime loans to the secondary market." The other Mortgage Originators of loans underlying the Securities initially offered by Banc of America, including Accredited, the Ameriquest Loan Sellers, New Century, and WMC, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production.

453. The statements of material facts in the documents Banc of America sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶51-57.

454. Banc of America's statements of material facts were also untrue because other material data provided to Plaintiff by Banc of America was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

455. In sum or substance, Banc of America stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as

required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

456. The result of Banc of America's untrue statements of material facts and omissions is that the Securities that Banc of America underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Banc of America to Plaintiff.

o. GMAC's Untrue Statements Of Material Facts And Omissions

457. GMAC offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $5,461,231. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

458. GMAC sought to expand its share of the RMBS market by aggressively pursuing subprime mortgage originators, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors.

459. To facilitate the sale of RMBS, GMAC formed SPVs, including Depositor Defendants Residential Asset Securities Corporation ("RASC") and Residential Asset Mortgage Products Inc. ("RAMP"), which served as the depositors and issuers for many of GMAC's offerings. GMAC offered or sold the Securities to Plaintiff. GMAC also provided financial research on RMBS and related structured products.

460. In connection with its offer or sale of Securities to Plaintiff, GMAC sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. GMAC also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and "loan tapes." The loan tapes GMAC sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the data, the mortgage originators' underwriting practices and guidelines for the mortgages supporting the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. In connection with the offer to Plaintiff of Securities that Plaintiff purchased in the initial offering of the Securities, GMAC also showed Plaintiff "pitch books" promoting, *inter alia*, the Mortgage Originators' underwriting practices and guidelines for the mortgages supporting the Securities, the data, and GMAC's due diligence of the Mortgage Originators' underwriting practices. GMAC did not allow Plaintiff to keep the pitch books.

461. In the Offering Documents, GMAC made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans.

462. Moreover, the Offering Documents made statements of material facts regarding the relevant Mortgage Originators' compliance with their appraisal guidelines.

463. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," GMAC made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

464. GMAC also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff in a meeting at Plaintiff's offices in Massachusetts on or about August 17, 2005.

465. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. The Mortgage Originators in the GMAC deals systematically violated their stated underwriting and appraisal standards. Moreover, GMAC's additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

466. The statements of material facts in the documents GMAC sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines.

467. The statements of material facts in the documents GMAC sent to Plaintiff were also untrue because of the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue.

468. GMAC's statements of material facts were also untrue because other material data provided to Plaintiff by GMAC was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

469. In sum or substance, GMAC stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because

Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

470. The result of GMAC's untrue statements of material facts and omissions is that the Securities that GMAC underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by GMAC to Plaintiff.

p. Barclays' Untrue Statements Of Material Facts And Omissions

471. Barclays offered or sold Securities to Plaintiff in Massachusetts, and underwrote Securities sold in the secondary market to Plaintiff, for a total price of $70,956,316. A full list of these offerings and sales, along with the relevant Offering Documents, the identities of the relevant Depositor Defendants and Mortgage Originators, the dates of the purchases, the amounts invested, and the selling Wall Street Bank Defendants, is contained in the attached Appendix A.

472. Barclays sought to expand its share of the RMBS market by aggressively pursuing subprime Mortgage Originators including the Ameriquest Loan Sellers, Fremont, and Option One, offering to pay more for their mortgages than competing Wall Street Banks, and offering to perform less due diligence than competitors. Fremont was one of the largest Mortgage Originators of loans underlying the Securities initially offered by Barclays. In an effort to expand its subprime origination, servicing, and securitization business in the United States, Barclays acquired two large U.S.-based mortgage companies: HomEq Servicing Corporation in June 2006, and EquiFirst Corporation in 2007.

473. To facilitate the sale of RMBS, Barclays parent company formed SPVs, including Depositor Defendant Securitized Asset Backed Receivables LLC (SABR), which served as the depositor and issuer for many of Barclays offerings. Barclays offered or sold the Securities to Plaintiff. Barclays also provided financial research on RMBS and related structured products.

474. In connection with its offer or sale of Securities to Plaintiff, Barclays sent numerous documents to Plaintiff in Massachusetts. These documents included registration statements, prospectuses, and prospectus supplements. Barclays also sent Plaintiff numerous other documents, including term sheets, private placement term sheets, confidential offering memoranda, computational materials, collateral terms sheets, and loan tapes. The loan tapes Barclays sent to Plaintiff consisted of Excel spreadsheets that contained over 60 categories of information related to the individual loans including, *inter alia*, the data, the Mortgage Originators underwriting practices and guidelines for the mortgages supporting the purpose of the mortgage loans; the type of properties; the owner-occupancy status; and borrower FICO scores. Often for Securities that Plaintiff purchased in the initial offering, Barclays also showed Plaintiff pitch books promoting, *inter alia*, the Mortgage Originators underwriting practices and guidelines for the mortgages supporting the Securities, the data, and Barclays due diligence of the Mortgage Originators underwriting practices. Barclays did not allow Plaintiff to keep the pitch books.

475. In the Offering Documents, Barclays made numerous statements of material facts regarding the underwriting standards that had been followed in originating the underlying mortgage loans. For example, in offerings for which Fremont originated all or a significant amount of the underlying mortgage loans, Barclays reprinted Fremont s Underwriting Guidelines, which stated, in sum or substance, that (a) Fremont s guidelines were intended to assess the borrower s ability and willingness of the borrower to repay the debt; (b) the mortgage loans [were] underwritten in accordance with Fremont s current underwriting programs; and (c) exceptions to these guidelines would only be made on a case-by-case basis . . . based on compensating factors. *See* 147-148. Barclays made similar statements of

material facts for Mortgage Loans originated by other Mortgage Originators, including Option One. *See* ¶199.

476. Moreover, the Offering Documents made statements of material facts regarding the appraisal guidelines and practices of the relevant Mortgage Originators. Barclays stated, for example, that "underwriting guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and require an appraisal of the mortgaged property, and if appropriate, a review appraisal" and that Fremont commissioned appraisals of mortgaged properties by "qualified independent appraisers." *See* ¶¶ 147-148. Barclays made similar statements of material facts for appraisals commissioned, performed, or reviewed by other Mortgage Originators, including Option One. *See* ¶199.

477. In other documents sent or shown to Plaintiff, including "term sheets," "loan tapes," and "pitch books," Barclays made additional statements of material facts regarding the particular Securities and their underlying data, data quality, and Mortgage Originator practices and guidelines applicable to mortgage loans underlying those Securities. This information was material as it allowed Plaintiff to perform sensitive calculations regarding the risk, cash flow, and value of a Security and to determine whether to purchase the Security on behalf of the Clients.

478. Barclays also made additional, oral statements of material facts about the Securities it offered or sold to Plaintiff. Some of Plaintiff's meetings with Barclays occurred on or about July 13 and October 27, 2004; January 19, 2005; and March 14 and November 6, 2006. During these meetings, Barclays representatives made statements of material facts regarding Barclays' upcoming RMBS deals, and assured Plaintiff that Barclay conducted its own due diligence to ensure that the Mortgage Originators complied with their stated underwriting guidelines, including by sampling loans in order to check underwriting process, documentation, valuations, and compliance. For example, Plaintiff met with Barclays at the ABS East industry conference during November 2006. At this meeting, Barclays stated that Barclays employees were on-site with the largest Mortgage Originators, "QCing" (*i.e.*, quality controlling) the

underwriting and pool construction process, and that every exception to the Mortgage Originators' underwriting standards was supposed to be QC'ed by a Barclays employee.

479. Each of the statements of material facts identified above regarding underwriting and appraisal standards were untrue and contained material omissions. As detailed below, Fremont, the principal Mortgage Originator in the Barclays deals, systematically violated its stated underwriting and appraisal standards. Moreover, Barclays' additional statements of material facts regarding its own due diligence were untrue and contained material omissions.

480. The statements of material facts in the documents Barclays sent to Plaintiff were untrue because the Mortgage Originators systematically violated their stated underwriting guidelines, did not consistently evaluate the borrowers' ability to repay the loans, and made exceptions to their underwriting standards absent the "compensating factors" required by their guidelines. For example, subsequent investigations and lawsuits have demonstrated that Fremont made frequent exceptions to its underwriting guidelines for borrowers who would not otherwise qualify for a loan; Fremont management encouraged risky loan originations; and Fremont was "operating with inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held by [Fremont]." *See* ¶¶149-168. Moreover, former Fremont employees witnessed firsthand how exceptions to Fremont's underwriting became the "norm" because employees had to do what was necessary to increase loan originations. *Id.* The FDIC ultimately issued a Cease & Desist Order to Fremont for extending subprime credit "in an unsafe and unsound manner" and committing violations of laws and FDIC regulations. *See* ¶¶153-154. The other Mortgage Originators of loans underlying the Securities initially offered by Barclays, including the Ameriquest Loan Sellers and Option One, similarly violated their stated underwriting guidelines in exchange for dramatically increased loan production. *See* Section V.

481. The statements of material facts in the documents Barclays sent to Plaintiff were also untrue because the Mortgage Originators either knew of or participated in the inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue. *See, e.g.*, ¶¶51-57.

482. Barclays' statements of material facts were also untrue because other material data provided to Plaintiff by Barclays was untrue. For example, the data often incorrectly identified properties as "owner occupied" when they were really second homes or investment properties. The untruth of this information was material to Plaintiff's analysis of the loans' credit quality and likelihood of default.

483. In sum or substance, Barclays stated in each Prospectus Supplement for Securities underwritten by it that the issuing trust for the relevant Securities had valid title to the mortgage loans comprising the pool for that securitization. These representations were false because, as alleged in detail in ¶¶ 67-82, Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans, lacked legal authority to receive cash flows from many of the mortgage borrowers' payments of interest and principal to be passed through to the Securities holders, and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

484. The result of Barclays' untrue statements of material facts and omissions is that the Securities that Barclays underwrote, offered or sold to Plaintiff have all been downgraded, and their value has collapsed. As of December 2010 over 32% of the mortgage loans underlying the Securities included in this Complaint are in delinquency, default, foreclosure, bankruptcy, or repossession. Plaintiff and the Clients have suffered significant losses on the Securities underwritten, offered or sold by Barclays to Plaintiff.

q. The Depositor Defendants' Untrue Statements Of Material Facts And Omissions

485. For their securitization businesses, financial institutions created SPVs, wholly-owned subsidiaries, to serve as depositors that purchased or acquired the loans for securitization

and sale to investors. The limited corporate purpose of depositors was to package and sell loans for the benefit of their parent banks. Revenues from the depositors securitization activities were passed up to the parent banks.

486. Each of the Depositor Defendants served as a depositor for the sale of the Securities. The Depositor Defendants, as issuers under Regulation AB (17 CFR § 230.191), were sellers of the Securities and made false statements of material facts in the Offering Documents.

487. Prior to issuing the Securities, the Depositor Defendants prepared and filed with the SEC on Form S-3 registration statements under the Securities Act of 1933, 15 U.S.C § 77k, indicating their intention to sell the Securities. The Depositors then issued the Securities pursuant to the registration statements, accompanying prospectuses, and subsequent prospectus supplements, or private placement memoranda. The Depositor Defendants and the Wall Street Banks drafted the prospectus supplements or private placement memoranda and circulated these documents to investors, including Plaintiff. The Depositor Defendants filed the prospectus supplements with the SEC.

488. As alleged above, the prospectus supplements or private placement memoranda purported to describe the mortgage pools underlying the Securities that the Depositor Defendants offered and sold, making statements about the loan origination process, the quality of the loans, and the adequacy of the collateral. Each prospectus supplement or private placement memorandum included tables with data concerning the loans underlying the Securities, including (but not limited to) the type of loans, the number of loans, the mortgage rate and net mortgage rate, the aggregate scheduled principal balance of the loans, the purported weighted average of original combined LTV ratios, the occupancy status of the mortgaged properties, and the geographic concentration of the properties.

489. The prospectus supplements or private placement memoranda contained the untrue statements of material facts set forth above in Section VI concerning the Securities, including untrue statements regarding: (1) the Mortgage Originators underwriting guidelines

that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal guidelines that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) various forms of credit enhancement applicable to certain tranches of Securities; and (5) the Depositor Defendants' transfer of valid title to the mortgage loans comprising the pool for each offering of Securities to the relevant issuing trust.

490. As detailed above, these statements of material facts concerning the Securities were untrue because: (1) the Mortgage Originators violated their stated underwriting guidelines and did not consistently evaluate the borrowers' ability to repay the loans; (2) inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be inaccurate; (3) the stated numbers of riskier "second home" and "investment property" mortgagees were lower than the actual numbers, and the stated numbers of less risky "owner occupied" mortgage loans were higher than the actual numbers; and (4) Defendants routinely failed to transfer valid title to the mortgage loans comprising the pool for each offering of Securities to the relevant issuing trust. In addition, metrics such as debt-to-income ratios were untrue as a result of the Mortgage Originators' acceptance of untrue information from mortgage applicants.

VII. THE PERFORMANCE AND VALUE OF THE SECURITIES

491. The rates of delinquency, foreclosure, and real estate owned (*i.e.*, foreclosed and not yet sold) on the Securities' underlying mortgages have soared since issuance. As reflected in the charts below (in which all figures are expressed as percentages), as of December 2010, the percentage of those underlying loans that are currently either 60 days or more delinquent, in foreclosure, or real estate owned exceeds 32%, on average, for the Securities offered or sold to Plaintiff by each Wall Street Bank Defendant. These data provide a snapshot of the pools as currently constituted and do not include loans that have been liquidated out of the original pools.

The pools and the related Securities suffered significant additional losses as a result of the liquidation of defaulted loans that are not included in the tables below.

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
ABFC 2005-HE1	2.90	7.84	14.86	3.67	29.27
ABFC 2005-HE2	1.98	7.33	23.91	2.38	35.60
ABSHE 2004-HE1	3.17	7.76	5.72	2.00	18.65
ABSHE 2004-HE7	1.10	4.27	11.83	2.68	19.88
ABSHE 2004-HE8	1.58	3.93	15.59	4.83	25.93
ABSHE 2006-HE7	2.30	9.92	13.93	5.45	31.60
ACE 2005-HE7	1.81	15.48	22.24	5.78	45.31
ACE 2006-NC1	2.60	7.64	19.56	3.34	33.14
AMIT 2005-1	3.59	12.42	21.38	6.28	43.67
AMIT 2005-2	1.37	5.20	23.21	11.84	41.62
AMIT 2005-4	2.61	10.55	17.19	5.26	35.61
AMIT 2006-1	1.78	10.64	17.36	4.78	34.56
AMSI 2003-AR2	1.71	3.52	12.52	3.14	20.89
AMSI 2004-R7	2.05	3.30	9.39	2.21	16.95
AMSI 2005-R1	1.36	4.47	11.44	2.55	19.82
AMSI 2005-R9	2.64	5.23	8.35	1.83	18.05
ARSI 2004-W7	1.29	6.26	8.98	5.04	21.57
ARSI 2004-W9	3.68	4.34	7.67	3.10	18.79
ARSI 2005-W2	2.84	7.13	17.34	2.79	30.10
ARSI 2005-W5	2.32	7.25	21.12	3.20	33.89
BSABS 2004-FR3	2.75	17.17	11.86	2.23	34.01
BSABS 2004-HE3	2.75	16.82	9.57	1.45	30.59
BSABS 2005-EC1	2.86	21.96	16.56	1.44	42.82
BSABS 2005-HE1	2.47	19.27	16.15	1.59	39.48
BSABS 2005-HE11	2.04	25.56	11.47	1.63	40.70
BSABS 2005-HE4	2.33	14.02	21.03	2.10	39.48
BSABS 2005-HE7	2.35	18.45	16.49	2.16	39.45
BSABS 2005-HE9	2.64	17.55	17.12	3.24	40.55
BSABS 2006-HE2	2.66	22.61	16.22	1.92	43.41
BSABS 2006-HE3	2.81	18.46	21.17	5.32	47.76
BSNIM 2004-HE5N	N/A	N/A	N/A	N/A	N/A
CARR 2005-NC2	1.56	7.52	15.43	31.49	56.00
CARR 2005-NC4	2.37	10.21	10.11	25.17	47.86
CARR 2006-NC1	1.86	11.22	10.78	22.04	45.90
CARR 2006-NC3	2.07	10.88	14.18	22.24	49.37
CWL 2004-BC4	1.82	16.74	8.97	1.43	28.96
CWL 2005-BC5	3.09	28.63	17.32	1.60	50.64
CWL 2006-6	2.83	34.06	18.61	2.08	57.58
CWL 2006-S10	1.06	2.94	0.04	0.14	4.18
CWL 2007-2	2.89	35.49	19.13	2.51	60.02
EMLT 2005-1	0.28	4.96	13.63	1.64	20.51
FBRSI 2005-5	1.73	13.31	22.43	3.71	41.18
FFML 2004-FF8	1.92	10.57	17.88	8.45	38.82

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
FHLT 2004-C	2.10	16.51	11.47	4.85	34.93
FHLT 2005-E	2.55	18.93	22.47	8.38	52.33
FHLT 2006-B	3.07	19.36	20.89	5.81	49.13
FHLT 2006-C	3.08	16.77	23.55	6.98	50.38
GPMF 2006-OH1	3.97	21.21	15.01	5.41	45.60
HASC 2005-NC1	2.39	12.58	17.75	1.51	34.23
HEAT 2004-3	2.27	5.57	10.75	1.70	20.29
HEAT 2004-5	1.50	6.11	10.25	5.35	23.21
HEAT 2004-7	2.44	5.57	9.80	2.07	19.88
HEAT 2005-2	2.70	7.26	11.90	3.57	25.43
HEAT 2005-8	2.75	9.14	13.62	5.69	31.20
HEAT 2005-9	2.11	7.89	18.59	5.29	33.88
IRWHE 2005-A	0.30	1.31	0.10	0.00	1.71
IXIS 2006-HE2	0.86	7.19	26.43	8.36	42.84
LBMLT 2003-4	2.98	7.95	9.03	2.70	22.66
LBMLT 2005-1	3.72	17.78	15.41	2.47	39.38
LBMLT 2005-WL1	2.30	18.75	18.02	3.73	42.80
LBMLT 2005-WL2	3.34	20.19	17.26	3.73	44.52
LUM 2006-2	2.78	23.83	22.15	4.92	53.68
MABS 2004-WMC3	1.86	5.38	12.55	2.10	21.89
MLMI 2004-SL1	1.63	4.87	0.61	0.00	7.11
MLMI 2004-WMC1	0.33	2.24	10.03	2.58	15.18
MLMI 2005-FM1	3.07	30.14	19.00	2.80	55.01
MLMI 2005-WMC1	1.68	17.44	13.66	1.16	33.94
MMLT 2005-1	1.77	12.38	15.83	4.25	34.23
MSAC 2004-HE4	2.73	13.76	9.69	0.81	26.99
MSAC 2004-NC3	2.89	15.97	9.71	1.44	30.01
MSAC 2004-NC4	1.79	4.61	7.87	2.56	16.83
MSAC 2005-NC2	1.88	26.37	13.63	2.58	44.46
MSAC 2005-WMC2	1.68	27.42	18.62	1.49	49.21
MSM 2005-10	1.17	5.49	5.43	1.62	13.71
NCHET 2003-6	1.99	10.68	7.76	4.27	24.70
NCHET 2004-4	1.81	11.32	13.05	6.00	32.18
NCHET 2005-3	2.10	11.43	13.28	7.75	34.56
NCHET 2005-D	3.69	11.41	21.81	2.52	39.43
NCMT 2006-1	3.20	18.99	9.84	3.76	35.79
NHEL 2004-4	1.53	5.75	13.08	3.27	23.63
OOMLT 2005-4	3.34	7.58	16.44	3.25	30.61
OOMLT 2006-1	3.29	7.88	15.64	4.21	31.02
POPLR 2007-A	2.51	15.59	12.37	4.52	34.99
PPSI 2004-MHQ1	2.70	6.66	11.72	2.81	23.89
PPSI 2004-WCW1	3.03	19.50	16.05	2.35	40.93
PPSI 2004-WCW2	2.43	23.13	12.70	1.80	40.06
PPSI 2004-WHQ2	1.62	7.25	12.88	2.84	24.59
PPSI 2005-WCH1	2.64	7.41	18.40	1.37	29.82
PPSI 2005-WCW1	2.09	22.30	23.57	2.91	50.87

Deal	60 Days Delinquent	90 Days Delinquent	In Foreclosure	Real Estate Owned	Total Delinquency
PPSI 2005-WHQ1	2.34	8.03	14.93	3.50	28.80
PPSI 2005-WHQ4	2.67	6.79	17.35	6.54	33.35
RAMP 2006-NC2	2.15	4.14	25.57	2.86	34.72
RASC 2004-KS12	2.05	4.70	12.62	1.23	20.60
RASC 2005-KS9	1.89	4.35	14.77	3.69	24.70
RASC 2006-KS2	3.10	5.25	17.81	2.62	28.78
SABR 2004-OP1	1.39	2.81	14.27	1.42	19.89
SABR 2004-OP2	3.21	6.16	13.00	0.94	23.31
SACO 2005-8	2.74	11.96	0.06	0.00	14.76
SACO 2006-5	2.49	10.83	0.00	0.19	13.32
SAST 2005-2	0.73	5.36	14.86	6.02	26.97
SAST 2006-3	0.86	6.75	20.47	5.62	33.70
SVHE 2005-1	2.74	9.57	11.06	2.95	26.32
SVHE 2005-4	3.77	15.82	17.32	1.95	38.86
SVHE 2005-B	2.77	7.67	0.17	0.00	10.61
				Average Total Delinquency:	**32.69**

VIII. COUNT I AGAINST THE WALL STREET BANK DEFENDANTS: VIOLATION OF MASSACHUSETTS UNIFORM SECURITIES ACT, MASS. GEN. LAWS CH. 110A § 410(A)(2)

492. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 488.

493. Each of the Securities was offered or sold to the Plaintiff in Massachusetts and purchased directly or for the benefit of the Clients. Each Wall Street Bank Defendant offered or sold Securities to Plaintiff in Massachusetts.

494. Massachusetts General Laws Chapter 110A, § 101 provides that □it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.□

495. Massachusetts General Laws Chapter 110A, § 410(a)(2) provides for civil liability in the event of any offer or sale of securities by means of an untrue statement or material

omission. Massachusetts General Laws Chapter 110A, § 410(b) provides for joint and several liability with the seller of every broker-dealer or agent who materially aids in a sale in violation of § 410(a).

496. Each Wall Street Bank Defendant made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made not misleading, in connection with the offer or sale of the Securities to Plaintiff. For Plaintiff's purchases of Securities from a Wall Street Bank Defendant that did not underwrite the initial offering of that Security, such Wall Street Bank made an untrue statement of material fact, or omitted to state a material fact necessary in order to make the statements made not misleading, by delivering the misleading Offering Documents and other offering materials to Plaintiff. The Wall Street Bank Defendant that underwrote the initial offering materially aided in the sale of the Securities to Plaintiff by preparing the misleading Offering Documents and other offering materials that were provided to Plaintiff and by circulating the misleading Offering Documents and other offering materials to the market.

497. In connection with the offer or sale of the Securities to Plaintiff, each Wall Street Bank Defendant violated § 410(a)(2) by making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made not misleading, concerning, *inter alia*, (1) the Mortgage Originators' underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (4) the Wall Street Bank Defendants' due diligence of the loans and the Mortgage Originators' underwriting practices; (5) various forms of credit enhancement applicable to certain tranches of Securities; and (6) whether the issuing trust for each offering had obtained good title to the mortgage loans comprising the

pool for the offering. Plaintiff made the decision to purchase the Securities on behalf of the Clients not knowing of the Defendants untruths or omissions.

498. The Wall Street Bank Defendants actions and conduct violated Massachusetts General Laws Ch. 110A.

499. Plaintiff has been damaged by the Wall Street Bank Defendants violations of the Massachusetts Securities Act.

IX. COUNT II AGAINST THE DEPOSITOR DEFENDANTS: VIOLATION OF MASSACHUSETTS UNIFORM SECURITIES ACT, MASS. GEN. LAWS CH. 110A § 410(A)(2)

500. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 496.

501. Each of the Securities was offered or sold to the Plaintiff in Massachusetts and purchased directly or for the benefit of the Clients. Each Depositor Defendant offered or sold Securities to Plaintiff in Massachusetts.

502. Massachusetts General Laws Chapter 110A, § 101 provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

503. Massachusetts General Laws Chapter 110A, § 410(a)(2) provides for civil liability in the event of any offer or sale of securities by means of an untrue statement or material omission.

504. Each Depositor Defendant made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made not misleading, in connection with the offer or sale of the Securities to Plaintiff.

505. In connection with the offer or sale of the Securities to Plaintiff, each Depositor Defendant violated § 410(a)(2) by making an untrue statement of a material fact or omitting to

state a material fact necessary in order to make the statements made not misleading, concerning, *inter alia*, (1) the Mortgage Originators' underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were 'owner occupied,' 'second homes,' or 'investment properties'; (4) the Wall Street Bank Defendants' due diligence of the loans and the Mortgage Originators' underwriting practices; (5) various forms of credit enhancement applicable to certain tranches of Securities; and (6) whether the issuing trust for each offering had obtained good title to the mortgage loans comprising the pool for the offering. Plaintiff made the decision to purchase the Securities on behalf of the Clients not knowing of the Defendants' untruths or omissions.

506. The Depositor Defendants' actions and conduct violated Massachusetts General Laws Ch. 110A.

507. Plaintiff has been damaged by the Depositor Defendants' violations of the Massachusetts Securities Act.

X. COUNT III AGAINST THE WALL STREET BANK DEFENDANTS: VIOLATION OF MASSACHUSETTS UNIFORM SECURITIES ACT, MASS. GEN. LAWS CH. 110A § 410(b)

508. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 504.

509. Each of the Securities was offered or sold to the Plaintiff in Massachusetts and purchased directly or for the benefit of the Clients. Each Wall Street Bank Defendant offered or sold Securities to Plaintiff in Massachusetts.

510. Massachusetts General Laws Chapter 110A, § 101 provides that 'it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the

statements made not misleading, or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

511. Massachusetts General Laws Chapter 110A, § 410(b) provides that every broker-dealer or agent who materially aids in the sale [of securities by a seller liable under subsection (a) is] also liable jointly and severally with and to the same extent as the seller . . . .

512. Each Wall Street Bank Defendant materially aided in the offer or sale of Securities to Plaintiff pursuant to an untrue statement of a material fact or omission to state a material fact necessary in order to make the statements made not misleading, in connection with the offer or sale of the Securities to Plaintiff.

513. In connection with the offer or sale of the Securities to Plaintiff, each Wall Street Bank Defendant violated § 410(b) by materially aiding the offer or sale of Securities pursuant to an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made not misleading, concerning, *inter alia*, (1) the Mortgage Originators underwriting standards that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Securities; (2) the appraisal standards that were purportedly applied to evaluate the value and adequacy of the mortgaged properties as collateral; (3) the LTV ratios, debt-to-income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were owner occupied, second homes, or investment properties; (4) the Wall Street Bank Defendants due diligence of the loans and the Mortgage Originators underwriting practices; (5) various forms of credit enhancement applicable to certain tranches of Securities; and (6) whether the issuing trust for each offering had obtained good title to the mortgage loans comprising the pool for the offering. Plaintiff made the decision to purchase the Securities on behalf of the Clients not knowing of the Defendants untruths or omissions.

514. The Wall Street Bank Defendants actions and conduct violated Massachusetts General Laws Ch. 110A.

515. Plaintiff has been damaged by the Wall Street Bank Defendants violations of the Massachusetts Securities Act.

XI. RELIEF REQUESTED

WHEREFORE, Plaintiff requests entry of final judgment, as expressly provided by Mass. Gen. Laws Ch. 110A, § 410, as follows: (i) recovery of the consideration paid for the Securities, together with statutory interest from the date of payment, costs, and reasonable attorneys fees, less the amount of any income received on the Securities, upon the tender of the Securities, or (ii) damages in the amount that would be recoverable upon a tender of the Securities less the value of the Securities when the buyer disposed of them, statutory interest from the date of disposition, costs, and reasonable attorneys fees. In addition, Plaintiff requests such other and further relief as the Court deems just and proper.

XII. JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

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Dated: February 11, 2011

CAMBRIDGE PLACE INVESTMENT MANAGEMENT INC.

By its attorneys,

T. Christopher Donnelly
(BBO # 129930)
Michael S. D'Orsi
(BBO # 566960)
DONNELLY, CONROY & GELHAAR, LLP
One Beacon Street, 33d Floor
Boston, MA 02108
Tel: (617) 720-2880
Fax: (617) 720-3554
tcd@dcglaw.com
msd@dcglaw.com

Of Counsel *(pro hac vice* applications forthcoming):

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Gerald H. Silk
David L. Wales
Jai K. Chandrasekhar
Lauren A. McMillen
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444
jerry@blbglaw.com
dwales@blbglaw.com
jai@blbglaw.com
lauren@blbglaw.com

-and-

David R. Stickney
Timothy A. Delange
Takeo Kellar
Matthew Jubenville
12481 High Bluff Drive, Suite 300
San Diego, CA 92130

Tel: (858) 793-0070
Fax: (858) 793-0323
davids@blbglaw.com
timothyd@blbglaw.com
takeok@blbglaw.com
matthewj@blbglaw.com

Exhibit 4

JUDGE SWAIN

UNITED STATES DISRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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U S DISTRICT COURT SDNY

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR CITIZENS NATIONAL BANK and STRATEGIC CAPITAL BANK, Plaintiff, v. BEAR STEARNS ASSET BACKED SECURITIES I LLC; THE BEAR STEARNS COMPANIES LLC.; J.P. MORGAN SECURITIES LLC.; CITICORP MORTGAGE SECURITIES, INC.; CITIMORTGAGE, INC.; CITIGROUP GLOBAL MARKETS INC.; CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP.; CREDIT SUISSE MANAGEMENT LLC; CREDIT SUISSE SECURITIES (USA) LLC; MERRILL LYNCH MORTGAGE INVESTORS, INC.; MERRILL LYNCH MORTGAGE CAPITAL INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; ALLY SECURITIES, LLC; DEUTSCHE BANK SECURITIES INC.; HSBC SECURITIES (USA) INC.; RBS SECURITIES INC.; and UBS SECURITIES LLC, Defendants.	Index No. 12 CV 4000 **COMPLAINT**

U.S. DISTRICT COURT
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S. D. OF N.Y.

Plaintiff Federal Deposit Insurance Corporation as Receiver for Citizens National Bank and Strategic Capital Bank, for its Complaint against Bear Stearns Asset Backed Securities I LLC; The Bear Stearns Companies LLC; J.P. Morgan Securities LLC; Citicorp Mortgage Securities, Inc.; CitiMortgage, Inc.; Citigroup Global Markets Inc.; Credit Suisse First Boston Mortgage Securities Corp.; Credit Suisse Management LLC; Credit Suisse Securities (USA) LLC; Merrill Lynch Mortgage Investors, Inc.; Merrill Lynch Mortgage Capital Inc.; Merrill Lynch, Pierce, Fenner & Smith Inc.; Ally Securities, LLC; Deutsche Bank Securities Inc.; HSBC Securities (USA) Inc.; RBS Securities Inc.; and UBS Securities LLC, alleges as follows:

I. NATURE OF THIS ACTION

1. This is an action for damages caused by violation of the federal Securities Act of 1933 (**1933 Act**) by the defendants. As alleged in detail below, defendants issued and underwrote nineteen securities known as "certificates," which were backed by collateral pools of residential mortgage loans in twelve securitizations. Citizens National Bank (referred to in this Complaint as **CNB**) purchased ten of the certificates for approximately $67.5 million. Strategic Capital Bank (referred to in this Complaint as **SCB**) purchased nine of the certificates for approximately $73 million. When they issued and underwrote these certificates, the defendants made numerous statements of material facts about the certificates and, in particular, about the credit quality of the mortgage loans that backed them. Many of those statements were untrue. Moreover, the defendants omitted to state many material facts that were necessary in order to make their statements not misleading. For example, the defendants made untrue statements or omitted important information about such material facts as the loan-to-value ratios of the mortgage loans, the extent to which appraisals of the properties that secured the loans were performed in compliance with professional appraisal standards, the number of borrowers who did not live in the houses that secured their loans (that is, the number of properties that were not primary residences), and the extent to which the entities that made the loans disregarded their own standards in doing so.

2. Based on an analysis of a random sample of the relevant loans in each of the twelve securitizations, the defendants made such untrue or misleading statements or omissions about at least the following numbers of the loans.

Securitization No.[1]	Number of Loans about which Defendants Made Material Untrue or Misleading Statements[2]	Number of Relevant Loans in the Securitizations	Percentage of Loans about which Defendants Made Material Untrue or Misleading Statements
1	2,380	3,552	67.0%
2	3,133	4,712	66.5%
3	383	636	60.2%
4	2,762	4,266	64.7%
5	1,986	3,009	66.0%
6	800	1,539	52.0%
7	1,125	1,822	61.7%
8	793	1,392	57.0%
9	1,119	1,696	66.0%
10	136	240	56.7%
11	827	1,645	50.3%
12	926	1,424	65.0%

3. The certificates are "securities" within the meaning of the 1933 Act. The defendants are liable under the following provisions of the 1933 Act:

As issuers: Bear Stearns Asset Backed Securities I LLC issued one of the certificates that CNB purchased and one of the certificates that SCB purchased. Citicorp Mortgage Securities, Inc. issued one of the certificates that SCB purchased. Credit Suisse First Boston Mortgage Securities Corp. issued one of the certificates that CNB purchased and one of the certificates that SCB purchased. Merrill Lynch Mortgage Investors, Inc. issued one of the certificates that CNB purchased and one of the certificates that SCB purchased. These defendants are liable as "issuers" under Section 11 of the 1933 Act.

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[1] Six of the securitizations issued two or more of the certificates that SCB and CNB purchased.

[2] The method of random sampling that Plaintiff used ensures that conclusions about the entire collateral pool have a margin of error of no more than plus or minus 5% at a confidence level of 95% (that is, one can be 95% certain that the true percentage in the collateral pool as a whole is within 5% of the percentage measured in the sample). For example, one can be 95% certain that the number of loans in Securitization No. 7 about which defendants made untrue or misleading statements or omissions is within 5% of 1,125, that is, between 1,069 and 1,181. The same margin of error should be applied to all information in the Complaint and accompanying schedules that is based on a random sample of loans in a collateral pool.

As underwriters: J.P. Morgan Securities LLC underwrote one of the certificates that CNB purchased and one of the certificates that SCB purchased. Citigroup Global Markets Inc. underwrote one of the certificates that CNB purchased and two of the certificates that SCB purchased. Credit Suisse Securities (USA) LLC underwrote one of the certificates that CNB purchased and two of the certificates that SCB purchased. Deutsche Bank Securities Inc. underwrote four of the certificates that CNB purchased. Ally Securities, LLC underwrote five of the certificates that CNB purchased and one of the certificates that SCB purchased. HSBC Securities (USA) Inc. underwrote one of the certificates that CNB purchased. Merrill Lynch, Pierce, Fenner & Smith Inc. underwrote one of the certificates that CNB purchased and one of the certificates that SCB purchased. RBS Securities Inc. underwrote two of the certificates that CNB purchased and three of the certificates that SCB purchased. UBS Securities LLC underwrote one of the certificates that SCB purchased. These defendants are liable as "underwriters" under Section 11 of the 1933 Act.

As control persons: The Bear Stearns Companies Inc., CitiMortgage, Inc., Credit Suisse Management LLC, and Merrill Lynch Mortgage Capital Inc., are liable as "controlling persons" of Bear Stearns Asset Backed Securities I LLC, Citicorp Mortgage Securities, Inc., Credit Suisse First Boston Mortgage Securities Corp., and Merrill Lynch Mortgage Investors, Inc., respectively, under Section 15 of the 1933 Act.

II. PARTIES

4. Plaintiff is the receiver for CNB and SCB. Under the Federal Deposit Insurance Act, the Federal Deposit Insurance Corporation, a corporation organized and existing under the laws of the United States of America, is authorized to be appointed as receiver for failed insured depository institutions. Under the Federal Deposit Insurance Act, Plaintiff is empowered to sue and complain in any court of law and to do so to pursue claims held by banks of which it is the receiver. 12 U.S.C. § 1819. Thus, Plaintiff has authority to pursue claims held by CNB and SCB, including its claims made against the defendants in this action.

5. Defendant Bear Stearns Asset Backed Securities I LLC (referred to as **BSABS**) is a corporation organized under the laws of Delaware. BSABS was the issuer of one of the certificates that CNB purchased and one of the certificates that SCB purchased.

6. Defendant The Bear Stearns Companies LLC (formerly known as The Bear Stearns Companies Inc. and referred to as **BSCI**) is a limited liability company organized under the laws of Delaware. During the relevant time period, BSCI controlled BSABS. Under Section 15 of the Securities Act, 15 U.S.C. § 77o, BSCI therefore is liable jointly and severally with, and to the same extent as, BSABS.

7. Defendant J.P. Morgan Securities LLC (formerly known as Bear, Stearns & Co. Inc. and referred to as **Bear Stearns**) is a limited liability company organized under the laws of Delaware. Bear Stearns underwrote one of the certificates that CNB purchased and one of the certificates that SCB purchased.

8. Defendant Citicorp Mortgage Securities, Inc. (referred to as **CMSI**) is a corporation organized under the laws of Delaware. CMSI issued one of the certificates that SCB purchased.

9. Defendant CitiMortgage, Inc. (referred to as **CitiMortgage**) is a corporation organized under the laws of New York. During the relevant time period, CitiMortgage controlled CMSI. Under Section 15 of the Securities Act, 15 U.S.C. § 77o, CitiMortgage therefore is liable jointly and severally with, and to the same extent as, CMSI.

10. Defendant Citigroup Global Markets Inc. (referred to as **Citigroup**) is a corporation organized under the laws of New York. Citigroup underwrote one of the certificates that CNB purchased and two of the certificates that SCB purchased.

11. Defendant Credit Suisse First Boston Mortgage Securities Corp. (referred to as **CSFB Mortgage Securities**) is a corporation organized under the laws of Delaware. CSFB Mortgage Securities issued one of the certificates that CNB purchased and one of the certificates that SCB purchased.

12. Defendant Credit Suisse Management LLC (referred to as **Credit Suisse Management**) is a limited liability company organized under the laws of Delaware. During the relevant time period, Credit Suisse Management controlled CSFB Mortgage Securities. Under Section 15 of the Securities Act, 15 U.S.C. § 77o, Credit Suisse Management therefore is liable jointly and severally with, and to the same extent as, CSFB Mortgage Securities.

13. Defendant Credit Suisse Securities (USA) LLC (referred to as **Credit Suisse**) is a limited liability company organized under the laws of Delaware. Credit Suisse underwrote one of the certificates that CNB purchased and two of the certificates that SCB purchased.

14. Defendant Merrill Lynch Mortgage Investors, Inc. (referred to as **MLMI**) is a corporation organized under the laws of Delaware. MLMI issued one of the certificates that CNB purchased and one of the certificates that SCB purchased.

15. Defendant Merrill Lynch Mortgage Capital Inc. (referred to as **MLMCI**) is a corporation organized under the laws of Delaware. During the relevant time period, MLMCI controlled MLMI. Under Section 15 of the Securities Act, 15 U.S.C. § 77o MLMCI therefore is liable jointly and severally with, and to the same extent as, MLMI.

16. Defendant Merrill Lynch, Pierce, Fenner & Smith Inc. (referred to as **Merrill Lynch**) is a corporation organized under the laws of Delaware. Merrill Lynch underwrote one of the certificates that CNB purchased and one of the certificates that SCB purchased.

17. Defendant Ally Securities, LLC (formerly known as Residential Funding Securities, LLC and doing business as GMAC RFC Securities, and referred to as **GMAC**) is a corporation organized under the laws of Delaware. GMAC underwrote five of the certificates that CNB purchased and one of the certificates that SCB purchased.

18. Defendant Deutsche Bank Securities Inc. (referred to as **DBS**) is a corporation organized under the laws of Delaware. DBS underwrote four of the certificates that CNB purchased.

19. Defendant HSBC Securities (USA) Inc. (referred to as **HSBC**) is a corporation organized under the laws of Delaware. HSBC underwrote one of the certificates that CNB purchased.

20. Defendant RBS Securities Inc. (formerly known as Greenwich Capital Markets, Inc. and doing business as RBS Greenwich Capital, and referred to as **RBS**) is a corporation organized under the laws of Delaware. RBS underwrote two of the certificates that CNB purchased and three of the certificates that SCB purchased.

21. Defendant UBS Securities LLC (referred to as **UBS**) is a limited liability company organized under the laws of Delaware. UBS underwrote one of the certificates that SCB purchased.

III. JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the Securities Act claims asserted herein arise under Sections 11 and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k and 77o. This Court further has jurisdiction over the Securities Act claims pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v.

23. Venue is proper in this Court, pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v, because the defendants are found in this district, are inhabitants of this district, and transact business in this district.

IV. SECURITIZATION OF MORTGAGE LOANS

24. The securities that CNB and SCB purchased are so-called **residential mortgage-backed securities**, or **RMBS**, created in a process known as **securitization**. Securitization begins with loans on which the borrowers are to make payments, usually monthly. The entity that makes the loans is known as the **originator** of the loans. The process by which the originator decides whether to make particular loans is known as the **underwriting** of loans. The purpose of underwriting is to ensure that loans are made only to borrowers of sufficient credit standing to repay them and only against sufficient collateral. In the loan underwriting process, the originator applies its **underwriting standards**.

25. In general, residential mortgage lenders may hold some of the mortgage loans they originate in their own portfolios and may sell other mortgage loans they originate into securitizations.

26. In a securitization, a large number of loans, usually of a similar type, are grouped into a **collateral pool**. The originator of those loans sells them (and, with them, the right to receive the cash flow from them) to a **trust**. The trust pays the originator cash for the loans. The trust raises the cash to pay for the loans by selling **securities**, usually called **certificates**, to investors such as CNB and SCB. Each certificate entitles its holder to an agreed part of the cash flow from the loans in the collateral pool.

27. In a simple securitization, the holder of each certificate is entitled to a *pro rata* part of the overall monthly cash flow from the loans in the collateral pool.

28. In a more complex securitization, the cash flow is divided into different parts, usually called **tranches** ("tranche" is "slice" in French), and the certificates are divided into different **classes**, each with different rights. Each class of certificates is entitled to the cash flow in the tranche corresponding to that class.

29. One way in which the cash flow is divided — and the rights of different classes of certificates distinguished — is by priority of payment or, put differently, risk of nonpayment. The most **senior** class of certificates usually is entitled to be paid in full before the next most senior class, and so on. Conversely, losses from defaults in payment of the loans in the collateral pool are allocated first to the most **subordinate** class of certificates, then to the class above that, and so on. The interest rate on each class of certificates is usually proportional to the amount of risk that that class bears; the most senior certificates bear the least risk and thus pay the lowest rate of interest, the most subordinate, the opposite. This hierarchy of rights to payment is referred to as the **waterfall**.

30. The risk of a particular class of certificate is a function of both the riskiness of the loans in the collateral pool and the seniority of that class in the waterfall. Even if the underlying loans are quite risky, the certificates may bear so little of that risk that they may be rated as

triple-A. (According to Moody's, "[o]bligations rated Aaa are judged to be of the highest quality, with minimal credit risk.") For example, assume a securitization of $100 million of risky loans, on which the historical loss rate is 5%. Assume that there are two classes of certificates, a senior class of $50 million and a subordinate class of $50 million. Even though the underlying loans are quite risky, the senior class of certificates would be paid in full as long as the $100 million of loans produced payments of at least $50 million plus interest, that is, unless the loss rate on those loans exceeded 50%, fully ten times the historical average. All but three of the certificates referred to in this Complaint were rated triple-A when CNB and SCB purchased them. The other three certificates were rated double-A.

31. Each securitization has a **sponsor**, the prime mover of the securitization. Sometimes the sponsor is the originator or an affiliate. In originator-sponsored securitizations, the collateral pool usually contains loans made by the originator that is sponsoring the securitization. Other times, the sponsor may be an investment bank, which purchases loans from one or more originators, aggregates them into a collateral pool, sells them to a trust, and securitizes them. The sponsor arranges for title to the loans to be transferred to an entity known as the **depositor**, which then transfers title to the loans to the trust.

32. The obligor of the certificates in a securitization is the trust that purchases the loans in the collateral pool. Because a trust has few assets other than the loans that it purchased, it may not be able to satisfy the liabilities of an issuer of securities (the certificates). The law therefore treats the depositor as the **issuer** of a residential mortgage-backed certificate.

33. **Securities underwriters**, like Citigroup, Credit Suisse, RBS, Bear Stearns, Merrill Lynch, DBS, UBS, and HSBC play a critical role in the process of securitization. They underwrite the sale of the certificates, that is, they purchase the certificates from the trust and then sell them to investors. Equally important, securities underwriters provide to potential investors the information that they need to decide whether to purchase certificates.

34. Because the cash flow from the loans in the collateral pool of a securitization is the source of funds to pay the holders of the certificates issued by the trust, the credit quality of

those certificates is dependent upon the credit quality of the loans in the collateral pool (and upon the place of each certificate in the waterfall). The most important information about the credit quality of those loans is contained in the files that the originator develops while making the loans, the so-called "loan files." For residential mortgage loans, each loan file normally contains comprehensive information from such important documents as the borrower's application for the loan, credit reports on the borrower, and an appraisal of the property that will secure the loan. The loan file may also include notes from the person who underwrote the loan about whether and how the loan complied with the originator's underwriting standards, including documentation of any "compensating factors" that justified any departure from those standards.

35. Potential investors in certificates are not given access to loan files. Instead, the securities underwriters are responsible for gathering, verifying, and presenting to potential investors the information about the credit quality of the loans that will be deposited into the trust. They do so by using information about the loans that has been compiled into a database known as a **loan tape**. The securities underwriters use the loan tape to compile numerous statistics about the loans, which are presented to potential investors in a **prospectus supplement**, a disclosure document that the underwriters are required to file with the Securities and Exchange Commission. (Neither CNB nor SCB had access to the loan tape before they purchased the certificates, but Plaintiff has reviewed data from the loan tape in preparing this Complaint.)

36. As alleged in detail below, the information in the prospectus supplements and other offering documents about the credit quality of the loans in the collateral pools of the trusts contained many statements that were material to the credit quality of those loans, but were untrue or misleading.

V. DEFENDANTS' MATERIAL UNTRUE OR MISLEADING STATEMENTS ABOUT THE CERTIFICATES

37. CNB purchased certificates in eight securitizations (referred to in this Complaint as Securitizations Nos. 1 through 8). SCB purchased certificates in nine securitizations (referred to in this Complaint as Securitizations Nos. 4 through 12). Both CNB and SCB purchased

securities in five overlapping securitizations (Securitizations Nos. 4 through 8). Details of each trust and each certificate are stated in Item 37 of Schedules 1 through 12 of this Complaint. The Schedules correspond to Securitizations Nos. 1 through 12. Plaintiff incorporates into this paragraph 37 and alleges the contents of Item 37 of the Schedules.

38. The prospectus supplement for each of the twelve securitizations is available from the Securities and Exchange Commission's website. A URL for each prospectus supplement is included in Item 37 of each Schedule. Each prospectus supplement is incorporated into this Complaint by reference.

39. In general, Plaintiff drew and analyzed random samples of 400 loans from the collateral pools of each of the securitizations in which CNB and SCB purchased certificates.[3]

40. Many of the statements of material fact that the defendants made in the twelve prospectus supplements were untrue or misleading. These untrue or misleading statements included the following.

A. Untrue or Misleading Statements About the Loan-to-Value Ratios (LTVs) of the Mortgage Loans, and the Appraisals of the Properties, in the Collateral Pools

1. LTVs

(a) The materiality of LTVs

41. The loan-to-value ratio of a mortgage loan, or LTV, is the ratio of the amount of the mortgage loan to the lower of the appraised value or the sale price of the mortgaged property when the loan is made. For example, a loan of $300,000 secured by a property valued at $500,000 has an LTV of 60%; a loan of $450,000 on the same property has an LTV of 90%. LTV is one of the most crucial measures of the risk of a mortgage loan, and the LTVs of the mortgage loans in the collateral pool of a securitization are therefore one of the most crucial measures of the risk of certificates sold in that securitization. LTV is a primary determinant of

[3] For Securitization No. 2, Plaintiff drew and analyzed a random sample of 800 loans that backed the certificates that CNB purchased. For Securitization No 10, Plaintiff drew and analyzed a sample of 207 of the 240 loans that backed the certificate that SCB purchased. For all other securitizations, Plaintiff drew and analyzed a random sample of 400 loans that backed the certificates that CNB or SCB purchased.

the likelihood of default. The lower the LTV, the lower the likelihood of default. For example, the lower the LTV, the less likely it is that a decline in the value of the property will wipe out the owner's equity and thereby give the owner an incentive to stop making mortgage payments and abandon the property, a so-called strategic default. LTV also is a primary determinant of the severity of losses on a loan that defaults. The lower the LTV, the lower the severity of losses if the loan defaults. Loans with lower LTVs provide greater "cushion," thereby increasing the likelihood that the proceeds of foreclosure will cover the unpaid balance of the mortgage loan.

42. Beyond these fundamental effects on the likelihood and severity of default, LTVs also affect prepayment patterns (that is, the number of borrowers who pay off their mortgage loans before maturity and when they do so) and therefore the expected lives of the loans. Prepayment patterns therefore affect many aspects of certificates that are material to the investors that purchase them, including the life of the certificate and the timing and amount of cash that the investor will receive during that life.

43. In addition, rating agencies use LTVs to determine the proper structuring and credit enhancement necessary for securities, such as the certificates that CNB and SCB purchased, to receive a particular rating. If the LTVs of the mortgage loans in the collateral pool of a securitization are incorrect, the ratings of certificates sold in that securitization will also be incorrect.

44. An accurate denominator (that is, the value of the property) is essential to an accurate LTV. In particular, an inflated denominator will understate, sometimes greatly, the risk of a loan. To return to the example above, if the property whose actual value is $500,000 is valued incorrectly at $550,000, then the ostensible LTV of the $300,000 loan falls from 60% to 54.5%, and the ostensible LTV of the $450,000 loan falls from 90% to 81.8%. In either case, the LTV based on the incorrect appraised value understates the risk of the loan.

45. For these reasons, a reasonable investor considers LTV critical to the decision whether to purchase a certificate in a securitization of mortgage loans. Even small differences in the weighted average LTVs of the mortgage loans in the collateral pool of a securitization have a

significant effect on both the risk and the rating of each certificate sold in that securitization and, thus, are essential to the decision of a reasonable investor whether to purchase any such certificate.

(b) Untrue or misleading statements about the LTVs of the mortgage loans in the collateral pools of these securitizations

46. In the prospectus supplements, the defendants made material untrue or misleading statements about the LTVs of the mortgage loans in the collateral pools of these securitizations. Each such statement is identified in Item 46 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 46, and alleges as though fully set forth in this paragraph, the contents of Item 46 of the Schedules.

47. The defendants made these statements as statements of fact. Plaintiff is informed and believes, and based thereon alleges, that the defendants intended that these statements be understood as statements of fact. CNB and SCB did understand the statements about the LTVs as statements of fact. CNB and SCB had no access to appraisal reports or other documents or information from which it could verify the LTVs of the mortgage loans other than the statements that the defendants made about those LTVs.

(c) An automated valuation model demonstrates that the defendants' statements about the LTVs were untrue because they were based on overstated valuations of the properties in the collateral pools.

48. The stated LTVs of many of the mortgage loans in each securitization were significantly lower than the true LTVs because the denominators (that is, the value of the properties that secured those loans) that were used to determine the disclosed LTVs were overstated to a material extent. The weighted-average LTVs presented in the prospectus supplements were also, therefore, untrue and misleading.

49. Using a comprehensive, industry-standard automated valuation model (**AVM**), it is possible to determine the true market value of a certain property as of a specified date. An AVM is based on objective criteria like the condition of the property and the actual sale prices of

comparable properties in the same locale shortly before the specified date, and is more consistent, independent, and objective than other methods of appraisal. AVMs have been in widespread use for many years. The AVM on which these allegations are based incorporates a database of 500 million sales covering ZIP codes that represent more than 97% of the homes, occupied by more than 99% of the population, in the United States. Independent testing services have determined that this AVM is the most accurate of all such models.

50. For many of the properties that secured the mortgage loans, the model reported that LTVs presented in the prospectus supplements were understated. In particular, the model reported that the denominator (that is, the appraised value of the property as stated in the loan tape and compiled into the tables in the prospectus supplement) that was used to determine the disclosed LTV was 105% or more of the true market value as determined by the model as of the time the loan was originated. The model reported that the denominator that was used to determine the disclosed LTV was 95% or less of the true market value on a much smaller number of properties. Thus, the number of properties on which the value was overstated exceeded by far the number on which the value was understated, and the aggregate amount overstated exceeded by far the aggregate amount understated.

51. To take an example, in Securitization No. 7,[4] there were 1,822 mortgage loans in loan group 1 of the collateral pool. On 615 of the properties that secured those loans, the model reported that the denominator that was used to determine the disclosed LTV was 105% or more of the true market value and the amount by which the stated values of those properties exceeded their true market values in the aggregate was $38,955,148. The model reported that the denominator that was used to determine the disclosed LTV was 95% or less of true market value on only 187 properties, and the amount by which the true market values of those properties exceeded the values reported in the denominators was $12,727,579. Thus, the number of properties on which the value was overstated exceeded by more than 3 times the number on

[4] Both CNB and SCB purchased certificates in Securitization No. 7.

which the value was understated, and the aggregate amount overstated was 3 times the aggregate amount understated.

52. On one of the loans in Securitization No. 7, the amount of the loan was $304,000 and the stated value of the property was $380,000, resulting in a stated LTV of 80%. The model, however, determined that the true value of the property was $256,000, resulting in a true LTV of 118.8%. Thus, the stated value was higher than the true value by 48.4%, and the stated LTV was lower than the true LTV by 38.8%. Both of these were huge discrepancies that were material to the credit quality of the loan.

53. The overstated values of 615 properties made virtually every statement by the defendants about the LTVs of the mortgage loans untrue or misleading. For example, the defendants stated that all mortgage loans had an LTV of 100% or less. In fact, 77 of the mortgage loans had LTVs of over 100%. Defendants also stated that the weighted-average LTV of the loans in the collateral pool was 70.013%. In fact, the weighted-average LTV of the loans was 78.7%. These differences were material for the reasons stated above.

54. The results of the valuations by the automated model in this example are summarized in the following table.

Number of loans in loan group 1	1,822
Number of loans on which the stated value was 105% or more of the true market value as determined by the model	615
Aggregate amount by which the stated values of those properties exceeded their true market values as determined by the model	$38,955,148
Number of loans on which the stated value was 95% or less of the true market value as determined by the model	187
Aggregate amount by which the true market values of those properties exceeded their stated values	$12,727,579
Number of loans with LTVs over 100%, as stated by Defendants	0
Number of loans with LTVs over 100%, as determined by the model	77
Weighted-average LTV, as stated by Defendants	70.013%
Weighted-average LTV, as determined by the model	78.7%

55. The model produced similar results for the mortgage loans in the collateral pool of each securitization. Details of the results of the model for each securitization are stated in Item

55 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 55, and alleges as though fully set forth in this paragraph, the contents of Item 55 of the Schedules.

(d) These statements also were misleading because the defendants omitted to state that there were additional liens on a material number of the properties that secured the mortgage loans in the collateral pools.

56. As mentioned above, the LTV of a mortgage loan is a key determinant of the likelihood that the mortgagor will default in payment of the mortgage. The lower the LTV, the less likely that a decline in the value of the property will wipe out the owner's equity and thereby give the owner an incentive to stop making mortgage payments and abandon the property. Because LTV affects the behavior of borrowers so profoundly, accurate LTVs are essential to predicting defaults and prepayments by borrowers. Also as mentioned above, LTV affects the severity of loss on those loans that do default. The power of LTV to predict defaults, prepayments, and severities is a major reason why reasonable investors consider the LTVs of mortgage loans important to the decision whether to purchase a certificate in the securitization of those loans.

57. The predictive power of the LTV of a mortgage loan is much reduced if there are additional liens on the same property. Additional liens reduce the owner's equity in the property and thereby increase the owner's incentive to stop making mortgage payments and abandon the property if the value of the property falls below the combined amount of all of the liens on the property (a strategic default). Additional liens also exacerbate delinquencies and defaults because they complicate the servicing of mortgage loans and the management of delinquencies and defaults. Servicers of the first-lien mortgage must then deal not only with the borrower, but also with the servicer of the second-lien mortgage. For example, the servicer of a single mortgage may want to grant a borrower forbearance while the borrower is unemployed and allow him or her to add missed payments to the principal of the loan and to resume payments when he or she is employed again. But the servicer of the second-lien mortgage may refuse such forbearance and initiate foreclosure and thereby force the borrower into default on the first mortgage as well.

58. According to land records, many of the properties that secured mortgage loans in the collateral pool of each securitization were subject to liens in addition to the lien of the mortgage in the pool at the time of the closing of these securitizations.[5] The defendants failed to disclose any of these additional liens in the prospectus supplements. These additional liens increased the risk that those owners would default in payment of the mortgage loan in the pool.

59. To take an example, of the 1,822 properties that secured the mortgage loans in Securitization No. 7, at least 528 were subject to undisclosed liens in addition to the lien of the mortgage in the pool. For example, defendants stated that the weighted-average LTV of the properties was 70.013%, when, solely because of the additional liens on these 528 properties, the weighted-average combined LTVs of all of the loans in the pool was 75.0%.[6] This is a significant difference.

60. On one of the loans, the original balance of the mortgage loan was $343,000, the represented value of the property was $490,000, and the reported LTV was 70%. On the date of the closing of this securitization, however, there were undisclosed additional liens on this property of $147,000. Thus, when all liens on the property were taken into account, the combined LTV of the loan was 100%, which was 43% higher than the stated LTV on that loan. This was a huge discrepancy that was material to the credit quality of the loan. In many cases, the amount of the undisclosed additional liens was much greater than the owner's ostensible equity, putting the owner "under water" on the day on which this securitization closed.

61. Details of the undisclosed additional liens in the securitizations are stated in Item 61 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 61, and alleges as though fully set forth in this paragraph, the contents of Item 61 of the Schedules. Plaintiff is informed and believes, and based thereon alleges, that discovery will demonstrate that the

[5] In order to ensure that liens that were paid off but were not properly removed from land records were not included in this calculation, additional liens referred to in this Complaint and the Schedules exclude liens on the loan tapes that were originated on or before the date on which the mortgage loans in the pools were originated.

[6] The combined LTV is the ratio of all loans on a property to the value of the property.

number of loans with additional liens is substantially higher than those disclosed in the Schedules.

62. Because the defendants did not disclose the existence or the amounts of these additional liens, all of the statements that they made about the LTVs of the mortgage loans were misleading.

2. Appraisals

63. As discussed above in paragraph 44, an accurate denominator (value of the mortgaged property) is essential to calculating an accurate LTV. An accurate appraisal of the property, in turn, is essential to identifying an accurate denominator.

64. In connection with these securitizations, there was undisclosed upward bias in appraisals of properties that secured mortgage loans and consequent understatement of the LTVs of those loans. This upward bias in appraisals caused the denominators that were used to calculate the LTVs of many mortgage loans to be overstated and, in turn, the LTVs to be understated. The defendants' statements regarding the LTVs of the mortgage loans in the collateral pools were misleading because they omitted to state that the appraisals of a material number of the properties that secured those loans were biased upwards. In addition, the defendants stated that the appraisals conformed to the Uniform Standards of Professional Appraisal Practice (**USPAP**), the professional standards that govern appraisers and appraisals (or to the standards of Fannie Mae and Freddie Mac, which required compliance with USPAP). Those statements were false because upwardly biased appraisals do not conform to USPAP.

(a) The statements that the defendants made about the LTVs of the mortgage loans in the collateral pools were misleading because they omitted to state that the appraisals of a large number of the properties that secured those loans were biased upward, so that stated LTVs based on those appraisals were lower than the true LTVs of those mortgage loans.

65. The defendants omitted to state that the appraisals in these securitizations used inaccurate property descriptions, ignored recent sales of the subject and comparable properties, and used sales of properties that were not comparable, all in order to inflate the values of the

appraised properties. The appraisals used to compute the LTVs of many of the mortgage loans in the collateral pools were biased upwards. As alleged in paragraphs 49 through 55, in each trust, the number of properties for which the value was overstated exceeded by far the number for which the value was understated, and the aggregate amount overstated exceeded by far the aggregate amount understated. These ratios for each trust are summarized in the following table:

Securitization No.	Ratio of Number of Properties whose Value was Overstated to Number whose Value was Understated	Ratio of Amount of Overvaluation to Amount of Undervaluation
1	2.8	2.8
2	3.2	3.9
3	7.6	10.1
4	3.6	3.8
5	4.5	10.0
6	5.1	9.2
7	3.3	3.1
8	3.0	3.2
9	3.0	2.7
10	8.1	10.0
11	7.2	6.8
12	5.4	8.6

These lopsided results demonstrate the upward bias in appraisals of properties that secured the mortgage loans in the collateral pools.

66. Plaintiff is informed and believes, and based thereon alleges, that a material number of the upwardly biased appraisals were not statements of the appraisers' actual findings of the values of the properties based on their objective valuations.

(b) The statements by the defendants about compliance with USPAP were untrue because the appraisals of a large number of the properties that secured the mortgage loans were biased upward.

67. Appraisers and appraisals are governed by USPAP, which is promulgated by the Appraisal Standards Board. The Preamble to USPAP states that its purpose "is to promote and maintain a high level of public trust in appraisal practice." Both Fannie Mae and Freddie Mac require that appraisals comply with USPAP.

68. USPAP includes the following provisions:

(a) USPAP Standards Rule 2-1(b)(iii) requires that "Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading."

(b) USPAP Standards Rule 1-4(a) provides that "When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion."

(c) USPAP Standards Rule 1-4(b) provides that "When a cost approach is necessary for credible assignment results, an appraiser must:

(i) develop an opinion of site value by an appropriate appraisal method or technique;

(ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and

(iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation)."

69. The Appraisal Standards Board, which promulgates USPAP, also issues Advisory Opinions. Although the Advisory Opinions do not establish new standards or interpret USPAP, they "are issued to illustrate the applicability of appraisal standards in specific situations." Advisory Opinion 1 discussing "Sales History" states that "The requirement for the appraiser to analyze and report sales history and related information is fundamental to the appraisal process. Just as the appraiser must analyze pending and recent sales of comparable properties, the appraiser must take into account all pending and recent sales of the subject property itself."

70. In the prospectus supplements, the defendants made statements that the appraisals of properties that secured the mortgage loans in the collateral pools were made in compliance with USPAP or with the appraisal standards of Fannie Mae and Freddie Mac, which required compliance with USPAP. Details of each such statement are stated in Item 70 of the Schedules

of this Complaint. Plaintiff incorporates into this paragraph 70, and alleges as though fully set forth in this paragraph, the contents of Item 70 of the Schedules.

71. Plaintiff is informed and believes, and based thereon alleges, that a material number of mortgage loans in the collateral pools had appraisals conducted that deviated from USPAP.

72. Each of the statements referred to in paragraph 70 was untrue because the appraisals of a material number of the properties referred to in each such statement did not conform to USPAP.

73. By each of the untrue and misleading statements referred to in paragraphs 46 and 70 above, the defendants materially understated the risk of the certificates that they issued and underwrote.

B. Untrue or Misleading Statements About the Occupancy Status of the Properties That Secured the Mortgage Loans in the Collateral Pools

1. The materiality of occupancy status

74. Residential real estate is usually divided into primary residences, second homes, and investment properties. Mortgages on primary residences are less likely to default than mortgages on non-owner-occupied residences and therefore are less risky. Occupancy status also influences prepayment patterns.

75. Occupancy status (that is, whether the property that secures a mortgage is to be the primary residence of the borrower, a second home, or an investment property) is an important measure of the risk of a mortgage loan. The percentage of loans in the collateral pool of a securitization that are not secured by mortgages on primary residences is an important measure of the risk of certificates sold in that securitization. Other things being equal, the higher the percentage of loans not secured by primary residences, the greater the risk of the certificates. A reasonable investor considers occupancy status important to the decision whether to purchase a certificate in a securitization of mortgage loans.

2. Untrue or misleading statements about the occupancy status of the properties that secured the mortgage loans in the collateral pools of these securitizations

76. In the prospectus supplements, the defendants made statements about the number of properties in the collateral pool of each securitization that were the primary residences of their owners. To return to the example of Securitization No. 7, the defendants stated that, of the 1,822 mortgage loans in loan group 1 of the collateral pool, 1,325 were secured by primary residences and 497 were not. Details of each such statement in each securitization are stated in Item 76 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 76, and alleges as though fully set forth in this paragraph, the contents of Item 76 of the Schedules.

77. These statements were untrue or misleading because (i) the stated number of mortgage loans secured by primary residences was higher than the actual number of loans in that category or (ii) the stated number of mortgage loans not secured by primary residences was lower than the actual number of loans in that category.

3. Basis of the allegations above that these statements about the occupancy status of the properties that secured the mortgage loans in the collateral pools were untrue or misleading

78. Because they are less risky than other mortgage loans, mortgage loans on primary residences usually have more favorable terms, including lower interest rates and more lenient underwriting standards, than mortgage loans on second homes and investment properties. Applicants for loans on second homes and investment properties therefore have an incentive to state that the property will be their primary residence even when it will not. Plaintiff is informed and believes, and based thereon alleges, that borrowers of many nonconforming securitized loans did so.

79. A significant number of the properties in the collateral pool of each securitization that were stated to be primary residences actually were not. Moreover, Plaintiff is informed and believes, and based thereon alleges, that there is additional evidence of occupancy fraud in the loan files of many more of the mortgage loans in each collateral pool.

80. With respect to some of the properties that were stated to be primary residences, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself. This is strong evidence that the mortgaged property was not the borrower's primary residence.

81. In some states and counties, owners of a property are able to designate whether that property is his or her "homestead," which may reduce the taxes on that property or exempt the property from assets available to satisfy the owner's creditors, or both. An owner may designate only one property, which he or she must occupy, as his or her homestead. The fact that an owner in one of these jurisdictions does not designate a property as his or her homestead when he or she can do so is strong evidence that the property was not his or her primary residence. With respect to some of the properties that were stated to be primary residences, the owner could have but did not designate the property as his or her homestead. That omission is strong evidence that the property was not the borrower's primary residence.

82. When a borrower actually occupies a newly mortgaged property, he or she normally notifies entities that send bills to him or her (such as credit card companies, utility companies, and local merchants) to send his or her bills to the address of the newly mortgaged property. Six months after the closing of the mortgage is ample time to complete this process. Six months after the closing of the mortgage, if the borrower is still receiving his or her bills at a different address, it is very likely that the borrower does not occupy the mortgaged property. For each securitization, a credit reporting agency specializing in mortgage loans compared the addresses in the borrowers' credit reports to the addresses of the mortgaged properties six months after the closing of the mortgage loans. Many borrowers whose mortgage loans were secured by properties that were stated in the loan tapes to be owner-occupied did not receive any bills at the address of the mortgaged property but did receive their bills at another address or addresses. It is very likely that each of these borrowers did not occupy the mortgaged property.

83. In Securitization No. 7, 100 owners of properties that were stated to be primary residences instructed local tax authorities to send the bills for the taxes on those properties to

them at different addresses; 187 owners of properties that were stated to be primary residences could have, but did not, designate those properties as their homesteads; and 32 owners of properties that were stated to be primary residences did not receive any of their bills there six months after the mortgages were originated. Eliminating duplicates, for one or more of these reasons, 278 of the 1,325 properties that were stated to be primary residences actually were not. Thus, the number of properties that were not primary residences was not 497, as defendants stated, but at least 775, a material difference. The numbers of such loans in the collateral pool of each securitization are stated in Item 83 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 83, and alleges as though fully set forth in this paragraph, the contents of Item 83 of the Schedules.

84. By each of the untrue and misleading statements referred to in paragraph 76, the defendants materially understated the risk of the certificates that they issued and underwrote.

C. Untrue or Misleading Statements About the Underwriting Standards of the Originators of the Mortgage Loans in the Collateral Pools

1. The materiality of underwriting standards and the extent of an originator's disregard of them

85. Originators of mortgage loans have written standards by which they underwrite applications for loans. An important purpose of underwriting is to ensure that the originator makes mortgage loans only in compliance with those standards and that its underwriting decisions are properly documented. An even more fundamental purpose of underwriting mortgage loans is to ensure that loans are made only to borrowers with credit standing and financial resources to repay the loans and only against collateral with value, condition, and marketability sufficient to secure the loans. An originator's underwriting standards, and the extent to which the originator does not follow its standards, are important indicators of the risk of mortgage loans made by that originator and of certificates sold in a securitization in which mortgage loans made by that originator are part of the collateral pool. A reasonable investor considers the underwriting standards of originators of mortgage loans in the collateral pool of a

securitization, and whether an originator disregards its standards, important to the decision whether to purchase a certificate in that securitization.

2. Untrue or misleading statements about the underwriting standards of originators of the mortgage loans

86. In the prospectus supplements, the defendants made statements about the underwriting standards of the originators of the mortgage loans in the collateral pool. Details of each such statement are stated in Item 86 of the Schedules of this Complaint. They included statements that the originators made mortgage loans in compliance with their underwriting standards and made exceptions to those standards only when compensating factors were present. Plaintiff incorporates into this paragraph 86, and alleges as though fully set forth in this paragraph, the contents of Item 86 of the Schedules.

87. Plaintiff is informed and believes, and based thereon alleges, that these statements were untrue or misleading because the defendants omitted to state that: (a) the originators were disregarding those underwriting standards; (b) the originators were making extensive exceptions to those underwriting standards when no compensating factors were present; (c) the originators were making wholesale, rather than case-by-case, exceptions to those underwriting standards; (d) the originators were making mortgage loans that borrowers could not repay; and (e) the originators were failing frequently to follow quality-assurance practices necessary to detect and prevent fraud intended to circumvent their underwriting standards.

3. Basis of the allegations that these statements about the underwriting standards of the originators of the mortgage loans in the collateral pools were untrue or misleading

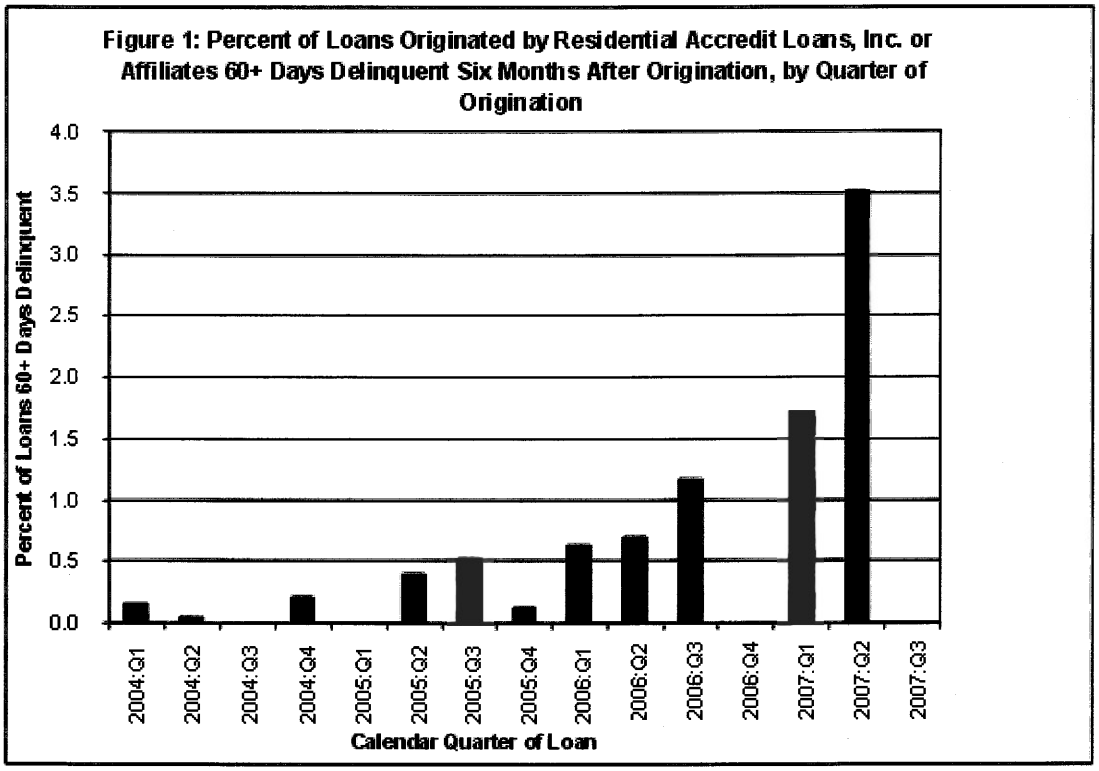
(a) The deterioration in undisclosed credit characteristics of mortgage loans made by these originators

88. Plaintiff is informed and believes, and based thereon alleges, that before and during the time of these securitizations the originators of the loans in the securitizations disregarded their stated underwriting standards. As a result, securitized mortgage loans made

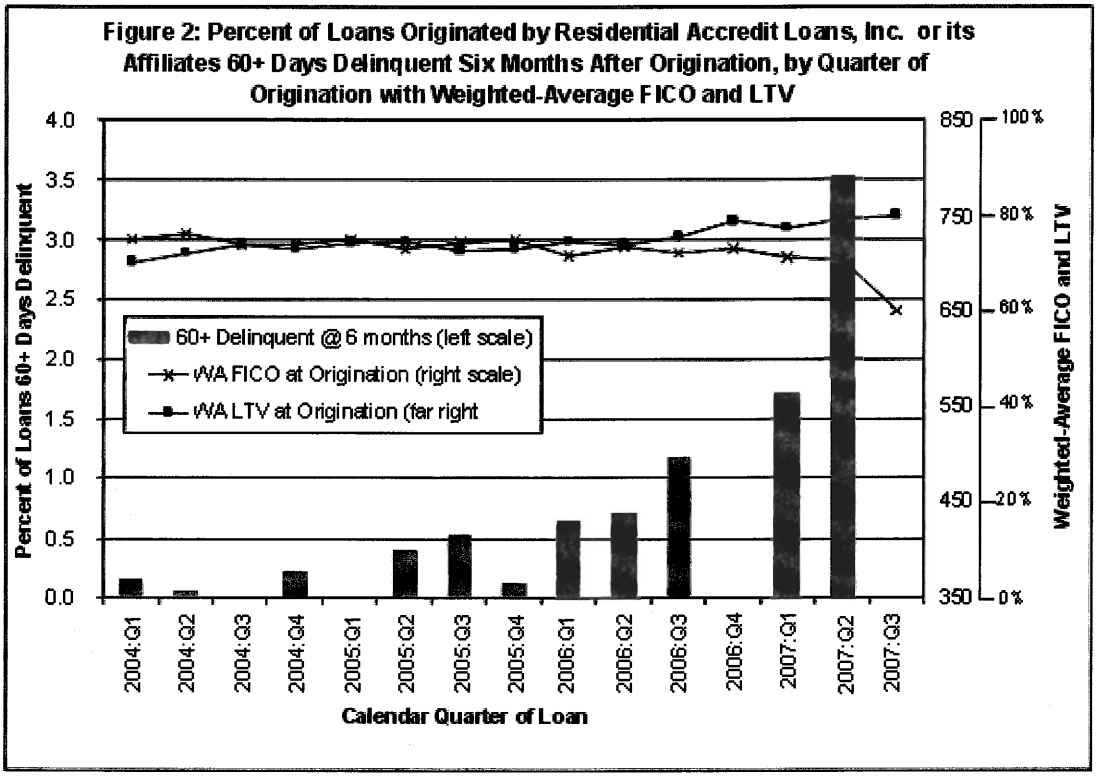
between 2004 and the dates of these securitizations have experienced high rates of delinquency and default.

89. The high rates of delinquency and default were caused not so much by any deterioration in credit characteristics of the loans that were expressly embodied in underwriting standards and disclosed to investors, but rather by deterioration in credit characteristics that were not disclosed to investors.

90. Plaintiff is informed and believes that what was true about recently securitized mortgage loans in general was true in particular of loans originated by the entities that originated the loans in the collateral pools of these securitizations, as the following figures demonstrate. Taking the originator Residential Accredit Loans, Inc. as an example, Figure 1 shows the rising incidence of early payment defaults (or **EPDs**), that is, the percent of loans (by outstanding principal balance) that were originated and sold into securitizations by Residential Accredit Loans, Inc. and that became 60 or more days delinquent within six months after they were made. An EPD is strong evidence that the originator did not follow its underwriting standards in making the loan. Underwriting standards are intended to ensure that loans are made only to borrowers who can and will make their mortgage payments. Because an EPD occurs so soon after the mortgage loan was made, it is much more likely that the default occurred because the borrower could not afford the payments in the first place (and thus that the underwriting standards were not followed), than because of changed external circumstances unrelated to the underwriting of the mortgage loan (such as that the borrower lost his or her job). The bars in Figure 1 depict the incidence of EPDs in loans originated by Residential Accredit Loans, Inc. that were sold into securitizations. The steady increase in EPDs is further evidence that the deterioration in the credit quality of those loans was caused by disregard of underwriting standards.



91. Figure 2 shows the weighted-average disclosed LTVs of the same loans and weighted-average disclosed credit scores of the borrowers. These were nearly constant, showing that the deterioration in the credit quality of the loans was caused not by these disclosed factors, but rather by undisclosed factors.



92. Substantially the same facts are true of the mortgage loans originated and sold into securitizations by each of the originators of mortgage loans in the collateral pools of these securitizations. Figures for them are presented in Figures 1 and 2 of Exhibits A to C of this Complaint:

Exhibit	Originator
A	Bear Stearns Residential Mortgage Corporation/EMC Mortgage Corporation
B	IndyMac Bank, F.S.B.
C	National City Mortgage Corporation

(b) The poor performance of the loans in these pools demonstrates that the originators disregarded their underwriting guidelines when making these loans.

93. As noted above, an EPD is evidence that the originator may have disregarded its underwriting standards in making the loan. The mortgage loans in some of the collateral pools of these securitization experienced EPDs. These EPDs are evidence that the originators of those

loans may have disregarded their underwriting standards when making those loans. The number and percent of the loans in each pool that suffered EPDs are stated in Item 93 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 93, and alleges as though fully set forth in this paragraph, the contents of Item 93 of the Schedules.

94. A high rate of delinquency at any time in a group of mortgage loans is also evidence that the originators of those loans may have disregarded their underwriting standards in making the loans. A common measure of serious delinquency is the number of loans on which the borrowers were ever 90 or more days delinquent in their payments. The mortgage loans in the collateral pools have experienced very high rates of delinquencies by this measure. This high rate of delinquencies is strong evidence that the originators of those loans may have disregarded their underwriting standards when making those loans. The number and percent of the loans in each pool that suffered 90 or more days delinquencies are stated in Item 94 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 94, and alleges as though fully set forth in this paragraph, the contents of Item 94 of the Schedules.

95. A second common measure of delinquency is the number of loans on which the borrowers are 30 or more days delinquent at a given point in time. This high rate of delinquencies is strong evidence that the originators of those loans may have disregarded their underwriting standards when making those loans. The number and percent of the loans in each pool that were 30 or more days delinquent on January 31, 2012 are stated in Item 95 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 95, and alleges as though fully set forth in this paragraph, the contents of Item 95 of the Schedules.

96. By each of the untrue and misleading statements referred to in paragraph 86 above, the defendants materially understated the risk of the certificates that they issued or underwrote. Moreover, Plaintiff is informed and believes, and based thereon alleges, that discovery will yield additional evidence that the originators disregarded their underwriting guidelines when making the mortgage loans in the collateral pools of these securitizations.

D. The Large Number of Mortgage Loans in the Collateral Pools About Which the Defendants Made Material Untrue or Misleading Statements Made Their Statements About the Ratings of CNB's and SCB's Certificates Untrue and Misleading.

97. In the prospectus supplements, the defendants made statements about the rating of each certificate by ratings agencies. They stated that the ratings agencies rated each such certificate investment grade. Details of each such statement are stated in Item 97 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 97, and alleges as though fully set forth in this paragraph, the contents of Item 97 of the Schedules.

98. The ratings were important to the decision of any reasonable investor whether to purchase the certificates. Many investors, including CNB and SCB, have investment policies that require a certain minimum rating for all investments. The policy of CNB and SCB was to purchase only certificates that were rated at least A.

99. These statements by the defendants about the ratings of the certificates they issued and underwrote were misleading because the defendants omitted to state that the ratings were affected by all the material untrue or misleading statements about specific mortgage loans in the collateral pools. These include:

(a) loans in which the LTVs were materially understated as shown by the AVM;

(b) loans in which the LTVs were misleading as a result of undisclosed additional liens;

(c) loans that suffered EPDs, strong evidence that the originators may have disregarded the underwriting standards in making those loans; and

(d) loans in which the properties were stated to be owner-occupied, but were not.

100. In Securitization No. 7, there were 615 loans whose LTVs were materially understated as shown by the AVM, 528 loans in which the LTVs were misleading because of undisclosed additional liens, 7 loans that suffered EPDs, and 278 loans in which the properties were stated to be owner-occupied but were not. Eliminating duplicates, there were 1,125 loans (or 61.7% of the loans in the collateral pool) about which defendants made untrue or misleading

statements. The numbers of such loans in the collateral pool of each securitization are stated in Item 100 of the Schedules of this Complaint. Plaintiff incorporates into this paragraph 100, and alleges as though fully set forth in this paragraph, the contents of Item 100 of the Schedules.

101. Plaintiff is informed and believes, and based thereon alleges, that loan files and other documents available only through discovery will prove that those statements were untrue or misleading with respect to many more loans as well.

102. By these untrue and misleading statements, the defendants materially understated the risk of the certificates that they issued and underwrote. Moreover, Plaintiff is informed and believes, and based thereon alleges, that the defendants materially understated the risk of the certificates that they issued and underwrote.

VI. STATUTE OF LIMITATIONS

103. None of the claims in this Complaint was barred by the statute of limitations on May 22, 2009, the date on which Plaintiff became receiver for CNB and SCB, because, even in the exercise of reasonable diligence, neither CNB nor SCB should have discovered, and neither CNB nor SCB did discover, the untrue or misleading statements by defendants more than one year before that date. Under 12 U.S.C. § 1821(d)(14), the statute of limitations on all of the claims in this Complaint is extended to three years from May 22, 2009. Plaintiff discovered the untrue or misleading statements by defendants in 2011 in the course of its investigation of possible claims of CNB and SCB that Plaintiff is authorized to bring as receiver for CNB and SCB. The claims in this Complaint are timely.

VII. CAUSES OF ACTION

A. Untrue or Misleading Statements in a Registration Statement Under Section 11 of the 1933 Act

104. Plaintiff hereby incorporates by reference, as though fully set forth, paragraphs 1 through 103.

105. BSABS is the depositor of Securitization No. 6 and therefore is the issuer of the certificates. In doing the acts alleged, BSABS violated Section 11 of the 1933 Act in connection with the sale to CNB and SCB of the certificates in Securitization No. 6.

106. CMSI is the depositor of Securitization No. 12 and therefore is the issuer of the certificates. In doing the acts alleged, CMSI violated Section 11 of the 1933 Act in connection with the sale to SCB of the certificate in Securitization No. 12.

107. CSFB Mortgage Securities is the depositor of Securitization No. 7 and therefore is the issuer of the certificates. In doing the acts alleged, CSFB Mortgage Securities violated Section 11 of the 1933 Act in connection with the sale to CNB and SCB of the certificates in Securitization No. 7.

108. MLMI is the depositor of Securitization No. 8 and therefore is the issuer of the certificates. In doing the acts alleged, MLMI violated Section 11 of the 1933 Act in connection with the sale to CNB and SCB of the certificates in Securitization No. 8.

109. Bear Stearns is the underwriter of Securitization No. 6. In doing the acts alleged, Bear Stearns violated Section 11 of the 1933 Act in connection with the sale to CNB and SCB of the certificates in Securitization No. 6.

110. Citigroup is the underwriter of Securitizations Nos. 4 and 9. In doing the acts alleged, Citigroup violated Section 11 of the 1933 Act in connection with the sale to CNB of the certificate in Securitization No. 4, and the sale to SCB of the certificates in Securitizations Nos. 4 and 9.

111. Credit Suisse is the underwriter of Securitizations Nos. 7 and 10. In doing the acts alleged, Credit Suisse violated Section 11 of the 1933 Act in connection with the sale to CNB of the certificate in Securitization No. 7, and the sale to SCB of the certificates in Securitizations Nos. 7 and 10.

112. DBS is the underwriter of Securitizations Nos. 2 and 3. In doing the acts alleged, DBS violated Section 11 of the 1933 Act in connection with the sale to CNB of the certificates in Securitizations Nos. 2 and 3.

113. GMAC is the underwriter of the certificates in Securitizations Nos. 1, 2, and 4. In doing the acts alleged, GMAC violated Section 11 of the 1933 Act in connection with the sale to CNB of the certificates in Securitizations Nos. 1, 2, and 4, and the sale to SCB of the certificate in Securitization No. 4.

114. HSBC is the underwriter of Securitization No. 3. In doing the acts alleged, HSBC violated Section 11 of the 1933 Act in connection with the sale to CNB of the certificate in Securitization No. 3.

115. Merrill Lynch is the underwriter of Securitization No. 8. In doing the acts alleged, Merrill Lynch violated Section 11 of the 1933 Act in connection with the sale to CNB and SCB of the certificates in Securitization No. 8.

116. RBS is the underwriter of Securitizations Nos. 1, 5, 11, and 12. In doing the acts alleged, RBS violated Section 11 of the 1933 Act in connection with the sale to CNB of the certificates in Securitizations Nos. 1 and 5, and the sale to SCB of the certificates in Securitizations Nos. 5, 11, and 12.

117. UBS is the underwriter of Securitization No. 10. In doing the acts alleged, UBS violated Section 11 of the 1933 Act in connection with the sale to SCB of the certificate in Securitization No. 10.

118. The certificates in these securitizations were issued pursuant or traceable to registration statements. Details of each registration statement and each certificate are stated in Item 37 of the Schedules.

119. The registration statements, as amended by the prospectus supplements, contained untrue statements of material fact and omitted to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. These untrue and misleading statements included all of the untrue and misleading statements described in paragraphs 41 through 102.

120. CNB and SCB purchased each certificate before the issuer made an earning statement covering a period of at least twelve months generally available.

121. Plaintiff expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional or reckless conduct. This cause of action is based solely on claims of strict liability or negligence under the 1933 Act.

122. CNB and SCB did not know when they purchased these certificates that the statements in the registration statements, as amended by the prospectus supplements, were untrue or misleading.

123. When they failed on May 22, 2009, neither CNB nor SCB had discovered that the defendants made untrue or misleading statements about the certificates. Plaintiff discovered that the defendants made untrue or misleading statements in the sale of the securities in 2011 in the course of its investigation.

124. CNB and SCB have suffered a loss on each of these certificates.

125. Plaintiff is entitled to recover damages as described in 15 U.S.C. § 77k(e).

B. Liability as a Controlling Person Under Section 15 of the 1933 Act

126. Plaintiff hereby incorporates by reference, as though fully set forth, paragraphs 1 through 125.

127. BSCI, by or through stock ownership, agency, or otherwise, controlled BSABS within the meaning of Section 15 of the 1933 Act.

128. In doing the acts alleged, BSABS violated Section 11 of the 1933 Act by issuing the certificates.

129. BSCI is therefore jointly and severally liable with and to the same extent as BSABS.

130. CitiMortgage, by or through stock ownership, agency, or otherwise, controlled CMSI within the meaning of Section 15 of the 1933 Act.

131. In doing the acts alleged, CMSI violated Section 11 of the 1933 Act by issuing the certificates.

132. CitiMortgage is therefore jointly and severally liable with and to the same extent as CMSI.

133. Credit Suisse Management, by or through stock ownership, agency, or otherwise, controlled CFSB Mortgage Securities within the meaning of Section 15 of the 1933 Act.

134. In doing the acts alleged, CFSB Mortgage Securities violated Section 11 of the 1933 Act by issuing the certificates.

135. Credit Suisse Management is therefore jointly and severally liable with and to the same extent as CSFB Mortgage Securities.

136. MLMCI, by or through stock ownership, agency, or otherwise, controlled MLMI within the meaning of Section 15 of the 1933 Act.

137. In doing the acts alleged, MLMI violated Section 11 of the 1933 Act by issuing the certificates.

138. MLMCI is therefore jointly and severally liable with and to the same extent as MLMI.

VIII. JURY DEMAND

139. Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury of all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against defendants for damages in an amount to be determined at trial, but not less than $66 million, plus attorneys' fees, costs of court, pre- and post-judgment interest at the appropriate allowable rates. Plaintiff further requests that the Court order any and all other relief at law and in equity to which Plaintiff is entitled.

Dated: May 18, 2012
New York, New York

Respectfully Submitted,

GRAIS & ELLSWORTH LLP

By Leanne M. Wilson

David J. Grais (DG 7118)
Mark B. Holton (MH 4939)
Leanne M. Wilson (LW 1225)
Grais & Ellsworth LLP
1211 Avenue of the Americas
New York, New York 10036
Phone: 212-755-0100

Attorneys for Federal Deposit Insurance Corporation as Receiver for Citizens National Bank and Strategic Capital Bank

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FEDERAL HOME LOAN BANK OF BOSTON, Plaintiff, v. ALLY FINANCIAL, INC., *et al*. Defendants.	Civil Action No. (Superior Court of the Commonwealth of Massachusetts for Suffolk County, Civil Action No. 11-1533-BLS1)

NOTICE OF REMOVAL

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

PLEASE TAKE NOTICE THAT Defendants Bear Stearns Asset Backed Securities I, LLC, EMC Mortgage Corporation, J.P. Morgan Acceptance Corporation I, J.P. Morgan Mortgage Acquisition Corp., J.P. Morgan Securities, LLC (f/k/a Bear, Stearns & Co. Inc. and J.P. Morgan Securities, Inc.), JPMorgan Chase & Co., JPMorgan Securities Holdings, LLC, Structured Asset Mortgage Investments II, Inc., The Bear Stearns Companies, LLC (f/k/a The Bear Stearns Companies Inc.), and WaMu Capital Corp. (collectively, the "Removing Defendants"), pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), hereby remove this action[1] from the Superior Court of the Commonwealth of Massachusetts to the United States District Court

[1] On May 23, 2011, Individual Defendants Lana Franks, Richard S. Fuld, Jr., Edward Grieb, Richard McKinney, Christopher O'Meara, Kristine Smith, James J. Sullivan, Samir Tabet and Mark Zusy also filed a Notice of Removal seeking to remove specifically the claims against them contained in the first, second and third causes of action in the Complaint filed in this action. On May 25, 2011, Individual Defendant Barry J. O'Brien filed a Joinder in the Individual Defendants' Notice of Removal.

for the District of Massachusetts.[2] This removal arises under 28 U.S.C. §§ 1334(b), 1441, 1446 and 1452(a), and 12 U.S.C. § 1432(a). As grounds for removal, the Removing Defendants state as follows:

SUMMARY

1. Defendants may properly remove an action from state court pursuant to 28 U.S.C. § 1441(a) if the federal district court has original jurisdiction over the action.

2. This Court has original jurisdiction over this matter pursuant to the charter of the Federal Home Loan Bank of Boston, 12 U.S.C. § 1432(a), and all claims and causes of action in the matter may be removed to this Court under 28 U.S.C. § 1441(a).

3. This Court also has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 1452(a) because this action is "related to" ongoing bankruptcy proceedings, and all claims and causes of action in this matter may be removed to this Court under 28 U.S.C. §§ 1441 and/or 1452.

PROCEDURAL HISTORY AND BACKGROUND

4. On or about April 20, 2011, Plaintiff filed a complaint (the "Complaint") in the Superior Court of the Commonwealth of Massachusetts (the "State Court") entitled "*Federal Home Loan Bank of Boston v. Ally Financial, Inc. et al.*," Civil Action No. 11-1533-BLS1 (the "State Court Action").

5. On April 28, 2011, and thereafter, Plaintiff served the Complaint on the Removing Defendants. In accordance with 28 U.S.C. § 1446(a), copies of process, pleadings

[2] The Removing Defendants appear specially for the purpose of removal only. They reserve all defenses as to jurisdiction, service, or otherwise that may be available in this action.

and orders served upon the Removing Defendants are attached hereto as Exhibit A.[3]

6. In the Complaint, Plaintiff alleges that it purchased approximately 115 Private Label Mortgage-Backed Securities ("PLMBS") issued or underwritten by various defendants. Residential home mortgages provide the collateral for each of the PLMBS at issue, such that mortgage payments made by thousands of homeowners back the PLMBS at issue in this case. Plaintiff alleges that defendants made material untrue statements and omissions in connection with the sale of PLMBS to the Plaintiff. The allegations center on disclosures concerning the lending practices of originators of the mortgage loans that provide the collateral of the PLMBS.

7. Plaintiff purports to bring claims against the Removing Defendants under the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A § 410, under the state Consumer Protection Act, Mass. Gen. Laws c. 93A § 11, and under the common law, based on alleged material untrue statements and omissions in connection with the sale of the PLMBS to the Plaintiff. Paragraphs 45-49, 85-89 and 127 of the Complaint, and Appendices XI, XII, XIII, and XIV identify the offerings alleged to be at issue in the claims against the Removing Defendants. Many of these offerings involved securities backed by mortgage loan collateral that was originated almost entirely by now-bankrupt entities.

8. The Removing Defendants deny that they have any liability whatsoever to Plaintiff.

9. The Removing Defendants' time to answer the summons and complaint

[3] Because the complaint with exhibits is 767 pages, the Removing Defendants attach only one copy of the complaint served on the Removing Defendants. Should the Court so desire, the Removing Defendants can supplement this filing with copies of the complaint served on each of the Removing Defendants. Copies of the summons served on each of the Removing Defendants are attached in Exhibit A.

has not expired and none of the Removing Defendants has served or filed an answer.

10. No motions or other proceedings in this action are pending in the State Court.

11. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is being filed within thirty (30) days after service of the summons and Complaint.

GROUNDS FOR REMOVAL

FHLB Boston's Federal Charter Confers Original Jurisdiction

12. This Court has original jurisdiction over this matter pursuant to Plaintiff's charter. The Supreme Court has held that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction" where, as here, it "specifically mentions the federal courts." *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247, 255 (1992).

13. Plaintiff's charter is codified in the Federal Home Loan Bank Act, 12 U.S.C. § 1421 *et seq.*, and specifically references the federal courts. The Act provides that all Federal Home Loan Banks "shall have the power . . . to sue and be sued, to complain and to defend in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1432(a). Recent decisions have held that charters with language essentially identical to the FHLB charter, which includes the phrase "any court of competent jurisdiction," also confer original jurisdiction to the federal district courts under *American National Red Cross*. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Rains*, 534 F.3d 779, 785 (D.C. Cir. 2008) (holding that Fannie Mae's charter, which includes "court of competent jurisdiction" in its "sue or be sued" clause, conferred original jurisdiction on federal district courts on the basis of the charter alone); *Grun v. Countrywide Home Loans*, No. Civ. A.S.A.-03-CA-0141-XR, 2004 WL 1509088, at *2 (W.D. Tex. Jul. 1, 2004) (denying remand based on "sue or be sued . . . in any court of competent

jurisdiction clause).[4]

14. This Court has also recognized that a charter clause materially identical to the one at issue here confers federal jurisdiction under *American National Red Cross*. In *Rodriguez v. Fed. Nat'l Mortg. Ass'n*, 268 F. Supp. 2d 87, 89-90 (D. Mass. 2003), this Court explicitly stated that "the Supreme Court has held that the 'sue and be sued' 'provision in a charter act of a similar federally chartered organization confers original jurisdiction over all cases to which the federally chartered corporation is a party, 'with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending.'" *Id.* (citing *Am. Nat'l Red Cross*, 505 U.S. at 248).[5]

15. Because Plaintiff s charter specifically references federal courts, this Court has original jurisdiction over this action and removal is available pursuant to section 1441(a). *See, e.g.*, *Am. Nat'l Red Cross*, 505 U.S. at 247 (the sue or be sued provision of the Red Cross charter confers original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action . . . .).

"Related to" Bankruptcy Jurisdiction

16. This Court also has original jurisdiction over this matter under 28 U.S.C.

[4] The Removing Defendants are aware of recent decisions by district courts in other Circuits holding that claims asserted by other Federal Home Loan Banks are not subject to removal under the terms of the Congressional charter. *See, e.g.*, *Federal Home Loan Bank of Chicago v. Bank of Am. Funding Corp.*, No. 10-C-7560, 2011 WL 151842, at *2 (N.D. Ill. Jan. 18, 2011); *Federal Home Loan Bank of San Francisco v. Deutsche Bank Sec., Inc.*, Nos. 10-3039, 10-3045, 2010 WL 5394742, at *6-8 (N.D. Cal. Dec. 20, 2010); *Federal Home Loan Bank of Seattle v. Deutsche Bank Sec., Inc.*, 736 F. Supp. 2d 1283, 1286 (W.D. Wash. 2010). We respectfully submit that those decisions incorrectly apply the Supreme Court s decision in *American Nat'l Red Cross* and the decision in *Pirelli* by the only Court of Appeals that has addressed the issue.

[5] The court went on to distinguish *Red Cross* and remand the case because, unlike here, the removing party was a counterclaim defendant that had initially filed the action in state court. *See id.* at 90 ("[counterclaim defendant] concedes that *Red Cross* did not involve a counterclaim, as is present here, and that the removal statute only allows a "defendant" to remove a state court case to federal court.").

§§ 1334(b) and 1452(a), because this action is "related to" numerous ongoing bankruptcy proceedings.

17. "[A] civil proceeding is related to a bankruptcy [where] the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Garcia-Quintero v. Commonwealth of Puerto Rico*, No. Civ. 96-1770, 1997 WL 157744, at *2 (1st Cir. Mar. 11, 1997) (quoting *In re GSF Corp.*, 938 F.2d 1467, 1475 (1st Cir. 1991)). *See also In re Boston Regional Med. Ctr., Inc.*, 410 F.3d 100, 105 (1st Cir. 2005).

18. The allegations against the Removing Defendants arise in part from the following PLMBS, each of which contains mortgages originated by bankrupt entities:

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
AHM 2005-2	American Home Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; The Bear Stearns Companies, LLC
BALTA 2005-10	Accredited Mortgage; Bear Stearns Residential Mortgage Corporation; Aegis Mortgage Corporation; Loan Link Financial Services; Lancaster Mortgage Bankers, LLC; American Home Mortgage Corporation; United Financial Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BALTA 2005-8	Bear Stearns Residential Mortgage Corporation; Lancaster Mortgage Bankers, LLC; Homebanc Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BALTA 2005-9	Bear Stearns Residential Mortgage Corporation; Homebanc Mortgage Corporation; Oak Street Mortgage LLC; Lancaster Mortgage Bankers, LLC	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BALTA 2006-1	Bear Stearns Residential Mortgage Corporation; Homebanc Mortgage Corporation; Lancaster Mortgage Bankers, LLC; Aegis Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Bear Stearns Asset Backed Securities I, LLC; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BALTA 2006-3	Bear Stearns Residential Mortgage Corporation; OwnIT Mortgage Solutions, Inc.; Lancaster Mortgage Bankers, LLC; Oak Street Mortgage LLC; Loan Link Financial Services; Homebanc Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BALTA 2006-5	Bear Stearns Residential Mortgage Corporation; American Home Mortgage Corporation; American Mortgage and Financial Services; American Mortgage Resources; Homebanc Mortgage Corporation; Lancaster Mortgage Bankers, LLC	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BALTA 2006-6	Bear Stearns Residential Mortgage Corporation; American Home Mortgage Corporation; American Mortgage and Financial Services; American Mortgage Resources; Lancaster Mortgage Bankers, LLC; Aegis Mortgage Corporation; Mountain View Mortgage Company	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BALTA 2006-7	Homebanc Mortgage Corporation; American Home Mortgage Corporation; First NLC Financial Services LLC; First Magnus Financial Corporation; Mountain View Mortgage Company; Franklin Bank Corporation; American Mortgage and Financial Services; American Mortgage Resources; Realty Mortgage Corporation; The Mortgage Company; Delta Funding Corporation; Choice Capital Funding; United Financial Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BALTA 2007-1	American Home Mortgage Corporation; First NLC Financial Services LLC; Franklin Bank Corporation; Mountain View Mortgage Company; First Magnus Financial Corporation; Homebanc Mortgage Corporation; ComUnity Lending, Inc.; Realty Mortgage Corporation; Cameron Financial Group, Inc.; Home Capital Funding, Inc.; United Financial Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BALTA 2007-2	Bear Stearns Residential Mortgage Corporation; Franklin Bank Corporation; First Magnus Financial Corporation; American Home Mortgage Corporation; ComUnity Lending, Inc.; Homebanc Mortgage Corporation; Mountain View Mortgage Company; First NLC Financial Services LLC; Realty Mortgage Corporation; Home Capital Funding, Inc.; United Financial Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BALTA 2007-3	Bear Stearns Residential Mortgage Corporation; First Magnus Financial Corporation; ComUnity Lending, Inc.; American Home Mortgage Corporation; Mountain View Mortgage Company; Franklin Bank Corporation; First NLC Financial Services LLC; Homebanc Mortgage Corporation; American Mortgage and Financial Services; American Mortgage Resources; Realty Mortgage Corporation; Home Capital Funding, Inc.; Cameron Financial Group, Inc.; United Financial Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BSMF 2006-AR1	Bear Stearns Residential Mortgage Corporation; Mountain View Mortgage Company; Home Capital Funding, Inc.	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BSMF 2006-AR2	Bear Stearns Residential Mortgage Corporation; Mountain View Mortgage Company; American Home Mortgage Corporation; Homebanc Mortgage Corporation; ComUnity Lending, Inc.; Cal Coast Mortgage Corporation; Home Capital Funding, Inc.; Realty Mortgage Corporation; United Financial Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BSMF 2006-AR3	Bear Stearns Residential Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BSMF 2006-AR5	Bear Stearns Residential Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BSMF 2007-AR1	Bear Stearns Residential Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
BSMF 2007-AR4	Bear Stearns Residential Mortgage Corporation; ComUnity Lending, Inc.; Aegis Mortgage Corporation; American Home Mortgage Corporation; Home Capital Funding, Inc.	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
BSMF 2007-AR5	Bear Stearns Residential Mortgage Corporation; ComUnity Lending, Inc.; Aegis Mortgage Corporation; Loan Link Financial Services; Realty Mortgage Corporation; Cameron Financial Group, Inc.	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
JPALT 2006-A3	American Home Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; J.P. Morgan Acceptance Corporation I; J.P. Morgan Mortgage Acquisition Corp.; JPMorgan Chase & Co.; JPMorgan Securities Holdings, LLC
JPALT 2007-A2	Alliance Bancorp, Inc.; American Home Mortgage Corporation; ComUnity Lending, Inc.; Loan Link Financial Services	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; J.P. Morgan Acceptance Corporation I; J.P. Morgan Mortgage Acquisition Corp.; JPMorgan Chase & Co.; JPMorgan Securities Holdings, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
LUM 2006-3	Bear Stearns Residential Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; The Bear Stearns Companies, LLC
LUM 2006-7	American Home Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; The Bear Stearns Companies, LLC
NAA 2007-3	American Home Mortgage Corporation	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; The Bear Stearns Companies, LLC
SAMI 2005-AR3	Aegis Mortgage Corporation; Homebanc Mortgage Corporation; Home Capital Funding, Inc.	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC
SAMI 2005-AR6	Home Capital Funding, Inc.	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

Offering	**Originator(s) in Bankruptcy**	**Underwriter/ Seller**	**Removing Defendant(s) Named By Plaintiff**
SAMI 2006-AR4	Bear Stearns Residential Mortgage Corporation; ComUnity Lending, Inc.; Loan Link Financial Services; Home Capital Funding, Inc.	J.P. Morgan Securities, LLC	J.P. Morgan Securities, LLC; Structured Asset Mortgage Investments II, Inc.; EMC Mortgage Corporation; The Bear Stearns Companies, LLC

19. The above-identified originators of the mortgages backing the PLMBS listed above (the Originators) made certain written representations to the Removing Defendants regarding the Originators respective loan underwriting standards and the nature of mortgage loan collateral for each of the PLMBS identified in paragraph 14, above. Each of the Originators is engaged in ongoing bankruptcy proceedings.

20. On May 1, 2009, Accredited Home Lenders Holding Co., the parent holding company of Bear Stearns Residential Mortgage Corporation, filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, *In re Accredited Home Lenders Holding Co., et al.*, Case No. 09-11516.

21. On January 18, 2008, First NLC Financial Services LLC filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Florida, *In re First NLC Financial Services, LLC*, Case No. 08-10632.

22. On August 9, 2007, Homebanc Mortgage Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court

for the District of Delaware, *In re Homebanc Mortgage Corporation*, Case No. 07-11079-KJC.

23. On August 6, 2007, the American Home Mortgage Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, *In re American Home Mortgage Corporation*, Case No. 07-11051.

24. On June 8, 2007, Oak Street Mortgage LLC filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Indiana, *In re Oak Street Mortgage LLC*, Case No. 07-05279.

25. On July 13, 2007, Alliance Bancorp, Inc., f/k/a United Financial Mortgage Corp., filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, *In re Alliance Bancorp.*, Case No. 07-10943.

26. On December 28, 2006, OwnIT Mortgage Solutions, Inc. filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Central District of California, *In re OwnIT Mortgage Solutions, Inc.*, Case No 06-12579.

27. On January 4, 2008, ComUnity Lending, Inc., d/b/a/ American Mortgage and Financial Services and American Mortgage Resources, filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of California, *In re ComUnity Lending, Inc.*, Case No. 08-50030.

28. On August 21, 2007, First Magnus Financial Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Arizona, *In re First Magnus Financial Corporation*, Case No. 07-01578.

29. On August 13, 2007, Aegis Mortgage Corporation filed a voluntary

petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, *In re Aegis Mortgage Corporation, et al.*, Case No. 07-11119.

30. On October 5, 2006, Cal Coast Mortgage Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of California, *In re Cal Coast Mortgage Corporation*, Case No. 06-02981.

31. On November 12, 2008, Franklin Bank Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, *In re Franklin Bank Corporation*, Case No. 08-12924.

32. On August 31, 2007, Lancaster Mortgage Bankers, LLC filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey, *In re Lancaster Mortgage Bankers, LLC*, Case No. 07-22479.

33. On June 18, 2010, Mountain View Mortgage Company filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Nevada, *In re Mountain View Mortgage Company*, Case No. 10-21356.

34. On February 13, 2010, Loan Link Financial Services filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Central District of California, *In re Loan Link Financial Services, Inc.*, Case No. 10-11777.

35. On February 19, 2008, Cameron Financial Group, Inc. filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Central District of California, *In re Cameron Financial Group, Inc.*, Case No. 08-10322.

36. On July 5, 2007, Choice Capital Funding, Inc. filed a voluntary petition

for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Georgia, *In re Choice Capital Funding, Inc.*, Case No. 07-70717.

37. On December 17, 2007, Delta Funding Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of California, *In re Delta Funding Corporation*, Case No. 07-11881.

38. On November 9, 2010, Home Capital Funding, Inc. filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of California, *In re Home Capital Funding, Inc.*, Case No. 10-19896.

39. On February 18, 2009, Realty Mortgage Corporation filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Mississippi, *In re Realty Mortgage Corporation*, Case No. 09-00544.

40. On February 13, 2008, Maverick Residential Mortgage Inc. a/k/a The Mortgage Company, filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Texas, *In re Maverick Residential Mortgage Inc.*, Case No. 08-40352.

41. Pursuant to agreements containing certain indemnification provisions for the benefit of the Removing Defendants, among others, and pursuant to statutory and common law, the Originators owe the Removing Defendants indemnification and/or contribution for any claims arising from actual or alleged material misstatements or omissions made by the Originators regarding the mortgage loans at issue, as well as certain legal expenses arising from such claims.

42. This action is related to the bankruptcies listed in ¶¶ 17-37 above because the Originators owe indemnity and/or contribution obligations to the Removing Defendants.

Such obligations could affect the property of the debtor, and thus give rise to "related to" jurisdiction under 28 U.S.C. § 1334(b). This action therefore may be removed to this Court by the Removing Defendants pursuant to 28 U.S.C. § 1452(a). *Garcia-Quintero*, 1997 WL 157744, at *2; *New England Wood Pellet, LLC v. New England Pellet, LLC*, 419 B.R. 133, 142-44 (D.N.H. 2009); *Kropp v. Lawrence*, No. Civ. 05-51-B-W, 2005 WL 757607, at *1 (D. Me. Mar. 31, 2005).

OTHER PROCEDURAL REQUIREMENTS

43. Promptly upon the filing of this Notice of Removal, a true copy of this Notice of Removal will be provided to all adverse parties pursuant to 28 U.S.C. § 1446(d). Pursuant to Fed. R. Civ. P. 5(d), the Removing Defendants will file with this Court a Certificate of Service of Notice to Adverse Parties of Removal to Federal Court.

44. Concurrently with the filing of this Notice of Removal, the Removing Defendants are filing a Notification of Filing of Notice of Removal with the clerk of the Superior Court for the Commonwealth of Massachusetts, Suffolk County in accordance with 28 U.S.C. § 1446(d).

45. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

46. As required under Rule 9027(a)(1) of the Federal Rules of Bankruptcy Procedure, the Removing Defendants state that the claims asserted against them are non-core, within the meaning of 28 U.S.C. § 157(b), and that they do not consent to entry of final orders or judgments by the bankruptcy judge.

47. By filing this Notice of Removal, the Removing Defendants do not waive any defense that may be available to any of them and do not concede that the allegations in the Complaint state a valid claim under applicable law.

WHEREFORE, the Removing Defendants respectfully request that the State Court Action now pending in the Superior Court for the Commonwealth of Massachusetts, Civil Action No. 11-1533-BLS1, be removed therefrom to this Court.

BINGHAM McCUTCHEN LLP

/s/ Nikki Jean Fisher

Beth I.Z. Boland (BBO #553654)
Nikki Jean Fisher (BBO #660268)
One Federal Street
Boston, Massachusetts 02110
Tel: (617) 951-8000
Fax: (617) 951-8736
beth.boland@bingham.com
nikki.fisher@bingham.com

Of Counsel:

Kenneth I. Schacter
Theo J. Robins
399 Park Avenue
New York, New York 10022
Tel: (212) 705-7000
Fax: (212) 753-5378
kenneth.schacter@bingham.com
theo.robins@bingham.com

Attorneys for Defendants Bear Stearns Asset Backed Securities I, LLC, EMC Mortgage Corporation, J.P. Morgan Acceptance Corporation I, J.P. Morgan Mortgage Acquisition Corp., J.P. Morgan Securities, LLC (f/k/a Bear, Stearns & Co. Inc. and J.P. Morgan Securities, Inc.), JPMorgan Chase & Co., JPMorgan Securities Holdings, LLC, Structured Asset Mortgage Investments II, Inc., The Bear Stearns Companies, LLC (f/k/a The Bear Stearns Companies Inc.), and WaMu Capital Corp.

Dated: May 26th, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel of record for plaintiffs by electronic mail and by first class mail and, pursuant to agreement, upon counsel of record for all defendants by electronic mail on May 26th, 2011.

/s/ Nikki Jean Fisher
Nikki Jean Fisher

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT DEPARTMENT

FEDERAL HOME LOAN BANK OF BOSTON,

Plaintiff,

v.

ALLY FINANCIAL, INC. F/K/A GMAC LLC; BANC OF AMERICA FUNDING CORPORATION; BANK OF AMERICA CORPORATION; BANK OF AMERICA, NATIONAL ASSOCIATION; BARCLAYS CAPITAL INC.; BARRY J. O'BRIEN; BCAP LLC; BEAR STEARNS ASSET BACKED SECURITIES I LLC; CAPITAL ONE FINANCIAL CORPORATION; CAPITAL ONE, NATIONAL ASSOCIATION; CHEVY CHASE FUNDING LLC; CHRISTOPHER M. O'MEARA; CITICORP MORTGAGE SECURITIES, INC.; CITIGROUP FINANCIAL PRODUCTS, INC.; CITIGROUP GLOBAL MARKETS INC.; CITIGROUP GLOBAL MARKETS REALTY CORP.; CITIGROUP INC.; CITIGROUP MORTGAGE LOAN TRUST INC.; CITIMORTGAGE, INC.; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS, INC.; COUNTRYWIDE SECURITIES CORP.; CREDIT SUISSE (USA), INC.; CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP.; CREDIT SUISSE HOLDINGS (USA), INC.; CREDIT SUISSE SECURITIES (USA) LLC; CWALT, INC.; CWMBS, INC.; DB STRUCTURED PRODUCTS, INC.; DB U.S. FINANCIAL MARKET HOLDING CORPORATION; DEUTSCHE ALT-A SECURITIES, INC.;

Civil Action No.: 11-1533

COMPLAINT FOR RESCISSION AND DAMAGES AND DEMAND FOR JURY TRIAL

RECEIVED
APR 20 2011
SUPERIOR COURT - CIVIL
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

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HOLDINGS, INC.; RBS SECURITIES INC. F/K/A GREENWICH CAPITAL MARKETS, INC.; RESIDENTIAL ACCREDIT LOANS, INC.; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION; RICHARD MCKINNEY; RICHARD S. FULD, JR.; SAMIR TABET; SANDLER O'NEILL + PARTNERS, L.P.; STANDARD & POOR'S FINANCIAL SERVICES LLC; STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.; THE BEAR STEARNS COMPANIES LLC F/K/A THE BEAR STEARNS COMPANIES INC.; THE MCGRAW-HILL COMPANIES, INC.; UBS AMERICAS INC.; UBS REAL ESTATE SECURITIES INC.; UBS SECURITIES LLC; WAMU CAPITAL CORP.; WELLS FARGO & COMPANY; WELLS FARGO ASSET SECURITIES CORPORATION; WELLS FARGO BANK, NATIONAL ASSOCIATION; and DEFENDANTS JOHN DOE 1-50,

Defendants.

COMPLAINT FOR RESCISSION AND DAMAGES AND DEMAND FOR JURY TRIAL

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Plaintiff, FEDERAL HOME LOAN BANK OF BOSTON (hereinafter the "Bank") alleges the following based upon personal knowledge with regard to its own acts, and upon public information as well as information and belief as to all other matters. The Bank's information and belief is based on, among other things, the investigation by its counsel. The investigation included but was not limited to: (1) review and analysis of the Offering Documents for the securities that are the subject of this action; (2) interviews with individuals with first-hand knowledge of the events alleged herein; (3) examination of relevant filings with the Securities and Exchange Commission ("SEC"), press releases and other public statements; (4) review and analysis of pleadings in other private civil actions involving certain Defendants; (5) review and analysis of investigations and complaints filed by state and federal authorities against certain Defendants; (6) published materials, media reports, congressional testimony and additional related materials; (7) analysis of the performance and composition of the loan pools underlying the securities; and (8) review of origination files for loans underlying certain of the securities to which the Bank recently has been provided access. Many of the facts related to Plaintiff's allegations are known only by the Defendants, or are exclusively within their custody or control, including, for example, the loan origination files to which the Bank has not been provided access. Plaintiff believes that substantial additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION

1. The action arises from the sale by certain Defendants to the Bank of over $5.9 billion in Private Label Mortgage-Backed Securities ("PLMBS" or "Certificates"). The Certificates are "securities" within the meaning of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, § 401(k). The Defendants include the Sponsors, Depositors/Issuers, and

Underwriters who packaged, marketed, offered, and sold the Certificates to the Bank ("Securities Defendants").

2. The Certificates were sold to the Bank by means of registration statements, prospectuses, supplemental prospectuses, private placement memoranda and other written offering materials (collectively, the "Offering Documents") that the Securities Defendants wrote, signed, and/or circulated, and which contained untrue statements of material facts and omitted to state material facts necessary in order to make the Offering Documents not misleading.[1]

3. Accordingly, the Bank seeks rescission and damages under M.G.L. c. 110A, § 101 *et seq.* (the Massachusetts Uniform Securities Act), M.G.L. c. 93A, § 1 *et seq.*, and applicable common law.

4. The Bank purchased the PLMBS in reliance on the ratings assigned to them by Fitch Inc.; The McGraw-Hill Companies, Inc. and Standard & Poor's Financial Services LLC; and Moody's Investors Service, Inc. and Moody's Corporation ("Rating Agency Defendants"). The Rating Agency Defendants issued these ratings knowing that the ratings were unreliable and lacked a sufficient basis in fact, and they issued the ratings without due care. The Bank seeks appropriate relief against the Rating Agency Defendants under M.G.L. c. 93A, § 1 *et seq.* and applicable common law.

[1] Attached as Appendix I is a list of the PLMBS purchased by the Bank that are the subject of this action. One of the certificates, MARM 2007-R5, is not directly backed by a mortgage pool, but rather constitutes an investment in a separate PLMBS, BALTA 05-09-2B, and is therefore backed indirectly by the pool of mortgages that back BALTA 05-09-2B.

II. EXECUTIVE SUMMARY

A. PLMBS Defined.

5. PLMBS are mortgage pass-through Certificate securities entitling the holder to income payments from pools of mortgage loans.[2] The securities are referred to as "private label" because they are issued by private entities instead of the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which are U.S. government-sponsored enterprises ("GSEs"). (Mortgage securities issued or guaranteed by Fannie Mae and Freddie Mac are referred to as "agency" mortgage securities.)

6. The value of a mortgage pass-through Certificate depends on the ability of borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral the borrowers provide. In the event that borrowers fall behind or default, the investor is exposed to loss. For this reason, statements regarding the nature and extent of the underwriting guidelines utilized by the mortgage originators who issued the loans backing the PLMBS and the collateral for the loans are critically important to investors such as the Bank. If stated underwriting criteria are not followed, the collateral is not properly appraised, or the creditworthiness of the borrower is not accurately measured, the Certificates are riskier and more likely to result in losses than is apparent from the Offering Documents.

B. The Bank Purchased Only the Highest Rated (Triple-A-Rated) PLMBS.

7. PLMBS are segmented into "tranches" with laddered payment priority and varying return potential for the holders of certificates representing various tranches. The most senior tranches enjoy the highest payment priority and lowest risk of default. Thus, if mortgage payments are not made, the losses are allocated first to the most junior tranches and move toward

[2] The terms "PLMBS" and "Certificate(s)" are used interchangeably. The Bank identifies the PLMBS using the ticker symbols for each certificate as created by Bloomberg.

the more senior tranches as losses cause the junior tranches to be exhausted. The senior tranches often are protected as well by certain credit enhancements, a common form of which is known as "overcollateralization." When a tranche is overcollateralized, the mortgages in that tranche have an aggregate principal balance that exceeds the aggregate principal balances of the Certificates secured thereby. For these reasons, the tranches are given different credit ratings—the higher up the ladder, the higher the rating.

8. Pursuant to both Bank policy and applicable regulatory requirements, and in order to minimize the risk of loss on the PLMBS, the Bank purchased only senior, triple-A-rated PLMBS tranches. Thus, based on the Offering Documents, the Bank believed it was buying safe and secure Certificates with an extremely low risk of default—equivalent, from an investment quality standpoint, to other triple-A-rated investments. Instead, the Bank purchased a toxic stew of PLMBS backed by doomed mortgage loans.

C. The Mortgage Originators Who Issued Loans Backing the Certificates Abandoned Underwriting Guidelines and Issued Loans Without Ensuring the Borrowers' Ability to Pay and Without Sufficient Collateral.

9. The Bank did not know when it purchased the Certificates that the mortgage originators who made the loans backing the PLMBS, many of whom were affiliates of the Securities Defendants, sought to issue as many loans as possible to feed these Defendants' securitization machine. Whether borrowers could repay the loans and the quality of the collateral became secondary considerations to the originators' ability to sell the pooled interests on the loans. The mortgage loan originators' standard operating procedure was to approve any loan that could be sold into the secondary mortgage market. As a result, unbeknownst to the Bank, exceptions to underwriting and appraisal standards became the norm. Likewise, the originators knowingly obtained flawed appraisals of the collateral for the loans. Rather than requiring appraisals conducted in accordance with governing federal appraisal regulations, the

mortgage originators pressured and coerced appraisers to ensure that the appraisals came back "at value," *i.e.*, the level necessary to close the loan. Consequently, the collateral for the loan pools backing the Certificates purchased by the Bank was vastly deficient.

10. The Bank also did not know that the Securities Defendants failed to ensure that the loans they purchased and packaged into the Certificates complied with the mortgage originators' stated underwriting guidelines and appraisal standards. As revealed in recent government investigations, this approach to securitization was labeled "IBGYBG"—"I'll be gone, you'll be gone." Lost in this process was any effort by the Securities Defendants to truthfully and accurately describe the loans in the Offering Documents so that investors such as the Bank could ascertain the true risk of the Certificates. Making matters even more egregious, the Securities Defendants conducted a certain amount of due diligence on the loans, and were in a position to know that no real underwriting had been done.

D. The Defendants Provided Misleading Information About the Certificates in the Offering Documents They Prepared and Provided to the Bank.

11. In many arm's-length transactions, a buyer and a seller have limited disclosure obligations—buyer beware, or *caveat emptor*, is acceptable. This, however, is not the case with the sale of securities. Those who participate in the sale of securities are required to provide detailed information regarding what is being sold. Here, as required by law, the Defendants prepared detailed Offering Documents in which they purported to describe among other things the characteristics of the loans backing the Certificates. However, unbeknownst to the Bank, and to its great detriment, the Offering Documents contained material misstatements and omitted to disclose material information with respect to the mortgage pools backing the Certificates, and what Defendants knew about the pools. As a result, despite their original triple-A ratings and the

abundant representations and warranties regarding the underlying mortgage pools, the Certificates were far riskier than could be determined from the Offering Documents.

12. Though the Certificates themselves are complex, the abuses by the Defendants can be put in simple terms. The Offering Documents did not provide truthful or accurate information about the underwriting and appraisal standards used when the loans backing the pools were issued, or about the due diligence conducted when the loans were securitized.

13. Defendants' untrue statements and omissions of material fact went to the heart of the risk of the mortgage pools underlying the PLMBS. Specifically, Defendants failed to accurately describe key characteristics of the mortgages and the securitization of the mortgages, including, but not limited to:

a. **The Mortgage Originators' Underwriting Guidelines.** The Offering Documents contained material misstatements and omitted material information regarding the mortgage originators' abandonment of underwriting guidelines. The Defendants represented that the mortgage originators applied their stated underwriting guidelines when issuing loans to borrowers. However, the mortgage originators routinely disregarded their own guidelines and granted exceptions without proper justification.

b. **The Loan-to-Value Ratios of the Mortgage Loans and the Appraisal Standards Used to Determine the Ratios.** The Offering Documents contained material misstatements and omitted material information regarding the loan-to-value ratios ("LTVs") of the loans in the mortgage pools and the appraisal standards that were purportedly applied to determine the home values. The LTVs were purportedly based on valid appraisals performed in accordance with specific regulations and standards—but in truth, they were not based on legitimate appraisals at all. They were predetermined values set to ensure that the loan would close.

c. **The Ratings Process.** The Offering Documents contained material misstatements and omitted material information regarding the basis for the Certificates' triple-A ratings and the ratings processes. The Offering Documents represented that the Rating Agency Defendants conducted analysis that was designed to assess the likelihood of delinquency and defaults in the underlying mortgage pools. However, the Rating Agency Defendants knew, and the Securities Defendants should have known, that the ratings were based on unreliable data and faulty assumptions—all of which caused the ratings to vastly understate the true risk of the PLMBS and overstate their creditworthiness.

d. **Predatory Lending.** The Offering Documents contained material misstatements and omitted material information regarding the mortgage originators' compliance with state and federal predatory lending prohibitions. Pursuant to the Bank's regulatory requirements, it was not permitted to purchase any mortgage-backed securities that were secured by mortgage loans that violated these prohibitions. The Defendants represented that the mortgage pools did not contain any mortgage loans that violated state and federal predatory lending prohibitions. However, in truth, the mortgage originators engaged in rampant predatory lending, and, thus, the mortgage pools contained many loans that violated state and federal predatory lending restrictions.

e. **Due Diligence.** Many of the Offering Documents contained material misstatements and omitted material information regarding the Sponsors' due diligence on the mortgage loans in the PLMBS mortgage pools. The Offering Documents stated that the underlying mortgage loans were inspected for compliance with the mortgage originators' underwriting and appraisal guidelines and documentation requirements. However, the Offering Documents omitted that the third-party due diligence firms retained to conduct the due diligence felt pressured to ignore deviations from the applicable underwriting criteria, and that even with regard to loan defects identified through the due diligence process, the Sponsors nonetheless waived the defects as to a substantial percentage of these loans and, in many cases, used this information about defective loans to negotiate lower prices for the loan pools. These lower prices were not reflected in the PLMBS prices paid by investors.

f. **Enforceability of Mortgages.** Many of the Offering Documents contained material misstatements regarding the measures taken to ensure the enforceability of the mortgages and mortgage loans transferred to the trusts. In order for a mortgage to be enforced, basic steps need to be taken to validly assign the mortgage and mortgage loan to the trust and ensure that the trustee has the proper papers. These basic steps, and the representations made about these steps, were critical to investors (including the Bank), because if a mortgage cannot be enforced, then the mortgage loans, and the Certificates dependent on these loans, are worthless. The Offering Documents failed to disclose that in fact basic steps regarding the transfer of mortgages and mortgage loans were not followed—mortgage loans were not validly assigned, and papers necessary to ensure enforceability of the mortgage were never transferred to the trustee.

g. **The Offering Documents Did Not Disclose the Compounded High-Risk Mortgages that Infected the Mortgage Pools.** The Offering Documents contained certain statistical measurements of the overall mortgage pools, including measurements of the pools' weighted average LTVs, credit scores, and debt-to-income ratios ("DTIs"). In addition to the material inaccuracy of much of this data, the Offering Documents did not disclose the compounding of risks in many mortgages in the pools. The representations in the Offering Documents indicated that a high risk according to one measure (say, a bad credit score) would be offset by a low risk according to another measure (say, a good LTV). If the Offering Documents were accurate, then, the mortgage pools would contain few if any mortgages with *compounded* high risks—with, for example, a bad credit score *and* a bad LTV. But analysis of the loans in the mortgage pools shows otherwise. Many of the mortgage loans in the pools in fact contained

multiple risky factors. The undisclosed presence of a significant volume of loans with these characteristics made the Certificates much more prone to default than the Offering Documents indicated. The prevalence of these compounded high-risk loans tainted the loan pools and contributed substantially to the decline in performance and value of the Certificates.

14. The untrue, incomplete and materially misleading statements summarized above and discussed in detail below were made with respect to each of the Certificates purchased by the Bank. The Bank reasonably relied on these statements and was misled by the omissions when deciding to purchase the Certificates.

15. As a result of these untrue statements in and omissions from the Offering Documents, the Bank purchased Certificates that were far riskier than represented by the Defendants, and that were not in truth "highest investment grade" as stated in the Offering Documents, but, instead, were low-quality, high-risk Certificates. All but two of the 115 Certificates have been downgraded to below investment-grade, *i.e.*, "junk," indicating a high probability of default.

E. The Bank Is Entitled to Rescission and Damages.

16. As indicated above, and described in detail below, it is not happenstance, or the result of later events, that the PLMBS failed to perform, plunged in value, and were ultimately severely downgraded. To the contrary, the PLMBS purchased by the Bank collapsed because the underlying loans were not what the Offering Documents represented them to be at the time the Certificates were issued. They were *not* backed by pools of loans issued to borrowers based on the application of stated underwriting standards. Exceptions to underwriting guidelines were *not* justified by "compensating circumstances." Valid appraisals of the collateral for the loans were *not* performed. The Securities Defendants did *not* engage in appropriate and effective due diligence to ensure that the loans satisfied the originators' stated underwriting guidelines.

17. Because the Offering Documents were marred by material misstatements and omissions that concealed the true risk of the Certificates, the Bank is entitled to rescission and such other make-whole relief afforded by applicable law.

18. The fair value of these Certificates has also declined dramatically. Moreover, as a result of the current and anticipated future poor performance of the mortgages underlying these Certificates, the Bank has incurred other-than-temporary impairment losses on these investments, resulting in hundreds of millions of dollars in losses.

19. Accordingly, the Bank seeks relief from Defendants in the manner set forth herein.

III. JURISDICTION AND VENUE

20. This Court has jurisdiction over the claims alleged in this action.

21. This is an action for rescission and damages in an amount exceeding $25,000.

22. Massachusetts law applies to Plaintiff's state law claims that arise under the Massachusetts Uniform Securities Act and under the common law of Massachusetts, because the Bank's claims arise from its transaction of business with Defendants in Massachusetts.

23. The Defendants are subject to personal jurisdiction in Massachusetts pursuant to M.G.L. c. 223A, § 3, because the Bank's claims against Defendants arise from Defendants' transaction of business within Massachusetts.

24. As set forth in Appendix X attached to this Complaint, numerous Defendants are or were at the relevant time registered to do business in Massachusetts and have thereby submitted to the jurisdiction of this Commonwealth.

25. Because its activities are not localized in one state, the Bank is not a citizen of any state under 28 U.S.C. § 1332(c).

26. Venue is proper in this County pursuant to M.G.L. c. 223, § 8(2), (4).

27. The Bank asserts no claims in this action against any entity that has filed for bankruptcy protection.

IV. THE PARTIES

A. Plaintiff

28. The Bank was created by the Federal Home Loan Bank Act of 1932. The Bank is a cooperative bank created to promote housing finance opportunities for Americans of all income levels. For more than 75 years, the Bank has pursued that public policy mission by loaning money at competitive rates to member financial institutions, which helps those members make home loans available to prospective home buyers.

29. The headquarters of the Bank are in Boston, Suffolk County, Massachusetts. Under its Organization Certificate, the Bank is to operate in Federal Home Loan Bank District 1, which comprises the states of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont. The Bank conducts business in each of these six states, and its member institutions are headquartered in and conduct business in each of them. From time to time, the Bank also conducts business with the other eleven Federal Home Loan Banks.

30. The Bank's operations are principally funded by its earnings and funds raised by issuing debt instruments (bonds and notes) in the capital markets through the Office of Finance, a joint Federal Home Loan Bank office in Virginia.

31. The Bank is capitalized solely by the capital-stock investments of its members and by its retained earnings.

32. The Bank's members are all private institutions eligible for membership, including banks, savings banks, savings and loan associations, cooperative banks, credit unions, and insurance companies.

33. The Bank is not a federal agency, and the Bank is not a citizen of any state. The Bank is federally chartered, but privately capitalized and independently managed. The federal government is not involved in the day-to-day management of the Bank's operations. Management of the Bank is vested by law in the Bank's board of directors, all members of which are either elected by the Bank's shareholder members or, in the case of a vacancy, appointed by the board of directors. No tax dollars are involved in the operation of the Bank, and the federal government does not own any of the Bank's stock.

34. The Bank is supervised and examined by the Federal Housing Finance Agency, the successor to the Federal Housing Finance Board.

35. The members of the Bank's board of directors reside in Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.

36. In light of its public policy mission, the Bank has a very conservative investment philosophy. The Bank bought the PLMBS on the basis of factual representations designed to convince the Bank that these securities were safe, prudent, and highly rated investments. The Bank could not and would not have purchased the PLMBS if the Offering Documents had disclosed the truth about these securities and the mortgage loans that backed them.

B. Defendants

1. The Banc of America Entities

37. Depositor/Issuer Defendant Banc of America Funding Corporation is a Delaware corporation. Banc of America Funding Corporation was the Depositor for Certificates BAFC 2006-D 1A1 and BAFC 2005-H 7A1.

38. Underwriter and Corporate Seller[3] Non-Defendant Banc of America Securities LLC was a Delaware limited liability company that, during the relevant period, maintained a

[3] See footnote 4 below for a definition of the term "Corporate Seller."

securities broker-dealer Financial Institutions Regulatory Authority ("FINRA") registration in Massachusetts and was registered to do business in Massachusetts. Banc of America Securities LLC underwrote Certificates NAA 2007-3 A1, BAFC 2006-D 1A1 and BAFC 2005-H 7A1. Banc of America Securities LLC also sold Certificate WFMBS 2006 AR12 1A1 to the Bank. Effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. *See infra* § III.C. All references herein to Banc of America Securities LLC are also to Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

39. Sponsor Defendant Bank of America, National Association is a nationally chartered bank that operates branches throughout Massachusetts and is regulated by the Office of the Comptroller of the Currency (OCC). Bank of America, National Association was the Sponsor of the offerings in which the bank purchased Certificates BAFC 2005-H 7A1 and BAFC 2006-D 1A1. Bank of America, National Association was also an originator of loans for the offering in which the bank purchased Certificate BAFC 2006-D 1A1.

40. Controlling Person Defendant Bank of America Corporation is a Delaware corporation. Bank of America Corporation is the parent and a controlling entity of Banc of America Funding Corporation, Banc of America Securities LLC and Bank of America, National Association.

41. Bank of America Corporation is also named as a Successor Defendant to CWALT, Inc., CWMBS, Inc., Countrywide Securities Corporation, Countrywide Home Loans, Inc. and Countrywide Financial Corporation. *See infra* § IV.C. As set forth below, on or about

July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and all of its subsidiaries, including CWALT, Inc., CWMBS, Inc., Countrywide Securities Corporation, and Countrywide Home Loans, Inc.

42. Bank of America Corporation is also named as a Successor Defendant to Merrill Lynch Mortgage Investors, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch & Co., Inc. *See infra* § IV.C. As set forth below, on or about January 1, 2009, Successor Defendant Bank of America Corporation acquired Merrill Lynch & Co., Inc. and all of its subsidiaries, including Merrill Lynch Mortgage Investors, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Merrill Lynch Mortgage Lending, Inc.

2. The Barclays Entities

43. Depositor/Issuer Defendant BCAP LLC is a Delaware corporation. BCAP LLC was the Depositor for Certificate BCAP 2006-AA1 A1.

44. Underwriter Defendant Barclays Capital Inc. is a Connecticut corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Barclays Capital Inc. underwrote Certificates RALI 2007-QS6 A29, CCMFC 2006-2A A1, CCMFC 2007-1A A1, CCMFC 2007-2A A1, LUM 2006-7 2A1, LUM 2006-6 A1, and BCAP 2006-AA1 A1.

3. The Bear Stearns Entities

45. Depositor/Issuer Defendant Bear Stearns Asset Backed Securities I LLC is a Delaware limited liability company. Bear Stearns Asset Backed Securities I LLC was the Depositor for Certificate BALTA 2006-1 11A1.

46. Depositor/Issuer Defendant Structured Asset Mortgage Investments II Inc. is a Delaware corporation. Structured Asset Mortgage Investments II Inc. was the Depositor for

Certificates BSMF 2007-AR5 1A1A, BALTA 2007-3 1A1, BSMF 2007-AR4 1A1, BALTA 2007-2 1A1, BALTA 2007-1 1A1, BSMF 2007-AR1 1A1, BSMF 2006-AR5 1A1, BALTA 2006-7 1A1, BSMF 2006-AR3 1A1, BSMF 2006-AR2 1A1, BALTA 2006-6 1A1, SAMI 2006-AR7 A1A, BSMF 2006-AR1 1A1, BALTA 2006-5 1A1, SAMI 2006-AR4 4A1, SAMI 2006-AR6 1A1, BALTA 2006-4 11A1, BALTA 2006-4 13A1, LUM 2006-3 11A1, BALTA 2006-3 1A1, BALTA 2006-2 11A1, BALTA 2005-10 11A1, LUM 2005-1 A1, BALTA 2005-9 11A1, BALTA 2005-8 11A1, SAMI 2005-AR6 2A1, GPMF 2005-AR4 4A1A, SAMI 2005-AR3 1A1, GPMF 2005-AR2 A1, SAMI 2005-AR2 1A1, GPMF 2005-AR1 A2, and GPMF 2006-AR3 4A1.

47. Underwriter and Corporate Seller[4] Defendant Bear, Stearns & Co. Inc., now known as J.P. Morgan Securities, LLC (hereafter "Bear, Stearns & Co. Inc."),[5] is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Bear, Stearns & Co. Inc. maintains its Massachusetts principal office at One Federal Street, Boston, MA 02110. Bear, Stearns & Co. Inc. underwrote Certificates AHM 2005-2 1A1, MHL 2005-5 A1, LUM 2005-1 A1, NAA 2007-3 A1, NAA 2007-1 2A1, LUM 2006-7 2A1, IMM 2005-7 A1,

[4] As used in this Complaint, "Corporate Seller" refers to a corporate entity that sold a particular issuance of PLMBS directly to that Bank, but did not act as an Underwriter for that PLMBS. For example, Bear, Stearns & Co. Inc. acted as a Corporate Seller—but not as an Underwriter—with respect to Certificate NAA2006-AR4A2.

[5] During the fall of 2008, Underwriter Defendant J.P. Morgan Securities Inc. merged with and into Underwriter Defendant Bear Stearns & Co., Inc. The surviving corporation changed its name from Bear Stearns & Co. Inc. to J.P. Morgan Securities Inc. The company changed its name again on or about September 1, 2010, when it converted into J.P. Morgan Securities LLC. For the sake of clarity, Plaintiff refers to this Underwriter Defendant as Bear Stearns & Co., Inc. in connection with all pre-merger acts and omissions of Bear Stearns & Co., Inc. Similarly, Plaintiff refers to this Underwriter Defendant as J.P. Morgan Securities Inc. in connection with all pre-merger acts and omissions of J.P. Morgan Securities Inc. To the extent that Underwriter Defendant J.P. Morgan Securities Inc. has undergone a change in corporate structure and/or ownership through merger, J.P. Morgan Securities LLC remains liable as the initial entity's successor.

LUM 2006-6 A1, BSMF 2007-AR5 1A1A, BALTA 2007-3 1A1, BSMF 2007-AR4 1A1, TMST 2007-1 A2A, BALTA 2007-2 1A1, BALTA 2007-1 1A1, BSMF 2007-AR1 1A1, BSMF 2006-AR5 1A1, BALTA 2006-7 1A1, BSMF 2006-AR3 1A1, BSMF 2006-AR2 1A1, BALTA 2006-6 1A1, SAMI 2006-AR7 A1A, BSMF 2006-AR1 1A1, BALTA 2006-5 1A1, SAMI 2006-AR4 4A1, SAMI 2006-AR6 1A1, IMSA 2006-2 1A2A, BALTA 2006-4 11A1, BALTA 2006-4 13A1, LUM 2006-3 11A1, BALTA 2006-3 1A1, BALTA 2006-2 11A1, BALTA 2006-1 11A1, BALTA 2005-10 11A1, IMSA 2005-2 A1, BALTA 2005-9 11A1, BALTA 2005-8 11A1, SAMI 2005-AR6 2A1, GPMF 2005-AR4 4A1A, SAMI 2005-AR3 1A1, GPMF 2005-AR2 A1, SAMI 2005-AR2 1A1, GPMF 2005-AR1 A2, and CWHL 2005-2 2A1. Bear, Stearns & Co. Inc. also sold Certificate NAA2006-AR4A2 to the Bank.

48. Sponsor Defendant EMC Mortgage Corporation is a Delaware corporation that was and is registered to do business in Massachusetts. EMC Mortgage Corporation was the Sponsor for the offerings in which the Bank purchased Certificates SAMI 2006-AR6 1A1, SAMI 2005-AR6 2A1, SAMI 2005-AR3 1A1, SAMI 2005-AR2 1A1, GPMF 2005-AR4 4A1A, BSMF 2007-AR5 1A1A, BALTA 2007-3 1A1, BSMF 2007-AR4 1A1, BALTA 2007-2 1A1, BALTA 2007-1 1A1, BSMF 2007-AR1 1A1, BSMF 2006-AR5 1A1, BALTA 2006-7 1A1, BSMF 2006-AR3 1A1, BSMF 2006-AR2 1A1, BALTA 2006-6 1A1, SAMI 2006-AR7 A1A, BSMF 2006-AR1 1A1, BALTA 2006-5 1A1, SAMI 2006-AR4 4A1, BALTA 2006-4 11A1, BALTA 2006-4 13A1, BALTA 2006-3 1A1, BALTA 2006-2 11A1, BALTA 2006-1 11A1, BALTA 2005-10 11A1, BALTA 2005-9 11A1, BALTA 2005-8 11A1, GPMF 2005-AR2 A1, GPMF 2005-AR1 A2, and GPMF 2006-AR34A1.

49. Controlling Person Defendant The Bear Stearns Companies Inc. is a Delaware corporation. At the time the Bank acquired the relevant Certificates, The Bear Stearns

Companies Inc. was the parent company and a controlling entity of Bear Stearns Asset Backed Securities I LLC, Structured Asset Mortgage Investments II Inc., Bear, Stearns & Co. Inc., and EMC Mortgage Corporation. At the time of the transactions, The Bear Stearns Companies, Inc. was also the parent company and a controlling entity of Bear Stearns Residential Mortgage Corporation which originated loans for the offerings in which the Bank purchased Certificates BALTA 2007-3 1A1, BALTA 2007-2 1A1, BSMF 2006-AR1 1A1, BSMF 2007-AR4 1A1, BSMF 2007-AR5 1A1A, BSMF 2007-AR1 1A1, BSMF 2006-AR3 1A1, BSMF 2006-AR2 1A1, and BSMF 2006-AR5 1A1. The Bear Stearns Companies, Inc. was also the parent company and a controlling entity of EMC Mortgage Corporation, which originated loans for the offerings in which the bank purchased Certificates BALTA 2007-3 1A1, BALTA 2007-2 1A1, BALTA 2007-1 1A1, BALTA 2006-7 1A1, BALTA 2006-5 1A1, BALTA 2006-3 1A1, BALTA 2006-2 11A1, BALTA 2006-1 11A1, BALTA 2006-4 13A1, BALTA 2006-4 11A1, BALTA 2005-9 11A1, BALTA 2006-6 1A1, BALTA 2005-10 11A1, BSMF 2006-AR5 1A1, BSMF 2006-AR2 1A1, BSMF 2006-AR3 1A1, BSMF 2007-AR1 1A1, LUM 2005-1 A1, BALTA 2005-8 11A1, BSMF 2006-AR1 1A1, BSMF 2007-AR4 1A1 and BSMF 2007-AR5 1A1A. On or about July 6, 2008, The Bear Stearns Companies, Inc. legally changed its name to The Bear Stearns Companies LLC. All references herein to The Bear Stearns Companies, Inc. are also to The Bear Stearns Companies LLC.

4. The Chevy Chase (Capital One) Entities

50. Depositor/Issuer Defendant Chevy Chase Funding LLC is a Delaware limited liability company. Chevy Chase Funding LLC was the Depositor for Certificates CCMFC 2006-2A A1, CCMFC 2007-1A A1, and CCMFC 2007-2A A1.

51. Sponsor and Controlling Person Non-Defendant Chevy Chase Bank, F.S.B. was a federally chartered savings bank that was registered to do business in Massachusetts at the time

of the transactions. Chevy Chase Bank, F.S.B. was the Sponsor for the offerings in which the Bank purchased Certificates CCMFC 2006-2A A1, CCMFC 2007-1A A1 and CCMFC 2007-2A A1. Chevy Chase Bank, F.S.B. was also the parent company and a controlling entity of Chevy Chase Funding LLC and originated loans for the offerings in which the Bank purchased Certificates CCMFC 2006-2A A1, CCMFC 2007-1A A1 and CCMFC 2007-2A A1. During December 2008, Chevy Chase Bank, F.S.B. was acquired by and merged with and into Successor Defendants Capital One Financial Corporation and Capital One, National Association. *See infra* § III.C. All references herein to Chevy Chase Bank, F.S.B. are also to Capital One Financial Corporation and Capital One, National Association, which are liable as a matter of law as successor to Chevy Chase Bank, F.S.B. and its subsidiaries, including Chevy Chase Funding LLC, by virtue of their status as the surviving entities in the acquisition of and merger with Chevy Chase Bank, F.S.B.

5. The Citigroup Entities

52. Depositor/Issuer Defendant Citicorp Mortgage Securities, Inc. is a Delaware corporation. Citicorp Mortgage Securities, Inc. was the Depositor for Certificate CMALT 2007-A4 1A7.

53. Depositor/Issuer Defendant Citigroup Mortgage Loan Trust Inc. is a Delaware corporation. Citigroup Mortgage Loan Trust Inc. was the Depositor for Certificate CMLTI 2005-9 1A1.

54. Underwriter and Corporate Seller Defendant Citigroup Global Markets Inc. is a New York corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Citigroup Global Markets Inc. underwrote Certificates LUM 2007-2 1A1, RALI 2006-QA2 1A1,

and CMLTI 2005-9 1A1. Citigroup Global Markets Inc. also sold Certificates MARM 2005-7 2A1 and GPMF 2006-AR3 4A1 to the Bank.

55. Sponsor Defendant Citigroup Global Markets Realty Corp. is a New York corporation that was and is registered to do business in Massachusetts. Citigroup Global Markets Realty Corp. was the Sponsor for the offering in which the Bank purchased Certificate CMLTI 2005-9 1A1.

56. Sponsor and Controlling Person Defendant CitiMortgage, Inc. is a New York corporation that was and is registered to do business in Massachusetts. CitiMortgage, Inc. was the Sponsor for the offering in which the Bank purchased Certificate CMALT 2007-A4 1A7. CitiMortgage, Inc. is also a parent company and controlling entity of Citicorp Mortgage Securities, Inc. and originated loans for the offering in which the Bank purchased Certificate CMALT 2007-A4 1A7.

57. Controlling Person Defendant Citigroup Financial Products, Inc. is a Delaware corporation and is also a parent company and controlling entity of Citigroup Mortgage Loan Trust Inc., Citigroup Global Markets Inc. and Citigroup Global Markets Realty Corp.

58. Controlling Person Defendant Citigroup Inc. is a Delaware corporation. Citigroup Inc. is the parent company and controlling entity of Citicorp Mortgage Securities, Inc., Citigroup Mortgage Loan Trust Inc., Citigroup Global Markets Inc., Citigroup Global Markets Realty Corp., CitiMortgage, Inc. and Citigroup Financial Products, Inc.

6. The Countrywide Entities

59. Depositor/Issuer Defendant CWALT, Inc. is a Delaware corporation. CWALT, Inc. was the Depositor for Certificates CWALT 2007-OA9 A1, CWALT 2007-OA4 A1, CWALT 2006-OA16 A2, CWALT 2006-OA8 1A1, CWALT 2005-86CB A10, and CWALT 2005-16 A4.

60. Depositor/Issuer Defendant CWMBS, Inc. is a Delaware corporation. CWMBS, Inc. was the Depositor for Certificate CWHL 2005-2 2A1.

61. Underwriter Defendant Countrywide Securities Corporation is a California corporation. Countrywide Securities Corporation underwrote Certificates IMM 2005-7 A1, CWALT 2007-OA9 A1, AHMA 2007-5 A1, AHMA 2007-2 A1, AHMA 2006-6 A1A, CWALT 2006-OA16 A2, IMSA 2006-2 1A2A, CWALT 2005-86CB A10, and IMSA 2005-2 A1.

62. Sponsor Defendant Countrywide Home Loans, Inc. is a New York corporation that was and is registered to do business in Massachusetts. Countrywide Home Loans, Inc. was the Sponsor for the offerings in which the Bank purchased Certificates CWALT 2007-OA9 A1, CWALT 2007-OA4 A1, CWALT 2006-OA16 A2, CWALT 2006-OA8 1A1, CWALT 2005-86CB A10, CWALT 2005-16 A4, and CWHL 2005-2 2A1. Countrywide Home Loans, Inc. also originated loans for the offerings in which the Bank purchased Certificates BALTA 2007-1 1A1, BALTA 2006-7 1A1, BALTA 2006-5 1A1, BALTA 2006-2 11A1, MARM 2005-7 2A1, CWALT 2007-OA9 A1, CWALT 2007-OA4 A1, CWALT 2006-OA8 1A1, CWALT 2005-86CB A10, CWALT 2005-16 A4, CWHL 2005-2 2A1, DBALT 2006-AR4 A1, BALTA 2006-4 11A1, DBALT 2006-AR3 A2, JPALT 2006-A2 1A1, BAFC 2005-H 7A1, HVMLT 2007-1 2A1A, BCAP 2006-AA1 A1, SAMI 2006-AR7 A1A, SAMI 2006-AR6 1A1, HVMLT 2005-10 2A1A, BAFC 2006-D 1A1, SAMI 2005-AR2 1A1, SAMI 2006-AR4 4A1, CWALT 2006-OA16 A2, MARM 2005-8 1A1, ARMT 2006-3 4A2, ARMT 2007-2 2A21, BALTA 2005-9 11A1, LUM 2005-1 A1, ARMT 2006-1 6A1, BALTA 2006-6 1A1, and LUM 2006-6 A1.

63. Controlling Person Defendant Countrywide Financial Corporation is a Delaware corporation. At the time the Bank acquired the relevant Certificates, Countrywide Financial Corporation was a holding company which, through its subsidiaries, was engaged in mortgage

lending and other real estate finance-related businesses, including mortgage banking, banking and mortgage warehouse lending, dealing in securities and insurance underwriting. Countrywide Financial Corporation managed its business through five business segments: Mortgage Banking; Banking; Capital Markets; Insurance; and Global Operations. The Mortgage Banking segment was Countrywide Financial Corporation's core business and generated 48% of the Countrywide Financial Corporation's pre-tax earnings in 2006. Countrywide Financial Corporation is the parent company and a controlling entity of CWALT, Inc., CWMBS, Inc., Countrywide Securities Corporation and Countrywide Home Loans, Inc.

64. Bank of America Corporation is also named as a Successor Defendant to CWALT, Inc., CWMBS, Inc., Countrywide Securities Corporation, Sponsor Defendant Countrywide Home Loans, Inc., and Controlling Person Defendant Countrywide Financial Corporation. *See infra* § IV.C. As set forth below, on or about July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and all of its subsidiaries, including CWALT, Inc., CWMBS, Inc., Countrywide Securities Corporation, and Countrywide Home Loans, Inc.

7. The Credit Suisse Entities

65. Depositor/Issuer Defendant Credit Suisse First Boston Mortgage Securities Corp. is a Delaware corporation that was and is registered to do business in Massachusetts. Credit Suisse First Boston Mortgage Securities Corp. was the Depositor/Issuer for Certificates ARMT 2007-2 2A21, ARMT 2007-1 5A1, ARMT 2006-3 4A2, ARMT 2006-1 6A1, and ARMT 2006-2 6A1.

66. Sponsor and Underwriter Defendant Credit Suisse Securities (USA) LLC is a Delaware limited liability company which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in

Massachusetts. Credit Suisse Securities (USA) LLC underwrote Certificates CCMFC 2006-2A A1, CCMFC 2007-1A A1, CCMFC 2007-2A A1, ARMT 2007-2 2A21, ARMT 2007-1 5A1, TMST 2007-1 A2A, ARMT 2006-3 4A2, ARMT 2006-2 6A1, ARMT 2006-1 6A1, and MHL 2006-1 1A2. Credit Suisse Securities (USA) LLC was also the Sponsor for the offering in which the Bank purchased Certificate ARMT 2006-2 6A1.

67. Sponsor Defendant DLJ Mortgage Capital, Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. DLJ Mortgage Capital Inc. was the Sponsor for the offerings in which the Bank purchased Certificates ARMT 2007-2 2A21, ARMT 2007-1 5A1, ARMT 2006-3 4A2, and ARMT 2006-1 6A1. DLJ Mortgage Capital, Inc. also originated loans for the offering in which the Bank purchased Certificates ARMT 2007-2 2A21, ARMT 2006-2 6A1, ARMT 2006-3 4A2, and ARMT 2007-1 5A1.

68. Controlling Person Defendant Credit Suisse (USA), Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. Credit Suisse (USA), Inc. is a parent company and controlling entity of Credit Suisse Securities (USA) LLC, and DLJ Mortgage Capital Inc.

69. Controlling Person Defendant Credit Suisse Holdings (USA), Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. Credit Suisse Holdings (USA), Inc. is the parent company and a controlling entity of Credit Suisse First Boston Mortgage Securities Corp.; Credit Suisse Securities (USA) LLC; DLJ Mortgage Capital, Inc.; and Credit Suisse (USA) Inc.

70. The Credit Suisse Entities identified in paragraphs 65 through 69 above are also affiliates, under common ownership, of Credit Suisse Financial Corporation, which originated

loans for the offerings in which the Bank purchased Certificates ARMT 2006-1 6A1, ARMT 2006-2 6A1, ARMT 2006-3 4A2, ARMT 2007-1 5A1, and ARMT 2007-2 2A21.

8. The Deutsche Entities

71. Depositor/Issuer Defendant Deutsche Alt-A Securities, Inc. is a Delaware corporation. Deutsche Alt-A Securities, Inc. was the Depositor/Issuer for Certificates DBALT 2006-AR2 1A1, DBALT 2006-AR2 1A2, DBALT 2006-AR3 A2, DBALT 2006-AR4 A1, DBALT 2006-AR5 1A1, DBALT 2007-AR1 A1, and DBALT 2007-AR3 2A1.

72. Underwriter and Corporate Seller Defendant Deutsche Bank Securities Inc. is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Deutsche Bank Securities Inc. underwrote Certificates DBALT 2006-AR2 1A1, DBALT 2006-AR2 1A2, DBALT 2006-AR3 A2, DBALT 2006-AR4 A1, DBALT 2006-AR5 1A1, DBALT 2007-AR1 A1, DBALT 2007-AR3 2A1, and RALI 2006-QA3 A1. Deutsche Bank Securities Inc. also sold Certificate JPMMT 2005-ALT1 2A1 to the Bank.

73. Sponsor and Controlling Person Defendant DB Structured Products, Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. DB Structured Products, Inc. was the Sponsor for the deals in which the Bank purchased Certificates DBALT 2006-AR2 1A1, DBALT 2006-AR2 1A2, DBALT 2006-AR3 A2, DBALT 2006-AR4 A1, DBALT 2006-AR5 1A1, DBALT 2007-AR1 A1, and DBALT 2007-AR3 2A1. DB Structured Products, Inc. was also a parent company and controlling entity of Deutsche Alt-A Securities, Inc.

74. DB Structured Products, Inc. is also named as a Successor Defendant to MortgageIT Holdings, Inc., MortgageIT, Inc. and MortgageIT Securities Corp. *See infra* § IV.C. As set forth below, on or about July 11, 2006, Successor Defendant DB Structured Products, Inc.

acquired MortgageIT Holdings, Inc. and all of its subsidiaries, including MortgageIT, Inc. and MortgageIT Securities Corp.

75. Controlling Person Defendant DB U.S. Financial Market Holding Corporation is a Delaware corporation. DB U.S. Financial Market Holding Corporation is a parent company and controlling entity of Deutsche Alt-A Securities, Inc.; Deutsche Bank Securities Inc.; and DB Structured Products, Inc.

9. Goldman, Sachs & Co.

76. Underwriter Defendant Goldman, Sachs & Co. is a New York corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Goldman, Sachs & Co underwrote Certificates AHM 2005-2 1A1, CWALT 2007-OA4 A1 and RALI 2006-QO10 A1.

10. The Greenwich Entities

77. Depositor/Issuer Defendant Greenwich Capital Acceptance, Inc. is a Delaware corporation. Greenwich Capital Acceptance, Inc. was the Depositor for Certificates DSLA 2005-AR1 2A1A, DSLA 2005-AR2 2A1A, HVMLT 2007-1 2A1A, HVMLT 2006-8 2A1A, HVMLT 2006-7 2A1A, MHL 2006-1 1A2, and HVMLT 2005-10 2A1A. Pursuant to its Restated Certificate of Incorporation, dated July 8, 2009, Greenwich Capital Acceptance, Inc. legally changed its name to RBS Acceptance Inc. All references herein to Greenwich Capital Acceptance, Inc. are also to RBS Acceptance Inc.

78. Underwriter Defendant Greenwich Capital Markets, Inc. is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Greenwich Capital Markets, Inc. underwrote Certificates AHM 2005-2 1A1, DSLA 2005-AR1 2A1A, DSLA 2005-AR2 2A1A, NAA 2006-AR4 A2, NAA 2007-1 2A1, LUM 2007-2 1A1,

CMALT 2007-A4 1A7, TMST 2007-1 A2A, HVMLT 2007-1 2A1A, HVMLT 2006-8 2A1A, HVMLT 2006-7 2A1A, MHL 2006-1 1A2, HVMLT 2005-10 2A1A, INDX 2005-AR8 2A1A, INDX 2005-AR4 2A1A, and INDX 2005-AR12 2A1a. Pursuant to its Restated Certificate of Incorporation, dated April 1, 2009, Greenwich Capital Markets, Inc. legally changed its name to RBS Securities Inc. All references herein to Greenwich Capital Markets, Inc. are also to RBS Securities Inc.

79. Sponsor Defendant Greenwich Capital Financial Products, Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. Greenwich Capital Financial Products, Inc. was the Sponsor for the offerings in which the Bank purchased Certificates 2005-AR1 2A1A, HVMLT 2007-1 2A1A, HVMLT 2006-8 2A1A, HVMLT 2006-7 2A1A, and HVMLT 2005-10 2A1A. Pursuant to its Restated Certificate of Incorporation, dated April 1, 2009, Greenwich Capital Financial Products, Inc. legally changed its name to RBS Financial Products Inc. All references herein to Greenwich Capital Financial Products, Inc. are also to RBS Financial Products Inc.

80. Controlling Person Defendant Greenwich Capital Holdings, Inc., a Delaware corporation, is the parent company and a controlling entity of Greenwich Capital Acceptance, Inc., Greenwich Capital Markets, Inc. and Greenwich Capital Financial Products, Inc. Greenwich Capital Holdings, Inc. legally changed its name to RBS Holdings USA Inc. All references herein to Greenwich Capital Holdings, Inc. are also to RBS Holdings USA Inc.

11. The Impac Entities

81. Depositor/Issuer Defendant IMH Assets Corp. is a California corporation. IMH Assets Corp. was the Depositor for Certificate IMM 2005-7 A1.

82. Depositor/Issuer Defendant Impac Secured Assets Corp. is a California corporation. Impac Secured Assets Corp. was the Depositor for Certificates IMSA 2005-2 A1 and IMSA 2006-2 1A2A.

83. Sponsor and Controlling Person Defendant Impac Funding Corporation is a California corporation that was and is registered to do business in Massachusetts. Impac Funding Corporation was the Sponsor for the offerings in which the Bank purchased Certificates IMSA 2006-2 1A2A and IMSA 2005-2 A1. Impac Funding Corporation is also the parent company and a controlling entity of Impac Secured Assets Corp.

84. Sponsor and Controlling Person Defendant Impac Mortgage Holdings, Inc. is a Maryland corporation. Impac Mortgage Holdings, Inc. was the Sponsor for the offering in which the Bank purchased Certificate IMM 2005-7 A1. Impac Mortgage Holdings, Inc. is also the parent company and a controlling entity of IMH Assets Corp., Impac Secured Assets Corp. and Impac Funding Corporation.

12. The J.P. Morgan Entities

85. Depositor/Issuer Defendant J.P. Morgan Acceptance Corporation I is a Delaware corporation. J.P. Morgan Acceptance Corporation I was the Depositor for Certificates JPALT 2007-A2 12A1, JPALT 2006-A3 1A1, JPALT 2006-A2 1A1, JPALT 2006-A1 1A1, and JPMMT 2005-ALT1 2A1.

86. Underwriter Defendant J.P. Morgan Securities Inc., a Delaware corporation, changed its name and organization to J.P. Morgan Securities LLC, a Delaware limited liability company, on or about September 1, 2010. This entity will simply be referred to as "J.P. Morgan Securities Inc."[6] It has, at all relevant times, maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. J.P.

[6] *See* footnote 5, *supra*.

Morgan Securities Inc. underwrote Certificates JPALT 2007-A2 12A1, JPALT 2006-A3 1A1, JPALT 2006-A2 1A1, and JPALT 2006-A1 1A1.

87. Sponsor Defendant J.P. Morgan Mortgage Acquisition Corp. is a Delaware corporation. J.P. Morgan Mortgage Acquisition Corp. was the Sponsor for the offerings in which the Bank purchased Certificates JPALT 2006-A2 1A1, JPALT 2006-A1 1A1, JPALT 2007-A2 12A1, JPALT 2006-A3 1A1, and JPMMT 2005-ALT1 2A1.

88. At all relevant times, Controlling Person Defendant JPMorgan Securities Holdings LLC, a Delaware limited liability company, was the parent company and a controlling entity of J.P. Morgan Acceptance Corporation I and J.P. Morgan Securities Inc.

89. Controlling Person Defendant JPMorgan Chase & Co., a Delaware corporation, is the parent company and a controlling entity of JPMorgan Securities Holdings LLC, J.P. Morgan Acceptance Corporation I, J.P. Morgan Securities Inc. and J.P. Morgan Mortgage Acquisition Corp. JP Morgan Chase & Co. is also the parent company of both Chase Home Finance LLC and JPMorgan Chase Bank, N.A. which originated loans for the offerings in which the Bank purchased Certificates JPALT 2007-A2 12A1, JPALT 2006-A2 1A1, JPALT 2006-A3 1A1, and JPALT 2006-A1 1A1.

13. The Lehman Individual Defendants

90. Seller and Controlling Person Defendant Lana Franks is an individual residing in New York. Franks was Chairman, President and Principal Executive Officer and a Director of Structured Asset Securities Corporation, which was the Depositor for Certificates LXS 2005-8 1A2, LXS 2006-15 A1, LXS 2007-9 1A1, and LXS 2007-11 A1 (together the "Lehman Certificates"). Frank was a signatory on the Registration Statement for Certificates LXS 2006-15 A1, LXS 2007-9 1A1 and LXS 2007-11 A1. Structured Asset Securities Corporation was a subsidiary of Lehman Brothers Holdings Inc., the Sponsor for all four Lehman Certificates.

Franks also served as a Manager of Aurora Loan Services LLC, another Lehman Brothers Holdings Inc. subsidiary, which was an originator of loans for the offerings in which the Bank purchased all four Lehman Certificates.

91. Controlling Person Defendant Richard S. Fuld, Jr. is an individual residing in Florida. Between at least 2005 and 2007, Fuld was the Chairman and Chief Executive Officer and a Director of Sponsor Lehman Brothers Holdings Inc., as well as chair of Lehman Brothers Holdings Inc's. Executive Committee and Risk Committee. During 2005, Fuld was the Chief Executive Officer and President of Lehman Brothers, Inc., a Lehman Brothers Holdings Inc. subsidiary and the Underwriter for all four Lehman Certificates. During 2006 and 2007, Fuld was the Chief Executive Officer and Chairman and a Director of Lehman Brothers Inc.

92. Seller and Controlling Person Defendant Edward Grieb is an individual residing in New York. Beginning no later than 2006, Grieb was the Chief Financial Officer of Structured Asset Securities Corporation. Grieb was signatory on the Registration Statement for Certificates LXS 2006-15 A1, LXS 2007-9 1A1, and LXS 2007-11 A1. From at least 2005 through 2007, Grieb also served as a Manager of Originator Aurora Loan Services LLC.

93. Seller and Controlling Person Defendant Richard McKinney is an individual residing in New York. Beginning no later than 2006, McKinney was a Director of Structured Asset Securities Corporation. McKinney was a signatory on the Registration Statement for Certificates LXS 2006-15 A1, LXS 2007-9 1A1, and LXS 2007-11 A1.

94. Controlling Person Defendant Barry J. O'Brien is an individual residing in New Jersey. During at least 2005 and 2007, O'Brien was the Treasurer of Sponsor Lehman Brothers Holdings Inc. From at least 2005 through 2007, O'Brien was the First Vice President of Underwriter Lehman Brothers, Inc.

95. Controlling Person Defendant Christopher M. O'Meara is an individual residing in New York. O'Meara was the Chief Financial Officer, Controller and Executive Vice President of Sponsor Lehman Brothers Holdings Inc. from 2004 until 2007, when he became the Global Head of Risk Management for Lehman Brothers Holdings Inc. O'Meara was also a member of the Lehman Brothers Holdings Inc. Risk Committee at all relevant times. During at least 2005 through 2007 O'Meara was the Chief Financial Officer of Underwriter Lehman Brothers, Inc.

96. Seller and Controlling Person Defendant Kristine Smith is an individual who, on information and belief, resides in New York. Beginning no later than 2006, Smith was the Controller and Principal Accounting Officer of Structured Asset Securities Corporation. Smith was signatory on the Registration Statement for Certificates LXS 2006-15 A1, LXS 2007-9 1A1, and LXS 2007-11 A1.

97. Seller and Controlling Person Defendant James J. Sullivan is an individual residing in New York. Beginning no later than 2005, Sullivan was a Director of Structured Asset Securities Corporation. Sullivan was signatory on the Registration Statement for all four Lehman Certificates.

98. Seller and Controlling Person Defendant Samir Tabet is an individual residing in New York. During at least 2005, Tabet was the Managing Director of Structured Asset Securities Corporation. Tabet was signatory on the Registration Statement for Certificates LXS 2005-8 1A2.

99. Seller and Controlling Person Defendant Mark L. Zusy is an individual residing in Florida. During at least 2005, Zusy was the Chairman, President and a Director of Structured

Asset Securities Corporation. Zusy was signatory on the Registration Statement for Certificates LXS 2005-8 1A2.

100. Defendants Franks, Fuld, Grieb, McKinney, Smith, Sullivan, Tabet and Zusy are referred to collectively as the "Individual Controlling Person Defendants."

101. Defendants Franks, Grieb, McKinney, O'Brien, O'Meara, Smith, Sullivan, Tabet and Zusy are referred to as the "Individual Seller Defendants."

14. The Merrill Lynch Entities

102. Depositor/Issuer Defendant Merrill Lynch Mortgage Investors, Inc., is a Delaware corporation. Merrill Lynch Mortgage Investors, Inc. was the Depositor for Certificates MANA 2007-A3 A2A and MLMI 2006-AF2 AV2A.

103. Underwriter and Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Merrill Lynch, Pierce, Fenner & Smith Incorporated underwrote Certificates IMSA 2006-2 1A2A, INDX 2006-AR19 1A1, MANA 2007-A3 A2A, MHL 2005-5 A1, MLMI 2006-AF2 AV2A and NAA 2006-AF2 5A1. A Merrill Lynch entity believed and alleged to be Merrill Lynch, Pierce, Fenner & Smith Incorporated sold Certificate MLMI 2006-AF2 AV2A to the Bank. Effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. All references herein to Banc of America Securities LLC are also to Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

104. Sponsor Defendant Merrill Lynch Mortgage Lending, Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. Merrill Lynch Mortgage Lending, Inc. was the Sponsor for the offerings in which the Bank purchased Certificates MANA 2007-A3 A2A and MLMI 2006-AF2 AV2A.

105. Controlling Person Defendant Merrill Lynch & Co., Inc. is a Delaware corporation. Merrill Lynch & Co., Inc. is the parent corporation and a controlling entity of Merrill Lynch Mortgage Investors, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; and Merrill Lynch Mortgage Lending, Inc.

106. Bank of America Corporation is also named as a Successor Defendant to Merrill Lynch Mortgage Investors, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch Mortgage Lending, Inc.; and Merrill Lynch & Co., Inc. *See infra* § IV.C. As set forth below, on or about January 1, 2009, Successor Defendant Bank of America Corporation acquired Merrill Lynch & Co., Inc. and all of its subsidiaries, including Merrill Lynch Mortgage Investors, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; and Merrill Lynch Mortgage Lending, Inc.

15. The Morgan Stanley Entities

107. Depositor/Issuer Defendant Morgan Stanley Capital I Inc. is a Delaware corporation. Morgan Stanley Capital I Inc. was the Depositor for Certificates MSM 2006-13AX A1, MSM 2006-16AX 2A1, MSM 2006-8AR 1A2, MSM 2006-9AR A3, MSM 2007-2AX 2A2, MSM 2007-5AX 2A2, and MSM 2007-7AX 2A1.

108. Underwriter and Controlling Person Defendant Morgan Stanley & Co. Incorporated is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Morgan Stanley & Co. Incorporated underwrote Certificates CMALT 2007-A4

1A7, CWALT 2005-86CB A10, LUM 2005-1 A1, MSM 2006-13AX A1, MSM 2006-16AX 2A1, MSM 2006-8AR 1A2, MSM 2006-9AR A3, MSM 2007-2AX 2A2, MSM 2007-5AX 2A2, and MSM 2007-7AX 2A1. Morgan Stanley & Co. Incorporated was also a controlling entity of Morgan Stanley Mortgage Capital Inc.

109. Sponsor Non-Defendant Morgan Stanley Mortgage Capital Inc. was a New York corporation that was registered to do business in Massachusetts. Morgan Stanley Mortgage Capital Inc. was the Sponsor for the offerings in which the Bank purchased Certificates MSM 2006-13AX A1, MSM 2006-16AX 2A1, MSM 2006-8AR 1A2, MSM 2006-9AR A3, MSM 2007-2AX 2A2, MSM 2007-5AX 2A2, and MSM 2007-7AX 2A1. Morgan Stanley Mortgage Capital Inc. also originated loans for the offerings in which the Bank purchased Certificates MSM 2006-13AX A1, MSM 2006-16AX 2A1, MSM 2006-8AR 1A2, MSM 2006-9AR A3, MSM 2007-2AX 2A2, MSM 2007-5AX 2A2, and MSM 2007-7AX 2A1. Effective June 17, 2007, Morgan Stanley Mortgage Capital Inc. merged with and into Successor Defendant Morgan Stanley Mortgage Capital Holdings LLC, a New York limited liability company that is registered to do business in Massachusetts. *See infra* § IV.C. Since the merger, Morgan Stanley Mortgage Capital Holdings LLC has continued the business of Morgan Stanley Mortgage Capital Inc. All references to Morgan Stanley Mortgage Capital Inc. are also to Morgan Stanley Mortgage Capital Holdings LLC, which is liable as a matter of law as successor to Morgan Stanley Mortgage Capital Inc. by virtue of its status as the surviving entity in its merger with Morgan Stanley Mortgage Capital Inc.

110. Controlling Person Defendant Morgan Stanley is a financial holding company organized under the laws of Delaware. Morgan Stanley is the parent company and a controlling

entity of Morgan Stanley Capital I Inc., Morgan Stanley & Co. Incorporated, and was a parent company and controlling entity of Morgan Stanley Mortgage Capital Inc.

16. The MortgageIT Entities

111. Depositor/Issuer Defendant MortgageIT Securities Corp. is a Delaware corporation. MortgageIT Securities Corp. was the Depositor/Issuer for Certificate MHL 2005-5 A1.

112. Sponsor and Controlling Person Defendant MortgageIT, Inc. is a New York corporation that was and is registered to do business in Massachusetts. MortgageIT, Inc. was the Sponsor for the offering in which the Bank purchased Certificate MHL 2006-1 1A2. MortgageIT, Inc. is the parent company and a controlling entity of MortgageIT Securities Corp. MortgageIT, Inc. also originated loans for the transactions in which the Bank purchased Certificates CWALT 2006-OA16 A2, DBALT 2006-AR3 A2, DBALT 2006-AR4 A1, DBALT 2007-AR1 A1, DBALT 2007-AR3 2A1, LUM 2006-6 A1, MARM 2005-7 2A1, MHL 2005-5A1, MHL 2006-1 1A2, MSM 2006-16AX 2A1, RALI 2006-QA2 1A1, and RALI 2006-QA3 A1.

113. Sponsor and Controlling Person Non-Defendant MortgageIT Holdings, Inc. was a Maryland corporation. MortgageIT Holdings, Inc. was the Sponsor for the offering in which the Bank purchased Certificate MHL 2005-5 A1. MortgageIT Holdings, Inc. was also the parent company and a controlling entity of MortgageIT Securities Corp. and MortgageIT, Inc. On or about July 11, 2006, MortgageIT Holdings, Inc. was acquired by and merged with and into Successor Defendant DB Structured Products, Inc. *See infra* § IV.C. All references herein to MortgageIT Holdings, Inc. are also to DB Structured Products, Inc., which is liable as a matter of law as successor to MortgageIT Holdings, Inc. by virtue of its status as the surviving entity in the acquisition of and merger with MortgageIT Holdings, Inc. DB Structured Products, Inc. is

named as a Successor Defendant to MortgageIT Holdings, Inc., and its former subsidiaries, including MortgageIT, Inc., and MortgageIT Securities Corp.

17. The Nomura Entities

114. Depositor/Issuer Defendant Nomura Asset Acceptance Corporation is a Delaware corporation. Nomura Asset Acceptance Corporation was the Depositor for Certificates NAA 2006-AF2 5A1, NAA 2006-AR4 A2, NAA 2007-1 2A1, and NAA 2007-3 A1.

115. Underwriter Defendant Nomura Securities International, Inc. is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. Nomura Securities International, Inc. underwrote Certificate NAA 2006-AF2 5A1.

116. Sponsor Defendant Nomura Credit & Capital, Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. Nomura Credit & Capital, Inc. was the Sponsor for the offerings in which the Bank purchased Certificates NAA 2006-AF2 5A1, NAA 2006-AR4 A2, NAA 2007-1 2A1, and NAA 2007-3 A1.

117. Controlling Person Defendant Nomura Holding America, Inc., a Delaware corporation, is the parent company and a controlling entity of Nomura Asset Acceptance Corporation, Nomura Securities International, Inc., and Nomura Credit & Capital, Inc.

18. The Residential Funding (GMAC) Entities

118. Depositor/Issuer Defendant Residential Accredit Loans, Inc. is a Delaware corporation. Residential Accredit Loans, Inc. was the Depositor for Certificates RALI 2005-QA9 NB41, RALI 2006-QA2 1A1, RALI 2006-QA3 A1, RALI 2006-QO10 A1, and RALI 2007-QS6 A29.

119. Sponsor Defendant Residential Funding Company, LLC, previously known as Residential Funding Corporation until it changed its name on October 16, 2006 (hereafter

together referred to as "Residential Funding Company, LLC"), is a Delaware limited liability company that was and is registered to do business in Massachusetts. Residential Funding Company, LLC was the Sponsor for the offerings in which the Bank purchased Certificates RALI 2006-QO10 A1, RALI 2007-QS6 A29, RALI 2005-QA9 NB41, RALI 2006-QA2 1A1, and RALI 2006-QA3 A1. Residential Funding Company, LLC, doing business as Residential Mortgage Corporation, also originated loans for the offering in which the Bank purchased Certificate LUM 2006-6 A1. Residential Funding Company, LLC is also the parent company and a controlling entity of Homecomings Financial Network Inc., which is now known as Homecomings Financial, LLC but will together be referred to as "Homecomings Financial Network Inc." Homecomings Financial Network Inc. originated loans for the offerings in which the Bank purchased Certificates RALI 2005-QA9 NB41, RALI 2006-QA2 1A1, RALI 2006-QA3 A1, RALI 2006-QO10 A1, and RALI 2007-QS6 A29.

120. Controlling Person Defendant GMAC Mortgage Group, Inc., a Delaware corporation, is now known as GMAC Mortgage Group LLC, a Delaware limited liability company. This entity will be referred to simply as "GMAC Mortgage Group, Inc." GMAC Mortgage Group, Inc. is a parent company and controlling entity of Residential Accredit Loans, Inc. and Residential Funding Company, LLC, as well as Homecomings Financial Network Inc.

121. Controlling Person Defendant GMAC LLC was a Delaware limited liability company that was registered to do business in Massachusetts. In June 2009, GMAC LLC converted to a Delaware corporation and changed its name to GMAC Inc. and in May 2010, GMAC Inc. changed its name to Ally Financial, Inc. All references to GMAC LLC are also to GMAC Inc. and Ally Financial, Inc. GMAC LLC is the parent company and a controlling entity of Residential Accredit Loans, Inc.; Residential Funding Company, LLC; and GMAC Mortgage

Group, Inc. GMAC LLC is also the parent company and a controlling entity of Homecomings Financial Network Inc. and GMAC Mortgage Corporation. GMAC Mortgage Corporation is now known as GMAC Mortgage, LLC, but this entity will be referred to simply as "GMAC Mortgage Corporation." GMAC Mortgage Corporation originated loans for the offerings in which the Bank purchased Certificates LUM 2006-6 A1 and RALI 2007-QS6 A29.

19. Sandler, O'Neill & Partners, L.P.

122. Corporate Seller Defendant Sandler, O'Neill & Partners, L.P. is a Delaware limited partnership which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and is registered to do business in Massachusetts. Sandler, O'Neill & Partners, L.P., which maintains an office at 50 Congress Street, Suite 330 Boston, MA, 02109, provides brokerage and investment banking services. Sandler, O'Neill & Partners, L.P. sold Certificate TMTS 2007-6ALT A1 to the Bank.

20. The UBS Entities

123. Depositor/Issuer Defendant Mortgage Asset Securitization Transactions, Inc. is a Delaware corporation. Mortgage Asset Securitization Transactions, Inc. was the Depositor for Certificates MARM 2005-7 2A1, MARM 2005-8 1A1, and MARM 2007-R5 A1.

124. Underwriter, Corporate Seller, and Sponsor Defendant UBS Securities LLC is a Connecticut limited liability company which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Massachusetts and was and is registered to do business in Massachusetts. UBS Securities LLC underwrote Certificates AHM 2005-2 1A1, CWALT 2005-16 A4, CWALT 2006-OA8 1A1, IMM 2005-7 A1, IMSA 2005-2 A1, MARM 2005-8 1A1, MARM 2007-R5 A1, MHL 2006-1 1A2, NAA 2006-AR4 A2, and RALI 2005-QA9 NB41. UBS Securities LLC also sold Certificate LUM 2006-3 11A1 to the Bank. UBS Securities LLC

was also the Sponsor for the offering in which the Bank purchased Certificate MARM 2007-R5 A1.

125. Sponsor Defendant UBS Real Estate Securities Inc. is a Delaware corporation that was and is registered to do business in Massachusetts. UBS Real Estate Securities Inc. was the Sponsor for the offerings in which the Bank purchased Certificates MARM 2005-7 2A1 and MARM 2005-8 1A1.

126. Controlling Person Defendant UBS Americas Inc. is a Delaware corporation. UBS Americas Inc. is the parent company and a controlling entity of Mortgage Asset Securitization Transactions, Inc., UBS Real Estate Securities Inc., and the parent company (owner of the preferred members' interest) of UBS Securities LLC.

21. WaMu Capital Corp.

127. Underwriter Defendant WaMu Capital Corp. is a Washington corporation that was registered to do business in Massachusetts during the relevant period. WaMu Capital Corp. underwrote Certificates DSLA 2005-AR1 2A1A and DSLA 2005-AR2 2A1A.

22. The Wells Fargo Defendants

128. Depositor Defendant Wells Fargo Asset Securities Corporation is a Delaware corporation. Wells Fargo Asset Securities Corporation was the depositor for Certificate WFMBS 2006 AR12 1A1.

129. Sponsor and Controlling Person Defendant Wells Fargo Bank, National Association, is a nationally chartered bank and is regulated by the OCC. Wells Fargo Bank, National Association was the Sponsor for the offerings in which the Bank purchased Certificate WFMBS 2006 AR12 1A1 and an originator of loans for the offering in which the Bank purchased Certificate WFMBS 2006 AR12 1A1s GSR 2006-AR1 2A3, GSR 2005-1F 3A1, WFMBS 2007-10 1A10, WFMBS 2005-AR12 2A2, WFMBS 2006-10 A7, WFMBS 2007-4

A16 and WFMBS 2007-11 A2. Wells Fargo Bank, National Assocation is also the parent corporation and controlling entity of Wells Fargo Asset Securities Corporation.

130. Controlling Person Defendant Wells Fargo & Company, a Delaware corporation, is the parent corporation, with 100% direct or indirect ownership, and controlling entity of Wells Fargo Asset Securities Corporation and Wells Fargo Bank, National Association.

23. The Securities Defendants

131. The Defendants identified in paragraphs 37 through 130 are referred to collectively herein as the "Securities Defendants."

24. The Rating Agency Defendants

132. Defendant Fitch, Inc. (also doing business as Fitch Ratings) ("Fitch") is a Delaware corporation that was and is registered to do business in Massachusetts. Fitch provides analysis of global credit markets covering corporate finance, including financial institutions and insurance, structured finance, public finance, global infrastructure and project finance.

133. Defendant The McGraw-Hill Companies, Inc. is a New York corporation that was and is registered to do business in Massachusetts. The McGraw-Hill Companies, Inc. maintains an office at 420 Boylston Street in Boston, Massachusetts. Through its credit rating division, Standard & Poor's Ratings Services, which maintains an office at 225 Franklin Street in Boston, Massachusetts, The McGraw-Hill Companies, Inc. provided global credit ratings, indices, risk evaluation, investment research and data to investors, corporations, governments, financial institutions, investment managers and advisors. At the time the Bank purchased the Certificates, The McGraw-Hill Companies, Inc. was a provider serving the financial services, education and business information markets through three business segments: McGraw-Hill Education, Financial Services, and Information and Media.

134. Effective January 1, 2009, The McGraw-Hill Companies, Inc. transferred certain assets and properties associated with its Standard & Poor's division to Standard & Poor's Financial Services LLC. This Complaint refers to The McGraw-Hill Companies, Inc. and Standard & Poor's Financial Services LLC collectively as "S&P."

135. Defendant Moody's Investors Service, Inc. is a Delaware corporation which, at relevant times, was registered to do business in Massachusetts and maintains an office at 175 Federal Street in Boston, Massachusetts. Moody's Investors Service, Inc., which is a wholly owned subsidiary of Defendant Moody's Corporation, provides credit ratings and research covering debt instruments and securities.

136. Defendant Moody's Corporation is a Delaware corporation. Moody's Corporation is a provider of credit ratings; credit and economic related research, data and analytical tools; risk management software; and quantitative credit risk measures, credit portfolio management solutions, training and financial credentialing and certification services. This Complaint refers to Moody's Investors Service, Inc. and Moody's Corporation collectively as "Moody's."

C. Successor Liability Allegations against Certain Defendants

1. Successor Defendant Bank of America Corporation (Countrywide)

137. On July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and those it controlled, including Depositor/Issuer Defendants CWALT, Inc. and CWMBS, Inc., Underwriter Defendant Countrywide Securities Corporation, and Sponsor Defendant Countrywide Home Loans, Inc. through an all-stock merger. In this transaction, Countrywide Financial Corporation merged with and into Bank of America Corporation, which acquired substantially all Countrywide Financial Corporation assets and responsibility for all pre-merger liabilities. *See* Agreement and Plan of Merger by and

among Countrywide Financial Corporation, Bank of America Corporation and Red Oak Merger Corporation (Jan. 11, 2008).

138. At the time of the transaction, Bank of America announced that it intended to combine Countrywide's operations with its own and re-brand those combined operations with the Bank of America name. Bank of America further announced that Barbara Desoer would run the combined mortgage and consumer real estate operations from Calabasas, California, where Countrywide Financial had its headquarters, and that Countrywide Financial's incumbent president, David Sambol, would remain for at least some time to work on the transition.

139. On October 16, 2008, Bank of America announced that Countrywide Financial Corporation would no longer publicly report its own financial results and that Bank of America was transferring "substantially all of the assets and operations of Countrywide Financial Corporation and Countrywide Home Loans, Inc. to other subsidiaries of Bank of America."

140. On November 10, 2008, Bank of America publicly announced through an SEC filing on Form 8-K the integration of Countrywide Financial Corporation (and its subsidiaries) with Bank of America's other businesses and operations. That filing once again disclosed that Bank of America had transferred substantially all of Countrywide Financial Corporation's assets to Bank of America.

141. On April 27, 2009, Bank of America announced that it was retiring the Countrywide name and that the combined operations of Countrywide and Bank of America would do business as Bank of America Home Loans. Many former Countrywide locations, employees, assets, and business operations now continue under the Bank of America Home Loans name. Upon information and belief, Bank of America Home Loans is a brand name that Bank of America now uses for the Countrywide Financial Corporation mortgage origination and

securitization operations that Bank of America has absorbed and consolidated with its own operations. The Form 10-K that Bank of America filed on February 26, 2010 lists Depositor/Issuer Defendants CWALT, Inc. and CWMBS, Inc., Underwriter Defendant Countrywide Securities Corporation, Sponsor Defendant Countrywide Home Loans, Inc. and Controlling Person Defendant Countrywide Financial Corporation as Bank of America subsidiaries.

142. Bank of America entered into the Countrywide merger with full knowledge that it was assuming substantial Countrywide liabilities. In a February 22, 2008 interview, Bank of America spokesman Scott Silvestri told Corporate Counsel that Bank of America had not overlooked Countrywide's legal expenses and liabilities when it decided to merge with Countrywide:

> Handling all this litigation won't be cheap, even for Bank of America, the soon-to-be largest mortgage lender in the country. Nevertheless, the banking giant says that Countrywide's legal expenses were not overlooked during negotiations. "We bought the company and all of its assets and liabilities," spokesman Scott Silvestri says. "We are aware of the claims and potential claims against the company and have factored these into the purchase."

143. A January 23, 2008 *New York Times* article similarly quotes former Bank of America Chairman and CEO Kenneth D. Lewis acknowledging that Bank of America had thought long and hard about acquiring Countrywide's liabilities:

> We did extensive due diligence. We had 60 people inside the company for almost a month. It was the most extensive due diligence we have ever done. So we feel comfortable with the valuation. We looked at every aspect of the deal, from their assets to potential lawsuits and we think we have a price that is a good price.

144. On November 16, 2010, Bank of America's Chief Executive Officer, Brian Moynihan, publicly admitted that Bank of America had accepted liability for investors' claims concerning Countrywide's mortgage-backed securities: "There's a lot of people out there with a

lot of thoughts about how we should solve this [investor demands for refunds over faulty mortgages], but at the end of the day, we'll pay for the things that Countrywide did."

145. And in a December 11, 2010 *New York Times* profile, Moynihan again publicly admitted that Bank of America would be responsible for Countrywide's liabilities:

> But what about Countrywide?
>
> "A decision was made; I wasn't running the company," Mr. Moynihan says, although he was obviously a top bank official at the time. "Our company bought it and we'll stand up; we'll clean it up."

The profile then noted that Bank of America's securities filings echoed the position taken by Moynihan that Bank of America would be responsible for Countrywide's liabilities:

> In addition to significantly increased revenues due to Countrywide's contributions, Bank of America has reported its payment on claims for defective legacy Countrywide mortgages and announced a $4.4 billion reserve fund to pay for similar claims in the future.

146. In October 2008, Bank of America agreed to pay $8.4 billion to settle predatory lending lawsuits that various state attorneys general had filed against Countrywide. Although Countrywide originated the mortgages and was alleged to have committed the misconduct in question long before Bank of America's acquisition, Bank of America assumed financial responsibility for the settlement.

147. On January 3, 2011, Bank of America similarly announced that it had agreed to pay $2.8 billion to settle claims to repurchase mortgage loans that Fannie Mae and Freddie Mac had purchased from Countrywide Financial or its subsidiaries. In its press releases and presentation concerning the settlement, Bank of America admitted that it was paying to resolve claims concerning "alleged breaches of selling representations and warranties related to loans sold by legacy Countrywide."

148. Bank of America has completed actual and de facto mergers with Controlling Person Defendant Countrywide Financial Corporation and its subsidiaries, including Underwriter Defendant Countrywide Securities, and has absorbed Countrywide Financial and those entities controlled by it into Bank of America's own operations. Bank of America Corporation is the successor in liability to Countrywide Financial Corporation and its subsidiaries, including CWALT, Inc.; CWMBS, Inc.; Countrywide Securities Corporation; and Countrywide Home Loans, Inc., and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants. Accordingly, the Bank seeks to recover any damages it is awarded against Countrywide Financial Corporation and Countrywide Securities Corporation from Bank of America.

2. Successor Defendant Bank of America Corporation (Merrill Lynch)

149. On January 1, 2009, Successor Defendant Bank of America Corporation, through a wholly owned subsidiary formed solely for the purpose of the merger, acquired Merrill Lynch & Co., Inc. and those it controlled, including Merrill Lynch Mortgage Investors, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; and Merrill Lynch Mortgage Lending, Inc. In this transaction, Merrill Lynch & Co., Inc. merged with and into Bank of America Corporation, and Bank of America Corporation acquired substantially all Merrill Lynch & Co., Inc. assets and responsibility for all pre-merger liabilities. *See* Agreement and Plan of Merger by and between Merrill Lynch & Co., Inc. and Bank of America Corporation dated as of September 15, 2008; *see also* Bank of America Proxy Statement, Schedule 14A (describing the terms of the "strategic business combination").

150. Bank of America has completed actual and de facto mergers with Seller and Controlling Person Defendant Merrill Lynch & Co., Inc. and its subsidiaries, including Depositor/Issuer Defendant Merrill Lynch Mortgage Investors, Inc., Underwriter and Successor

Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Sponsor Defendant Merrill Lynch Mortgage Lending, Inc. by absorbing Merrill Lynch & Co., Inc. and those entities controlled by it into Bank of America's own operations. Bank of America Corporation is the successor in liability to Merrill Lynch Mortgage Investors, Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch Mortgage Lending, Inc.; and Merrill Lynch & Co., Inc., and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants. Accordingly, the Bank seeks to recover any damages it is awarded against Merrill Lynch Mortgage Investors, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch & Co., Inc. from Bank of America.

3. Successor Defendant Capital One Financial Corporation and Capital One, National Association (Chevy Chase)

151. On December 3, 2008, Successor Defendant Capital One Financial Corporation, a Delaware corporation, entered into an agreement to acquire B.F. Saul Real Estate Investment Trust, a Maryland real estate investment trust, Derwood Investment Corporation, a Maryland corporation, and the B.F. Saul Company Employees' Profit Sharing and Retirement Trust and those they controlled, in particular Sponsor and originator Chevy Chase F.S.B. and its subsidiary Depositor/Issuer Defendant Chevy Chase Funding LLC, through a stock and cash transaction. The acquisition became effective February 27, 2009.

152. In its December 4, 2008 announcement of the transaction, Capital One Financial Corporation touted the benefits of the agreement, including the receipt of more than $11 billion in deposits, which helped it ride out the financial crisis:

> With the addition of Chevy Chase's $11 billion in deposits, Capital One—the largest retail depository institution headquartered in the Washington D.C. region—will also have the largest branch and ATM network in the area.

. . . .

. . . Capital One expects this transaction will be accretive to operating EPS in 2009 and accretive to GAAP EPS in 2010 . . .

. . . .

"Chevy Chase is a great strategic fit for Capital One and the combination of our two banks is economically compelling. Chevy Chase provides an opportunity to acquire a well-run retail bank with local scale in one of the best local banking markets in the U.S. This transaction will enhance our strong deposit base, providing us with greater scope and scale in key Mid-Atlantic banking markets," said Richard D. Fairbank, Chairman and Chief Executive Officer of Capital One. "At a time when core funding is key, we see our deposit strength as an important element of our continued success. The integration of Chevy Chase and the continued growth of our banking businesses is our highest priority."

153. Capital One also announced that, as part of the transaction, Capital One would be taking a net credit mark of $1.75 billion for potential losses in Chevy Chase's loan portfolio. Ultimately, the adjustment exceeded the initial estimate: "the Company recorded net expected principal losses of approximately $2.2 billion as a component of the fair value adjustment for which actual losses will be applied." 2009 Form 10-K at 30.

154. Following the acquisition, on July 30, 2009, Chevy Chase Bank F.S.B. was merged with and into one of Capital One Financial Corporation's "principal" subsidiaries, Capital One, National Association. By reason of the merger, Capital One Financial Corporation and Capital One National Association obtained substantially all Chevy Chase Bank F.S.B. assets and are responsible for the pre-merger liabilities of Chevy Chase Bank F.S.B. *See, e.g.*, Stock Purchase Agreement by and among Capital One Financial Corporation, B.F. Saul Real Estate Investment Trust, Derwood Investment Corporation, and B.F. Saul Company Employees' Profit Sharing and Retirement Trust, dated as of December 3, 2008; Capital One Financial Corporation 2009 Annual Report; Capital One Financial Corporation 2009 Form 10-K.

155. Capital One, North America, as the surviving entity, retained as operating, financial and statutory subsidiaries a number of entities that were owned by Chevy Chase Bank F.S.B. before the merger, including Chevy Chase Funding LLC. *See, e.g.*, Letter from Comptroller of the Currency Administrator of National Banks, dated July 14, 2009, granting conditional approval to the conversion and merger applications of Chevy Chase Bank and Capital One, National Association.

156. Capital One promptly integrated the business and operations of Chevy Chase Bank F.S.B. and its subsidiaries, including Chevy Chase Funding LLC. For instance, in Capital One Financial Corporation's 2009 Annual Report, investors were advised:

> During the third quarter of 2009, the Company realigned its business segment reporting structure to better reflect the manner in which the performance of the Company's operations is evaluated.
>
> . . . .
>
> The segment reorganization includes the allocation of Chevy Chase Bank to the appropriate segments.

See also Capital One 2010 Annual Report at 5 ("We converted Chevy Chase Bank to the Capital One brand in 2010."); 2010 Form 10-K at 1 ("In September 2010, we rebranded Chevy Chase Bank, F.S.B. ("Chevy Chase Bank"), strengthening the Capital One brand in the Washington, D.C. region.").

157. Following the acquisition, visitors to Chevy Chase's website have been are automatically redirected to the Capital One website, and have been told that Chevy Chase Bank is "a division of Capital One, N.A." and that "[t]he Chevy Chase Bank site is no longer available. Please bookmark www.capitalonebank.com for future reference. You will be redirected to capitalonebank.com momentarily."

158. In March 18, 2010 proxy statement to shareholders, Capital One Financial Corporation noted that it was "[c]ontinuing to integrate Chevy Chase Bank to build a scalable bank infrastructure to ensure that the Company is well-positioned to take advantage of opportunities to grow its consumer and commercial banking businesses."

159. Capital One Financial Corporation further touted the benefits of the transaction in its 2009 10-K and confirmed that it had incorporated Chevy Chase Bank's financials into its own: "This acquisition improves the Company's core deposit funding base, increases readily available and committed liquidity, adds additional scale in bank operations, and brings a strong customer base in an attractive banking market. Chevy Chase Bank's results of operations are included in the Company's results after the acquisition date of February 27, 2009."

160. Capital One Financial Corporation and Capital One, National Association entered into this transaction with full knowledge that it was assuming substantial Chevy Chase liabilities. In fact, Capital One Financial Corporation, in its 2009 Annual Report, referred to Capital One, National Association as the "successor" to Chevy Chase Bank F.S.B., and has taken steps to expressly and impliedly assume Chevy Chase Bank's liabilities, advising investors that "[w]e have established a reserve in the consolidated financial statements for potential losses that are that are considered to be both probable and reasonably estimable related to the mortgage loans sold by our originating subsidiaries," including Chevy Chase Bank. Indeed, in its 2009 Form 10-K, Capital One Financial Corporation disclosed that Capital One, National Association, "as successor to Chevy Chase Bank," may be liable to investors who purchased securitized Chevy Chase loans, "in the event that there was improper underwriting or fraud, or in the event that the loans become delinquent shortly after they are originated." Capital One Financial Corporation further disclosed:

> [W]e may be exposed to credit risk associated with sold loans. We have established a reserve in the consolidated financial statements for potential losses that are considered to be both probable and reasonably estimable related to the mortgage loans sold by our originating subsidiaries. The adequacy of the reserve and the ultimate amount of losses incurred will depend on, among other things, the actual future mortgage loan performance, the actual level of future repurchase and indemnification requests, the actual success rate of claimants, developments in Company and industry litigation, actual recoveries on the collateral, and macroeconomic conditions (including unemployment levels and housing prices). Due to uncertainties relating to these factors, we cannot reasonably estimate the total amount of losses that will actually be incurred as a result of our subsidiaries' repurchase and indemnification obligations, and there can be no assurance that our reserves will be adequate or that the total amount of losses incurred will not have a material adverse effect upon the Company's financial condition or results of operations. For additional information related to the Company's mortgage loan operations, mortgage loan repurchase and indemnification obligations and related reserves, see Item 7 "Management Discussion and Analysis of Financial Conditions and Results of Operations – Valuation of Representation and Warranty Reserve"

161. In its 2009 10-K, Capital One Financial Corporation described the accounting treatment of the transaction, including assumption of liabilities, as follows:

> The Chevy Chase Bank acquisition is being accounted for under the acquisition method of accounting following the provisions of ASC 805-10/SFAS No. 141(R). . . . ASC 805-10/SFAS No. 141(R) requires an acquirer to recognize the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at the acquisition date, at their fair values as of that date, with limited exceptions, thereby replacing SFAS 141's cost-allocation process. This Statement also changes the requirements for recognizing acquisition related costs, restructuring costs, and assets acquired and liabilities assumed arising from contingencies.
>
> Accordingly, the purchase price was allocated to the acquired assets and liabilities based on their estimated fair values at the Chevy Chase Bank acquisition date, as summarized in the table below. Initial goodwill of $1.1 billion was calculated as the purchase premium after adjusting for the fair value of net assets acquired. Throughout 2009, the Company continued the analysis of the fair values and purchase price allocation of Chevy Chase Bank's assets and liabilities which resulting in purchase accounting adjustments and an increase to goodwill of $510.9 million. Goodwill of $1.6 billion represents the value expected from the synergies created through the scale, operational and product enhancement benefits that will result from combining the operations of the two companies. The change was predominantly related to a reduction in the fair value of net loans at the acquisition date. As of December 31, 2009, the Company has completed the analysis and considers purchase accounting to be final and the Company has

recast previously presented information as if all adjustments to the purchase price allocation had occurred at the date of acquisition.

162. Capital One Financial Corporation and Capital One, National Association have completed de facto and actual mergers with Controlling Person Chevy Chase F.S.B. and its subsidiaries, including Depositor/Issuer Defendant Chevy Chase Funding LLC, by absorbing Chevy Chase F.S.B. and those entities controlled by it into Capital One Financial Corporation and Capital One, National Association's own operations. Capital One Financial Corporation and Capital One, National Association are the successors in liability to Chevy Chase F.S.B. and its subsidiaries, including Depositor/Issuer Defendant Chevy Chase Funding LLC, and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants and entities alleged herein, including the liability with respect to the Certificates. Accordingly, the Bank seeks to recover any damages it is awarded against Chevy Chase F.S.B. and its subsidiaries, including Depositor/Issuer Defendant Chevy Chase Funding LLC, from Capital One Financial Corporation and Capital One, National Association.

4. Successor Defendant DB Structured Products, Inc. (MortgageIT Holdings)

163. On or about July 11, 2006, Controlling Person MortgageIT Holdings, Inc. was acquired by and merged with and into Successor Defendant DB Structured Products, Inc. through a wholly owned subsidiary formed solely for the purpose of the merger. DB Structured Products, Inc. acquired MortgageIT Holdings, Inc. and its wholly owned subsidiaries, MortgageIT, Inc. and MortgageIT Securities Corp. In this transaction, DB Structured Products, Inc. acquired substantially all of the assets and responsibility for all pre-merger liabilities of MortgageIT Holdings, Inc. and its subsidiaries. *See* Agreement and Plan of Reorganization Dated as of July 11, 2006 among DB Structured Products, Inc., Titan Holdings Corp., Titan Acquisition Corp., and MortgageIT Holdings, Inc.

164. In its July 12, 2006 announcement of the transaction, Deutsche Bank AG, the parent of DB Structured Products, Inc., stressed the financial and operational benefits of the agreement, such as the loan origination capacities of MortgageIT, Inc., which originated $29.2 billion in loans in 2005. DB Structured Products, Inc. promptly integrated the operations of MortgageIT, Inc. into its Residential Mortgage Backed Securities business, part of its Corporate Banking and Securities line of business:

> This acquisition is expected to be earnings accretive in 2007 and will add significant platform scale and synergies to Deutsche Bank's existing US residential mortgage franchise. It is a key element of the Bank's build-out of a vertically integrated mortgage origination and securitization platform.
>
> . . . .
>
> . . . In 2005, MortgageIT grew its loan originations approximately 124% over 2004, to $29.2 billion, and is one of the fastest-growing and largest residential mortgage loan originators in the US.
>
> . . . .
>
> Upon closing, the operating company, MortgageIT, Inc., will become a part of Deutsche Bank's Residential Mortgage Backed Securities (RMBS) business, which is based in New York. Deutsche Bank's acquisition of MortgageIT is the latest in a series of steps taken to significantly increase its presence in the US mortgage markets.

165. Anshu Jain, head of Global Markets for Deutsche Bank, expressed confidence in that press release that "[t]he MortgageIT team ha[d] built an outstanding business." He stated: "[W]e are extremely pleased to have them join our effort as we continue to expand our mortgage securitization platform in the US and globally."

166. The acquisition and incorporation of the lending practices of MortgageIT represented a significant risk. In Deutsche Bank's Form 6-K filed on April 3, 2008, Deutsche Bank disclosed that, as of December 2007, it had taken on $12.67 billion worth of exposure in its residential mortgage-backed security business—and that this exposure was primarily due to the

acquisition of MortgageIT. Deutsche Bank thereafter announced that it was closing the retail operations and scaling down the wholesale operations of MortgageIT, and on December 11, 2008, Deutsche Bank issued a statement announcing the closure of MortgageIT's remaining wholesale lending operations.

167. DB Structured Products Inc. has completed actual and de facto mergers with Mortgage IT Holdings, Inc. and its subsidiaries, including Sponsor and Controlling Person Defendant MortgageIT, Inc. and Depositor/Issuer Defendant MortgageIT Securities Corp., by absorbing MortgageIT Holdings, Inc. and those entities controlled by it, including MortgageIT, Inc. and MortgageIT Securities Corp. into the operations of DB Structured Products, Inc. DB Structured Products, Inc. is the successor in liability to MortgageIT Holdings, Inc. and its subsidiaries, including MortgageIT, Inc. and MortgageIT Securities Corp., and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants and entities. Accordingly, the Bank seeks to recover any damages it is awarded against Mortgage IT Holdings, Inc. and its subsidiaries, including MortgageIT, Inc. and MortgageIT Securities Corp., from DB Structured Products, Inc.

5. Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (Banc of America Securities LLC).

168. As noted in § IV.B, *supra*, effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. All references herein to Banc of America Securities LLC are also to Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

6. Successor Defendant Morgan Stanley Mortgage Capital Holdings LLC (Morgan Stanley Mortgage Capital Inc.).

169. As noted in § IV.B, *supra*, effective June 17, 2007, Morgan Stanley Mortgage Capital Inc. merged with and into Successor Defendant Morgan Stanley Mortgage Capital Holdings LLC, a New York limited liability company that is registered to do business in Massachusetts. Since the merger, Morgan Stanley Mortgage Capital Holdings LLC has continued the business of Morgan Stanley Mortgage Capital Inc. All references herein to Morgan Stanley Mortgage Capital Inc. are also to Morgan Stanley Mortgage Capital Holdings LLC, which is liable as a matter of law as successor to Morgan Stanley Mortgage Capital Inc. by virtue of its status as the surviving entity in its merger with Morgan Stanley Mortgage Capital Inc.

D. The John Doe Defendants

170. Defendants John Doe 1-50 are other Depositor/Issuers, Underwriters, and/or others who are jointly and severally or otherwise liable for the misstatements, omissions, and other wrongful conduct alleged herein, including the liability with respect to the Certificates. The John Doe Defendants may include persons or entities that are not named as defendants at this time because Plaintiff has insufficient information as to the extent, if any, of their involvement in and liability for the matters alleged herein. Plaintiff will amend this Complaint to allege the true names and capacities of these defendants when ascertained.

E. Summary Charts of Defendants and Certificates

171. Summary Charts of the Defendants, and the Certificates with which they are associated, are included in Appendices XI through XVII.

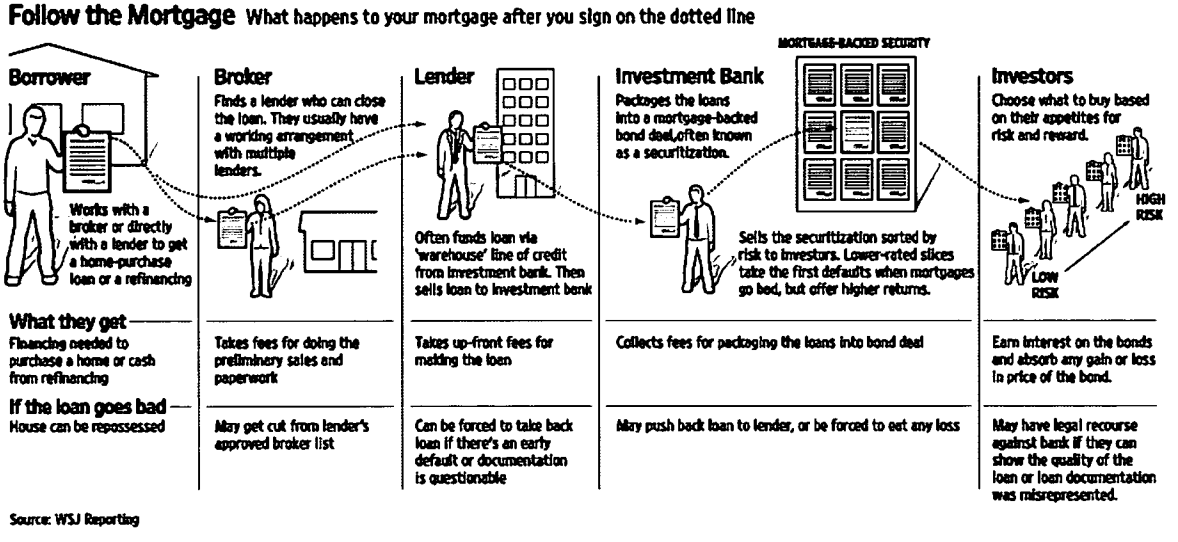
V. FACTUAL BACKGROUND

A. The Creation of Mortgage-Backed Securities.

1. The Securitization Process

172. The PLMBS purchased by the Bank were created in a process known as "mortgage securitization." Mortgage securitization is an end-to-end process by which mortgage loans are acquired from "mortgage originators," pooled together, and securities constituting interests in the cash flow from the mortgage pools are then sold to investors. The securities are referred to as "mortgage pass-through certificates" because the cash flow from the pool of mortgages is "passed through" to the certificate holders when payments are made by the underlying mortgage borrowers.

173. The following graphic illustrates the securitization process:



174. Securitization involves several entities who perform distinct tasks, though, as was the case here, many or all of the entities in a securitization may be subsidiaries or affiliates of a single parent or holding company.

175. The first step in creating a mortgage pass-through security such as the PLMBS purchased by the Bank is the acquisition by a "**Depositor**" or "**Depositor/Issuer**" of an

inventory of loans from a "**Sponsor**" or "**Seller**" which organizes and initiates these PLMBS transactions by acquiring the loans from its own origination unit or from other mortgage originators in exchange for cash, and participates in marketing and selling the securities to investors, including the Bank. The Depositor/Issuer is often a subsidiary or other affiliate of the Sponsor, and indeed, each Depositor/Issuer Defendant named herein was an affiliate of the Sponsor, and often also of at least one originator of mortgage loans underlying that security. *See infra* § V.D.1. Plaintiff believes and alleges that each Depositor/Issuer named herein was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization.

176. The Depositor then securitizes the pool of loans by forming one or more mortgage pools with the inventory of loans, and creating tranches of interests in the mortgage pools with various levels of seniority. Interests in these tranches are then issued by the Depositor (who then serves as the Issuer) through a trust in the form of bonds, or Certificates. The Depositor/Issuer Defendants, which securitized these PLMBS, were the "issuers" of the securities.[7]

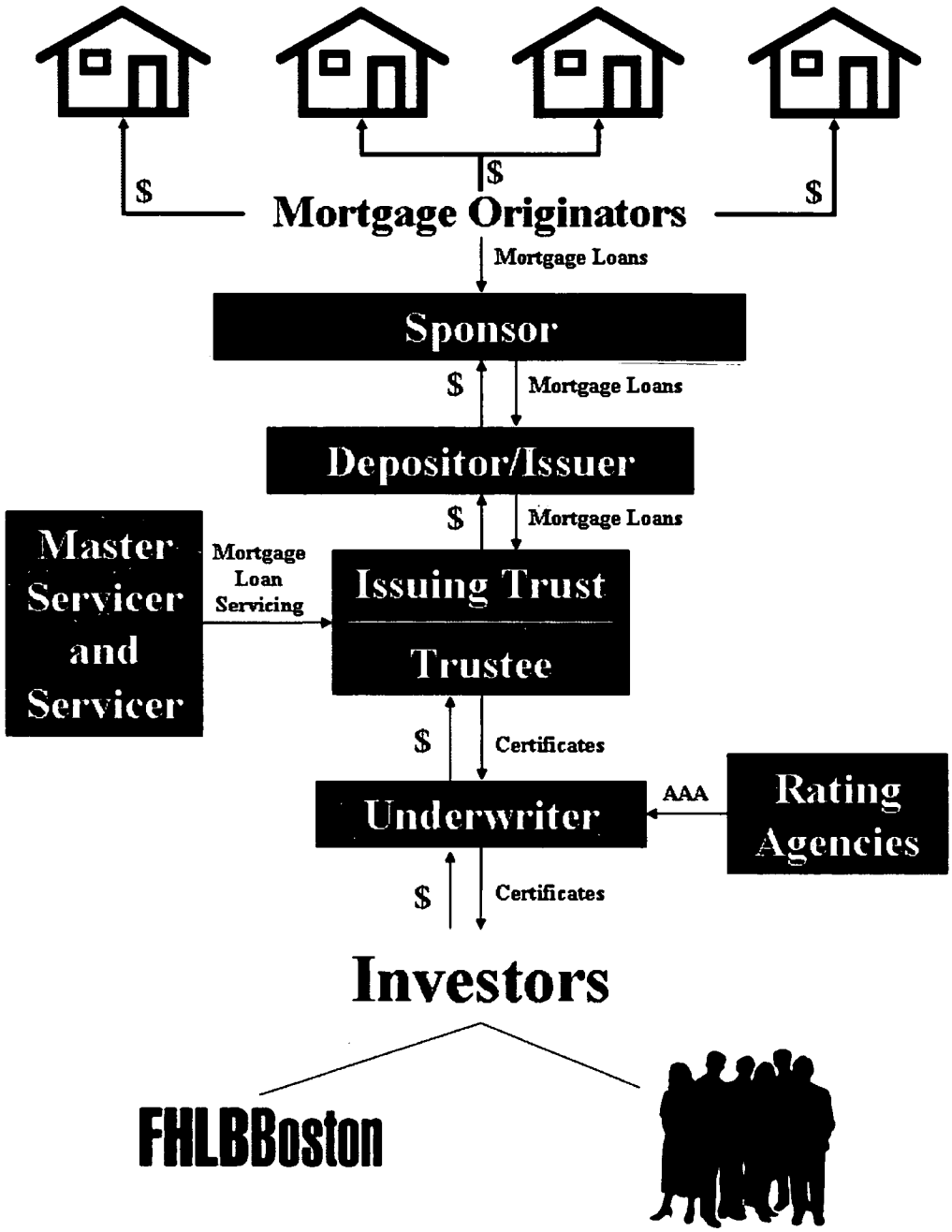
177. Each tranche has a different level of purported risk and reward, and, often, a different rating. The most senior tranches typically receive the highest investment-grade rating, triple A. Junior tranches, which usually have lower ratings, are more exposed to risk, but offer higher potential returns. The most senior tranches of Certificates often are retired faster than the more junior, or subordinate, tranches, by redirecting all or part of the collateral's principal repayments from junior tranches up to the senior tranches. Conversely, losses on the underlying loans in the asset pool—whether due to default, delinquency, or otherwise—are allocated first to

[7] *See* 17 C.F.R. § 230.191 ("The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the issuer for purposes of the asset-backed securities of that issuing entity.").

the most subordinate or junior tranche of Certificate, then to the tranche above that. This hierarchy in the division of cash flows is referred to as the "flow of funds" or "waterfall."

178. The Depositor/Issuer and/or Sponsor worked with one or more of the nationally-recognized credit rating agencies—here, one or more of the Rating Agency Defendants—to ensure that each tranche of the Certificate received the rating desired by the Securities Defendants. For PLMBS, this meant a triple-A rating for the senior tranche, and lower ratings for the subordinated tranches. Triple-A ratings are provided where the credit rating agency purports to determine that the tranche has the necessary level of credit support. Once the asset pool is securitized, the Certificates are placed with one or more "**Underwriters**" who resell them to investors, such as the Bank.

179. The following diagram identifies in basic terms the entities involved in the creation and sale of PLMBS:



2. Defendants' Access to Loan Files and Due Diligence Obligations.

180. Because the cash flow from the loans in the mortgage pool of a securitization is the source of funds to pay the holders of the Certificates issued by the trust, the credit quality of

the Certificates depends largely on the credit quality of the loans in the mortgage pool. The collateral pool for each PLMBS often includes thousands of loans. Detailed information about the credit quality of the loans is supposed to be contained in the "loan files" developed and maintained by the mortgage originators when making the loans. For residential mortgage loans, such as the loans that backed the PLMBS purchased by the Bank, loan files contain documents such as the borrower's application for the loan; verification of income, assets, and employment; references; credit reports; an appraisal of the property that will secure the loan and provide the basis for other measures of credit quality, such as loan-to-value ratios ("LTVs"); and occupancy status. The loan file also generally includes notes from the person who underwrote the loan describing the loan's purported compliance with underwriting guidelines, and documentation of "compensating factors" that justified any departure from those standards.

181. When evaluating whether to purchase PLMBS, investors such as the Bank do not have access to the loan files. Only the Sponsors, Depositors/Issuers, and the Underwriters, together with the trustees and/or servicers, are in a position to have access to the loan files. Consequently, the Sponsors, Depositor/Issuers, and the Underwriters who draft and sign the Offering Documents, and who sell the PLMBS to investors like the Bank, are responsible for gathering and verifying information about the credit quality and characteristics of the loans that are deposited into the trust, and presenting summaries of this information in prospectuses or other offering documents that are prepared for potential investors. This due diligence process is a critical safeguard for investors and a fundamental legal obligation of the Sponsors, the Depositor/Issuers and the Underwriters. Accordingly, the due diligence process supposedly performed by Securities Defendants was critical to the Bank's decision to purchase the Certificates. As discussed in more detail below, the Defendants did not use their access to the

loan files in order to ferret out defective loans or to provide an accurate assessment to the Bank regarding the quality and characteristics of the loans.

3. The Rating Process for PLMBS

182. Like many institutional investors, the Bank was permitted to buy only triple-A-rated securities. Accordingly, the credit ratings of the tranches of PLMBS were material to the Bank's decision to purchase the Certificates.

183. In any PLMBS, the credit rating of each tranche is negotiated between the Depositor/Issuer of the Certificates and the credit rating agencies. In this process, the Depositor/Issuer and/or the Sponsor and Underwriters provide the credit rating agency with information about the credit quality and characteristics of the loans that are deposited into the trust.

184. The credit rating agency is then supposed to evaluate, among other things:

A. The appraised value of the mortgaged property.

B. The mortgagor's ability to pay.

C. The experience and underwriting standards of the originators of the underlying loans.

D. The loan characteristics that, according to the Depositor/Issuer, underlie a particular transaction.

E. The default rates and historic recovery rates of the loans.

F. The *concentration* of the loans along a number of variables, which typically include—to name just a few—the extent to which the loans come from any particular geographic area, the extent to which the mortgagors have low FICO scores[8] or

[8] A FICO score is a score developed by the Fair Isaac Corporation to assess consumer credit risk; it is the most widely used credit score in the United States.

other indications of low credit quality, and the extent to which the loans were "low-document" or "no-document" loans.

G. The ability of the servicer to perform all the activities for which the servicer will be responsible.

H. The extent to which the cash flow from trust assets can satisfy all of the obligations of the PLMBS transaction. The cash flow payments which must be made from the asset pool are interest and principal to investors, servicing fees, and any other expenses for which the Depositor/Issuer is liable. The credit rating agencies are supposed to stress-test the flow of funds to determine whether the cash flows match the payments that are required to be made to satisfy the Depositor/Issuer's obligations.

185. After evaluating these objective and verifiable factors, the credit rating agency issues a rating for the security. This rating constitutes a factual representation regarding the risk of the security made in reliance on objectively verifiable facts, including those listed immediately above. The rating should therefore be a reflection of both the riskiness of the loans in the asset pool and the seniority of the tranche. If the rating that the credit rating agency assigns to the tranche is not in accord with the Sponsor's target, then the Depositor/Issuer may "credit enhance" the structure. Such credit enhancement may include:

A. Adjusting the level of support provided by subordinate tranches.

B. Overcollateralization—that is, ensuring that the aggregate principal balance of the mortgages securing the Certificates exceeds the aggregate principal balances of the Certificates secured thereby.

C. Cash reserve accounts.

D. Excess spread, which is defined as scheduled cash inflows from the mortgages that exceed the interest service requirements of the related Certificates.

E. Third-party contracts, under which losses suffered by the asset pool are absorbed by an insurer or other counterparty.

186. By using credit enhancement, a Depositor/Issuer may be able to elevate a bond to the highest credit rating.

187. All of the Certificates that the Bank purchased were senior Certificates that were rated triple A when the Bank purchased them.

B. The Mortgage Originators Abandoned Underwriting and Appraisal Standards and Engaged in Predatory Lending.

1. The Shift from "Originate to Hold" to "Originate to Distribute" Securitization Encouraged Mortgage Originators to Disregard Loan Quality.

188. As noted above, the fundamental basis upon which mortgage pass-through Certificates are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral for those loans. If the borrowers cannot pay, and the collateral is insufficient, the cash flow from the Certificate diminishes, and the investors are exposed to losses. For this reason, the underwriting standards and practices of the mortgage originators who issued loans that back PLMBS—and the representations in the Offering Documents regarding those standards—are critically important to the value of the Certificates and an investor's decision to purchase the Certificates.

189. Yet, unbeknownst to the Bank, during the period that the Bank purchased the PLMBS, mortgage originators, including those affiliated with the Securities Defendants, were motivated by the financial rewards of securitization to: (a) effectively abandon their stated underwriting standards; (b) allow pervasive and systematic exceptions to their stated underwriting standards without proper justification; (c) disregard credit risk and quality controls

in favor of generating loan volume; (d) pressure and coerce appraisers to inflate their collateral valuations in order to permit loans to close; and (d) engage in predatory lending practices. As has only become clear recently, this was the result of a fundamental shift in the mortgage securitization markets.

190. Historically, mortgage originators held on to the mortgage loans they provided to borrowers through the term of the loan. Originators would therefore profit from the obligor's payment of interest and repayment of principal, but also bear the risk of loss if the obligor defaulted and the property value was insufficient to repay the loan. The originator had an economic incentive to establish the creditworthiness of the obligor and the true value of the underlying property.

191. As mortgage securitization emerged in the 1980s and 1990s, it generally fell within the domain of GSEs Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac purchased loans from originators, securitized them, and sold them to investors. Investors in these early GSE securitizations were provided protections because the underlying loans were originated pursuant to strict underwriting guidelines imposed by Fannie Mae and Freddie Mac, and these entities guaranteed that the investors would receive timely payments of principal and interest. Because Fannie Mae and Freddie Mac were perceived as being backed by the federal government, investors viewed the guarantees as diminishing credit risk, if not removing it altogether.

192. Between 2001 and at least 2006, however, Wall Street investment banks and other large financial institutions moved aggressively into the securitization markets, taking market share away from the GSEs. Unlike the GSEs, which focused on "prime" mortgage pools, the Wall Street banks and large financial institutions focused primarily on "Alt-A" and "subprime"

mortgage pools because of the higher fees that were available. "Alt-A" mortgage loans were loans that allegedly met the credit score and other underwriting criteria of the GSEs, but were ineligible for GSE purchase either because the mortgages exceeded the applicable GSE dollar limit, were supported by reduced documentation, or contained disqualifying terms, such as certain types of adjustable rates. "Subprime" mortgage loans were mortgages that did not meet the GSE criteria for creditworthiness of the borrower but purportedly satisfied loan underwriting criteria developed by their originators.

193. As the Financial Crisis Inquiry Commission (often, "FCIC") reported in April 2010, "[t]he amount of all outstanding mortgages held in [PLMBS] rose notably from only $670 billion in 2004 to over $2,000 billion in 2006." This statistic demonstrates the dramatic growth of the PLMBS market during this time. FCIC, *Preliminary Staff Report: Securitization and the Mortgage Crisis* 12 (Apr. 7, 2010).

194. This enormous increase in PLMBS securitization is reflected in the securitization volume of the Depositors/Issuers of the PLMBS purchased by the Bank. For example, between 2003 and 2005, the Bear Stearns entities' securitizations of Alt-A mortgages more than tripled, from $6.7 billion to $22.9 billion, and its subprime securitizations increased from $0.8 billion to $13.5 billion (a 1675% increase). This growth was fueled in large part by the growth of EMC Mortgage Corporation, whose loan volume grew sevenfold between 2000 and 2006. Other Sponsors—large financial institutions and Wall Street banks—similarly expanded their securitization business during the same period.

195. This increase was fueled by the complex interaction between record high global savings, referred to by Federal Reserve Chairman Ben Bernanke as the "global savings glut," and exceedingly low interest rates. Low interest rates made it easier and more appealing for

consumers to take out home mortgage loans. But the low Federal Reserve rate also meant that the global pool of investors received only marginal returns on traditional low-risk investments, in particular U.S. Government Bonds. This created an incentive for financial institutions to create seemingly low-risk investment options that produced returns in excess of those of government bonds. PLMBS securitization was their answer. Thus, following the model created by the GSEs, the large financial institutions began buying pools of mortgages from mortgage originators, securitizing the pools, and selling the securities to global investors. Because mortgage interest rates (and even more so Alt-A and subprime rates) generally exceeded those of U.S. Government bonds, the resulting PLMBS could provide investors with the higher rate of return they were seeking.

196. One complication that the investment banks needed to solve was the rating of the Certificates. Debt securities secured by pools of mortgages made to lower credit quality borrowers would generally fail to meet the investment-grade requirements of most institutional investors. The financial institutions' solution was to structure the financings through the creation of tranches as discussed above. As a general rule, the result was that up to 80% of any particular PLMBS would receive an "investment-grade" rating. The remaining 20% was often purchased by hedge funds and other entities that were able to buy non-investment-grade Certificates. This development opened the floodgates for the securitization and sale of PLMBS.

197. To ensure that the flood of securitizations and sale of PLMBS did not abate, the financial institutions bankrolled the lenders (both the ones they owned and those that were independent) so that the lenders had ample capital to issue loans. Indeed, a recent study by the Center for Public Integrity found that 21 of the top 25 subprime lenders in terms of loan volume were either owned outright by the biggest banks or former investment houses, or had their

subprime lending financed by those banks, either directly or through lines of credit. *See Who Is Behind the Financial Meltdown: The Top 25 Subprime Lenders and Their Wall Street Backers*, The Center for Public Integrity (May 6, 2009), http://www.publicintegrity.org/investigations/economic_meltdown/.

198. As the PLMBS market expanded, the traditional "originate to hold" model morphed into the "originate to distribute" model. Under the new "originate to distribute" model, mortgage originators no longer held the mortgage loans to maturity. Rather, mortgage originators sold the loans to Wall Street banks and other major financial institutions and shifted the risk of loss to the investors who purchased an interest in the securitized pool of loans.

199. The new distribution model was highly profitable for the mortgage originators in the short term. By securitizing and selling pools of these mortgages to investors through Underwriters, the mortgage originators shifted loans and credit risk off their books, earned fees and, thus, were able to issue more loans. Additionally, the securitization process enabled the originators to earn most of their income from transaction and loan-servicing fees, rather than (as in the traditional model) from the spread between interest rates paid on deposits and interest rates received on mortgage loans. This created an unchecked incentive to originate more and more loans to feed into the securitization machine.

200. In testimony before the FCIC, Sheila C. Bair, Chair of the Federal Deposit Insurance Corporation, explained both the misalignment of incentives arising from the sale of loans and the misalignment created by flawed compensation practices within the origination industry:

> The standard compensation practice of mortgage brokers and bankers was based on the volume of loans originated rather than the performance and quality of the loans made. From the underwriters' perspective, it was not important that consumers be able to pay their mortgages when interest rates reset, because it was

> assumed the loans would be refinanced, generating more profit by ensuring a steady stream of customers. The long-tail risk posed by these products did not affect mortgage brokers and bankers' incentives because these mortgages were sold and securitized.

201. The Attorney General for the Commonwealth of Massachusetts came to the same conclusion when she issued the results of her investigation into the subprime mortgage industry, *The American Dream Shattered: The Dream of Homeownership and the Reality of Predatory Lending* ("The Massachusetts Attorney General Predatory Lending Report"). This report explains:

> Historically, the vast majority of home mortgages were written by banks which held the loans in their own portfolios, knew their borrowers, and earned profit by writing good loans and collecting interest over many years. Those banks had to live with their "bad paper" and thus had a strong incentive to avoid making bad loans. In recent years, however, the mortgage market has been driven and funded by the sale and securitization of the vast majority of loans. Lenders now frequently make mortgage loans with the intention to promptly sell the loan and mortgage to one or more entities. . . . The lenders' incentives thus changed from writing good loans to writing a huge volume of loans to re-sell, extracting their profit at the front end, with considerably less regard to the ultimate performance of the loans.

202. Similarly, as reported in the *Seattle Times*, executives at Washington Mutual (also termed "WaMu" in reference to Washington Mutual Bank and its parent corporation, Washington Mutual, Inc.), an originator of loans underlying some of the Bank's Certificates, recognized and responded to the same incentive.

> Now it [WaMu] began bundling ARMs [adjustable rate mortgages] and certain other mortgages into securities and selling them off—pocketing hundreds of millions of dollars in fees immediately, while offloading any potential repayment problems. . . . [At this time WaMu CEO] Killinger hired Craig Davis, American's director of mortgage origination, to run WaMu's lending and financial services. Davis, several former WaMu executives said, began pushing WaMu to write more adjustable-rate mortgages, especially the lucrative option ARMs. "He only wanted production," said Lee Lannoye, WaMu's former executive vice president of corporate administration. "It was someone else's problem to worry about credit quality, all the details."

Drew DeSilver, *Reckless Strategies Doomed WaMu*, Seattle Times, Oct. 25, 2009, at A1 (hereinafter DeSilver, *Reckless*, Seattle Times).

203. The statements above provide support for the argument that, as far as lenders were concerned, their profits were generated by origination of as many loans as possible, and once these loans were packaged and securitized, repayment risk was someone else's problem.

204. As Ben Bernanke, Chairman of the Federal Reserve Board, explained in Congressional testimony:

> When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.

2. Mortgage Originators Abandoned Underwriting Guidelines to Create Loans for Securitization.

205. The misalignment of incentives following the shift to the "originate to distribute" model caused mortgage originators to violate their stated underwriting and appraisal standards, and to accept, encourage and even fabricate their own untrue information from loan applicants. This was not a problem limited to one or a few mortgage originators, but rather—contrary to the incessant touting of "quality underwriting" by mortgage originators during this period—was pervasive among the mortgage originators at issue here. Mortgage originators and the financial institutions that bankrolled them sought loan volume, not loan quality, to profit from the securitization market.

206. In addition, coincident with the widespread transfer of mortgage default risk to purchasers of mortgage-backed securities, mortgage originators expanded the practice of originating highly risky nontraditional loans. In a marked departure from traditional mortgage

origination procedures, originators offered a variety of reduced documentation programs in which the verification or substantiation of the applicants' statements of income, assets and employment history was limited or non-existent. While these programs were touted as providing for "streamlined" but nonetheless effective underwriting, the programs—unbeknownst to the Bank—enabled originators to make loans to unqualified borrowers. When these defective loans were securitized, investors including the Bank were assured that reduced documentation programs were available only where the borrower satisfied certain criteria, such as FICO scores, LTVs, and/or debt-to-income ratios ("DTIs"). In fact, the originators lacked any principled basis on which to evaluate the increased credit risk posed by what would eventually become colorfully and generally accurately known as "Liar Loans," or "NINJA" (for "no income, no job or assets") loans. Moreover, the widespread granting of exceptions to underwriting standards without legitimate compensating factors meant that the minimal safeguards associated with the reduced documentation programs were often abandoned in the headlong rush to maximize origination volume. Additionally, mortgage underwriters would often begin the underwriting of an applicant's loan under full documentation procedures, only to transfer the loan applicant to a "No Doc" program upon learning of information that would disqualify the applicant under the full documentation procedures.

207. John C. Dugan, Acting Comptroller of the Currency, described for the FCIC the consequences of these poor underwriting practices:

> The combination of all the factors I have just described produced, on a nationwide scale, the worst underwritten mortgages in our history. When house prices finally stopped rising, borrowers could not refinance their way out of financial difficulty. And not long after, we began to see the record levels of delinquency, default, foreclosures, and declining house prices that have plagued the United States for the last two years—both directly and through the spillover effects to financial institutions, financial markets, and the real economy.

3. Mortgage Originators Manipulated Appraisals of Collateralized Real Estate to Create Loans for Securitization.

208. Accurate appraisals prepared in accordance with established appraisal standards are essential for PLMBS investors to evaluate the credit risk associated with their investment. Indeed, an accurate appraisal is necessary to calculate an accurate LTV, which is the ratio of the amount of the mortgage loan to the lower of the appraised value or the sale price of the mortgaged property when the loan is made. The LTV is strongly indicative of the borrowers' likelihood of defaulting. As a borrower's equity decreases and the corresponding LTV increases—and particularly when equity drops to less than 10% of the property's value and LTVs are greater than 90%—the borrower's incentive to keep the mortgage current, or to maintain the collateral in good condition, decreases dramatically. Consequently, aggregate LTV calculations are among the most significant characteristics of a mortgage pool because LTVs both define the extent of the investor's "equity cushion" (*i.e.*, the degree to which values may decline without the investor suffering a loss), and are strongly indicative of a borrower's incentive to pay. In the absence of properly prepared appraisals, the value component of the LTV is unreliable and misleading. The appraisal practices of the mortgage originators who issued loans that back PLMBS, and the accuracy of the representations in the Offering Documents regarding those practices, therefore, were critically important to the value of the Certificates, and to the investors' decisions to purchase the Certificates.

209. Appraisers are governed by the Uniform Standards of Professional Appraisal Practice ("USPAP"), which are promulgated by the Appraisal Standards Board. The USPAP contain a series of ethical rules designed to ensure the integrity of the appraisal process. For example, the USPAP Ethics Conduct Rule provides: "An appraiser must perform assignments

with impartiality, objectivity, and independence, and without accommodation of personal interests."

210. The USPAP Ethics Conduct Rule states: "An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions."

211. The USPAP Ethics Management Rule states:

> It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:
>
> 1. the reporting of a predetermined result;
> 2. a direction in assignment results that favors the cause of a client;
> 3. the amount of a value opinion;
> 4. the attainment of a stipulated result; or
> 5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

212. The USPAP Scope of Work Acceptability Rule states: "An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased."

213. The Appraisal Standards Board also issues Advisory Opinions regarding appropriate appraisal conduct. For example, Advisory Opinion 19 states in part:

> Certain types of conditions are unacceptable in any assignment because performing an assignment under such condition violates USPAP. Specifically, an assignment condition is unacceptable when it:
>
> - precludes an appraiser's impartiality because such a condition destroys the objectivity and independence required for the development of credible results;
> - limits the scope of work to such a degree that the assignment results are not credible, given the intended use of the assignment; or
> - limits the content of a report in a way that results in the report being misleading.

214. The USPAP Scope of Work Rule states: "For each appraisal . . . an appraiser must . . . determine and perform the scope of work necessary to develop credible assignment results."

215. Additionally, USPAP Standard 1 states: "In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal."

216. USPAP Standards Rule 2-1 states that "[e]ach written or oral real property appraisal report must "(a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment."

217. Despite the importance of accurate appraisals and the requirements that are designed to ensure them, during the time frame that the Bank purchased the PLMBS, the originators routinely manipulated the process for appraising the collateralized real estate properties. They did so by pressuring and coercing appraisers, and blacklisting those that would not "come back at value." The prevalence of this problem and its impact on the financial crisis has been extensively investigated and examined in the aftermath of the market collapse.

218. According to his statements submitted in connection with his April 7, 2010 testimony before the Financial Crisis Inquiry Commission, Richard Bitner, a former executive of a subprime lender for 15 years and author of the book *Confessions of a Subprime Lender*, explains:

> With the appraisal process highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted. . . . [E]ither the majority of appraisers were incompetent or they were influenced by brokers to increase the value. . . .
>
> . . . 25% of [the] appraisals that we initially underwrote were so overvalued they defied all logic. Throwing a dart at a board while blindfolded would've produced more accurate results.
>
> . . . .
>
> If the appraisal process had worked correctly, a significant percentage of subprime borrowers would've been denied due to lack of funds. Inevitably, this would have forced sellers to drop their exorbitant asking price to more reasonable levels. The rate of property appreciation experienced on a national basis from 1998 to 2006 was not only a function of market demand, but was due, in part, to the subprime industry's acceptance of overvalued appraisals, coupled with a high percentage of credit-challenged borrowers who financed with no money down.
>
> . . . .
>
> . . . [T]he demand from Wall Street investment banks to feed the securitization machine couple[d] with an erosion in credit standards led the industry to drive itself off the proverbial cliff.

Testimony of Richard Bitner at 9-10 (Apr. 7, 2010), *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0407-Bitner.pdf (last visited Apr. 15, 2011).

219. Alan Hummel, Chair of the Appraisal Institute's Government Relations Committee and Past President of the Appraisal Institute, testified before the Senate Committee on Banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraisers "experience[d] systemic problems with coercion" and were "ordered to doctor their reports or else never see work from those parties again."

220. In testimony before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, Jim Amorin, President of the Appraisal Institute, testified similarly that:

> In recent years, many financial institutions have lost touch with fundamental risk management practices, including the separation between loan production and risk management. Unfortunately, parties with a vested interest in a transaction are often the same people managing the appraisal process within many financial institutions: a flagrant conflict of interest.
>
> . . . .
>
> Another coercion tactic is the threat of being placed on a "blacklist: (aka — "exclusionary appraiser list"), commonly used to blackball appraisers. It is one thing to maintain a list of reputable businesses to work with, or to maintain a list of firms to avoid as a result of poor performance. However, [it] is another to place an appraiser on a blacklist for refusal to hit a predetermined value.

221. Confirming the extent of the problem, a survey of 1,200 appraisers conducted by October Research Corp. found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through during the period at issue. The study also found that 75% of appraisers reported negative ramifications if they did not cooperate, alter their appraisal, and provide a higher valuation.

222. As a result of widespread appraisal abuse, in 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1472, amended Chapter 2 of the Truth in Lending Act, 15 U.S.C. §§ 1631 *et seq.*, to specifically prohibit actions that violate "appraisal independence." Under the new Act, acts or practices that violate appraisal independence include:

> (1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;
>
> (2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;
>
> (3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

223. All of the abuses targeted by the amended Truth in Lending Act were widespread during the time frame that the Bank purchased the PLMBS, and many of these abuses were in fact carried out by the originators, causing the appraisals of the collateralized real estate backing the PLMBS to be unreliable.

4. Mortgage Originators Engaged in Predatory Lending to Initiate Loans for Securitization.

224. Under state and federal predatory lending laws, predatory loans are characterized by excessively high interest rates or fees, and abusive or unnecessary provisions that do not benefit the borrower, including balloon payments, prepayment penalties, and underwriting that ignores a borrower's repayment ability. Moreover, according to the Office of the Comptroller of the Currency ("OCC"), "a fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered." OCC Advisory Letter, Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices, AL 2003-2 at 2 (Feb. 21, 2003) ("OCC 2003 Predatory Lending Advisory Letter"). The Securities Defendants represented and warranted that the mortgage pools that backed the PLMBS purchased by the Bank did not contain predatory loans. This was critically important to the Bank because the Federal Home Loan Banks were precluded by regulation from purchasing any loan that was the result of predatory lending abuses. Accordingly, the Bank would not have purchased the PLMBS had it known that the Certificates were backed by predatory loans. The representations and warranties in the Offering Documents about the absence of predatory lending were false.

225. Predatory lending was part of the mortgage lenders' effort to increase volume at any cost. The Wall Street banks and other financial institutions that issued and underwrote PLMBS depended on a steady stream of higher interest subprime loans, which often were the result of predatory lending practices. As Federal Reserve Board Chairman Bernanke explained: "[a]lthough the high rate of delinquency has a number of causes, it seems clear that unfair or deceptive acts and practices by lenders resulted in the extension of many loans, particularly high-cost loans, that were inappropriate for or misled the borrower."

226. "The truth is that many of us in the industry were deeply distressed by the growing practice of pushing high risk loans on borrowers who had no reasonable expectation of being able to repay the mortgage. Disclosures were often less than adequate, and faced with a bewildering array of loan terms, borrowers tended to trust their mortgage banker or broker. . . . In our industry, we have frankly seen too much mortgage malpractice." Scott Stern, CEO of Lenders One, Testimony before the Senate Banking Committee.

227. Too often, mortgage loans were issued to "a borrower who ha[d] little or no ability to repay the loan from sources other than the collateral pledged," a predatory practice explicitly identified by the Expanded Guidance for Subprime Lending Programs issued by the OCC, the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS"). The Expanded Guidance stated:

> Loans to borrowers who do not demonstrate the capacity to repay the loan, as structured, from sources other than the collateral pledged are generally considered unsafe and unsound. Such lending practices should be criticized in the Report of Examination as imprudent.

Expanded Guidance for Subprime Lending Programs at 11 (Jan. 31, 2001). Additionally, the OCC warned:

> When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit. Not surprisingly, such credits experience foreclosure rates higher than the norm.
>
> [S]uch disregard of basic principles of loan underwriting lies at the heart of predatory lending . . . .

OCC 2003 Predatory Lending Advisory Letter at 2.

228. As detailed below, *see infra* § V.C, numerous investigations have revealed the extent of predatory lending by the entities that originated the loans underlying the Certificates.

229. The Massachusetts Attorney General Predatory Lending Report explains the ramifications of such predatory lending:

> Subprime ARM loans typically carry an artificially low, fixed interest rate for two or three years, sometimes called a "teaser" rate. That initial rate eventually adjusts to a higher, variable rate for the remaining term of the loan, causing monthly payments to increase, often dramatically. In recent years, many subprime lenders qualified borrowers based only on their ability to make payments during the "teaser" rate period, ignoring the fact that the borrowers would not be able to make payments when the rate adjusted upwards. As a result, many borrowers had to continually refinance. Borrowers were forced to obtain new loans, each one higher than the last, at increasingly high loan to value (LTV) ratios . . . . Exacerbating the effects of serial refinancing, subprime mortgages often carry burdensome prepayment penalties, as well as high transaction costs including lender and broker commissions and other fees. . . . [T]his cycle could continue only so long as home valuations continued to increase []. As soon as real estate prices flattened, however, homeowners—especially those who used high LTV loans—no longer had the same options when monthly payments began to adjust upward.

230. Singling out one specific common practice, the Report notes that "[w]hen lenders qualify borrowers for ARM loans based only on the 'teaser' rate period, that reflects an utter lack of diligence in determining whether the borrower could actually pay back the loan. This problem is systemic." According to the Report, this practice was permitted by lax underwriting standards

and apparently reached its peak in 2006 (though it also continued into 2007), and was directly in violation of the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006, which stated that for "nontraditional" loans, "analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule." 71 Fed. Reg. 58,609, 58,614 (Oct. 4, 2006).

231. As FDIC Chairman Sheila C. Bair explained in her January 2010 testimony before the Financial Crisis Inquiry Commission:

> The well-publicized benefits associated with legitimate rate-reducing mortgage refinancing and rising housing prices conditioned consumers to actively manage their mortgage debt. An unfortunate consequence of this favorable environment for refinancing was fraud. Many consumers have only a limited ability to understand details of standard mortgage contracts let alone the complex mortgages that became common during this period. In this environment, unscrupulous mortgage providers capitalized on the widely advertised benefits associated with mortgage refinance, and took advantage of uninformed consumers by refinancing them into mortgage loans with predatory terms that were not readily transparent to many borrowers.

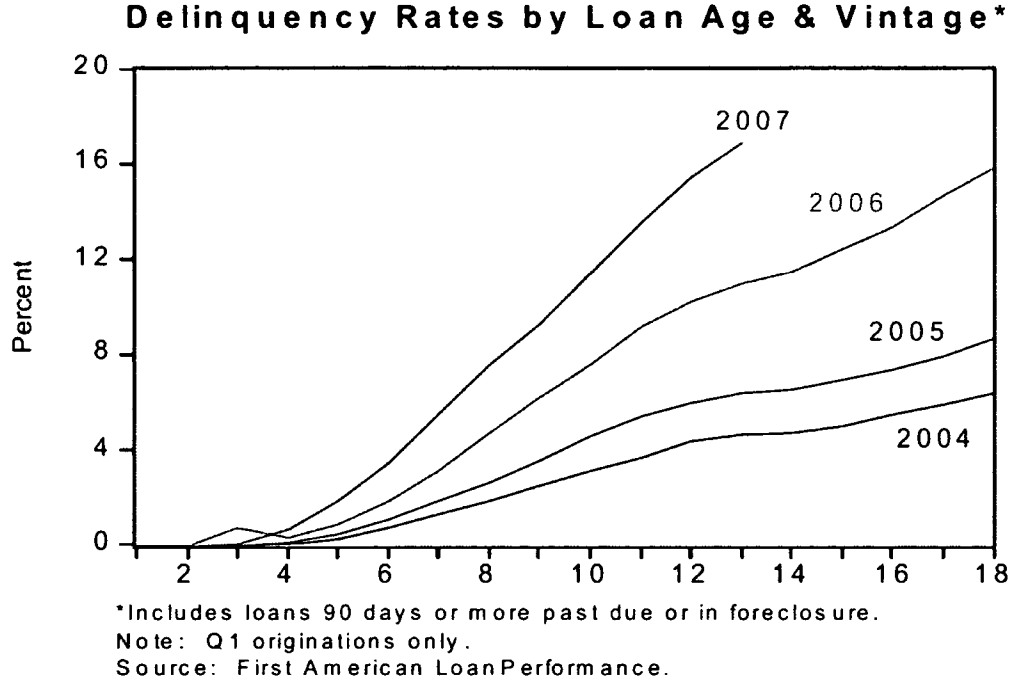
5. Widespread Defaults and Delinquencies Are the Inevitable Consequence of Loans Issued Without Meaningful Underwriting.

232. High payment defaults and delinquency rates are reflective of a systematic disregard for underwriting guidelines by mortgage originators. When effective underwriting occurs, poor credit risks are screened out. That is the purpose of underwriting. In the absence of effective underwriting, loans are made to unqualified borrowers and fraud is not detected. When borrowers are loaned money without regard to their ability to repay, loan delinquencies (and foreclosures) ensue. High delinquency rates in loans issued by an originator provide further evidence that the originator failed to adhere to prudent underwriting practices.

233. Academic studies have shown that the departure from sound underwriting practices that accompanied the explosion in securitizations contributed to substantial increases in early payment defaults and delinquencies. *See* Benjamin J. Keys et al., *Did Securitization Lead*

to Lax Screening? Evidence from Subprime Loans, 125 Q. J. Econ. 307 (2010) ("[W]e show that a doubling of securitization volume is on average associated with about a 10%-25% increase in defaults . . . within two years of origination . . . [and] a decline in screening standards . . . .").

234. Data collected on the performance of loans over the past several years and analyzed in these studies show that payment default and delinquency rates have in fact soared as a result of faulty underwriting. In the chart below, the X axis reflects months since issuance of the loan; the Y axis reflects the percentage of loans delinquent.



235. Review of current performance data of the loan pools backing the Bank's PLMBS similarly shows increased rates of default, delinquency and foreclosure, indicating pervasive underwriting failures by the mortgage originators who issued the loans backing the PLMBS. *See infra* ¶ 723. As of March 31, 2011, the rates of default, delinquency, and foreclosure for mortgage loans underlying the Bank's PLMBS are all in the double digits, and many are as high as 49 or 50%.

6. The Bank's Review of Loan Files Recently Provided by Certain Trustees Confirms that Underwriting Guidelines Were Abandoned.

236. As noted above, the Bank did not have access to loan files when it purchased these Certificates. However, as a financial institution, the Bank has certain post-purchase contractual rights to obtain from the trustees the loan files for certain of the Certificates. The Bank has sought to exercise this right, but has faced significant resistance from the trustees and Defendants to obtaining these loan files. For the most part, despite the Bank's demands, the trustees have refused to comply with their obligation to provide access to the loan files. However, after much wrangling, the Bank was able to obtain loan file information for two Certificates—one issued by Nomura, and the other by MortgageIT (a Deutsche Bank affiliate). The findings of the review of the loan files are startling. Despite the Defendants' representations regarding their due diligence review of the loan pools and confirmation that loans in the pools were issued pursuant to stated underwriting guidelines, the loan files demonstrate just the opposite.

237. The trustee for MHL 2006-1 1A2 (a MortgageIT issuance) provided the Bank with loan files for certain of the 855 loans in the pool. The Bank reviewed 113 loans. Of this number, a full one third (37) of the loans were identified by the Bank's third-party reviewer as exhibiting "obvious material and adverse breach" of the applicable representations and warranties. The trustee for NAA 2006-AF2 5A1 (a Nomura issuance) provided the Bank with loan files for certain of the 631 loans in the pool. The Bank reviewed 113 loans. Of this number, over half (60) of the loans were identified by the Bank's third-party reviewer as exhibiting "obvious material and adverse breach" of the applicable representations and warranties. The large number of defective loans in the loan pools strongly evidences the failure of the mortgage originators to apply their stated underwriting guidelines.

238. The material and adverse breaches documented with respect to some of the loan files are included in Section V.C, below, and in Appendix VIII.

C. Federal and State Investigations, Press Reports, Publicly Available Documents Produced in Other Civil Lawsuits, and Analysis of the Loan Pools Underlying the Certificates Identify Systematic Violation of Underwriting Guidelines, Appraisal Guidelines, and Predatory Lending by the Originators Whose Loans Back the PLMBS in this Case.

239. There have been numerous investigations into the practices of the mortgage originators who issued loans backing the PLMBS purchased by the Bank. A review of these investigations and related litigation, as well as confidential witness testimony obtained during the Bank's investigation, demonstrate that mortgage originators in general, and those that issued loans that backed the PLMBS purchased by the Bank in particular, systematically violated and ignored their stated underwriting standards, rendering the statements in the Offering Documents with regard to underwriting standards of the mortgage originators misleading. This evidence is reinforced further by the analysis of the performance of the actual loan pools backing the PLMBS purchased by the Bank, and, where it has been made available, the actual loan files for the loans backing the PLMBS.

240. Indeed, many of the mortgage originators who issued loans backing the PLMBS purchased by the Bank have been specifically identified as problem lenders. In materials presented to the FCIC on April 8, 2010, the OCC presented a list of the worst of the subprime lenders based on their mortgage foreclosure rates in the hardest hit metropolitan areas of the country. *See* OCC, *Activities of the National Banks Related to Subprime Lending*, Attachment 2. Eight of the originators of mortgage loans that back the PLMBS purchased by the Bank were included on the list: Countrywide, Ameriquest Mortgage Co., American Home Mortgage Corp., IndyMac Bank, F.S.B., Greenpoint Mortgage Funding, Wells Fargo, OwnIt Mortgage Solutions, Inc., and Decision One Mortgage.

241. Abundant additional information now available reveals the extent to which these and other mortgage originators abandoned sound underwriting practices and engaged in predatory lending, as follows.[9]

1. Countrywide Home Loans, Inc.

242. Countrywide Home Loans, Inc. ("Countrywide") originated underlying mortgage loans securing at least thirty-four of the Certificates purchased by the Bank: ARMT 2006-1 6A1, ARMT 2006-3 4A2, ARMT 2007-2 2A21, BAFC 2005-H 7A1, BAFC 2006-D 1A1, BALTA 2005-9 11A1, BALTA 2006-2 11A1, BALTA 2006-4 11A1, BALTA 2006-5 1A1, BALTA 2006-6 1A1, BALTA 2006-7 1A1, BALTA 2007-1 1A1, BCAP 2006-AA1 A1, CWALT 2005-16 A4, CWALT 2005-86CB A10, CWALT 2006-OA16 A2, CWALT 2006-OA8 1A1, CWALT 2007-OA4 A1, CWALT 2007-OA9 A1, CWHL 2005-2 2A1, DBALT 2006-AR3 A2, DBALT 2006-AR4 A1, HVMLT 2005-10 2A1A, HVMLT 2007-1 2A1A, IMSA 2006-2 1A2A, JPALT 2006-A2 1A1, LUM 2005-1 A1, LUM 2006-6 A1, MARM 2005-7 2A1, MARM 2005-8 1A1, SAMI 2005-AR2 1A1, SAMI 2006-AR4 4A1, SAMI 2006-AR6 1A1 and SAMI 2006-AR7 A1A. Countrywide abandoned sound underwriting practices.

243. Countrywide was the nation's largest subprime loan originator between 2005 and 2007. In 2010, Countrywide was identified by the OCC as the eighth worst mortgage originator in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

[9] The Bank profiles in the following section thirteen mortgage loan originators whose abandonment of underwriting guidelines and other non-disclosed origination practices resulted in materially false and misleading statements in the Offering Documents. The practices of additional mortgage loan originators whose practices were similarly not disclosed in the Offering Documents are set forth in Appendix IX.

a. Government actions against Countrywide and documents produced therein demonstrate Countrywide's abandonment of sound underwriting practices.

244. On June 4, 2009, the SEC filed a complaint against certain senior executives of Countrywide's parent corporation, Countrywide Financial Corporation, including President, David Sambol, Chairman and CEO, Angelo Mozilo, and CFO, Eric Sieracki. *SEC v. Mozilo et al.*, No. 09-3994 (C.D. Cal.).[10] In this complaint, the SEC alleged that these three senior officers committed securities fraud by hiding from investors "the high percentage of loans it originated that were outside its own already widened underwriting guidelines due to loans made as exceptions to guidelines." That SEC complaint detailed how Countrywide was aware internally that its own underwriting guidelines were being ignored and that borrowers were lying about their income in the reduced-documentation application process.

245. According to the SEC:

> [T]he actual underwriting of exceptions was severely compromised. According to Countrywide's official underwriting guidelines, exceptions were only proper where "compensating factors" were identified which offset the risks caused by the loan being outside of guidelines. In practice, however, Countrywide used as "compensating factors" variables such as FICO and loan to value which had already been assessed [in determining the loan to be outside the guidelines].

246. Countrywide's top-down involvement in the securitization process and complete abandonment of underwriting standards are confirmed by the documents produced in the SEC action, including internal emails, memos, minutes, presentations and deposition testimony, which only became publicly available as part of the briefing on the Countrywide Defendants' unsuccessful motion for summary judgment.

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[10] Countrywide Financial Corporation originated mortgage loans through its wholly owned subsidiary Countrywide Home Loans, Inc., which this Complaint refers to as "Countrywide" for simplicity. *See, e.g.*, Countrywide Financial Corporation 2006 Annual Report at 3 (Form 10-K). Thus, the allegations from, and evidence produced in, actions against Countrywide Financial Corporation, when they concern Countrywide Financial Corporation's mortgage origination business, really concern Countrywide Home Loans, Inc.

247. For example, Countrywide's Chief Risk Officer John McMurray testified as to Countrywide's adoption of a "matching" strategy, under which Countrywide matched whatever product was being offered by other originators in the marketplace. [Exh. 267] However, Countrywide's adoption of its competitors' guidelines (without adoption of corresponding credit risk mitigants) rendered Countrywide's origination practices "the most aggressive in the country." A June 24, 2005 e-mail from McMurray to Sambol stated that "[b]ecause the matching process includes comparisons to a variety of lenders, our [guidelines] will be a composite of outer boundaries offered across multiple lenders," and that because comparisons are only made to lender guidelines where they are more aggressive and not used where they are less aggressive, CFC's "composite guides are likely among the most aggressive in the industry." [Exh. 106].

248. As part of that matching strategy, Countrywide adopted a policy of underwriting ever more loans based on exceptions to their underwriting guidelines. As Sambol explained in a February 13, 2005 email to Countrywide management, Countrywide "should be willing to price virtually any loan that we reasonably believe we can sell/securitize without losing money, even if other lenders can't or won't do the deal." [Exh. 220] Similarly, an internal Countrywide email from Managing Director, Carlos Garcia, to McMurray and Countrywide's Credit Risk Officer, Clifford Rossi, dated June 2, 2006 states that "[w]e should originate whatever we can sell to investors." [Exh. 118]

249. Ever in pursuit of the next deal, Countrywide routinely went beyond and around its publicly-touted Automated Underwriting System, the Countrywide Loan Underwriting Expert System ("CLUES"). If CLUES rejected an applicant, Countrywide subjected the loan application to a process of manual underwriting whereby the loan would be sent up the chain for

approval, first to a loan officer, then to the Structured Loan Desk (also referred to as the "exception desk"), and if still not approved, the loan would be referred to Secondary Marketing where applications were routinely granted exceptions to stated underwriting guidelines, all in furtherance of Countrywide's matching strategy. As former Countrywide Managing Director for Secondary Marketing, Nathan "Josh" Adler, testified in the SEC action:

> Q. Do you know whether Countrywide sometimes originated loans that were considered to be exceptions to its underwriting guidelines?
>
> A. We did.
>
> Q. To your knowledge, was there a process by which such loans were approved?
>
> . . . .
>
> A: There generally was, yes.
>
> Q. And what is your understanding of that process?
>
> A. Well, I was—I was at the tail end of that process. There was—we had guidelines, we had kind of core guidelines, and then we had these shadow guidelines, which were the kind of the second tier guideline, if you will. And then there was this third tier which would come to me. But essentially there were—the tiering of guidelines related to the kind of the exception process. And there was an underwriting, they called it, Structured Loan Desk process in the divisions where loans would get referred to the Structured Loan Desk if they were outside, I believe, of kind of the core guidelines. And then if those loans were outside of even the shadow guidelines, then they would be referred to Secondary Marketing to determine if the loan could be sold given the exception that was being asked for.

[Exh. 234]

250. As the SEC alleged: "The elevated number of exceptions resulted largely from Countrywide's use of exceptions as part of its matching strategy to introduce new guidelines and product changes." SEC Compl. ¶ 29 (citing July 8, 2008 testimony of John P. McMurray at 373:25-375:6). [SOF 285/Exh. 267] In order to boost revenue from securitizations, Countrywide was willing to approve virtually any loan, regardless of deviation from stated underwriting standards, so long as it could package and re-sell the loan in a securitization. While not publicly

disclosed, these facts were well known within Countrywide, including by Countrywide's highest levels of management.

251. For example, in a May 22, 2005 email to Sambol, McMurray, after noting that "exceptions are generally done at terms even more aggressive than [Countrywide] guidelines," identified a number of concerns regarding credit risk associated with Countrywide's exception loans, including the following:

(a) "Use of 2nds Liens as Credit Enhancement." Because many exceptions loans are structured as piggy-back transactions, Countrywide was taking on much of the loan's credit risk through the second lien, which is not sold into the secondary market;

(b) "R&W [representation and warranty] Exposure." Although Countrywide sold "much of the credit risk associated with high risk transactions away to third parties," Countrywide "will see higher rates of default on the riskier transactions and third parties coming back to us seeking a repurchase or indemnification" for losses due to the defaults;

(c) "Security Performance. To the extent our securities contain a greater concentration of higher risk transactions than those issued by our competitors, our security performance may be adversely impacted. The issue here is the extent our concern over security performance drives what we will or won't do on an exception."

252. McMurray also noted in his email that Countrywide's pricing models were inherently limited because they "are often used to price transactions (e.g., exceptions) beyond the scope of the data used to estimate the models." [SOF 288/Exh. 84]

253. At a June 28, 2005 Credit Risk Committee meeting, Countrywide senior executives received a presentation informing the attendees that nonconforming exceptions loans accounted for a staggering 40% of Countrywide's loan originations. [SOF 289]

254. On April 13, 2006, CEO Mozilo issued an email noting that he had "personally observed a serious lack of compliance with our origination system as it relates to documentation and generally a deterioration in the quality of loans originated versus the pricing of those

loan[s]." Specifically, in his email, Mozilo explained that Countrywide was originating home mortgage loans "through our channels with disregard for process [and] compliance with guidelines."

255. During June 2006, a Credit Risk Leadership package reported that Countrywide underwrote, on an exceptions basis, 44.3% of its Pay-Option ARMs, 37.3% of its subprime first liens, 25.3% of its subprime second liens, and 55.3% of its standalone home equity loans. [SOF 293/Exhs. 4, 117]

256. During December 2006, the Credit Risk Leadership package reported similar percentages of loans underwritten on an exceptions basis: 45.4% of Pay-Option ARMs, 35.3% of subprime first liens, 24.1% of subprime second liens, and 52.6% of standalone home equity loans [SOF 294/Exh. 5].

257. Countrywide's Quality Control group performed a "4506 Audit" for the 10-month period ended on April 30, 2006, comparing the stated income from loan applications to the income reported by that borrower to the Internal Revenue Service [SOF 427/Exhs. 115, 117, 119], and concluded that 50.3% of the stated income loans audited by Countrywide showed a variance in income from the borrowers' IRS filings of greater than 10%. Of those, 69% had an income variance of greater than 50%. [SOF 428/Exh. 117] Available documents confirm that the audit results were widely known within Countrywide, having been distributed to Countrywide management, including its highest ranking officers, and were discussed at the April 24, 2006 Credit Risk Management Committee meeting [SOF 431/Exhs. 115, 117], where McMurray stated that the income discrepancies revealed in the audit were also being seen at Countrywide Home Loans. [SOF 432, Exhs. 115, 117] Rossi, testified that the "vast majority"

of the income discrepancies revealed in the 4506 Audit were the result of fraud and misrepresentation. [SOF 434/Exh. 275]

258. By February 2007, internal risk management at Countrywide "noted that the production divisions continued to advocate for, and operated pursuant to, an approach based upon the matching strategy alone. . . . Additionally, [a senior risk manager] warned [Sambol] that 'I doubt this approach would play well with regulators, investors, rating agencies etc. To some, this approach might seem like we've simply ceded our risk standards and balance sheet to whoever has the most liberal guidelines.'" McMurray email to Sambol dated Feb. 11, 2007. [Exh. 109]

259. The deterioration of Countrywide's internal quality control process was noted by Countrywide's management and Corporate Credit Risk Committee. At the March 12, 2007 meeting, it was reported that of the loans reviewed through Countrywide's internal quality control process, 30.3% had deficiencies or were rated high risk, and 11.9% were rated severely unsatisfactory, and that one of the principal causes for such ratings included inadequate DTIs or LTVs, missing income or appraisal documentation, or failure to meet minimum FICO scores. Similarly, at the May 29, 2007 meeting, attendees were informed that loans were being made "outside of any guidelines." A presentation made at the May 29, 2007 meeting notes that "loans continue to be originated outside guidelines primarily via the Secondary SLD desk, and that there is no formal guidance or governance surrounding SLD approvals." [Exhs. 133, 55, 176]

260. A December 2007 internal Countrywide memorandum quoted by the SEC states that "a Countrywide review of loans issued in late 2006 and early 2007 resulted in . . . the finding that borrower repayment capacity was not adequately assessed by the bank during the underwriting process . . . . More specifically, debt-to-income ratios did not consider the impact

of principal [negative] amortization or any increase in interest." SEC Compl. ¶ 56 (quoting Mozilo memo dated December 13, 2007).

261. In employing its "matching" strategy and thereby making as many loans as possible, regardless of exceptions, Countrywide was able to enjoy tremendous profits from securitization of the loans, which also shifted the risk of the loans from Countrywide to investors:

> As indicated in a previous note, when we first started the SLD, the intent was to be able to offer at least one option for borrowers who wanted exceptions to our underwriting guides. The thought was that we would offer borrower exceptions in our two major loan programs: 30-year fixed rate and 5/1 ARMs. In addition, both of these programs were set up for Alt A and as such we could price and sell under these programs. While this process seemed to have worked well in the past, we have been recently seeing increased demand from Production for exceptions on all products in general and Pay Option loans in particular. In addition, Production has been expressing frustration that we were only offering major exceptions for 5/1 ARMs and 30-year fixed rates. As such, to the widest extent possible, we are going to start allowing exceptions on all requests, regardless of loan program, for loans less than $3 million effective immediately.
>
> The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. We will assume securitization in all cases.
>
> . . . .
>
> The methodology from a saleability point of view will also be similar to that used for 30-year fixed rates and 5-1 Hybrids. We will view the exception assuming securitization and will no longer take into account whole loan buyers. In the past, this has caused some exceptions to be declined for Ratios, Balances and LTV/CLTV[11] combinations. Provided we can sell all of the credit risk (i.e. not be forced to retain a first loss place due to a[n] 80% LTV, 60 Back-end ratios $3 million loan) we will approve the loan as a salable loan. Finally, we will not be reviewing loans from an underwriting point of view but will rather be relying on Production to make certain that the loan[s] meet all other underwriting Guideline and w[i]ll have been reviewed for compliance acceptability and fraud.

[11] "CLTV" means "combined loan-to-value ratio"—the ratio of *all* liens on a property to the property's total appraised value.

July 28, 2005 email from David Spector, Managing Director, to Countrywide Managing Directors and Secondary Marketing Management.

262. As Nathan Adler, Managing Director of Secondary Markets, testified in the SEC action:

> Q. Was one of the criteria for granting exceptions at the Secondary Loan Desk in Secondary Marketing whether or not the loan could be sold into the secondary market?
>
> A. That was the only criteria that we followed.

263. The widespread use of exceptions to its underwriting guidelines were well known within Countrywide, but permitted because, as recognized by John McMurray in his May 22, 2005 email discussed above, "CW's approach to exceptions has been lucrative over the past several years."

264. Yet Countrywide did not publicly disclose the amount of loans it was underwriting on an exception basis for any loan product or division. Paul Liu, a Countrywide attorney who participated in, and testified to, the legal work involved in the securitization process at Countrywide between 2004 and 2007, including review of offering documents such as prospectus supplements, testified in the SEC action that while the prospectus supplements he reviewed may have stated that "some of those mortgage loans may have . . . been originated with exemptions that have compensating factors," they did not disclose the number or percentage of loans included in each securitization that were underwritten pursuant to exceptions, or even in many cases whether any loans within that securitization were underwritten pursuant to exceptions at all.

265. Indeed, Countrywide assured investors that the level of exceptions was low. Christopher Brendler, a Stifel Nicholas analyst who initiated coverage of Countrywide in early 2006, testified that Countrywide repeatedly advised conference call and investor presentation

participants that it kept its "exceptions low." Brendler also testified that a low exception rate in the mortgage industry would have been 5% to 10% of total loans—not the extreme number of exceptions that Countrywide made. Brendler confirmed that such a disclosure would have been material:

> That's—that would have been a very disturbing disclosure, I believe, to know that you're basically seeking out the most aggressive policies and underwriting guidelines of your competitors without consideration for other factors. You're essentially creating a worst of the worst.

[Exh. 242]

266. On November 3, 2009, the District Court for the Central District of California denied a motion to dismiss the SEC complaint. Judge Walter specifically noted that "neither Countrywide's disclosures nor a careful review of the context of the statements convince this Court that the alleged omissions or misstatements were immaterial or not misleading as a matter of law." *SEC v. Mozilo, et al.*, No. 09-3994, slip op., at 10 (C.D. Cal. Nov. 3, 2009).

267. Subsequently, on September 16, 2010, Judge Walter denied Countrywide's motion for summary judgment. Among other key determinations, the court found:

> [The] SEC has also presented evidence that Countrywide routinely ignored its official underwriting guidelines to such an extent that Countrywide would underwrite *any* loan it could sell into the secondary mortgage market. According to the evidence presented by the SEC, Countrywide typically made four attempts to approve a loan. Countrywide first used an automated underwriting system known as "CLUES", which applied Countrywide's underwriting guidelines as set forth in Countrywide's technical manuals and loan program guides. . . . CLUES would either approve the loan or "refer" it to a loan officer for manual underwriting. If that loan officer lacked the authority to make an exception to Countrywide's underwriting guidelines, the loan was referred to the Structured Lending Desk, where yet another underwriter, with even more authority to waive guideline requirements, attempted to make the loan. If that attempt failed, the loan was referred to Countrywide's Secondary Markets Structured Lending Desk. According to the testimony of the Managing Director of Countrywide Home Loans' Secondary Marketing Division, once the loan was referred to Countrywide's Secondary Markets Structured Lending Desk, the sole criterion used for approving the loan was whether or not the loan could be sold into the secondary market. As a result of this process, a significant percentage (typically in

> excess of 20%) of Countrywide's loans were issued as exceptions to its official underwriting guidelines. As reported in one Corporate Credit Risk Committee meeting, one third of the loans referred from CLUES missed "major guidelines" and another one third missed "minor" guidelines. In light of this evidence, a reasonable jury could conclude that Countrywide all but abandoned managing credit risk through its underwriting guidelines, that Countrywide would originate any loan it could sell, and therefore that the statements regarding the quality of Countrywide's underwriting and loan production were misleading.

SEC v. Mozilo, et al., No. 09-3994, slip op., at 11–12 (C.D. Cal. Sept. 16, 2010) (citations to the record omitted).

268. In short, evidence presented to the court supported the claim that "Countrywide routinely ignored its official underwriting guidelines, and in practice, Countrywide's only criterion for approving a loan was whether the loan could be sold into the secondary market." *Id.* at 12.

269. The Attorneys General from many states also filed complaints against Countrywide based on its abusive and predatory lending practices. Among them, the Attorney General of California alleged based on its extensive investigation of Countrywide that the company "viewed borrowers as nothing more than the means for producing more loans, originating loans with little or no regard to borrowers' long-term ability to afford them." Complaint at 5, *People v. Countrywide Fin. Corp.*, No. LC083076 (Cal. Super. Ct.) ("California Attorney General Countrywide Complaint"). Countrywide, the California Attorney General found, "did whatever it took to sell more loans, faster—including by ... disregarding the minimal underwriting criteria it claimed to require." California Attoney General Countrywide Complaint at 20.

270. For example, the California Attorney General Countrywide Complaint quotes one former California loan officer explaining how stated income loans were sold, with a loan officer telling the borrower "with your credit score of X, for this house, and to make X payment, X is

the income that you need to make"—after which the borrower would state that his or her income was X. *Id.* at 21.

271. A similar lawsuit instituted by the Illinois Attorney General, *People v. Countrywide Financial Corp.*, No. 08-22994 (Ill. Ch.), detailed how (a) one Countrywide employee estimated that approximately 90% of all reduced documentation loans sold out of the Chicago office had inflated incomes; and (b) one of Countrywide's mortgage brokers, One Source Mortgage, Inc., routinely doubled the amount of the potential borrower's income on stated income mortgage applications.

272. The Illinois complaint also detailed how Countrywide created incentives for its employees to increase the number of loans without concern for ability of the borrower to repay the loan. The *New York Times* described the allegations in the complaint as "paint[ing] a picture of a lending machine that was more concerned with volume of loans than quality."

273. Among the many other abuses described in the Illinois complaint, the Attorney General found that:

> [t]hrough the securitization process, Countrywide extracted hefty over-head charges, then shifted the risk of the failure of these non-traditional loans to investors. Moreover, securitization allowed Countrywide to tap those investors for much needed capital to fuel its origination process and reach its goal of capturing more and more market share. To facilitate the increase in loan origination volume, Countrywide relaxed its underwriting standards even more and sold risky, unaffordable and unnecessarily more expensive mortgage loans to millions of American homeowners.

Testimony of Illinois Attorney General Lisa Madigan before the FCIC, Jan. 14, 2010.

274. Similar allegations appear in a complaint filed by the Connecticut Attorney General, *State v. Countrywide Financial Corp.*, No. 08-40390945 (Conn. Super. Ct.).

> On October 6, 2008, Countrywide entities settled lawsuits brought by *eleven* State Attorneys General and potential claims by 28 other states, including all of the States in which loans backing the PLMBS purchased by the Bank were issued. The settlement valued at $8.4 billion resolved charges of violations of predatory

> lending, unfair competition, false advertising, and violations of banking laws, and required Countrywide to implement a program to modify certain existing loans, particularly high risk loans and pay-option mortgages that were the subject of the Attorneys Generals' investigations.

275. Similarly, as the 2011 FCIC Report just recently revealed based on the FCIC's extensive investigation:

> Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities. As early as September 2004, Countrywide executives recognized that many of the loans they were originating could result in "catastrophic consequences." Less than a year later, they noted that certain high-risk loans they were making could result not only in foreclosures but also in "financial and reputational catastrophe" for the firm. But they did not stop.

FCIC Report at xxii.

b. Private actions against Countrywide demonstrate Countrywide's abandonment of sound underwriting practices.

276. A multitude of private class action and individual cases raise further challenges to Countrywide's underwriting practices—and substantiate the challenges with witness testimony and documentary evidence. For example, Mark Zachary, a former Regional Vice President of Countrywide Mortgage Ventures, LLC, Countrywide's joint venture with the homebuilding company KB Home, detailed in a complaint how Countrywide blatantly ignored its underwriting policies and procedures. Compl., *Zachary v. Countrywide Financial Corp.*, No. 08-0214 (S.D. Tex). Mr. Zachary states that in September of 2006 he informed Countrywide executives that loan officers were helping loan applicants to submit applications with false income amounts.

277. Zachary's observations about problems with appraisals at KB Home are confirmed by documents reflecting internal correspondence within and between KB Home and Countrywide filed in *Johnson v. KB Home*, No. 09-972 (D. Ariz.).

278. Countrywide handled all of the mortgage financing and appraisal services for KB Home.

279. For example, on June 8, 2005, Christina Nickerson, a KB Home salesperson wrote: "We have an appraisal issue at IMR Mesa . . . . [T]he [lender's] appraiser can not obtain value. . . . I have asked the [lender] for a copy of the appraisal, and I requested that she try a more aggressive appraiser. . . . My suggestion is that we have [KB Home Mortgage Company, a wholly owned subsidiary of KB Home] order an appraisal from a KB friendly appraiser and see what happens." KB Home Director of Sales McLaury responded: "I agree, we need to order an appraisal from our KB friendly appraiser[.]" On June 16, the salesperson heard back: "Here's our appraisal at purchase price[,]" but McLaury complained: "It's $1,966 short isn't it? Can Ernie Carver bump it up?" Soon after, McLaury confirmed that the maneuvering had worked: "Christina and the Mesa Team, the appraisal will come in at the total sales price."

280. In another instance, in July 2006, KB Home Phoenix Vice President Stacie McDonald asked a KB Home salesman about a home for which an appraisal was low. The salesman responded: "It was approved at $290,000 with a VC of 38%, however, we were able to push appraisal to $300,000 and the addendum for $300,000 was done yesterday."

281. Similarly, in October 2007, KB Home Director of Sales McLaury instructed "friendly" appraiser Scott Dugan: "Please base your appraisal on today's base sales price, the options/upgrades the buyer purchased ($40,777), and comps in the neighborhood/area, particularly the one lot 44 (66 Lions Den Avenue) that closed at $248,643." Dugan responded: "ok."

282. KB Home salesperson, Peter Manesiotis, reported to his manager, Gregory Victors: "Appraisal came in low. This is a CW deal. How should we proceed?" Victors responded: "Have Countrywide order a second appraisal. KB will pay for it. Speak to [loan officer] or processor to get someone who knows area. This process just worked at Mesquite.

Buyer did not know about first appraisal." Manesiotis then instructed that a new appraisal be ordered and "do not notify the buyer about the first appraisal."

283. Countrywide senior executives were apparently not just aware but actively involved in this conduct. In an August 9, 2006 email sent after an appraisal was below contract price and below the level that KB Home's hand-picked appraiser, Harry, could reach, Countrywide/CWKB Vice President, Tim Ryan wrote: "Eric Sanford the western regional VP of landsafe is reviewing the appraisal—he is as high as it gets at landsafe. . . . As soon as I hear I will let you know. We are fighting all the way to the top for you." Ryan later reported: "We were just informed the original appraisal will be amended to Harry's appraisal. . . . So CW will be able to use the $687,000.00 value." On another occasion Ryan explained one scheme for generating self-perpetuating excessive appraisals: "Going forward I have asked ops to request Harry on homes that are 'decked' out—this way we know max value has been given. Under the new rules we cannot do it often, however once a few closing occur—we have comps!"

284. More evidence has been presented in lawsuits against Countrywide by the leading insurance companies that insured mortgage-backed securities sold by Countrywide. On September 30, 2008, MBIA Insurance, one of the largest providers of bond insurance, filed its complaint in *MBIA Insurance Corp. v. Countrywide Home Loans* (Sup. Ct. Cty of New York). This complaint explains how MBIA "provide[d] credit enhancement on the [mortgage-backed securities]—in the form of guarantee of repayment of principal and interest for the [mortgage-backed securities] notes in each securitization," and claims MBIA issued such insurance on the basis of fraudulent representations by Countrywide.

285. MBIA explains that:

> MBIA's re-underwriting review has revealed that 91% of defaulted or delinquent loans in these fifteen Countrywide securitizations show material discrepancies

> from underwriting guidelines. . . . For example the loan documentation may (i) lack key documentation such as verification of borrower income or assets; (ii) include an invalid or incomplete appraisal; (iii) demonstrate fraud by the borrower on the face of the application; or (iv) reflect that any of the borrower income, FICO score, debt, DTI or CLTV ratios, fails to meet stated Countrywide guidelines (without any permissible exception).

MBIA specifically notes that "the Defective Loans run across Countrywide's securitizations from 2004-2007, demonstrating the consistency of Countrywide's disregard for its underwriting guidelines during this period." On April 27, 2010, the Court denied Countrywide's motion to dismiss MBIA's fraud claims.

286. The September 28, 2010 Complaint filed by monoline insurer Ambac in *Ambac Assurance Corp. v. Countrywide Home Loans* (N.Y. Sup. Ct.) alleges:

> Because Countrywide [Financial Corporation, Countrywide Home Loans, Inc. and Countrywide Securities Corporation] was the nation's leading mortgage originator, its many public pronouncements that its underwriting practices were the industry's gold standard carried significant weight. Countrywide repeatedly asserted that the loans in its portfolio, from which the loans in the transactions at issue were drawn, were originated pursuant to Countrywide's strict underwriting standards that allowed "exceptions" only if compensating factors were present. But what Countrywide concealed is that, contrary to its representations, approval of "exceptions" became the rule. Countrywide failed to disclose that its business model was premised on the perpetual origination and refinancing of loans to borrowers who did not have the ability to make the required payments.

287. Ambac alleges that Countrywide made numerous false and misleading statements and omitted material facts about the quality of Countrywide's loan origination procedures and the collateral underlying the transactions. In particular, "[t]he Prospectus Supplements contained false and misleading statements concerning the quality of Countrywide's loan origination procedures and, in particular, failed to disclose that Countrywide had adopted a practice of making loans to borrowers who had little or no ability to repay their loans." Furthermore, the loan tapes for the transactions provided by Countrywide—which were "large spreadsheets that purported to contain true and accurate information concerning the proposed loan pools, including

key metrics for assessing the borrowers' ability to repay their loans and the sufficiency of the properties as collateral," and upon which Ambac was intended to rely to analyze the risks of and pricing for the proposed transactions—contained information that was materially false and misleading "in view of Countrywide's abandonment of sound underwriting practices and its knowledge of pervasive fraud."

288. The falsity of Countrywide's representations is evidenced by the performance of the underlying loans, which have defaulted at extraordinary rates. As of September 2010, more than 35,000 loans insured by Syncora, with an aggregate principal balance of more than $1.95 billion, had defaulted or have been charged-off. Further, by September 2010, Ambac had reviewed the origination files for 6,533 loans for conformance with Countrywide's loan-level representations and warranties and discovered that 6,362 of the loans—more than 97%—materially breached Countrywide's loan-level representations and warranties.

289. In *Financial Guaranty Insurance Co. v. Countrywide Home Loans, Inc.* (N.Y. Sup. Ct.), Financial Guaranty Insurance Company ("FGIC"), an insurer of Countrywide's mortgage-backed securities, alleges that, with respect to securitization it insured in 2006 and 2007, Countrywide and its corporate affiliates made multiple false misrepresentations and omissions, including that Countrywide: (a) failed to disclose an increase in its exceptions to, and expansion of, its mortgage-underwriting guidelines, including exceptions for which there were no compensating factors; (b) failed to disclose and deliberately concealed changes to its underwriting standards and procedures from those used for mortgage loans included in prior securitizations; (c) engaged in "adverse selection," whereby poor quality loans would be securitized while loans that were expected to perform better were retained on Countrywide's books; (d) failed to disclose mortgage-loan-origination fraud, in which Countrywide and its

corporate affiliates were participants or complicit; (e) misrepresented to FGIC the nature of key delinquency information; and (f) made numerous false and misleading public statements concerning the quality of Countrywide's mortgage origination process and securitized mortgage loans.

290. According to FGIC, beginning in early 2006, at the latest, Countrywide made continuing undisclosed changes in its mortgage loan origination practices, and started originating and securitizing lower-quality, poorly underwritten loans. These changes resulted in an undisclosed weakening of Countrywide's underwriting guidelines by permitting increased exceptions in originating mortgage loans, and permitting these exceptions without adequate, and in many cases any, compensating factors. Moreover, FGIC alleges that Countrywide admitted to it that Countrywide not only expanded the exception process, but also engaged in "adverse selection" by retaining fewer exception mortgage loans for its portfolio, while securitizing (for sale to investors) those loans with exceptions.

291. FGIC's allegations and Countrywide's purported admissions are supported by the analysis of professional residential mortgage loan review experts that were retained by FGIC to review statistically significant samples of mortgage loans from FGIC insured securitizations. These reviews determined that approximately *70%* of the mortgage loans in these securitizations significantly violated one or more of Countrywide's underwriting guidelines or standard mortgage underwriting practices. Unsurprisingly, the loss rate for mortgage loans found to be in breach of underwriting standards was two-and-a-half to three times the loss rate on non-breaching loans.

292. Similarly, in *Syncora Guarantee Inc. v. Countrywide Home Loans, Inc.* (N.Y. Sup. Ct.), Syncora, an insurer of Countrywide's mortgage-backed securities, alleges that, with respect to Countrywide securitizations it insured between 2004 and 2006:

> in originating the loans in these portfolios, Countrywide, *consistent with its business practices at the time, systematically ignored its own underwriting guidelines* and made imprudent loans that no reasonable underwriter would have made in a single-minded pursuit of generating ever-greater volumes of new loans. As a result, thousands of non-performing loans in the securitized portfolios violated Countrywide's own published guidelines should never have been made.

(emphasis added.)

293. Syncora alleges that the Countrywide offering documents, including the prospectuses and prospectus supplements, were replete with misrepresentations regarding Countrywide's underwriting process and failed to disclose its routine, material deviations from sound underwriting practices. Countrywide is also alleged to have materially misrepresented the accuracy of data, including DTIs and CLTVs, provided to Syncora for each securitized loan (commonly referred to as the "loan tape").

294. Syncora's review of underlying files for 3,700 defaulted loans in two of the securitizations it insured revealed that 2709 of the loans—almost 75%—have severe underwriting defects. The majority of these loans exceeded or ignored one or more Countrywide underwriting guidelines regarding excessive DTIs; excessive combined loan to value ratios; excessive loan amounts; improper calculation of first-lien debt, improper calculation of property values; patently unreasonable stated incomes; borrower fraud; indiscriminate availability of stated income loans; inflated appraisals; insufficient borrower credit; insufficient cash reserves; and/or missing documents. Indeed, Countrywide frequently breached a combination of underwriting guidelines for a given loan, which created a "layered risk," greatly increasing the likelihood of default.

295. With respect to inflated appraisals, Syncora alleges in part:

> In a review of non-performing loans in the 2005-K and 2006-D Securitizations, Syncora has found that Countrywide's appraisals of properties secured by non-performing loans show a clear pattern of inflation compared to sales prices achieved for comparable properties in the locale at the time Countrywide obtained its appraisals. Moreover, despite Countrywide's promise in the contractual documents and the Prospectuses to obtain "independent third party" appraisals, the properties underlying the vast majority of the loans in the Securitizations were appraised by Countrywide's own affiliated appraisal company, Landsafe, Inc. ("Landsafe"). Landsafe, like Countrywide Home Loans, is a subsidiary of Countrywide Financial [Corp.].

296. In sum, the evidence developed in numerous other actions against Countrywide substantiate that Countrywide abandoned its stated underwriting guidelines.

c. Confidential witnesses provide further evidence of Countrywide's abandonment of sound underwriting practices.

297. Confidential witnesses provide additional evidence of Countrywide's failure to adhere to sound underwriting practices and guidelines. For example, confidential witnesses, such as Confidential Witness ("CW")-1, a loan officer who worked at Countrywide from 1997 through 2007, CW-2, a former branch manager and regional vice president for Countrywide from September 2005 through December 2007, CW-3, a loan specialist at Countrywide's subprime lender, Full Spectrum Lending, from 2004 to 2005, and CW-4, a former Countrywide branch operation's manager from 2005 to 2010 (after Countrywide was taken over by Bank of America), all confirm that: (a) Countrywide employees faced intense pressure to close loans at any cost; (b) Countrywide increasingly approved risky, low- or no-documentation loans without adequate review; (c) Countrywide failed to adhere to underwriting guidelines; (d) Countrywide routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (e) Countrywide employees pressured appraisers to inflate home values; and (f) Countrywide employees manipulated loan data in order to close loans.

298. Specifically, CW-1 stated that employees at Countrywide always faced pressure to produce and close more loans. Because CW-1's performance was judged only on how many loans he closed each month, and not on long-term performance, he used to joke to friends that his status of employment was continually under scrutiny by his employer: "I'm fired every month, and then every month they re-hire me."

299. CW-1 stated that from 2004 to 2006, Countrywide's underwriting guidelines became "looser and looser and looser." During this period, the minimum credit scores required for prime or Alt-A mortgages fell repeatedly, such that a borrower with a FICO score of 680 could get a mortgage with a 100% LTV based upon stated income/stated assets documentation. CW-1 also stated that Countrywide offered no income/no asset ("NINA") loans, whereby a borrower could obtain a loan without providing any employment, income, or asset documentation, and did so without any effort, or for that matter no way to determine whether the borrower had an ability to repay the loan. CW-1 further stated that Countrywide frequently offered loans to borrowers who had been rejected by other mortgage providers. In fact, Countrywide loan officers often emphasized to prospective borrowers that Countrywide could do loans that other lenders could not.

300. According to CW-1, Countrywide had an "Exception Desk," whose purpose was to review loans that did not strictly meet the underwriting guidelines. During the 2004-2006 time period, CW-1 stated that, "It got to where loan approvals with exceptions were the norm."

301. According to both CW-1 and CW-2, Countrywide loan officers pressured appraisers to return values which would allow the loans to be approved. For example, Countrywide loan officers would tell the appraisers that if they did not provide the value the loan officers needed, Countrywide would not send any more work to the appraiser.

302. Both CW-1 and CW-2 described that, even in circumstances where the appraisers were not directly threatened, Countrywide influenced their appraisal values by telling appraisers exactly what value they needed in order to approve the loan. CW-2 also explained that in other instances, Countrywide provided appraisers with the purchase price of the home and the loan amount so that the appraisers could extrapolate the minimum value needed for the appraisal. CW-2 noted that Countrywide also sent appraisers additional comparables that were higher than those the appraiser initially relied upon.

303. CW-2 stated as well that Countrywide's underwriting guidelines became "way too easy" to meet. As a consequence, many of Countrywide's loans ended up in default. Numerous times, he recalled thinking to himself, "people making this kind of money shouldn't qualify for a $400,000 loan." For example, he recalled seeing loan applications for $350,000 homes, with $1,900/month loan payments, when the borrowers were making only $3,000/month. The DTI on such a loan was approximately 63%. He said such situations were "absurd, but I saw it all the time."

304. Additionally, CW-2 said that most approved mortgages at Countrywide had 95-100% LTVs, and most borrowers only put down zero to five percent of the purchase price. Consequently, borrowers had "no skin in the game," and when home values started to drop and the borrowers' loans were for more than the homes were worth, they had no incentive to continue making their mortgage payments. Moreover, CW-2 said that Countrywide granted numerous mortgages to borrowers with 65% DTIs, and that Countrywide did not require borrowers to have any "reserves" (*i.e.*, cash in their bank accounts)—or, at most, they only had to have one month's reserve—in order to be approved.

305. CW-2 also stated that Countrywide offered a "Fast and Easy" loan program, which required minimal documentation and thereby allowed mortgages to be approved more quickly. It was Countrywide's version of the stated income/stated asset mortgage. CW-2 had "no doubt" that there was a lot of upward manipulation of borrower income in order to qualify borrowers for a Fast and Easy loan. Indeed, CW-2 reported one employee to Countrywide's Fraud Department when he caught the employee repeatedly entering fraudulently high income. However, the Countrywide human resources department said that such reported incidents were not enough to fire the employee, and the employee was simply suspended. While the employee was suspended, CW-2 examined the employee's loan files and found four to five different applications in which the employee had nearly doubled the borrowers' reported income in order to get the loans approved.

306. CW-3 also saw a practice of inflating incomes on stated-income loans when she worked at Countrywide's Full Spectrum Lending division. On instruction from the branch manager, CW-3 said that loan officers "recalculated income and removed [any documents] they didn't want the underwriters to see" in order to push the loans through. In addition, CW-3 knew that loan officers at Countrywide cut and pasted false information into loan documents in order to get loans approved. "It was a pretty common practice," she said.

307. Like CW-1, CW-4 was aware that her bosses were under a lot of pressure to produce a high volume of loans; she noted that there was a big push on volume back then and that bonuses were tied to volume. In fact, CW-4 was admonished that she was being too difficult with respect to the underwriting rules, and was told that "I had to find a way to make the loans, and not try to find a way to not make them." CW-4 recalls many times during her tenure when she did not believe a loan should be made, but it nevertheless was pushed through. By way of

example, CW-4 recalls a Countrywide loan officer in her branch who was allowed to originate loans for his family members, notwithstanding that this violated Countrywide policy, and even though the applications only contained names and addresses and no other information. In fact, it was only after several of these loans closed, and CW-4 complained to her regional manager, that her colleague was told he could no longer make loans to family.

308. CW-4 also recalls instances in which she spoke with a customer over the telephone regarding missing or questionable information, and was informed by the customer that he or she just put down what the loan officer told him or her to write. When CW-4 expressed her concerns to the loan officer involved, she was told *not* to contact any customers. CW-4 recalls a lot of tension between the loan officers and loan processors in the branch, with the loan officers insisting that loans be processed quickly and without questions and becoming angry when loan processors attempted to verify and validate the information on the loan.

309. CW-5, a loan officer and branch manager for Countrywide, stated that verification of income under Countrywide's Fast and Easy loan program was "a joke." Moreover, if the CLUES system—Countrywide's Automated Underwriting System—did not approve a loan at first, loan officers would often simply inflate the numbers until there was an approval. There was no limit to how many times the numbers could be re-entered. In CW-5's experience, loan officers were unlikely to seek exceptions to the underwriting guidelines from the branch manager, since they could simply commit fraud on the "front end"—i.e., by inflating the numbers.

310. CW-5 also said that 50% of mortgage loans were made without formal appraisals. When appraisals were done, the appraiser was told that if the property did not "come back at value," Countrywide would simply go to another appraiser thereafter. CW-5 said when an

appraised property had zoning violations, or other features that would bring down the valuation, the appraiser was told to make sure their photographs of the property didn't include those features.

d. The mortgages originated by Countrywide and securitized in the PLMBS purchased by the Bank provide further evidence of Countrywide's abandonment of sound underwriting practices.

311. Countrywide originated mortgages that secured at least the Certificates listed above in paragraph 242. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates – averaging over 49 percent. These circumstances are strong evidence of Countrywide's failure to observe its stated underwriting standards. Countrywide's actual practices—including use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

e. Press reports, government investigations, and related litigation demonstrate that Countrywide engaged in predatory lending.

312. The *New York Times* detailed Countrywide's abusive lending practices in a story entitled "Inside the Countrywide Lending Spree":

> On its way to becoming the nation's largest mortgage lender, the Countrywide Financial Corporation encouraged its sales force to court customers over the telephone with a seductive pitch that seldom varied. "I want to be sure you are getting the best loan possible," the sales representatives would say.

> But providing "the best loan possible" to customers wasn't always the bank's main goal, say some former employees. Instead, potential borrowers were often led to high-cost and sometimes unfavorable loans that resulted in richer commissions for Countrywide's smooth-talking sales force, outsize fees to company affiliates providing services on the loans, and a roaring stock price that made Countrywide executives among the highest paid in America.
>
> Countrywide's entire operation, from its computer system to its incentive pay structure and financing arrangements, is intended to wring maximum profits out of the mortgage lending boom no matter what it costs borrowers, according to interviews with former employees and brokers who worked in different units of the company and internal documents they provided. One document, for instance, shows that until last September the computer system in the company's subprime unit excluded borrowers' cash reserves, which had the effect of steering them away from lower-cost loans to those that were more expensive to homeowners and more profitable to Countrywide.

313. According to *The New York Times*, "Countrywide was willing to underwrite loans that left little disposable income for borrowers' food, clothing and other living expenses." The Company's incentive compensation system encouraged such loans—regardless of the inevitability that the borrower would default and the Company (and the borrower) would be severely harmed.

314. According to Mark Zachary, a former Regional Vice President of Countrywide's joint venture with KB Home, Countrywide Mortgage Ventures, LLC, the appraiser, as known to Countrywide executives, was being strongly encouraged to inflate appraisal values by as much as 6% to allow the homeowner to "roll up" all closing costs. Mr. Zachary explained that this resulted in the homeowner being "duped" as to the value of the home. According to Mr. Zachary, this inflated value put the buyer "upside down" on the home immediately after purchasing it, *i.e.* the borrower owed more than the home's worth. Thus, the buyer was set up to be more susceptible to defaulting on the loan. *See supra* ¶¶ 276-77 (citing to complaints filed in *Zachary v. Countrywide Fin. Corp.*, No. 08-0214 (S.D. Tex.), and *Johnson v. KB Homes*, No. 09-972 (D. Ariz.)).

315. Countrywide's incentive compensation system encouraged brokers and sales representatives to place borrowers into the sub-prime category even if they in fact qualified for other loans. As reported in *Bloomberg*, Senator Charles Schumer urged that "Countrywide, the biggest U.S. mortgage lender, should stop paying higher commissions to brokers who steer borrowers to high-cost loans that 'are designed to fail.'"

316. The Massachusetts Attorney General has detailed "Countrywide's indifference to its borrowers' inability to repay its loans." For example, while "[o]n its website, Countrywide's successor Bank of America suggests when obtaining a mortgage to purchase a home that a borrower have a maximum back-end [DTI] ratio of 36%[,] Countrywide routinely approved loans for borrowers with back-end DTI ratios exceeding 50%."

317. According to the Massachusetts Attorney General complaint in *Commonwealth v. Countrywide Financial Corp.* (Mass. Super. Ct.), Countrywide allegedly violated Massachusetts' Consumer Protection Law by "originat[ing] loans in such a manner that would lead predictably to a borrower's default and foreclosure," including the origination of negative amortization loans, hybrid ARMs where borrowers were not qualified based on the post-teaser rate, stated income loans, and loans with these features plus prepayment penalties.

318. Among the conduct alleged and resolved in Countrywide's above-noted settlement with 39 state Attorneys General were violations of state predatory lending laws by (a) making loans it could not reasonably have expected borrowers to be able to repay; (b) using high pressure sales and advertising tactics designed to steer borrowers towards high-risk loans; and (c) failing to disclose to borrowers important information about loans, such as refinancing costs, the availability of lower cost products, the existence of prepayment penalties, and that advertised rates would adjust upwards sharply as soon as one month after closing.

f. Confidential witnesses provide further evidence of Countrywide's predatory lending practices.

319. Confidential witnesses also confirmed that Countrywide engaged in predatory lending practices. For example, CW-1 said he knew a lot of Countrywide loan officers who misrepresented to borrowers how a negative amortization loan worked. On a negative amortization loan, the monthly payment covered an amount that was less than the total accrued interest on the loan; any unpaid interest was added on to the end of the loan. The interest rate on the negative amortization loans then adjusted upward periodically. Consequently, if a borrower continued to make monthly payments that were below the amount of the accrued interest, the amount of the unpaid interest would skyrocket. In approximately three years, the amount due would hit a "ceiling" of 110% to 115% of the original principal balance. Then Countrywide would "recast" the loan balance, and adjust the required monthly payment so that it would cover all of the previously-deferred interest. As a result, the borrower's monthly payment could rise to as much as two-and-a-half times the original monthly payment. Many borrowers fell into problems with such loans.

320. CW-1 said he knew that Countrywide loan officers misrepresented how these types of loans worked because he used to make calls to Countrywide workers posing as a prospective borrower. When the Countrywide officers explained the loans to him, their explanations were not accurate.

321. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at Countrywide variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability

to repay. Nowhere did any of the Offering Documents apprise the Bank that Countrywide abandoned its guidelines and engaged in predatory lending.

2. Bear Stearns Residential Mortgage Corporation and EMC Mortgage Corporation

322. Bear Stearns Residential Mortgage Corporation ("Bear Stearns Residential Mortgage") originated underlying mortgage loans securing at least nine of the Certificates purchased by the Bank: BALTA 2007-2 1A1, BALTA 2007-3 1A1, BSMF 2006-AR1 1A1, BSMF 2006-AR2 1A1, BSMF 2006-AR3 1A1, BSMF 2006-AR5 1A1, BSMF 2007-AR1 1A1, BSMF 2007-AR4 1A1, and BSMF 2007-AR5 1A1A. Bear Stearns Residential Mortgage abandoned sound underwriting practices.

323. EMC Mortgage Corporation ("EMC Mortgage"), a subsidiary of The Bear Stearns Companies, originated or acquired from other originators, reviewed, and resold underlying mortgage loans securing at least twenty three of the PLMBS purchased by the Bank: BALTA 2005-10 11A1, BALTA 2005-8 11A1, BALTA 2005-9 11A1, BALTA 2006-1 11A1, BALTA 2006-2 11A1, BALTA 2006-3 1A1, BALTA 2006-4 11A1, BALTA 2006-4 13A1, BALTA 2006-5 1A1, BALTA 2006-6 1A1, BALTA 2006-7 1A1, BALTA 2007-1 1A1, BALTA 2007-2 1A1, BALTA 2007-3 1A1, BSMF 2006-AR1 1A1, BSMF 2006-AR2 1A1, BSMF 2006-AR3 1A1, BSMF 2006-AR5 1A1, BSMF 2007-AR1 1A1, BSMF 2007-AR4 1A1, BSMF 2007-AR5 1A1A, LUM 2005-1 A1 and MARM 2007-R5 A1. EMC Mortgage Corporation also abandoned sound underwriting practices.

a. Private actions and confidential witnesses demonstrate the wholesale abandonment of sound underwriting practices by Bear Stearns Residential Mortgage Corporation and EMC Mortgage Corporation.

324. Both Bear Stearns Residential Mortgage and EMC served as mortgage loan conduits for the massive Bear Stearns mortgage-loan-securitization machine. The Bear Stearns

entities had no intention of ever holding the loans they originated or purchased. Rather, the sole purpose of the origination conduits was to generate the flow of loans into the Bear Stearns securitization pipeline.

325. Bear Stearns affiliates provided loan volume, not loan quality, and, indeed, pushed for increased loan volume at the expense of underwriting standards.

326. The abandonment of underwriting guidelines by EMC and Bear Stearns Residential Mortgage (both with regard to loans originated by them and purchased from other originators) is at the heart of several lawsuits filed by monoline bond insurers from which Bear Stearns entities had obtained insurance on several securitization trusts. The policies required the insurers to guarantee payment of interest and principle to bond holders in the event of loan defaults within the trusts. For example, Ambac, which provided bond insurance for four Bear Stearns securitizations, alleged based on substantial discovery obtained in its lawsuit that Bear, Stearns & Co., Inc. was in a position to know of the low quality of loans it aggregated and securitized through EMC and Bear Stearns Residential.

327. In the course of its investigation and litigation, Ambac obtained loan files from Bear, Stearns & Co., Inc. for many of the loans backing the PLMBS it insured. Analysis of the loan files by an independent consultant hired by Ambac confirms widespread breaches of representations and warranties with regard to the underwriting of the loans. Indeed, of the 6,309 loans reviewed, 5,724 breached one or more of EMC's representations and warranties, evidencing a staggering ***90%*** breach rate. Defects identified in the analysis include:

- rampant fraud, primarily involving misrepresentation of the borrower's income, assets, employment, or intent to occupy the property as the borrower's residence (rather than as an investment), and subsequent failure to so occupy the property;

- failure by the borrower to accurately disclose his or her liabilities, including multiple other mortgage loans taken out to purchase additional investment property;
- inflated and fraudulent appraisals; and,
- pervasive violations of the loan originators' own underwriting guidelines and prudent mortgage-lending practices, including loans made to borrowers (i) who made unreasonable claims as to their income, (ii) with multiple, unverified social-security numbers, (iii) with debt-to-income and loan-to-value ratios above the allowed maximums, or (iv) with relationships to the applicable originator or other non-arm's-length relationships.

328. Ambac's findings are not unique. Independent consultants have analyzed loan files from the Bear Stearns securitization pipeline for other monoline bond insurers, and this has produced similar or worse results. For example, Syncora Guaranty Inc., analyzed hundreds of defaulting loans backing Bear Stearns PLMBS insured by Syncora, and found material breaches of representations and warranties in ***93%*** of the loans in one review, and ***95%*** in another. A subsequent randomly selected sample of 400 loans in Bear Stearns securitizations insured by Syncora demonstrated that **85.5%** of the loans breached one or more representations and warranties regarding loan quality.

329. As explained by Syncora: "The most prevalent and troubling of the breaches indentified by Syncora involve (i) rampant misrepresentations about borrower income, employment, assets, and intentions to occupy the purchased properties and (ii) the loan originator's abject failure to adhere to proper and prudent mortgage-lending practices and its own underwriting guidelines."

330. Confidential witness testimony further demonstrates the abandonment of underwriting guidelines and predatory lending by EMC and Bear Stearns Residential Mortgage. For example, CW-6 was an underwriter at Bear Stearns Residential Mortgage in 2006. He reveals that Bear Stearns Residential Mortgage engaged in predatory lending, regularly

approving loans without analyzing whether a customer could actually afford the loan. CW-6 also routinely rejected loans that his managers would later approve—despite the fact that these loans failed to meet underwriting guidelines pertaining to income, assets, or the appraised value of the homes.

331. Among the loans CW-6 underwrote were what the company called "no ratio loans." According to applicable guidelines, "no ratio" loans did not require underwriters to analyze whether the customer could actually afford the loan.

332. CW-6 stated that Bear Stearns Residential Mortgage also sold stated income and stated asset loans, which did not require any documentation to substantiate income or assets. The underwriter only needed to verify the fact of employment, but did not need to verify income levels.

333. CW-6's branch office of Bear Stearns Residential Mortgage underwrote about $150 million in mortgages every month in 2006. To maintain these numbers, CW-6 was under pressure to process about five loans each day. When CW-6 rejected loans because they did not meet underwriting guidelines as to income, assets, or appraisal values, account executives would often appeal his decision up the line to management. These appeals often resulted in an override of his decision to reject the loan, and its subsequent approval.

334. CW-6 reports that the borrowers who received approved loans from Bear Stearns Residential Mortgage did not fully understand the risks of some of the loans they were getting. "They didn't know they couldn't afford the loan," CW-6 stated.

335. CW-7 worked at EMC's Lewisville, Texas headquarters from 2000 to 2007 as a fraud auditor in the "fraud prevention" department. In addition to CW-7, the "fraud prevention" department had two underwriters and an analyst.

336. CW-7 audited loans that EMC had acquired from other lenders and that it was preparing to bundle and sell to investors as mortgage-backed securities. CW-7 was given a set of approximately 30 to 50 loan files each week to audit and determine whether they contained evidence of fraud. It was part of her job to take the perceived burden off the company's regular underwriters who suspected fraud in the loan files by reviewing the suspect loans, so that the other underwriters could keep their loan reviews and approvals flowing.

337. CW-7 regularly found fraud in the loan files she reviewed, including inflated appraisals, altered credit reports, investors using straw buyers for multiple properties and transactions, and titles that had been doctored. "There was a lot of misrepresentation and fraud," CW-7 said. Although CW-7 identified these problems throughout the portfolio she reviewed, she recalls in particular that the loans EMC acquired from Encore Credit—a mortgage originator—were rampant with fraud. In fact, there were so many issues with Encore Credit's loans that EMC was forced to buy Encore Credit in 2007.

338. CW-7 confirmed that loans in which she identified fraud remained in the mortgage pools that were sold to investors. These loans "were put in a pool and sold off to someone else. The 'dirty' loans got lost in the mix." CW-7 knew this occurred, because she witnessed it. "I was sitting right there. That was the strategy. If someone on the other end didn't catch it, so be it. It made me cringe."

339. CW-8 was also employed by EMC at its Lewisville, Texas headquarters as an underwriting coordinator at EMC from 2005 through the fall of 2007. As an underwriting coordinator, he reviewed loans that EMC had acquired from other lenders, and either approved or declined them before they were sold off for securitization. CW-8 explained that EMC's

strategy was to buy pools of loans, do as little analysis as possible on them, and sell them off to investors.

340. Beginning in about 2006, CW-8 started raising questions with his supervisors and colleagues about the quality of the loans that he was processing. Instead of taking his concerns seriously about poor loan quality, CW-8 was mocked, and given the nickname, "Eagle Eye," for spotting risk factors or red flags in loan files that others did not want to see.

341. At EMC during this period, CW-8, along with the other underwriting coordinators, was pushed to meet high production numbers for reviewing and approving loan files. EMC required CW-8 to review more than 10 loan files a day, and the emphasis was on quickly reviewing—and approving—as many loans as possible.

342. Given these pressures, CW-8 felt that most of the loans should have been given some "qualitative analysis" before being sold to investors. "We needed more due diligence in the system," he said. However, CW-8 believed that EMC was "not scrutinizing the loans enough." Rather, "we were told to make the deals go." The emphasis that CW-8 felt was on making his production numbers, not reviewing for loan quality or red flags in the file.

b. The mortgages originated by Bear Stearns Residential Mortgage Corporation and EMC Mortgage Corporation and securitized in the PLMBS purchased by the Bank provide further evidence of these originators' abandonment of sound underwriting practices.

343. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing the Certificates that included loans originated by Bear Stearns Residential Mortgage and EMC, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723

below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Bear Stearns Residential Mortgage's and EMC's failure to observe its stated underwriting standards. Bear Stearns Residential Mortgage's and EMC's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information—caused them to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

344. In summary, far from following their underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at both Bear Stearns Residential Mortgage and EMC, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that Bear Stearns Residential Mortgage and EMC abandoned their underwriting guidelines.

3. IndyMac Bank, F.S.B.

345. IndyMac Bank, F.S.B. ("IndyMac") originated underlying mortgage loans securing at least thirteen of the Certificates purchased by the Bank: BAFC 2006-D 1A1, BALTA 2006-4 13A1, CWALT 2007-OA9 A1, DBALT 2006-AR5 1A1, DBALT 2007-AR1 A1, INDX 2005-AR4 2A1A, INDX 2005-AR8 2A1A, INDX 2005-AR12 2A1A, INDX 2006-AR19 1A1, LUM 2006-3 11A1, LUM 2006-7 2A1, LXS 2007-9 1A1 and MSM 2007-5AX 2A2. IndyMac abandoned sound underwriting practices.

a. Government actions and related lawsuits and investigations demonstrate IndyMac's abandonment of sound underwriting practices and its predatory lending.

346. In 2010, IndyMac was identified by the OCC as the twelfth worst mortgage originator in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

347. As reported in the Audit Report of the Office of Inspector General, Department of Treasury, IndyMac made loans to borrowers who could not afford to repay them, an indicator of predatory lending:

> IndyMac often made loans without verification of the borrower's income or assets, and to borrowers with poor credit histories. Appraisals obtained by IndyMac on underlying collateral were often questionable as well. As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, 80/20 loans, and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments.

SAFETY AND SOUNDNESS: MATERIAL LOSS REVIEW OF INDYMAC BANK, FSB, OIG-09-032, (February 26, 2009).

348. In describing what it referred to as IndyMac's "Unsound Underwriting Practices," the Inspector General's audit explained:

> IndyMac encouraged the use of nontraditional loans. IndyMac's underwriting guidelines provided flexibility in determining whether, or how, loan applicants' employment, income, and assets were documented or verified. The following procedures were used by the thrift:
>
> - No doc: income, employment, and assets are not verified
> - No income/no assets (NINA): income and assets are not verified; employment is verbally verified
> - No ratio: no information about income is obtained; employment is verbally verified; assets are verified
> - Stated income: income documentation is waived, employment is verbally verified, and assets are verified
> - Fast forward: income documentation is sometimes waived, employment is verbally verified, and assets may or may not be verified.

349. The Inspector General's audit also explained that:

> [A]mong other things, we noted instances where IndyMac officials accepted appraisals that were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP). We also found instances where IndyMac obtained multiple appraisals on a property that had vastly different values. There was no evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser. As illustrative of these problems, the file for one 80/20, $1.5 million loan we reviewed contained several appraisals with values ranging between $639,000 and $1.5 million. There was no support to show why the higher value appraisal was the appropriate one to use for approving the loan.

350. The Inspector General's audit contained four examples of examined loans with serious underwriting failings and questionable appraisals. These included the following examples of IndyMac's conduct and the losses resulting from IndyMac's violation of underwriting standards and reliance on faulty appraisals:

> Loan 1
>
> On May 2, 2007, IndyMac approved a $926,000 stated income loan for the borrower, . . . an adjustable rate mortgage with a 5-year term and a beginning interest rate of 5.875 percent, which was subject to change monthly. . . .
>
> As a stated income loan, IndyMac performed no verification of the borrower's self-employment income of $50,000 a month ($600,000 annually). IndyMac also did not verify the borrower's assets. . . .
>
> The loan file contained an appraisal which indicated that the property value was $1.43 million. This value was based on comparable properties that had been improved with single family residences. However, the comparable properties were located closer to the ocean and bay, and their values were based on listing price instead of the actual selling price. The appraised value also did not take in consideration a slowdown in the real estate market. We saw no evidence in the loan file that IndyMac resolved these and other anomalies with the appraisal.
>
> The borrower made payments totaling $5,389 before defaulting on the loan. The unpaid principal and interest at the time of foreclosure totaled approximately $1.01 million. At the time of our review, the property was listed for sale for an asking price of $599,000.
>
> Loan 2

In November 2007, IndyMac approved a $3 million stated income loan, secured by the borrower's primary residence in Scottsdale, Arizona. The loan proceeds were used to refinance the primary residence which the borrower had owned for 11 years and reported its value as $4.9 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported self-employment income of $57,000 a month ($684,000 annually). Contrary to IndyMac policy, the borrower selected the appraiser who appraised the property at $4.9 million.

Notes in the loan file indicated that the borrower had listed the property for sale in November 2006, first at a price of $4.9 million that was later reduced to $4.5 million before the borrower pulled the property off the market. Despite this, the appraiser concluded that the value of $4.9 million appeared to be reasonable. IndyMac accepted the appraiser's value based on a review of online sale and public records. It did not physically inspect the property.

The borrower made no payments on the loan before default. The total delinquent loan amount as of November 2008 was $3,015,625. According to the IndyMac official, the property sold in October 2008 for $2.0 million.

Loan 3

In February 2007, IndyMac provided the borrower a stated income, 80/20 loan, for a combined total of $1.475 million, to purchase a property in Marco Island, Florida. The combined loan equaled the appraised value of the property.

As a stated income loan, IndyMac performed no verification of the borrower's reported income of $28,500 a month ($342,000 annually). For 80/20 loans, IndyMac allowed an $800,000/$200,000 maximum loan amount and a maximum combined loan amount of $1 million. This loan was an exception to IndyMac policy as the combined loan amount of $1,475,000 exceeded the maximum combined loan amount. The loan exception was approved anyway.

Various appraisals in the loan file contained significant differences with no indication of how they were resolved by IndyMac. A January 2007 appraisal valued the property at $1.48 million. A valuation analysis prepared by an IndyMac employee on January 25, 2007, stated that the skill level of the appraiser was unacceptable—the appraiser had not provided accurate comparable properties to the subject property and did not accurately consider the location of the property. The IndyMac employee estimated the property value at $1 million and recommended that another appraisal be obtained. Another note in the loan indicated that the IndyMac official overruled the employee's recommendation and the appraisal was accepted. The IndyMac official, however, adjusted the appraised value approximately 10 percent lower, to $1.33 million, citing as a justification that a property on the same street had sold for $1.97 million.

The borrower made no payments before defaulting on the combined $1.48 million loans. According to the IndyMac official, the borrower deeded the property to the thrift in lieu of foreclosure. The IndyMac official estimated in November 2008 that the property was worth about $700,000.

Loan 4

In April 2002, IndyMac approved the borrower for a stated income home equity line of credit of $550,000. This line of credit was in addition to a 80/20 loan for $3 million that the borrower already had with IndyMac. The borrower reported that the property was worth $5.2 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported gross income of $95,000 a month ($1.14 million annually) as the owner/manager of a limited liability corporation. The loan notes history did not indicate how IndyMac resolved negative information revealed in credit reports on the borrower. Two credit reports obtained in March 2002 listed serious and frequent delinquencies. An earlier credit report had noted a discrepancy with the borrower's social security number.

Various appraisals in the loan file also contained significant discrepancies with no indication of how they were resolved by IndyMac. Specifically, the appraisal for the original 80/20 loan, dated in October 2001, valued the property which the appraisal described as new construction at $5.2 million. This same value was reported by a second appraisal dated in March 2002. A third appraisal, dated in April 2002, placed the market value of the home at $508,500. The appraisal stated that the home was less than ½ mile from a hazardous waste facility. A fourth appraisal, also prepared in April 2002, valued the property at $730,000, with the lowest reasonable value at $590,000 and the highest reasonable at $900,000. This appraiser also reported that the home was built in 1959.

The borrower made payments totaling about $11,000 before defaulting on the $550,000 home equity line of credit loan. According to the IndyMac official, the thrift was able to recover approximately $600,000 on both loans. . . .

351. A June 30, 2008 report issued by the Center for Responsible Lending entitled INDYMAC: WHAT WENT WRONG? HOW AN "ALT-A" LEADER FUELED ITS GROWTH WITH UNSOUND AND ABUSIVE MORTGAGE LENDING concluded that IndyMac often ignored its stated underwriting and appraisal standards and encouraged its employees to approve loans regardless of the borrower's ability to repay.

352. The Center for Responsible Lending's report quotes an IndyMac underwriting team leader, Audrey Streater, as stating of her time at IndyMac: "I would reject a loan and the insanity would begin. It would go to upper management and the next thing you know it's going to closing."

353. The Center for Responsible Lending's report describes the recollection of another former underwriter for IndyMac, Wesley Miller:

> [W]hen he rejected a loan, sales managers screamed at him and then went up the line to a senior vice president and got it okayed. "There's a lot of pressure when you're doing a deal and you know it's wrong from the get-go—that the guy can't afford it," Miller told CRL. "And then they pressure you to approve it." The refrain from managers, Miller recalls, was simple: "Find a way to make this work."

354. The Center for Responsible Lending interviewed another former Indymac underwriter:

> Scott Montilla, who worked as an underwriter for IndyMac in Arizona . . . says that when salespeople went over his head to complain about loan denials, higher-ups overruled his decisions roughly half the time. "I would tell them: 'If you want to approve this, let another underwriter do it, I won't touch it—I'm not putting my name on it,'" Montilla says. "There were some loans that were just blatantly overstated. . . . Some of these loans are very questionable. They're not going to perform."

b. Private actions against IndyMac demonstrate IndyMac's abandonment of sound underwriting practices.

355. Multiple insurers of IndyMac-originated loans, including MBIA Insurance Corporation, FGIC, and Syncora—all of whom have experienced unprecedented losses in connection with the financial guarantee insurance they provided on IndyMac loans—have filed suit against IndyMac alleging the abandonment of underwriting standards based, in part, on their analysis of the loan files for IndyMac loans. Some of the allegations made by the insurers are virtually identical to the allegations made by the Bank here—namely that IndyMac completely

abandoned its underwriting standards in its rush to originate (and securitize) as many loans as possible.

356. By way of example, according to MBIA:

> IndyMac had abandoned any reasonable and prudent underwriting standards. In an effort to expand its market share during the mortgage lending boom, IndyMac systematically abandoned its own underwriting guidelines in pursuit of increased loan originations: it knowingly loaned millions of dollars to borrowers who could not afford to repay the loans, or who IndyMac personnel knew or should have known were including misstatements in their loan applications, often with the assistance and encouragement of IndyMac's employees and brokers, or who otherwise did not satisfy the basic risk criteria for prudent and responsible lending that IndyMac claimed to use.

357. This systematic abandonment of underwriting standards stands in sharp contrast to the representations made about IndyMac's underwriting standards in numerous documents, including investor prospectuses and prospectus supplements.

358. MBIA's allegations are supported by reviews of loan files backing PLMBS insured by MBIA. A review of the loan files of 418 defaulting loans in one of the PLMBS insured by MBIA indicated that *over 95%* of the defaulting loans failed to comply with IndyMac's representations and warranties with respect to its underwriting guidelines and policies. Similarly, a review of 297 defaulting loans in another PLMBS insured by MBIA indicated that *over 99%* failed to comply with IndyMac's stated underwriting guidelines and policies.

359. Syncora also analyzed various IndyMac loans backing PLMBS it insured. Out of the 107 loans analyzed by Syncora, 105 of the loans breached representations and warranties made by IndyMac to Syncora. These include (a) 83 loans in breach of the representation that "each Mortgage Loan was originated in all material respects in accordance with the applicable Originator's underwriting criteria in effect at the time of origination"; (b) 57 loans in breach of the representation that "each Mortgage Note be a legal, valid and binding obligation, all parties

had full legal capacity to execute the documents and convey real estate to the best of the Seller's knowledge, and there was no fraud involved in the origination of any Mortgage loan"; and (c) six loans in breach of the representation that "each Mortgage Loan contain an appraisal conforming to the standards of the applicable Originator."

360. In addition to similar allegations of the abandonment of underwriting guidelines by IndyMac, which are also based on review of loan files, FGIC alleges that IndyMac materially misrepresented the accuracy of data provided to FGIC for a securitization it insured, including the owner-occupancy status of a property, the combined LTV for the property, the borrower's DTI, and the borrower's FICO credit score. Again, this allegation is supported by evidence obtained by FGIC from its review of loan files it obtained in the course of its investigation.

361. The three insurers noted above have not been able to conduct complete analyses of the loan pools for which they provided insurance because IndyMac, despite its contractual obligations to the insurers, has refused to provide complete access to the loan files. For this reason, all three insurers are seeking judicial relief to gain access to these various loan files. Similarly, many of the Securities Defendants have repeatedly refused to provide the Bank with access to the files for the loans underlying its Certificates.

362. Other entities are also pursuing claims against IndyMac for abandoning its underwriting guidelines. For example, in May of 2009, Deutsche Bank National Trust Company, in its capacity as a trustee, filed suit against IndyMac Bank and the FDIC (in its corporate capacity as well as in its capacity as receiver and conservator for IndyMac Bank and IndyMac Federal Bank) over the more than 150,000 mortgage loans that IndyMac Bank had originated or acquired and sold to the trust. *See Deutsche Bank Nat'l Trust Co. v. FDIC*, No. 09-3852 (C.D. Cal.). Deutsche Bank's complaint asserts claims for breach of contract, breach of the

duty of good faith and fair dealing, and breach of fiduciary duty, and alleges that IndyMac breached numerous representations and warranties that it made to the trusts, including: (a) selling mortgage loans into the trusts that failed to comply with IndyMac's credit underwriting standards and origination process; (b) providing mortgage loan origination files that failed to contain required documentation; (c) originating mortgage loans that did not comply with applicable law; and (d) selling mortgage loans into the trusts that did not possess the characteristics set forth in the schedules to the relevant governing agreements. Encompassed in the Deutsche Bank case are three of the IndyMac-originated Certificates purchased by the Bank, INDX 2005-AR4, INDX 2005-AR8, and INDX 2006-AR19. Hence, like the Bank, the trustee for these very Certificates contends that IndyMac abandoned its underwriting guidelines, contrary to the statements in the Offering Documents.

c. Confidential witnesses provide further evidence of IndyMac's abandonment of sound underwriting practices.

363. Confidential witnesses provide additional evidence of IndyMac's failure to adhere to sound underwriting practices and guidelines, as well as appraisal guidelines.

364. According to CW-9—a former underwriter for IndyMac in Missouri from June 2005 to June 2007—she was required on a daily basis to approve loans that she believed should not be approved. IndyMac required underwriters who wanted to deny stated income loans to obtain management approval for the denial. As a result, CW-9 was frequently overruled, even when the income provided in the application was obviously overstated, such as when a cab driver from Chicago claimed to have $12,000 a month in income. Upset at being forced to approve clearly inaccurate loan applications, CW-9 many times noted in the file that "the loan was approved under duress."

365. CW-9 noted that IndyMac underwriters were under a lot of pressure to approve loans. IndyMac underwriters received bonuses based on the number of loans that they permitted to be funded, not the number of loans that they reviewed. According to CW-9, this structure incentivized the approval of unscrupulous loans and opened the doors to committing fraud on the inside. CW-9 stated that a broker could not commit fraud unless an underwriter approved it, and there were certain underwriters that would approve anything, no matter how blatant, because they wanted a larger paycheck. In fact, in 2007, CW-9 recalled being required, along with the other underwriters in her department, to come in on a Saturday and review the loan files for stated income loans that had been previously funded. CW-9 believes that during this time period a lot of questions were coming up about the loans being reviewed, and CW-9 and her colleagues went through every loan her department had approved to see whether or not the stated salary was within the correct range—as indicated by salary.com—for the job description of the loan applicant. CW-9 found a lot of overstated incomes in the files that had been reviewed by other underwriters—"some of the underwriters would rather see a bigger paycheck than do the right thing."

366. The testimony of CW-10, a former underwriter for IndyMac in California from 2006 to 2008, and CW-11, a former underwriter for IndyMac in New Jersey from 2004 to 2007, further confirm IndyMac's abandonment of underwriting standards. CW-10 stated that on several occasions she suspected that stated-income loan applications contained inflated income information. In particular, she recalls a gardener in California who purportedly made $20,000 a month. Notwithstanding her concerns, because the loan applicant had a sufficiently high FICO score, IndyMac's automated system—eMITS—approved him for the loan. When CW-10 questioned this approval, she was informed that because the system approved it, she needed to

process the loan. CW-10 also recalled that the bonus system—which was based on the number of loans funded—incentivized underwriters to quickly approve loans. Those underwriters who failed to meet their quotas were written up. Similarly, CW-11 reported that no-documentation and stated income loans were "the norm" during CW-11's tenure as an underwriter, with CW-11 stated that his managers approved loans that CW-11 would not have approved, and were known to overrule CW-11 on loans that he denied. CW-11 believed that IndyMac did too many no-doc and stated income loans, and approved deals that should not have been approved.

367. CW-9 also testified as to the loosening of appraisal standards. When CW-9 first started at IndyMac, the bank had an automated system for scoring appraisals that took into account different factors such as the location of the property and the date of the comparable sales. Based on the scoring of this data, certain appraisals were sent to IndyMac's appraisal review department, which denied a lot of loans. According to CW-9, at a certain point management concluded that too many loans were being reviewed and denied, so management relaxed the standards, thereby reducing the number of appraisals automatically sent to the review department. CW-9 worked on the same floor as the appraisal review department, and recalls talking with appraisal reviewers who complained "a lot" that they had a strong belief that "they weren't seeing appraisals [they should be seeing]," i.e., that suspect appraisals were not being reviewed.

368. CW-9's testimony was confirmed by CW-12, who began working for IndyMac in California as a licensed real estate appraiser trainee and who did appraisals for IndyMac in 2006 and 2007. CW-12 recalls being blacklisted over her appraisal of a California home with a separate guest house. Consistent with standard appraisal practices, CW-12 did not include the guest house's square footage in the main house, and refused to do so even under pressure from

IndyMac. CW-12's refusal prompted IndyMac to stop sending her work, and an IndyMac representative verbally confirmed that she had been placed on a blacklist.

d. The mortgages originated by IndyMac and securitized in the PLMBS purchased by the Bank provide further evidence of IndyMac's abandonment of sound underwriting practices.

369. IndyMac originated mortgages that secured at least twelve of the Certificates in this action. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Certificates, including misstatements and omissions with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of IndyMac's failure to observe its stated underwriting standards. IndyMac's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

370. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at IndyMac, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that IndyMac abandoned its guidelines and engaged in predatory lending.

4. Washington Mutual Mortgage Securities Corp.

371. Loans backing two of the Certificates (Certificates JPALT 2006-A1 1A1 and LUM 2007-2 1A1) were originated by Washington Mutual Mortgage Securities Corp., a wholly owned subsidiary of Washington Mutual Bank, and loans backing Certificate HVMLT 2006-8 2A1A were originated by Washington Mutual Bank. These originators are referred to individually and collectively herein as "WaMu."

372. Investigations into the practices of WaMu reveal the depth and breadth of its abandonment of underwriting standards, appraisal standards, and its predatory lending practices.

373. A review of the investigations and related litigation involving WaMu, as well as confidential witness testimony obtained during the Bank's investigation, demonstrate that these mortgage originators systematically violated and ignored their stated underwriting guidelines, rendering materially misleading the statements in the Offering Documents regarding underwriting practices, appraisals and LTVs, and predatory lending. This evidence is reinforced further by the analysis of the performance of the actual loan pools backing the PLMBS purchased by the Bank.

a. Government actions and related lawsuits and investigations demonstrate WaMu's abandonment of sound underwriting practices.

374. As reported at the Senate Subcommittee hearing on Wall Street and the Financial Crisis held on April 13, 2010, identified high risk loan practices by WaMu, concluding:

> **Shoddy Lending Practices.** WaMu used shoddy lending practices riddled with credit, compliance and operational deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.
>
> **Steering Borrowers to High Risk Loans.** WaMu too often steered borrowers into home loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans.

> **Securitizing Delinquency-Prone and Fraudulent Loans.** At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.
>
> **Destructive Compensation.** WaMu's compensation system rewarded loan officers and loan processors for originating large volumes of high risk loans, [and] paid extra to loan officers who overcharged borrowers or added stiff prepayment penalties . . . .

375. A November internal 2005 review of WaMu loans in southern California found "an extensive level of loan fraud . . . virtually all of it stemming from employees in these areas circumventing bank policy surrounding loan verification and review." According to the *Seattle Times*, "[a]t one California office, 58 percent of loans examined in an internal review were fraudulent; at another, 83 percent." Drew DeSilver, *WaMu Execs Saw Warning Signs of Deteriorating Loans*, Seattle Times, Apr. 12, 2010, at A1.

376. A WaMu PowerPoint presentation presented to Kerry Killinger, Steve Rotella and many other WaMu executives was disclosed at the April 13, 2010 hearing before the Senate Subcommittee on Investigations. The presentation, which examined the risk management of WaMu's home loan division, examined 187 loan files that had made a first payment default. The presentation revealed that of these 187 files, there was "confirmed fraud" on 115. 17 were "highly suspect." 133, or 71%, "had credit evaluation or loan decision errors." 58, or almost one-third, "had appraisal discrepancies or issues that raised concerns." Of the 187 loans, 112 had required no documentation of income; out of these 112, 80 were identified "for lack of reasonableness of income."

377. Another internal memorandum presented at the Senate Subcommittee hearings, titled "So. California Emerging Markets Targeted Loan Review Results," explained that "[o]f the 129 detailed loan review[s] that have been conducted to date, 42% of the loans reviewed

contained suspect activity or fraud, virtually all of it attributable to some sort of employee malfeasance or failure to execute company policy. . . . On average, 78% of the funded retail broker loans reviewed were found to contain fraud . . . principally centered in misrepresentation of loan qualifying data and appraisal issues."

378. Another exhibit at the April 13, 2010 Senate Subcommittee hearing explained how: "[o]ne Sales Associate admitted that during that crunch time some of the Associates would 'manufacture' asset statements from previous loan docs and submit them to the LFC [Loan Fulfillment Center]. She said the pressure was tremendous from the LFC to get them the docs since the loan had already funded and pressure from the Loan Consultants to get the loans funded [sic]."

379. At one point, the *Seattle Times* reports that over three quarters of WaMu's $58.9 billion portfolio of option-ARM loans had been issued as limited documentation loans. Drew DeSilver, *Big Dreams of WaMu Dashed By Risky Loans*, Seattle Times, Sept. 21, 2008 at H1.

380. As explained in the *Seattle Times*, WaMu increasingly favored "low-documentation" loans, "lean[ing] more and more heavily on credit scores, which could be ascertained while the borrower was still on the phone." Nancy Erken, a WaMu loan consultant in Seattle, is quoted as stating that at WaMu at this time "the big saying was 'a skinny file is a good file.'" She also explained how she would try to document borrowers' ability to afford their loans but that her experience was that when she would "take the files over to the processing center in Bellevue . . . . [T]hey'd tell me 'Nancy, why do you have all this stuff in here? We're just going to take this stuff and throw it out.'" DeSilver, *Reckless*, Seattle Times, *supra* ¶ 202 at A1.

381. In a 2005 memo obtained by the *Seattle Times*, WaMu risk managers were told they needed to "shift ways of thinking" so they would no longer be a "regulatory burden" on lending operations and instead act as a "customer service" to support growth. *Id.*

382. The *Seattle Times* further reported that Dale George, a senior credit-risk officer in Irvine, California attended an "all hands" meeting of risk managers where Melissa Martinez, WaMu's chief compliance and risk oversight officer, emphasized "the softer side of risk management." George explained that the message was: "They weren't going to have risk management get in the way of what they [production] wanted to do, which was basically lend the customers more money." *Id.*

383. WaMu Senior Mortgage Underwriter Keysha Cooper, who started at WaMu in 2003 and left in 2007, was quoted by the *New York Times* explaining that "[a]t WaMu it wasn't about the quality of the loans; it was about the numbers . . . . They didn't care if we were giving loans to people that didn't qualify. Instead it was 'how many loans did you guys close and fund?'" Cooper continued to explain how the pressure became intense in 2007 and admitted that "I swear 60 percent of the loans I approved I was made to . . . . If I could get everyone's name, I would write them apology letters." Gretchen Morgenson, *Was There a Loan It Didn't Like?*, N.Y. Times, Nov. 1, 2008 at BU1.

384. Another *Seattle Times* report quotes Mary Kay Morse, a 20-year veteran at WaMu whose job was to persuade independent brokers to make option ARM loans, stating, as to option-ARMs: "I hated that loan . . . . It's just not a good loan. It wasn't good for the borrower." She continued that whereas at one time: "I always felt like I worked for a really honest industry that cared for the borrowers they dealt with," in her opinion the corporate culture had changed to:

"[w]e just want to do the most we can to make money for the bank." David Heath, *Hometown Bank Turned Predatory,* Seattle Times, Oct. 26, 2009, at A1.

385. The reason for WaMu's adoption of these highly risky and unsuitable products was simple. As the *Seattle Times* explained:

> As demand [for traditional loans] waned, lenders tried to entice business by slashing profit margins on conventional mortgages, such as the 30-year fixed. WaMu's chief business was making home loans, yet it lost money on that segment in the third quarter of 2003.
>
> By November, WaMu had eliminated 4,500 full-time jobs in home lending and ousted the division head. By year's end, its mortgage business had shrunk with alarming speed, down by about half from the summer.
>
> After [Kerry] Killinger [WaMu's CEO] finished speaking, Chief Financial Officer Tom Casey got up and presented WaMu's solution.
>
> WaMu had other types of loans, such as subprime and home-equity lines of credit, that remained highly profitable. He noted there was even a specialty loan for borrowers with good credit that remained lucrative, the option ARM.
>
> As Casey explained it, the bank recently had beefed up its commissions and retrained its sales force to push option ARMs. In just the past few months, they had climbed from 15 to 35 percent of its mortgage business.
>
> The loan—mind-numbingly complex and highly risky for both the bank and its customers—originally was created for the savviest and most risk-tolerant of borrowers.

Heath, *supra* ¶ 384 at A1.

386. Unsurprisingly, given its predatory practices and abandonment of any genuine underwriting standards, the *Seattle Times* reported that "WaMu's subprime loans failed at the highest rates in the nation. . . . In the 10 hardest hit cities, more than a third of WaMu subprime loans went into foreclosure." DeSilver, *Reckless*, Seattle Times, *supra* ¶ 202 at A1.

b. WaMu manipulated the appraisal process.

387. WaMu manipulated the appraisal process to inflate the reported value of real estate properties thereby artificially depressing the LTVs based on the appraisals. Multiple

government investigations, including ones by the Senate Permanent Subcommittee on Investigations and the New York Attorney General's office, have examined the appraisal practices of WaMu. The internal documents recently released to the public by these investigations reveal that: (1) appraisal fraud infected the origination of mortgages; and (2) WaMu actively pressured appraisers to inflate their appraisals or manipulated the appraisals themselves so that more loans could close and subsequently be securitized.

388. Internal WaMu documents released by the Senate Subcommittee on Investigations demonstrate that appraisal fraud infected its mortgage origination process. According to an internal WaMu memorandum presented at the April 2010 Senate Subcommittee hearing regarding a review of loans from 2003-2005, *78%* of the funded retail broker loans reviewed by WaMu's Risk Mitigation department were found to contain fraud that principally involved misrepresentation of loan qualifying data and appraisal issues.

389. One specific example of appraisal fraud for a WaMu originated loan involved an appraisal value for a property that apparently was based on both the value of the property *and the value of another house located in Mexico*. As WaMu's internal "Fraud Risk" PowerPoint notes, the inclusion of this additional house might explain why the appraisal value of $400,000 was so much higher than the $240,000 sales price of the property. Moreover, the appraisal omitted other important information, including that the property use was "illegal" because there was a third unpermitted unit on the property. This appraisal was not referred to an underwriter because the WaMu office manager waived the requirement for an underwriter to review the appraisal.

390. Another specific example for a WaMu originated loan involved an appraisal that contained false data regarding the subject property's site and building sizes as well as numerous warning signs that the appraisal was unreliable. The borrowers were refinancing a first mortgage

that they had previously obtained from WaMu a year earlier. According to the Fraud Report, the appraisal contained multiple red flags. The property had appreciated in value by *90%* (from $322,000 to $610,000) in a *single year*; the occupancy type was an investment property; the automated valuation model ("AVM") reflected a more probable value of $400,000. Further, the "comparables"—properties with characteristics similar to the appraised property—did not appear comparable; two out of the three "comparable" properties were located 3-4 miles away, and the comparable properties were given large upward adjustments in value to account for differences in design, functionality, square footage and lot size. Notwithstanding these warnings, the appraisal was not reviewed by underwriters. The Fraud Report also notes that the refinancing transaction was a "cash out refinance," and that the funds from this refinancing were needed *to close another loan that WaMu was processing for the borrower*. In other words, not one, but two transactions were dependent upon the appraisal coming in at value, even if that meant a 90% increase in the appraised value over the course of a single year.

391. Another internal document dated December 2006 states that "[WaMu subsidiary] Long Beach [Mortgage] represents a real problem for WaMu," and forwards the results of "post-funding review team" tasked with reviewing, on a monthly basis, 275 loans within 15 days of funding. The review team identified, as a "top five priority" issue "[a]ppraisal deficiencies that could impact value and were not addressed." The review also emphasized that both the Corporate Credit Review department and the Senior Credit Officer Subprime were focused on "two key facts"—that "[t]he non accrual rate had increased year over year from 3.53% to 6.13%," and that "[o]n a vintage basis the deterioration was accelerating in recent vintages with each vintage since 2002 having performed worse than the prior vintage." As noted above, LTVs and a borrower's equity in his or her home are strongly indicative of a borrower's likelihood of

defaulting. To the degree that inflated appraisals understate the LTVs, and overstate a borrower's equity, one would expect to find increasing rates of non-accrual correlated with increasingly unreliable appraisals.

392. On November 1, 2007, the New York Attorney General filed *People v. First Am. Corp. and First Am. eAppraiseIT*, No. 46796/2007 (N.Y. Sup. Ct.) ("eAppraiseIT Compl."), alleging that eAppraiseIT colluded with WaMu to inflate the appraisal value of homes.

393. eAppraiseIT was one of two appraisal management firms hired by WaMu in the Spring of 2006 when WaMu decided to close its internal appraisal office. WaMu was eAppraiseIT's largest client, and on information and belief, eAppraiseIT performed appraisals for loans included in the loan pools for Certificates purchased by the Bank.

394. The New York Attorney General's complaint, which relies on multiple internal documents and emails—many of which have only recently become publicly available—demonstrates that WaMu actively encouraged the manipulation of appraisals to facilitate the origination of more and more mortgages for securitization. In 2009, the trial court denied eAppraisIT's motion to dismiss, finding that the complaint sufficiently alleged a violation of New York law, "insofar as the intentional misleading of consumers in this state relating to the accuracy and independence of appraisals constitutes fraudulent and deceptive business practices that the [Attorney General] may seek redress for." *People v. First Am. Corp.*, 24 Misc. 3d 672, 682 (N.Y. Sup. Ct. 2009).

395. From its inception, the relationship between WaMu and eAppraiseIT was focused on undermining the appraisal process by pressuring appraisers to come in "at value"—provide appraisals that were equal to or greater than a property's purchase price in order for a transaction to close. WaMu's efforts to pressure appraisers included: (1) excessive "Reconsideration of

Value" requests to reconsider appraisals that were too low to permit a loan to be funded; (2) demanding that "business managers"—many of whom were former WaMu employees—have the authority to overrule appraisals that were too low; (3) constantly complaining that appraisals by eAppraiseIT appraisers were lower than appraisals from eAppraiseIT's chief competitor; (4) making clear to senior management at First American (eAppraiseIT's parent company) that any expanded business relationship was contingent upon the "resolution" of the appraisal issue to WaMu's satisfaction; and (5) ultimately creating a blacklist designed to punish appraisers who failed to inflate their appraisals to come in "at value."

396. According to the New York Attorney General's complaint, and the internal documents referenced therein:

- WaMu retained eAppraiseIT in Spring 2006, after WaMu decided to close its internal appraisal office and terminate its staff appraisers. WaMu quickly became eAppraiseIT's largest client.

- From the beginning, WaMu possessed the ability to pressure eAppraiseIT's staff and third party appraisers to increase their valuations. WaMu had a contractual arrangement with eAppraiseIT whereby WaMu could challenge an independent appraiser's conclusions by requesting a "Reconsideration of Value," if WaMu disagreed with an appraisal. WaMu frequently ordered Reconsiderations of Value from eAppraise IT.

- eAppraiseIT also hired approximately 50 former WaMu appraisers as eAppraiseIT staff appraisers and Appraisal Business Managers. At WaMu's request, these "business managers" were authorized to override and revise the values reached by staff and third party appraisers. According to a September 29, 2006 email from a WaMu executive to senior executives at eAppraiseIT, the business managers would be responsible for "proactively making a decision to override and correct the third party appraiser's value or reviewer's value cut, when considered appropriate and supported."

- Almost immediately after retaining eAppraiseIT, WaMu's loan production staff began to complain that eAppraiseIT's appraisals were too low. On August 9, 2006, eAppraise IT's President informed WaMu executives that "[w]e need to address the [Reconsideration of Value] issue . . . . The Wamu internal staff we are speaking with admonish us to be certain we solve the [Reconsideration of Value] issue quickly or we will all be in for some pretty rough seas."

- The following week, eAppraiseIT's Executive Vice President informed eAppraiseIT's President that WaMu's loan officers would often pressure WaMu internal appraisal field managers for a "extra few thousand," or "tell[] them specifically what they needed," or "would ask for several [Reconsiderations of Value] on the same property." According to the vice president, "[h]aving loan officers ask for a few thousand dollars because it is within the range is something we do not currently do for any client . . . . It is also direct pressure on the appraiser for a higher value without any additional information."

- During the latter part of 2006, WaMu repeatedly complained to eAppraiseIT regarding low appraisals. On December 2, 2006, an internal eAppraiseIT communication notes that "we know [WaMu is] going to complain about the excessive number of low values because the majority of orders are not going to [WaMu's] preferred appraisers."

- By December 2006, WaMu had reassigned all of its Northern California appraisal work to Lender Services, Inc. and away from eAppraiseIT. One eAppraiseIT executive told his colleagues that WaMu's criticism stemmed from the fact that "values are coming in lower with [eAppraiseIT]," than with Lender Services, Inc., its top competitor for WaMu work, and that "[t]he [WaMu] managers indicated that if the loan consultants had a choice they would prefer to use [Lender Services] over eAppraiseIT because they feel they will have less problem with the values."

- In addition to pressuring eAppraiseIT regarding low appraisals, WaMu also indicated to First American, eAppraiseIT's parent company, that WaMu would be open to expanding its business relationship with First American, provided the appraisal issues were "resolved." According to a First American executive, the President of WaMu mortgage told him that "if the appraisal issues are resolved and things are working well he would welcome conversations about expanding our relationship."

- In early 2007, WaMu directed eAppraiseIT to stop using panels of staff and third party appraisers to perform WaMu appraisals, and demanded that eAppraiseIT use "Proven Appraisers" selected by WaMu. The President of eAppraiseIT explained to First American executives the reason for this change: "Performance ratings to retain position as a Wamu Proven Appraiser will be based on how many come in on value, negating the need for a[] [Reconsideration of Value]."

- eAppraiseIT's President informed the First American executives that "we have agreed to roll over and just do it." The President of eAppraiseIT also wrote to WaMu's executives stating that "Wamu proven appraisers bring the value in a greater majority of time . . . . I am fine with that, of course, and will happily assign Wamu orders to Wamu proven appraisers instead of eAppraiseIT's approved panel appraisers whenever possible."

- Internal eAppraiseIT communications indicate that WaMu's *lending department* was in charge of selecting the preferred appraisers. An eAppraiseIT Appraisal Specialist contacted the Executive Vice President, the Chief Operating Office and the Chief Appraiser about two "good, solid long-time wonderful appraisers" that were removed from the WaMu panel "for no apparent reason" after having "value issues." The Chief Appraiser informed him that "[t]he probability that a loan officer requested him to be removed is pretty high I think because that is what they did with the Master List; they sent it out to Lending to choose."

- eAppraiseIT was willing to accede to WaMu's demands that its lending department select its appraisers, despite knowing that these demands violated federal law and professional appraisal standards by compromising appraiser independence. eAppraiseIT's President expressly acknowledged that "[w]e view this [agreeing to WaMu's demands] as a violation of the OCC, OTS, FDIC, and USPAP influencing regulation."

397. In addition, documents that have only recently become publicly available demonstrate WaMu's efforts to manipulate the appraisal process.

398. The Bank has reviewed an August 10, 2010 affidavit by Peter Gailitis, a former Chief Appraiser for eAppraiseIT. Mr. Gailitis was promoted to Chief Appraiser in 2006, and was Chief Appraiser during the time period that WaMu outsourced its appraisal business to eAppraiseIT.

399. The Gailitis Affidavit indicates that from the beginning of eAppraiseIT's relationship with WaMu in Spring 2006, WaMu began pressuring eAppraiseIT appraisers to inflate their appraisals. (*Id.*, ¶¶ 5, 6) According to Mr. Gailitis, shortly after eAppraiseIT began performing appraisals for WaMu loans, Mr. Gailitis began receiving "many complaints" from WaMu managers over the "allegedly low values" being provided by eAppraiseIT appraisers. (*Id.* ¶ 6)

400. One of WaMu's primary methods for increasing appraisals was to flood eAppraiseIT with requests for Reconsiderations of Value. According to Mr. Gailitis, WaMu submitted considerably more Reconsiderations of Value than any other eAppraiseIT client, with the volume from WaMu loan officers reaching *four hundred* Reconsiderations of Value per

month at one point. (*Id.*, ¶ 6) WaMu loan officers would file a Reconsideration of Value simply because the appraised value of a property was too low for a loan to close, and use the Reconsideration of Value as a tool for obtaining a sufficient increase in value for the transaction to go forward. (*Id.*, ¶ 6)

401. In addition to abusing the Reconsideration of Value process, WaMu also sought to use its considerable economic leverage to manipulate the appraisal process. Mr. Gailitis testified that WaMu was eAppraiseIT's largest client, and that WaMu management would pass along the complaints regarding low appraisals to eAppraiseIT management, along with a threatened loss of business if the complaints from WaMu's retail divisions did not stop. (*Id.*, ¶ 7)

402. An internal email from David Feldman, the Executive Vice President of eAppraiseIT, to Anthony Merlo, the President, also makes clear that WaMu's manipulation of the appraisal process pre-dated its relationship with eAppraiseIT. (Aug. 15, 2006 email from Mr. Feldman to Mr. Merlo.) According to Mr. Feldman, WaMu had an "extra few thousand" policy under which loan officers would ask for, and apparently receive, increases in appraisals of a few thousand dollars if the inflated appraisal was still "within the range." Mr. Feldman emphasized that this was something that eAppraiseIT does "not currently do for any client," and that it constitutes "direct pressure on the appraiser for a higher value without any additional information." Mr. Feldman also noted that the WaMu staff he spoke with indicated that this "policy was abused in many ways including calling the [appraisal field manager] and telling them specifically what they needed," or asking for multiple Reconsiderations of Value on the same property (a practice that became so prevalent that the appraisal field managers began allowing only one Reconsideration of Value for free and then charging $175 for each additional one).

403. A fall 2006 email from eAppraiseIT President Merlo to executives at First American (eAppraiseIT's parent company) and WaMu further illustrates WaMu's efforts to manipulate the process and eAppraiseIT's concerns. (Sept. 13, 2006 email from Mr. Merlo to Mr. Sando.) Mr. Merlo's email forwards various instances of WaMu pressure on appraisers, including WaMu production staff regularly contacting appraisers to "argue and often berate them" over their appraisals, or informing appraisers that if they do not increase their valuations, the appraisal request will be given to another appraiser to get the appropriate "price." Mr. Merlo warns that these efforts to pressure appraisers are "getting outrageously unethical and now borderline dangerous," and he implores WaMu's executives to "respond [with] what you will do to have this stopped within the WaMu organization." As Mr. Merlo candidly acknowledges, WaMu's actions are "pure pressure to commit fraud."

404. Notwithstanding President Merlo's concerns, WaMu continued its efforts to manipulate the appraisal process. In April 2007, eAppraisetIT expressed concern that WaMu loan production staff had "a great deal to do with selecting appraisers," which was "directly in contradiction" with the interagency guidelines adopted by the OTS, the agency responsible for regulating WaMu. (Apr. 17, 2007 memo to WAMU Oversight Team)

c. WaMu engaged in predatory lending.

405. At WaMu, mortgage originators were paid more for originating loans that carried higher profit margins for WaMu and had commensurately higher risk. As James G. Vanasek, WaMu Bank's former Chief Credit Officer/Chief Risk Officer, testified to the Senate Permanent Subcommittee on Investigations:

> Because of the compensation systems rewarding volume vs. quality and the independent structure of the loan originators, I am confident that at times borrowers were coached to fill out applications with overstated incomes or net worth adjusted to meet the minimum underwriting policy requirements.

In a document entitled "2007 Product Strategy," WaMu noted that it must "maintain a compensation structure that supports the high margin product strategy." The *Seattle Times* reported how a 2007 compensation grid revealed that "the company paid the highest commissions on option-ARMs, subprime loans and home-equity loans. A $300,000 option ARM, for example, would earn a $1,200 commission, versus $960 for a fixed rate loan of the same amount. The rates increased as a consultant made more loans. . . ." DeSilver, *Reckless*, Seattle Times, *supra* ¶ 202. Likewise, a WaMu "Retail Loan Consultant 2007 Incentive Plan" explained that "[i]ncentive tiers reward high margin products... such as the Options ARM, Non-prime referrals and Home Equity Loans . . . ."

406. In April 2010, the Senate Permanent Subcommittee on Investigations held a series of hearings into the causes of the financial crisis. The Senate Subcommittee concluded that WaMu often steered borrowers into home loans with low initial payments they could afford only in the short term, if at all, presuming that rising home prices would enable those borrowers to refinance or sell their homes before the loan payments ballooned beyond a level they could not afford. Internal compensation schemes encouraged such conduct because loan officers and loan processors were rewarded for originating high risk loans and for placing borrowers in high interest loans with large prepayment penalties.

407. The details of how WaMu paid brokers to press borrowers into buying unsuitable loans at high interest rates, and often pressured borrowers to refinance from a fixed rate loan into a variable rate loan with higher interest rates, is illustrated by the story of Bob Houk:

> Usually, Bob Houk's wife handled the family's money matters. But after being diagnosed with a brain tumor, she was in and out of the hospital, so he took over. In late 2006, he received a postcard with WaMu's logo on it.
>
> Houk already had a 30-year WaMu mortgage at a fixed rate of 4.6 percent. But the postcard promised to lower the monthly payments on their Bainbridge Island home with an adjustable-rate mortgage starting at only 1 percent interest.

He liked the idea of cutting expenses. A son was in college, his wife was on disability from her job as a nurse, and Houk, a physician assistant at Group Health, worked only part time to be at her side.

Houk called the number on the card, reached an independent mortgage broker in California, and made all the arrangements over the phone. Soon someone came to his house with papers to sign. Houk was impressed at how easy the process was.

But a couple of months later, Houk noticed something on his monthly statement that gave him a sick feeling. Instead of one low monthly payment, there were now options. His minimum monthly payment of only $1,018 was there. But there were also higher-priced options for paying interest only or for paying interest and principal. Just covering the interest that month would cost him about $1,000 more.

The 1 percent interest rate Houk thought he was getting was only good for the first month. It had reset to 7.4 percent, nearly 3 percentage points above his previous WaMu loan. This was buried in the fine print in a sheaf of legal documents he had signed. "Who in their right mind would give up a 4.6 percent loan?" Houk said. "I felt totally duped."

Houk said he called Washington Mutual, but the woman he talked to said nothing could be done. WaMu just gets the loan from the broker, he recalled her saying, so the bank's not responsible.

To drum up customers for these overpriced loans, WaMu offered hefty commissions to its sales force.

Loan officers working inside WaMu were rewarded with higher commissions for signing up a borrower for an option ARM rather than a conventional loan.

But WaMu made the vast majority of its option ARMs through its network of independent mortgage brokers. They worked in a loosely regulated industry. In many states, the job required no education, no background check and no oversight. While there are reputable brokers, the industry suddenly attracted a motley crew, who could make six figures in a year in commissions.

WaMu did not reward brokers for getting its customers the best deal. Just the opposite. The worse the terms were for borrowers, the more WaMu paid the brokers.

A WaMu daily rate sheet obtained by The Seattle Times shows how lavish the rewards could be. On an option ARM, WaMu would reward brokers as much as 3 percent of the loan amount—more than triple the standard commission at the time.

> Brokers would get an additional point—1 percent of the loan—for roughly every half-point in higher interest the borrower paid. So the broker would get 3 percent of the loan if he could get the borrower to pay 1.5 percent above the market rate.
>
> WaMu could afford to pay such high commissions, called "yield spread premiums," because the money actually came from the borrower in the form of higher interest rates and prepayment penalties.
>
> Houk's broker, for example, got paid a commission of $9,498 on a $316,000 loan, according to loan documents.

Heath, *supra* ¶ 384 at A1.

408. Moreover, WaMu was among 14 lenders named by the NAACP in a complaint alleging "systematic, institutionalized racism in sub-prime home mortgage lending." According to the lawsuit, African American homeowners who received sub-prime mortgage loans from these lenders were more than 30 percent more likely to be issued a higher rate loan than Caucasian borrowers with the same qualifications. In January 2009, the court denied a motion to dismiss, finding that the plaintiff had sufficiently pled a disparate impact claim.

409. Of particular note among the many other cases against WaMu with regard to its loan origination practices, in September of 2010, Deutsche Bank National Trust Company, in its capacity as a trustee, filed suit alleging breach of contract and seeking a declaratory judgment and damages over 99 different trusts created, sponsored and/or serviced by WaMu, and which included loans originated by WaMu. *See* Am. Compl., *Deutsche Bank Nat'l Trust Co. v. FDIC*, No. 09-cv-1656-RMC (D.D.C. Sept. 8, 2010). The allegations in Deutsche Bank's complaint are very similar to the ones made by the Bank here. These allegations include that WaMu engaged in "shoddy lending practices," "performed inadequate underwriting," and securitized "delinquency prone and fraudulent loans." The trustee's contract claim is based on numerous breaches of representations and warranties, including representations and warranties that the loans complied with laws prohibiting predatory lending, that the loans were written in

accordance with the seller's underwriting guidelines as described in the prospectus supplement, that appraisals were conducted generally in accordance with WaMu's underwriting guidelines, that the LTV for each mortgage loan was no greater than 100% at the time of origination, and that "to the best of the seller's knowledge, no misrepresentation, negligence, fraud or similar occurrence with respect to a Mortgage loan has taken place on the part of any person, including without limitation, the Mortgagor, any appraiser, builder or developer, or any other party involved in the origination of the mortgage loan."

d. Confidential witnesses provide further evidence of WaMu's failures to adhere to sound underwriting practices, predatory lending, and manipulation of the appraisal process.

410. Confidential witnesses such as CW-13 provide further evidence that WaMu abandoned sound underwriting practices. CW-13 worked at WaMu from 1987 until the fall of 2006. During her time at WaMu, CW-13 held such positions as personal financial manager, assistant branch manager, and branch manager. In these capacities, CW-13 worked in consumer lending, including loan origination.

411. CW-13 saw many "stated income" loans at WaMu. If the borrower had false documents or if CW-13 believed that the borrower's income would not be high enough (as evidenced by paystubs) to qualify for a loan, CW-13 would instruct the borrower not to show her the documents and she would simply offer a "stated income" loan.

412. CW-13 also said that WaMu underwriters frequently made exceptions on the loans in order to approve them; moreover, she knew who the "lenient" underwriters were and would direct her loans to them so that they would be approved. CW-13 used different tactics in order to get loans approved by the underwriter; for example, she would write the documents up in a special way so that the loans would always be approved, even if a borrower was not strong enough to otherwise qualify.

413. Even if loans were declined by certain underwriters, CW-13 said she could always ask for the loan to be reviewed again. Sometimes she would call the borrower to tell them why a loan was denied, and the borrower would come back with new facts or new documentation. According to CW-13, there was a lot of "fudging" that took place in those situations.

414. CW-13 also confirmed that during the time period she was employed at WaMu, including 2005 and 2006, appraisals were manipulated to reach a value necessary for the loan to close. CW-13 would order appraisals from the WaMu appraisal department by saying "this is what I need," or "this is what the customer thinks it's worth." CW-13 was trained to forward all information on the application to the appraisers, including the homeowner's estimate of value, even if the estimated home value looked high. The FDIC's Office of Inspector General has found this practice to be inconsistent with "standard residential appraisal methods" because providing the homeowner's estimate of the value of the home to the independent appraiser biases the appraiser's evaluation. (Evaluation of Federal Regulatory Oversight of Washington Mutual Bank at p. 11, Report No. EVAL-10-002 (April 2010)). Pursuant to USPAP Rule 1-2(b), appraisers must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

415. While CW-13 normally submitted appraisal requests to the appraisal department for a coordinator to handle, CW-13 could, and did, request specific appraisers if she needed a certain value in a certain neighborhood. CW-13 knew the appraisers' reputations for being high or low with respect to certain neighborhoods, and she used that knowledge in requesting certain appraisers in order to get the value the client needed for the loan to close.

416. If an appraisal came back lower than what was needed to close the deal, CW-13 had several options available to increase the appraisal. If the appraisal was close to the required value, CW-13 would call the appraiser and negotiate for a higher number. For some of the time CW-13 worked at WaMu, the appraisal department was either in the same building or across the street, which allowed CW-13 to walk to the appraisal department and directly negotiate with the appraisers to see what could be done to increase the value of the appraisal so the loan could close.

417. If the appraisal was significantly lower than the required value, CW-13 would tell the customer to find additional comparable properties within a two-mile radius to justify increasing the appraisal value, even though standard practice generally required a comparable to be within a one mile radius of the property. If there were not any comparables within a two-mile radius that would justify an increase, the customer would pull higher value comparables from even farther afield.

418. In addition to CW-13, CW-14 provided additional evidence confirming the manipulation of appraisals by WaMu. CW-14 was a staff appraiser at eAppraiseIT from 2002 until February 2007. CW-14 appraised homes for a variety of lender who used eAppraiseIT's services, including WaMu.

419. According to CW-14, after WaMu closed its in-house appraisal department and chose eAppraiseIT as one of its two preferred appraisal management companies, eAppraiseIT hired several former WaMu appraisers to serve as "business managers." These business managers supervised the eAppraiseIT staff appraisers and were also "in contact" with WaMu loan officers.

420. According to CW-14, prior to WaMu retaining eAppraiseIT, the eAppraiseIT staff appraisers were left alone and were not routinely pressured to increase values. After eAppraiseIT hired WaMu's former appraisers as managers, they pressured everyone, including CW-14, to increase appraisal values. Beginning in approximately mid-2006, CW-14 began reporting to a business manager in Arizona. CW-14's manager was in touch with WaMu loan officers who complained about CW-14's low valuations on refinancing transactions. CW-14's manager then called her, advised her of the complaints, and informed her that she was tired of getting complaints from the loan officers about CW-14's low values.

421. CW-14's manager constantly pressured her to increase values by modest amounts, telling her that "just a couple thousand more and the loan would go through," or "[t]here's got to be something you're not looking at." In many instances, CW-14's manager would tell her that WaMu had requested she look at other comparables that simply were not comparable, and force CW-14 to explain why the comparables WaMu identified were not appropriate. CW-14 estimates that this occurred for 75% of the appraisals she performed for WaMu.

422. CW-14 eventually asked not to be assigned any WaMu appraisals, despite the fact that roughly 50% of her workload was WaMu transactions. While eAppraiseIT had other clients, her business manager nevertheless informed her that she "wouldn't get any work." In February 2007, CW-14 left eAppraiseIT. Based on CW-14's experience, "eAppraiseIT prostituted themselves for WaMu. I can't understand why they didn't treat WaMu like any other lender."

423. The testimony of CW-15 also confirms the pressure that WaMu exerted on eAppraiseIT and the appraisers working for eAppraiseIT. CW-15 is an independent real estate appraiser who received assignments from WaMu through eAppraiseIT. CW-15 believes that he performed work for WaMu between approximately November 2005 and April 2007. CW-15

stated that after WaMu closed its in-house appraisal department, a former WaMu appraiser was hired by eAppraiseIT to serve as his district or regional manager. CW-15 also noted that many former WaMu staff appraisers were hired in similar manager capacities at eAppraiseIT.

424. According to CW-15, "within the individual purview of the district manager, it was commonplace for them to come back for revision or reconsideration [of an appraisal]. It was understood that when they asked, you complied." CW-15 believes that as a conservative estimate, 10% of the reports he wrote for WaMu resulted in a value adjustment that CW-15 made at the request of the eAppraiseIT manager.

425. CW-16 and CW-17 provided testimony regarding what occurred if an appraiser refused to bow to WaMu pressure. CW-16 was an independent appraiser that received assignments through eAppraiseIT, LSI, and directly from WaMu. CW-16 was placed on WaMu's list of "approved appraisers," and estimates that around 75% of her appraisals were for WaMu.

426. CW-16 recalls being pressured by WaMu to increase appraisal values on several occasions, and she believes that this pressure occurred between November 2005 and April 2007. CW-16 would be told that she was missing the sales price by a small amount, and that because the market was going up, her appraisal should also increase. On one occasion, an appraisal was reassigned from CW-16 to a staff appraiser because her appraisals were too conservative.

427. CW-16 was ultimately removed from the "approved appraiser" list because of her view that the market was declining in value. The standard appraisal form that CW-16 used included a section on market condition, and required appraisers to check a box indicating whether market values were stable, increasing, or decreasing at the time the appraisal was made. Sometime between November 2005 and April 2007, CW-16 indicated that property values were

decreasing. According to CW-16, this was a "big no-no," because if the market was in decline, WaMu would not be able to resell the loan on the secondary market, or if they did, the loan would have to be discounted. WaMu "hassled" CW-16 for her conclusion, and a WaMu employee even called her to try to convince her that market values were not declining. WaMu subsequently removed CW-16 from the approved appraiser list—informing her via a telephone call—and she never received work from WaMu again.

428. CW-17 is an independent appraiser and has prepared appraisals for a variety of lenders, including WaMu. In the spring of 2006, in connection with a WaMu loan application, CW-17 appraised a home for $2.2 million. While CW-17's supervisor reviewed the appraisal, and agreed with the valuation, a WaMu staff appraiser subsequently sent CW-17 a letter indicating that she disagreed with the valuation, and was increasing it by $500,000 to $2.7 million. CW-17 was confident that his appraisal was accurate, in part because it was based on comparable properties on the same street as the subject property, and contacted the WaMu's chief appraiser in the area to express his concerns about the inflated appraisal. Far from being concerned, WaMu's chief appraiser informed CW-17 that WaMu "could change the value to anything it wanted."

429. After this incident, CW-17's assignments for WaMu decreased, even though he believed he remained on the "panel" of preferred appraisers. CW-17 also recalls an instance where a WaMu appraisal was assigned to him, only to be reassigned thirty minutes later at the request of the WaMu loan officer, who believed that CW-17 was "too conservative." According to CW-17, this behavior was "typical"—it was either "their way or the highway."

430. CW-18 also confirmed that the time pressures placed on auditors hurt the quality of the loan review. From 2005 to early 2006, CW-18 was a senior staff appraiser at WaMu.

CW-18's position was eliminated in 2006 when WaMu eliminated its in-house appraisal department, but CW-18 rejoined WaMu in 2007 as an appraisal reviewer in the quality control department.

431. According to CW-18, WaMu senior staff appraisal reviewers had to meet volume quotas that harmed the quality of their reviews. While CW-18 is not sure of the exact quota, he believes that "front-end" reviewers were required to review 20 appraisals per day, in contrast to quality control reviewers who were only expected to review 8 to 10 appraisals per day. CW-18 explained that "front-end" appraisals had an effect on production in that they were required to fund loans, whereas no one relied on quality control's appraisals for funding.

432. As a quality control review appraiser, CW-18 saw many fraudulent appraisals in approved WaMu loans. CW-18 estimates that a very high number, probably 15-20% of the appraisals he reviewed were inflated or fraudulent. Although most of the fraudulent appraisals were of collateral securing loans approved by Washington Mutual origination subsidiary, Long Beach Mortgage, CW-18 also saw many fraudulent appraisals in approved WaMu loans, as well. According to CW-18, "the problem was on the lending side of the business. It was pure greed," fostered by a desire to make as many loans as possible.

433. CW-18 also explained that WaMu implemented an appraisal tracking and review system called OPTISValue. OPTISValue reviewed an appraisal for key characteristics, and if those characteristics were satisfied, it could approve the appraisal. WaMu could change the key characteristics that the OPTISValue system used to determine whether an appraisal would be approved or flagged for secondary review. CW-18 believes that as time went on, the key characteristics were loosened because, as a lender, WaMu wanted "to get everything approved." According to CW-18, while OPTISValue was initially designed from a risk standpoint, it was

geared towards "cookie cutter loans," and was not designed to catch fraud. For this reason, there were red flags in loan applications that a human appraiser or underwriter would have caught, that OPTISValue would not.

434. Another Confidential Witness, CW-19, confirmed the flaws in the OPTISValue program. CW-19 was a senior staff appraiser at WaMu from 1999 until September 2006.

435. Prior to 2002, WaMu administrative staff reviewed appraisals using checklists to assist them in finding risky characteristics that warranted further review by a certified appraiser.

436. Starting in 2001 or 2002, WaMu began automating its appraisal review process by using OPTISValue. After 2002, all appraisals were automatically reviewed by the OPTISValue system. OPTISValue performed the initial appraisal screening that humans had previously done, thus eliminating human involvement from the first stage of review, and creating a system where certain appraisals would be automatically approved without ever being reviewed by a person.

437. According to CW-19, OPTISValue automatically approved a huge percent of appraisals; CW-19 estimates that more than 50% of all appraisals sent to WaMu were never looked at by any human. Both in-house production appraisers and fee appraisers knew that if "they came in with a value that worked"—a value that was equal to or greater than the purchase price—their appraisal would never be questioned because OPTISValue would approve it without any review. The use of an automated system, coupled with increasingly relaxed appraisal standards, resulted in inflated appraisals. CW-19 recalls seeing a "whole bunch of appraisals with inflated values," and was aware of loans that were supported with inflated or otherwise fraudulent appraisals that were still approved.

438. The confidential witness statements quoted above demonstrate that WaMu routinely accepted—in fact demanded—appraisals that were conducted in violation of USPAP

standards. Because WaMu insisted upon certain results, negotiated results with appraisers, and pressured appraisers to increase values, the resulting appraisals simply were not performed with "impartiality, objectivity, and independence" as required by the USPAP Ethics Conduct Rule. Instead, appraisers routinely allowed the "intended use of an assignment or a client's objectives to cause the assignment results to be biased" in violation of the USPAP Scope of Work Acceptability Rule. Additionally, by threatening appraisers regarding the availability of future work and removing appraisers from the list of accepted appraisers, WaMu forced appraisers to violate the USPAP Ethics Management Rule, which precludes the acceptance of assignments that are contingent upon either "the reporting of a predetermined result" or "a direction in assignment results that favors the cause of a client." Ultimately, the systemic coercion of appraisers caused a fundamental violation of USPAP Standard 1, which requires that appraisers "correctly complete research and analyses necessary to produce a credible appraisal." As discussed in public reports and confirmed by confidential witnesses, WaMu's appraisal abuse was standard operating procedure for both companies.

e. The mortgages originated by WaMu and securitized in the PLMBS purchased by the Bank provide further evidence of WaMu's abandonment of sound underwriting practices.

439. WaMu originated the mortgages that secured at least 3 securities purchased by the Bank. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of WaMu's failure to observe its stated

underwriting standards. WaMu's actual practices—including use of unreliable and biased collateral valuations in lieu of appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs were far different from those reported in the Offering Documents. As a result, the likelihood of default for these loans was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

440. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was in fact the norm at WaMu, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of WaMu's pervasive and systematic disregard of its stated underwriting guidelines, failure to adhere to standard appraisal practices, and rampant predatory lending.

5. Wells Fargo Bank, N.A.

441. Wells Fargo Bank, N.A. ("Wells Fargo") originated underlying mortgage loans securing at least three of the Certificates purchased by the Bank: BAFC 2006-D 1A1, IMSA 2006-2 1A2A, and WFMBS 2006-AR 12 1A1. Wells Fargo Bank, N.A. abandoned sound underwriting practices.

a. Investigations, lawsuits and confidential witness testimony demonstrate that Wells Fargo abandoned underwriting guidelines.

442. In 2010, Wells Fargo was identified by the OCC as the fourteenth worst mortgage originator in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency. In denying in part a motion to dismiss in *In re Wells Fargo Mortgage-Backed Securities Litigation*, No. 3:09-1376 (N.D.

Cal.) ("*Wells Fargo* Complaint"), the court found that plaintiffs had adequately pled that "variance from the stated [underwriting] standards was essentially [Wells Fargo's] norm" and that this conduct "infected the entire underwriting process."

443. The *Wells Fargo* Complaint is supported by numerous confidential witness statements substantiating the allegations that Wells Fargo abandoned underwriting guidelines, increasingly made exceptions without compensating factors, sacrificed underwriting standards to loan volume, and manipulated loan information in order to close loans without regard to borrowers' ability to repay the loans.

444. Confidential witnesses contacted in connection with the Bank's investigation provide additional evidence of Wells Fargo's repeated failure to adhere to sound underwriting practices and guidelines. Statements by confidential witnesses confirm that: (a) Wells Fargo underwriters faced intense pressure to close loans at any cost; (b) Wells Fargo increasingly approved risky, low- or no-documentation loans without adequate review; (c) Wells Fargo routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (d) Wells Fargo employees approved loans with inflated appraisal values; and (e) Wells Fargo employees manipulated data in order to close loans.

445. Confidential witnesses include CW-20, CW-21, and CW-22. CW-20 worked as an underwriter at Wells Fargo for five years and left the company in approximately 2006. She helped start one of Wells Fargo's wholesale lending offices. The wholesale lending office received mortgage applications from various brokers in the area and then underwrote, approved, and funded such mortgages. CW-21 was an underwriting manager at a Wells Fargo branch in California from 2004 until late 2007, when Wells Fargo closed the branch. The branch was a "MAP" center, which was a location where Wells Fargo loans were registered, underwritten,

processed, closed, and shipped out for sale in pools. CW-22 was a quality control specialist at Wells Fargo Mortgage in Maryland from January 2004 through August 2005. CW-22 audited conventional mortgage loan files from all over the United States that had already been through Wells Fargo underwriting, but which had not yet closed. CW-22 was one of five quality control specialists in the office who evaluated the work of underwriters "to make sure they were underwriting correctly."

446. Wells Fargo employees increasingly disregarded the credit risk of loans and quality controls in favor of generating loan volume. According to CW-21, this was because loan officers and underwriters at Wells Fargo received commissions and/or bonuses based on the number of loans closed. CW-22 noticed an increase in the number of exceptions made in loan files, "when the sales numbers weren't where they were supposed to be at the end of a month." In such cases, CW-22 said, Wells Fargo granted more exceptions to meet sales goals. "The sales force was driving the business, as opposed to underwriting management doing the driving . . . . It came down to volume and keeping up with our lender peers and getting market share."

447. Among Wells Fargo's abuses of underwriting standards, confidential witnesses detailed a practice of approving risky loans based upon little or no documentation. CW-20 explained that underwriters at Wells Fargo's branches used two Automated Underwriting Systems (often, "AUS"), which were pre-programmed with the minimum credit scores, LTVs and DTIs, cash reserve levels, and documentation levels needed for the borrower to qualify for the various mortgage products that Wells Fargo offered. If these AUS returned an "approve" or "accept" result, then Wells Fargo typically approved the application and funded the mortgage. CW-20 commented that she was skeptical of the "approvals" that came from the AUS, and often

thought to herself, "How did it approve *this*?" The systems approved borrowers who "never should have been approved."

448. For example, the AUS would approve a borrower with recent late payments, a 50-55% DTI, a 650 credit score, and no cash reserves. CW-20 would have questioned such an application. However, so long as the AUS approved the loan, the underwriters in Wells Fargo's branches were not required to look any deeper. In CW-20's view, the integrity of mortgage origination "all fell apart when the AUS became the standard." She explained that by the mid-2000s, when the AUS were being relied upon almost exclusively, she no longer agreed with the loans that were being approved because the underwriting guidelines had become so loose.

449. CW-22 described 2004 and 2005 as the era of "creative financing programs" at Wells Fargo such as no-doc and stated income loans. "It was a free-for-all at that point. You would see a file where a janitor was stating he made $5,000 a month and his debt ratio was right where our cut-off was. CW-22 said that it was obvious that a loan officer, who would have been aware of the debt ratio required for loan approval, had either "filled out the paperwork or coached the borrower." When CW-22 inquired about facts like this, he was told "there were compensating factors like a good FICO score or stated assets of $10,000 or something like that." However, "there was no way to verify it."

450. CW-22 saw exceptions to underwriting guidelines involving business tax returns. For example, if lending guidelines required three years of business tax returns, a borrower might provide just two years of such returns, and Wells Fargo would waive the requirement for providing documents for a third year.

451. According to CW-20, her superiors at Wells Fargo "didn't want to hear" her concerns about mortgages being approved for borrowers with questionable credit, high debt

levels, high LTVs, or minimal cash reserves. Throughout her time with Wells Fargo, the origination and underwriting emphasis was completely sales-oriented. According to CW-20, the motto at the company was "sales rules," and underwriters had no say in the kinds of borrowers that the AUS approved.

452. The only time human underwriters were involved in the underwriting process was when the AUS recommended a loan for "refer" instead of "accept." A result of "refer" meant that the application did not meet the underwriting guidelines programmed into the AUS. These loans required manual underwriting, and most of the time they were still approved.

453. CW-20 stated that underwriters at Wells Fargo were pressured to approve applications on which the AUS returned a "refer" result because "sales rules." Underwriters were pressured to approve the loans because if they did not, they were at risk of suddenly being fired. As stated by CW-20, "The loan officer or broker would go to the Operations Manager and complain, and suddenly people [underwriters] were no longer there." Additionally, underwriters received e-mails directly from the outside mortgage brokers or loan officers indicating that they weren't happy with the underwriter's decision not to approve an application. Many mortgage brokers expected the underwriter to approve all of his or her loans. In general, CW-20 stated that the mortgage brokers and loan officers "learned how to get away with what they needed in order to get the loans approved."

454. CW-20 explained that, in deciding whether to approve loans, underwriters disregarded whether the borrower had the ability to repay the loan: "We were just supposed to ignore all the warning signs." Thus, even for government loan programs, LTVs were in the range of 95-100%, FICO scores were as low as 550 to 560, and DTIs were as high as 55%. Cash

reserves were only required "sometimes." Many of the conventional loans that CW-20 underwrote between 2004 and 2006 were stated income/stated asset or no-income/no-asset loans.

455. Confidential witnesses also described Wells Fargo's standard practice of approving exceptions that deviated from prudent underwriting guidelines. According to CW-21, 30-40% of the time, Wells Fargo loan officers issued exceptions to underwriting guidelines on loans that otherwise would have been rejected.

456. CW-21 noticed that the exceptions that Wells Fargo granted increased in late 2006 or early 2007, in conjunction with Wells Fargo's decision to tighten its underwriting guidelines. Wells Fargo's sales staff could not understand why a loan that would have been approved the prior year could not be approved in the current year, and did not accept the tightened guidelines. According to CW-21, the sales staff "wouldn't take 'no' for an answer," and therefore placed tremendous pressure on the Wells Fargo underwriters to approve their loans. Even where the Wells Fargo underwriters would deny requests for exceptions, Wells Fargo's sales staff would take their loans to lead underwriters and risk managers to have the decisions overridden. According to CW-21, the increase in exceptions countered Wells Fargo's efforts to tighten the underwriting guidelines.

457. Evidence also exists that Wells Fargo employees also manipulated loan data in order to close loans and generate volume. For example, CW-21 was aware of circumstances in which loan files were doctored in order for the loans to be approved.

458. Confidential witnesses also detailed how mortgages approved by Wells Fargo were based upon inflated appraisal values. According to CW-20, the outside mortgage brokers who brought the loans to her branch for approval chose the appraisers that they wanted to use. The outside brokers, loan officers, and appraisers all had a vested interest in the appraised value

being accepted and the mortgage application being approved by Wells Fargo, since they all made money off of the transaction. Consequently, they all had a "let's make a deal mentality" about reaching an appraisal value that supported the amount of the mortgage loan.

459. CW-23 has been a licensed appraiser in Washington since 1992. In the spring of 2007, CW-23 was given an assignment by Rels Valuation—the appraisal management firm used by Wells Fargo—to appraise a home on the outskirts of Seattle. CW-23's appraisal noted that the house was being remodeled, that the remodel was incomplete, and that the house was consequently not habitable. After submitting his appraisal, CW-23 was contacted by both Wells Fargo underwriters and Rels customer service representatives, ordering him to change his appraisal to state that the house remodel was complete. This pressure culminated with CW-23 receiving a phone call from a Rels Valuation Area Manager informing him that "you appraisers take USPAP [the uniform appraisal standards] too seriously," and that if CW-23 failed to alter his appraisal, he would be blacklisted. When CW-23 refused on the grounds that changing the appraisal would violate appraisal standards, he was blacklisted and ceased receiving work from Wells Fargo.

460. CW-24, who formerly worked as a review resolution coordinator for Rels Valuation from February 2007 to July 2010, confirms the problematic nature of the appraisal process. According to CW-24, Wells Fargo had an unwritten "Five Percent Rule," whereby if a Rels review appraiser came up with a new value that was within 5% of the original value, the higher value was automatically accepted.

461. CW-24 also testified that from the beginning of his tenure at Rels in 2007, until the implementation of the new Federal Home Valuations Code of Conduct in 2009, pressure from Wells Fargo officers occurred quite frequently, with CW-24 receiving at least one call a

day from a review appraiser complaining that a Wells Fargo loan officer contacted him or her directly. CW-24 also sat near 18 review resolution analysts that were tasked with resolving appraisals in which the original appraiser and the review appraiser could not agree on the value. On multiple occasions, CW-24 recalls a Rels national review manager arguing with the review analysts and telling them what he believed was the correct value. CW-24 believes that this constituted undue pressure on review analysts. According to CW-24, "[o]n the one hand the review manager was trying to run a delicate balancing act with the client, Wells Fargo. But on the other hand, you have to draw the line. Most of the stuff that I saw I felt like it was a little over the line."

462. CW-24 also emphasized that not every appraisal ordered by Rels Valuation for Wells Fargo was reviewed by human eyes. Rels relied on a computer program, called ACE, to identify problematic appraisals. While the system caught clerical errors or omissions, appraisals containing "egregious violations of USPAP" were sometimes not identified until after the loan had closed.

b. The mortgages originated by Wells Fargo and securitized in the PLMBS purchased by the Bank provide further evidence of Wells Fargo's abandonment of sound underwriting practices.

463. Wells Fargo originated mortgages that secured at least two of the Certificates. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing this Certificate, including misstatements with respect to its weighted average LTV and the percentages of loans with LTVs in excess of 100%, 90% and 80%. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Wells Fargo's failure to observe its stated underwriting standards. Wells Fargo's actual practices—including the use of unreliable appraisals, routine granting of

underwriting exceptions and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

464. Thus, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at Wells Fargo, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that Wells Fargo abandoned its underwriting guidelines.

c. Investigations, lawsuits and confidential witness testimony demonstrate that Wells Fargo engaged in predatory lending.

465. In July 2009, the Attorney General for the State of Illinois brought a lawsuit in Cook County Circuit Court alleging that Wells Fargo "steer[ed minority applicants] into high cost subprime or riskier mortgage loans while White borrowers with similar incomes received lower cost or less risky mortgages" and that Wells Fargo "engaged in deceptive practices by misleading Illinois borrowers about their mortgage terms, misrepresenting the benefits of refinancing, and repeatedly refinancing borrowers' mortgages, also known as loan flipping, without any real benefit to consumers."

466. The Illinois Attorney General's complaint in *People v. Wells Fargo & Co.*, No. 09-26434 (Ill. Cir. Ct.), details how borrowers were "plac[ed] into subprime mortgages, even though they qualified for prime mortgages with better terms," with the result that "[i]nstead of the affordable mortgages that these borrowers should have received, they were sold mortgages that were unaffordable and unsuitable." The complaint also details how Wells Fargo rewarded

its employees for steering borrowers away from prime mortgages and into subprime loans, creating an incentive to sell borrowers higher cost sub-prime loans even if they qualified for prime loans, and "failed to maintain proper controls to ensure that borrowers were not placed into mortgages that were riskier or more expensive than the mortgage loans for which they were qualified."

467. On April 7, 2010 the City of Memphis filed its First Amended Complaint in *City of Memphis v. Wells Fargo Bank*, No. 09-2857 (W.D. Tenn.), alleging violations of the Fair Housing Act and of the Tennessee Consumer Protection Act arising from Wells Fargo's discriminatory lending practices. The Complaint attaches sworn declarations from six former Wells Fargo employees providing evidence of discriminatory and predatory lending practices.

468. Doris Dancy, a former Wells Fargo credit manager explained how she was provided with lists of leads who were predominantly minorities despite her branch being "in an area where a lot of white people lived" and how she was required to present a misleading sales pitch that did not disclose that "we were actually just giving them a new more expensive loan that put their house at risk." She detailed how her "district manager pressured the credit managers . . . to convince our leads to apply for a loan, even if we knew they could not afford the loan or did not qualify for the loan." She stated that "I knew that Wells Fargo violated its own underwriting guidelines in order to make these loans to these customers." She was instructed by her district manager "to conceal the details of the loan." Eventually she resigned because she "decided that the practices were too unethical for me to participate any longer. I hated to go to work, and found myself crying at the end of the day." Another Wells Fargo credit manager, Mario Taylor, testified how:

> [B]ranch managers told us how to mislead borrowers. For example we were told to make "teaser rate" loans without informing the borrower that the rate was

> adjustable. . . . We were told not to tell the customer what was in the fine print. In many cases income documents were falsified in order to qualify a borrower for a loan. I know that some managers, including one of my branch managers, changed pay stubs and used white-out on documents to alter the borrower's income so it would look like the customer qualified for the loan. Borrowers were not told about prepayment penalties. [O]ne of my branch managers told me not to disclose . . . fees to borrowers.

469. Camille Thomas, a Wells Fargo loan processor, explained that "[i]t was the practice at the Wells Fargo offices where I worked to target African Americans for subprime loans. . . . Elderly African Americans were thought to be highly vulnerable and were frequently targeted for subprime loans with high interest rates." She confirmed Ms. Taylor's testimony that "credit managers and branch managers made 'teaser rate' loans without informing the borrower that the loan had an adjustable rate. . . . In many cases documents were actually falsified to inflate a borrower's income so that the borrower would appear to meet the debt-to-income requirements. I know that at least one branch manager engaged in this practice."

470. Tony Pashal, a Wells Fargo loan officer, described the case of one borrower who had a 2/28 adjustable rate mortgage and was seeking to refinance in 2006 before his "teaser rate" for the first two years expired. He explained that:

> I determined that the borrower qualified for a prime loan. The borrower had an excellent credit score and for this reason I suspected that he had previously qualified for a prime loan in 2004 but had been inappropriately placed by Wells Fargo into a subprime ARM at that time. In working with the borrower in 2006, I informed my branch manager, Dave Zolnak, that the borrower qualified to refinance into a prime fixed-rate loan. Mr. Zolnak told me I should instead refinance the borrower into another subprime ARM. I refused [and was written up with] a negative performance evaluation in my personnel folder.

471. Elizabeth Jacobson, who "was the top subprime loan officer at Wells Fargo" for many years testified about how:

> [T]he commission and referral system at Wells Fargo was set up to make it more profitable for a loan officer to refer a prime customer for a subprime loan than to make the prime loan directly to the customer. . . . When I got referrals it was my job to figure out how to get the customer into a subprime loan. I knew that many

> of the referrals I received could qualify for a prime loan. . . . [Loan officers] used their discretion to steer loan customers to subprime loans by telling the customer, for example, that this was the only way for the loan to be processed quickly; that there would be less paperwork or documentation requirements; or that they would not have to put any money down. Customers were not told about the added costs, or advised about what was in their best interest. . . . According to company policy, we were not supposed to solicit 2/28 customers for re-finance loans for two years after we made a 2/28 subprime loan. . . . [M]y area manager told his subprime loan officers to ignore this rule and go ahead and solicit 2/28 customers within the two year period, even though this violated our agreement with secondary market investors. The result was that Wells Fargo was able to cash in on the pre-payment penalty by convincing the subprime customer to refinance his or her 2/28 loan within the initial two-year period. . . . Wells Fargo qualified borrowers for subprime loans by underwriting all adjustable rate mortgage loans, including 2/28 loans, with the assumption that the borrower would pay the teaser rate for the full life of the loan even though this lower rate only applied during the first two or three years of the loan. . . . I learned of [loan officers] cutting and pasting credit reports from one applicant to another [and] subprime loan officers who would cut and paste W2 forms [to] increase the credit worthiness of the applicant so that Wells Fargo's underwriters would approve the loan. I reported this conduct to management. . . . Underwriters, like loan officers, had a financial incentive to approve subprime loans than [sic], even if the customer could qualify for a prime loan, because they got paid more . . . if a subprime loan went through.

472. Confidential witnesses confirmed that Wells Fargo engaged in predatory lending practices. For example, CW-21 mentioned that Wells Fargo's underwriters did not fully inform borrowers of the risks of the loans. In addition, as the above discussion shows, Wells Fargo routinely issued loans to borrowers who lacked the ability to repay the loans in violation of predatory lending restrictions.

6. Ameriquest Mortgage Company

473. Ameriquest Mortgage Company ("Ameriquest") originated underlying mortgage loans securing at least two of the Certificates purchased by the Bank: CMLTI 2005-9 1A1 and MLMI 2006-AF2 AV2A. Ameriquest abandoned sound underwriting practices.

a. Investigations and lawsuits demonstrate that Ameriquest abandoned underwriting guidelines and engaged in predatory lending.

474. Ameriquest was the wholly owned retail lending subsidiary of ACC Capital Holdings ("ACC"), one of the nation's largest subprime lenders. Ameriquest was the largest subprime lender in 2003, 2004, and 2005. In 2010, Ameriquest was identified by the OCC as the ninth worst mortgage originator in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

475. Ameriquest's management pressured employees to generate loan volumes at all costs: "Up and down the line, from loan officers to regional managers and vice presidents, Ameriquest's employees scrambled at the end of each month to push through as many loans as possible to pad their monthly production numbers, boost their commissions, and meet [founder] Roland Arnall's expectations. Arnall was a man 'obsessed with loan volume,' former aides recalled, a mortgage entrepreneur who believed 'volume solved all problems.'" Michael Hudson, *The Monster: How a Gang of Predatory Lenders and Wall Street Bankers Fleeced America—and Spawned a Global Crisis* 2 (2010). As a result of such pressures at Ameriquest, employees falsified documents, forged borrowers' signatures on government-required disclosure forms, and misrepresented the terms of loans in order to induce borrowers to take out loans they could not afford. *Id.* at 2-3. In fact, "Ameriquest's deals were so overpriced and loaded with nasty surprises that getting customers to sign often required an elaborate web of psychological ploys, outright lies, and falsified papers. 'Every closing that we had really was a bait and switch,' a loan officer who worked for Ameriquest in Tampa, Florida, recalled. ''Cause you could never get them to the table if you were honest.'" *Id.* at 3.

476. An August 2007 *Business Week* article discusses the case of Mary Overton of Brooklyn, New York. Without her knowledge or understanding, Ameriquest created false tax

returns, employment records, and a 401(k) to make her appear qualified for a loan as part of a scheme to coerce her to sign a loan which she could not afford.

477. A former Ameriquest loan officer interviewed on National Public Radio recalled how at her office in Tampa, Florida, in order to close a loan "at any cost," "managers encouraged loan officers to conceal the actual cost and interest rate on loans" and would "white out income numbers on W2s and bank statements and fill in bigger amounts basically to qualify people for loans that they couldn't afford." This practice was known as "taking the loan to the Art Department." The National Public Radio broadcast stated that other former Ameriquest employees confirmed this same conduct occurring around the country.

478. According to the 2011 FCIC Report, Christopher Cruise, a Maryland-based corporate educator who trained loan officers for companies that were expanding mortgage originations, coached about 10,000 loan originators a year, including at Ameriquest and Countrywide. Most of their newly hired loan officers were young, with no mortgage experience, fresh out of school and with previous jobs "flipping burgers," he told the FCIC. Given the right training, however, the best of them could "easily" earn millions.

479. As the FCIC Report quotes Cruise: "I was a sales and marketing trainer in terms of helping people to know how to sell these products to, in some cases, frankly unsophisticated and unsuspecting borrowers," he said. He taught originators, including originators at Ameriquest, the new playbook: "You had no incentive whatsoever to be concerned about the quality of the loan, whether it was suitable for the borrower or whether the loan performed. In fact, you were in a way encouraged not to worry about those macro issues." He added, "I knew that the risk was being shunted off. I knew that we could be writing crap. But in the end it was

like a game of musical chairs. Volume might go down but we were not going to be hurt." FCIC Report at 7-8 nn.26-27.

480. Ed Parker, the former head of Ameriquest's Mortgage Fraud Investigations Department, told the FCIC that fraudulent loans were very common at the company. "No one was watching. The volume was up and now you see the fallout behind the loan origination process," he told the FCIC. FCIC Report at 161 n.29. In fact, Parker detected fraud at the company within one month of starting his job there in January 2003, but senior management did nothing with the reports he sent. He heard that other departments were complaining he "looked too much" into the loans. In November 2005, he was downgraded from "manager" to "supervisor," and was laid off in May 2006. *Id.* at 12 n.52.

481. In late 2003, Prentiss Cox, then a Minnesota assistant attorney general, asked Ameriquest to produce information about its loans. He received about 10 boxes of documents. He pulled one file at random, and stared at it. He pulled out another and another. He noted file after file where the borrowers were described as "antiques dealers"—in his view, a blatant misrepresentation of employment. In another loan file, he recalled in an interview with the FCIC, an octogenarian disabled borrower who used a walker was described in the loan application as being employed in "light construction." As Mr. Cox testified to the FCIC, "It didn't take Sherlock Holmes to figure out this was bogus." As he tried to figure out why Ameriquest would make such obviously fraudulent loans, a friend suggested that he "look upstream." Cox suddenly realized that the lenders were simply generating product to ship to Wall Street to sell to investors. "I got that it had shifted," Cox recalled. "The lending pattern had shifted." *Id.* at 12 nn.53-54.

482. Marc S. Savitt, a past president of the National Association of Mortgage Brokers, told the FCIC that while most mortgage brokers looked out for borrowers' best interests and steered them away from risky loans, about 50,000 of the newcomers to the field nationwide were willing to do whatever it took to maximize the number of loans they made. He added that some loan origination firms, such as Ameriquest, were "absolutely" corrupt. *Id.* at 4 n.66.

483. Moreover, Ameriquest was among 14 lenders named by the NAACP in a complaint alleging "systematic, institutionalized racism in sub-prime home mortgage lending." According to the lawsuit, African American homeowners who received sub-prime mortgage loans from these lenders were more than 30 percent more likely to be issued a higher rate loan than Caucasian borrowers with the same qualifications. In January of 2009 the court denied a motion to dismiss, finding that the plaintiff had sufficiently pled a disparate impact claim.

b. The mortgages originated by Ameriquest and securitized in the PLMBS purchased by the Bank provide further evidence of Ameriquest's abandonment of sound underwriting guidelines.

484. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pool securing Certificate CMLTI 2005-9 1A1, including misstatements with respect to the percentages of loans with LTVs in excess of 100%, 90% and 80%. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Ameriquest's failures to observe their stated underwriting standards. Ameriquest's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

485. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at Ameriquest, and Ameriquest approved numerous loans with essentially little to no underwriting screens applied to the loans or effort to evaluate the borrowers' ability to repay.

486. Nowhere did any Offering Document apprise the Bank that Ameriquest abandoned its underwriting guidelines and the extent to which it engaged in predatory lending.

7. Aurora Loan Services LLC and Lehman Brothers Bank, F.S.B.

487. Aurora Loan Services LLC and Lehman Brothers Bank, F.S.B. (collectively, "Aurora") originated underlying mortgage loans securing at least four of the Certificates purchased by the Bank: LXS 2005-8 1A2, LXS 2006-15 A1, LXS 2007-9 1A1, and LXS 2007-11 A1. Aurora abandoned sound underwriting practices.

a. Evidence produced in the Lehman Brothers bankruptcy case demonstrates that Aurora abandoned sound underwriting practices.

488. The Examiner's Report issued in the Lehman Brothers bankruptcy case provided useful insight into—and disclosed numerous internal Lehman Brothers documents regarding—the mortgage origination practices of Lehman's subsidiary Aurora. *See* Report of Anton R. Valukas, Examiner, *In Re Lehman Brothers Holdings Inc.*, No. 08-13555 (S.D.N.Y. Bankr. March 11, 2010) ("Examiner's Report").

489. Among the Examiner's many findings was that, despite assertions that Lehman was reducing its subprime mortgage operations in favor of supposedly safer Alt-A mortgages, in reality Lehman and Aurora were continuing to originate loans that were as risky as subprime loans, but were doing so under the label "Alt-A." The Examiner summarized these findings as follows:

> Even as Lehman was tightening standards on its subprime originations through BNC, Lehman was also using its Aurora subsidiary to expand its Alt-A lending. Moreover, Aurora's Alt-A lending reached borrowers of lesser credit quality than those who historically had been considered Alt-A borrowers. The vehicle for that aspect of the Aurora business plan was the Mortgage Maker product. As Mortgage Maker expanded to more than half of Aurora's Alt-A production by February 2007, many of Aurora's loans denominated as Alt-A came more and more to resemble the subprime loans that Lehman was supposedly exiting by tightening origination standards at BNC.

Examiner's Report at 87.

490. Defendant Richard McKinney, who was the head of Lehman's Securitized Products Division in the United States, was aware of inconsistency between the "Alt-A" label and the subprime-like performance of many of Aurora's loans. In fact, in an email sent in February 2007 to the CEO of Aurora, Thomas L. Wind, McKinney expressed concern that "we are creating worse performance than subprime, while the rating agencies assume our performance should be substantially better." E-mail from Defendant Richard McKinney, Lehman, to Thomas L. Wind, Aurora, et al. (Feb. 12, 2007). In that same e-mail, McKinney noted that "[o]ur aggregate LXS (mostly Mortgage Maker) performance has worsened vs. largest competitor on '06 production." Defendant McKinney was particularly concerned about the "bucket" of limited documentation loans with greater than 95% LTV, which "is not only worse than [Countrywide Financial Corp.], but underperforms the aggregate subprime market." *Id.* Finally, McKinney remarked that the Lehman XS trust [LXS], which issued the PLMBS purchased by the Bank, "will take the bottom quality Mortgage Maker product." *Id.*

491. Similarly, Aurora Vice President Russell V. Brady suggested in January of 2007 that Aurora needed to "[d]etermine whether a segment of the [Mortgage] Maker population should be serviced similar to subprime." Russell V. Brady, Aurora, Response to LXS Performance Issues (Jan. 24, 2007), at p. 1. Moreover, as the Examiner's report noted, Lehman managers began referring to the Mortgage Maker product as "Alt-B," which "was not an

accepted term or categorization in the business" but was used "as a way of differentiating the riskier mortgages in the Mortgage Maker program from what had more traditionally been considered Alt-A mortgages . . . ." Examiner's Report at 88.

492. Numerous other documents revealed in the Examiner's Report demonstrate that Lehman Brothers was aware that the quality of its mortgage originations was deteriorating. A February 2007 presentation prepared by Lehman's residential mortgage analyst, Dimitrios Kritikos, warned that "[t]he product mix of Aurora Production has shifted substantially in the last 6 months from Alt-A to MortgageMaker (Alt-B)" and that "FICOs, LTVs, DTIs, and Documentation levels have deteriorated as the rest of the industry." Dimitrios Kritikos, Lehman, Selected trends from Aurora Risk Review (Feb. 2, 2007), at 2. The presentation further noted:

> While the industry is moving away from high CLTVs [combined loan-to-value ratios on multiple liens] and non-owner occupied properties, Aurora is gaining considerable share, especially during the last three months. On the non-owner occupied segment, there is a significant shift to the 100% CLTV product.

Id. A similar presentation from March 2007 discussed the previous month's loan originations as follows:

> Mortgage Maker production is at an all time high of 55%, while Alt-A has dropped to 40% . . . . Overall FICOs are at an all time low at 703, with DTIs and CLTVs to an almost all time high at 39.5% and 91.5% . . . . No Ratio loans . . . currently run at 14%, with more than half on the 100% financing. No Doc production runs at 11%, with one third of which is also 100% CLTV. Non Owner Occupied loans increased to 18%, with almost half of it in 100% CLTV (this segment has more than doubled in volume since Sept-06). Stated and No Ratio loans with low FICOs (<640) hit an all time high with 4.3% and 1.2% of the production, while Stated-Stated and No Doc with low FICOs (<660) remained flat at 2.3% and 0.8% respectively.

Dimitrios Kritikos, Lehman, Risk Review: Aurora and BNC February 2007 (Mar. 19, 2007), at 6-9.

493. Kritikos also sent numerous emails to Jeffery Goodman, Lehman's Managing Director of Risk Management, in early 2007 warning about the deteriorating quality of Aurora's mortgage originations:

- "I have pointed out in the past that Aurora's product is far from Alt-A anymore. The traditional Alt-A program is only 40% of Aurora's production, with half of it in 100% financing. This product generally performs well. My concern is the rest 60% of production, that has 100% financing in lower FICOs with non-full documentation and/or investment properties." E-mail from Dimitrios Kritikos, Lehman, to Jeffery Goodman, (Mar. 12, 2007).

- "I am really concerned with the dramatic change of the product mix, especially the last 3 months. While the rest of the industry is tightening credit and increasing pricing in these areas, we are moving in the opposite direction. Although I understand that we need to take risk to get > reward, the areas where Aurora is growing are not the right ones. To put things in perspective, more than 50% of Aurora's current originations are 100% financing - 80% of that is in non full documentation loans. Extensive analysis has been done on both first payment defaults and long term performance on a lot of these segments. My biggest concern is the high CLTV, stated-stated program which has double or triple "bad" performance compared to the other segments. This segment has really taken off the last 3 months and, in my opinion, needs to get shut down." Email from Dimitrios Kritikos, Lehman, to Jeffrey Goodman, Lehman (Feb. 2, 2007).

- "I can see performance for Aurora originated loans to become even worse in 2007. Looking at the trends on originations and linking them to first payment defaults, the story is ugly: The last 4 months, Aurora has originated the riskiest loans ever, with every month been riskier than the one before – the industry meanwhile has pulled back during that time. The proposed guideline changes that are on the table today are not sufficient to rein in the bad performance." E-mail from Dimitrios Kritikos, Lehman, to Jeffrey Goodman, Lehman (Jan. 31, 2007).

494. Finally, the Examiner's Report revealed the misalignment of incentives within Lehman that helped fuel the departure from sound underwriting practices. In his interview with the Examiner, Michael Gelband, Lehman's head of fixed-income products, stated that "in general, MCD [Lehman Mortgage Capital Division] had an incentive to continue to push for originations because it was rewarded when its origination volumes were high and the risk was

shifted to the Securitized Products Group after the mortgages were originated." Examiner's Interview of Michael Gelband, Aug. 12, 2009, at 11.

b. Confidential witnesses provide additional evidence of Aurora's abandonment of sound underwriting practices.

495. CW-26 worked for Aurora for almost five years, from 2002 through September 2007. From April 2004 through September 2007, he was a credit risk underwriter in Aurora's audit control department for its regional operations center in Gaithersburg, Maryland.

496. Aurora's regional operations center originally had five or six different teams who underwrote loans for Aurora's Wholesale Division. By September 2007, the number of underwriting teams had doubled to eleven teams. The regional operations center also had in-house loan officers who were in charge of about 10 to 15 independent brokers each.

497. CW-26 said that he worked in a high pressure environment at Aurora. "There was a lot of pressure to increase production," he said. His office was expected to close a greater number of loans each month. Indeed, Aurora was closing loans at such a fast pace that it had a hard time hiring enough underwriters. "There were people who became underwriters because they were a warm body in a vacant seat," CW-26 explained.

498. Because of the volume of loans coming into the office, CW-26 said that it was difficult for the underwriters to detect fraud. "None of us wanted to approve fraudulent loans, but it was so easy to do with no income, no assets loans," he said.

499. CW-26 explained that through his experiences working with various brokers while at Aurora, it was clear to him that borrowers did not fully understand what they were getting into with their loans. "There were plenty of brokers that did whatever they could to get someone's loan to go through." For example, CW-26 said, the brokers would tell borrowers not to worry about a high interest rate resetting on adjustable-rate mortgage loans. The brokers

would tell borrowers that by the time the interest rate adjusted upwards, they'd be able to either sell their property for a profit or refinance into a traditional mortgage. As a result of these practices, Aurora loan services was approving loans that were based on predatory lending—loans that were issued without regard to a borrower's ability to pay.

500. CW-27 worked as a Regional Operations Manager for Aurora in New Jersey from June 2004 through April 2005. CW-27 explained that the majority of loans Aurora underwrote were Alt-A loans, based on stated income and stated assets. She said that Aurora has systems in place to detect fraud and prevent underwriting bad loans. However, because Aurora put an emphasis on volume, and brokers "were trying to push anything they could," a lot of bad loans were approved by Aurora and pushed through its system anyway.

501. CW-27 said that that there were a lot of exceptions granted for the loans Aurora underwrote. "We had a lot of leeway to make exceptions," she said. "Exceptions were rampant." Aurora had internal guidelines that clarified which employees, in which position, could make which types of exceptions. For example, an underwriter could only grant exceptions on credit scores that were short two or three points from the required number in the underwriting guidelines for a specific product. Supervisors, however, were authorized to deviate five points from a required credit score, while managers, like CW-27, who worked at Aurora's regional operations center, could deviate up to ten points off the required credit score. Any deviation greater than ten points had to be approved by Aurora's Credit Policy Committee in Denver. CW-27 said that a similar system was in place for exceptions on LTVs.

502. CW-27 participated in monthly conference calls with all of the other managers of Aurora's regional operations centers. During these calls, each manager would go over projections for how many loans they expected to close in the coming month and explain why.

They would also discuss new loan products or changes to guidelines. Every quarter all of the managers for the regional operations centers would also meet at Aurora's offices in Denver. CW-27 estimates that exceptions were made on at least fifty percent of the loans that Aurora underwrote. Although exceptions were not as high in her New Jersey office ("because we were new"), she learned through conversations with managers of other regional Aurora offices that they granted more exceptions.

503. For example, when she made visits to Aurora's Gaithersburg, Maryland office for training, CW-27 noticed the high number of exceptions that office generated. CW-27 also learned through conversations with her colleagues and other managers that the manager of the Gaithersburg, Maryland office was compromising standards in order to push loans through. CW-27 said that the Gaithersburg managers was "pushing loans through and over-riding underwriters' decisions" to decline loans. "Sometimes the Quality Control results were swept under the rug if fraud was found because the branch was doing so well," she added.

504. CW-27 also explained that when Aurora utilized "compensating factors," the factor on which Aurora relied was supposed to be part of the loan file or related to borrower-supplied information. However, Aurora would count as a "compensating factor" not factual information originating from the borrower, but the amount of fees or costs it could extract from the transaction, based on the borrower's otherwise unlikely ability to meet underwriting guidelines. For example, Aurora would count as a "compensating factor" justifying approval of the loan whether it could count an extra quarter point for pricing for the loan, or add a prepayment penalty. CW-27 said that these types of "compensating factors" did not decrease the risk of the borrower defaulting. Rather, it made the loan more attractive for Aurora to sell to investors, because Aurora would make more money on the loan.

505. CW-27 said that although Aurora had good policies in writing, they did not work as well in practice. For example, the underwriting guidelines called for underwriters to perform a "reasonability test" for stated income, stated asset loans regarding a borrower's income. However, the guidelines never told the underwriters how to do this. CW-27 said that there should have been specific recommendations for underwriters to check salaries on websites such as Salary.com and the U.S. Department of Labor's website.

c. The mortgages originated by Aurora and securitized in the PLMBS purchased by the Bank provide further evidence of Aurora's abandonment of sound underwriting guidelines.

506. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing the Certificates for which Aurora originated loans, including misstatements with respect to the percentages of loans with LTVs in excess of 100%, 90% and 80%. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Aurora's failures to observe their stated underwriting standards. Aurora's actual practices—including emphasis on loan quantity rather than quality, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose characteristics were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

507. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at Aurora variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Furthermore, Aurora manipulated the use of the term "compensating factors," approving

loans that did not otherwise meet underwriting guidelines by adding a financial penalty to the loan, in the form of extra points or prepayment penalties, thereby increasing Aurora's profit when it securitized the loan, while also penalizing borrowers with high costs and fees and increasing the likelihood of default.

508. Nowhere did any Offering Document apprise the Bank that Aurora abandoned its underwriting guidelines and that it engaged in predatory lending.

8. Chase Home Finance LLC and JPMorgan Chase Bank, N.A.

509. Chase Home Finance LLC ("Chase Home Finance") and/or JPMorgan Chase Bank, N.A. (collectively the "Chase Originators") originated underlying mortgage loans securing at least five of the Certificates purchased by the Bank: JPALT 2006-A1 1A1, JPALT 2006-A2 1A1, JPALT 2006-A3 1A1 and JPALT 2007-A2 12A1. The Chase Originators abandoned sound underwriting practices.

510. The Chase Originators' departure from sound underwriting standards has been confirmed by JP Morgan Chase & Co. ("JPMC") Chairman and CEO, Jamie Dimon. In his January 13, 2010 testimony before the FCIC, Dimon stated that "the underwriting standards of our mortgage business should have been higher." Dimon confessed that JPMC, the parent company of the Chase Originators, "misjudged the impact of more aggressive underwriting standards and should have acted sooner and more substantially to reduce the loan-to-value ratios."

a. Investigations and confidential witness testimony demonstrate that the Chase Originators abandoned sound underwriting practices.

511. In an undated internal memorandum that became public in March 2008, Chase Originator employees circulated tips for using "Cheats & Tricks" to allow Chase loan originators to circumvent the Chase Originators' in-house automated loan underwriting system to get risky

loans approved. The memo provides that the secret to getting risky loans approved is to inflate the borrower's income or to otherwise falsify their loan application.

512. The memo suggests that the Chase Originators' automated loan-origination system, called "Zippy," "can be adjusted" to "get the findings you need" by trying some of these "handy steps":

> (1) In the income section of your 1003, make sure you input all income in base income. DO NOT break it down by overtime, commissions or bonus.
>
> (2) NO GIFT FUNDS! If your borrower is getting a gift [to cover some or all of the down payment], add it to a bank account along with the rest of the assets. Be sure to remove any mention of gift funds on the rest of your 1003.
>
> (3) If you do not get Stated/Stated, try resubmitting with slightly higher income. Inch it up $500 to see if you can get the findings you want. Do the same for assets.

513. Thus, according to the memo, Chase Originator employees should "never fear" if they "do not get stated income / stated asset findings" on the first attempt because they can try and try again until they get their desired result. By lumping contingent income with base income, concealing the receipt of gifts (which are typically required to be specifically disclosed in loan applications), and artificially inflating income, Chase loan originators were able to approve countless loans that otherwise would not have satisfied Zippy's stated underwriting guidelines.

514. As the "Zippy Cheats & Tricks" memo reveals, "If you get a "refer" or if you DO NOT get Stated Income / Stated Asset findings. . . . Never Fear!! ZiPPY can be adjusted (just ever so slightly). Try these steps next time you use Zippy! You just might get the findings you need!!"

515. Confidential witnesses confirm this prevailing attitude of using "cheats and tricks" designed to game the system and approve loans that are not in accordance with stated

underwriting guidelines. These confidential witness statements provide evidence that (1) the Chase Originators' employees faced intense pressure to close loans at any cost; (2) the Chase Originators' employees manipulated loan data in order to close loans; (3) the Chase Originators approved loans based upon inflated appraisal values; and (4) the Chase Originators failed to adhere to sound underwriting guidelines.

516. CW-3 was a loan processor and assistant to the branch manager at a Florida branch of Chase Home Finance from April 2006 until August 2007.[12] She stated that Chase Home Finance employees faced enormous pressure to close loans because their salaries were dependent solely upon quantity. For example, loan officers only received a salary their first two months at the company. After the second month, their income was based upon commissions for the number of loans they closed; if they did not close loans, they did not receive a paycheck. CW-29 echoed similar comments, and said that staff underwriters at JPMorgan Chase received a salary plus bonus pay that was based on the quantity of funded loans.

517. According to CW-3, branch and regional managers pressured loan officers to meet monthly quotas. If a loan officer worked two months without closing a loan, he or she could be fired. Thus, "loan officers walked around on eggshells at month end" for fear of losing their job or not getting the commission that fed their families.

518. Underwriters at Chase Home Finance also received monthly bonuses based upon the volume of loans closed, and management pressured such underwriters to close loans. CW-3's regional manager would send the branch managers below him to Chase Home Finance's underwriting office in New Jersey "to work the magic" and close the loans.

[12] CW-3 had earlier worked for Countrywide. *See supra* ¶¶ 297, 306.

519. Due to the pressure that was placed upon Chase Home Finance employees to close loans at any cost, many employees inflated borrowers' income and modified loan files in order to push loans through. "It was very common to take stuff out of the loan file" in order to get a loan approved, said CW-3. For example, loan officers removed bank statements, paystubs, or other documents which showed the borrower's income so that the loans would not be hindered in closing.

520. According to CW-3, "loan officers knew [the borrowers] were making less income" than was stated on the loans because, acting on orders from the branch manager, the loan officers inflated the borrowers' income. As an example, CW-3 stated: "You'd see a guy that owned a pizzeria that was making millions and you knew there was just no way."

521. Knowledge of the inflated incomes flowed to management at Chase Home Finance because loan officers often brought their loans to the branch manager for help and instruction on how to make them close. In fact, said CW-3, "The branch manager often fixed the loan . . . [he] figured out what LTV [the borrower] needed to close the loan and inflated the income to make the loan work." Branch managers also called the regional managers above them to help close problem loans.

522. CW-3 summed up the overall attitude at the Chase Home Finance branch where she worked: "It's okay to do what you have to do to get the loans closed."

523. The statements of CW-28, a senior loan underwriter at Chase Home Finance from December 2004 to August 2005, illustrate similar problems, including that Chase Home Finance closed loans based upon stated incomes that were false and inflated. CW-28 recalled circumstances in which mortgage brokers changed applicants' stated incomes before they submitted the loan files to Chase Home Finance. Then, after the loans closed and weren't

performing, Chase Home Finance would contact the borrower and "hear the borrower say, 'I never said I make that much.'"

524. CW-28 also said that he commonly reviewed loan files that contained "questionable" statements of income. In fact, "[i]t happened daily," said CW-28, and "[y]ou'd see self-employed people, like a landscaper, who stated they made $10,000 a month," without an adequate savings history or FICO score. When CW-28 determined that the stated income was "not do-able," based upon his review of the website salary.com or an occupational jobs handbook, he notified his manager or other supervisors. "There was never any push-back. They wanted the loans booked and funded." However, he was always told that "it meets the FICO score and savings history guidelines so we do the loan." It was "one size fits all." According to CW-28, "It really wasn't common sense-based, but based on the FICO scores you could sell the loan to investors. They wanted quantity, not quality." Loans were issued based on "FICO and income. This was not common-sense underwriting. It was not based on risk, but almost like on the game show "Let's Make a Deal": they made a deal based on satisfaction of these two criteria" only.

525. In addition to approving loans based upon inflated incomes, CW-28 also said that Chase Home Finance employees approved loans based upon inflated appraisal values. According to CW-28, Chase Home Finance employees were "not allowed to contest appraisals that appeared to be inflated." As a result of the housing bubble, appraisers overadjusted and ensured that the appraisals came in at or above the sales price. For example, CW-28 said he recalled one subdivision in California in which homes sold in the second phase of the subdivision build-out doubled the value of those sold in the first phase, which had occurred just a few months earlier. In this regard, CW-28 said, "[t]he first phase appraisals were valued at

$200,000. The second phase, based on speculative investors buying and selling, pushed the values to $400,000. You'd look at the comps and there would be two inside the 'division' and one outside, but you couldn't contest the value."

526. CW-29, a senior underwriter at JPMorgan Chase Bank, N.A. from April 2001 to June 2008, stated that managers at JPMorgan Chase Bank, N.A. often overturned the decisions of lower-level underwriters to reject stated-income loans. According to CW-29, "If the manager felt the income made sense and the underwriter didn't, the manager could overturn it."

b. The mortgages originated by the Chase Originators and securitized in the PLMBS purchased by the Bank provide further evidence of abandonment of sound underwriting practices.

527. The Chase Originators originated mortgages that secured at least five Certificates in this action. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Certificates, including misstatements and omissions with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of the Chase Originators' failures to observe their stated underwriting standards. The Chase Originators' actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused them to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

528. In summary, far from following their underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at the Chase Originators, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that the Chase Originators abandoned their underwriting guidelines.

9. American Home Mortgage and American Home Mortgage Investment Corporation

529. American Home Mortgage Corporation and American Home Mortgage Investment Corporation (collectively, "AHM") originated underlying mortgage loans securing at least thirteen of the Certificates purchased by the Bank: AHM 2005-2 1A1, AHMA 2006-6 A1A, AHMA 2007-2 A1, AHMA 2007-5 A1, DBALT 2006-AR2 1A1, DBALT 2006-AR2 1A2, DBALT 2007-AR1 A1, HVMLT 2006-7 2A1A, JPALT 2007-A2 12A1, LUM 2006-7 2A1, MARM 2005-8 1A1, MSM 2006-16AX 2A1 and NAA 2007-3 A1. AHM abandoned sound underwriting practices.

a. Investigations, lawsuits and confidential witness testimony demonstrate that AHM abandoned sound underwriting practices.

530. In 2010, AHM was identified by the OCC as the eleventh worst mortgage originator in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

531. The *Wells Fargo* Complaint details how an internal AHM "Credit Update" presentation dated from October 2005 detailed revised credit factors to be used in making loans to high risk borrowers. The Credit Update sets forth the new "guideline interpretations" under a heading "Where We Are Now" which included:

- Not requiring verification of income sources on stated income loans;

- Reducing the time that need have passed since the homeowner was in bankruptcy or credit counseling;
- Reducing the documentation required for self-employed borrowers; and
- Broadening the acceptable use of second and third loans to cover the full property value.

These new guideline interpretations, which were not disclosed in the Offering Documents, relaxed substantially, or sometimes rendered meaningless, AHM's prior underwriting guidelines.

532. The *Wells Fargo* Complaint specifically identifies an internal AHM email sent on November 2, 2006, from Steve Somerman, an AHM Senior Vice President of Product and Sales Support in California, stating that AHM would make a loan to virtually anyone, regardless of the borrower's ability to verify income, assets or even employment. The email specifically urged loan officers to make stated income loans, no income loans, no asset loans, and "No Doc" loans.

533. Confidential witness testimony confirms this policy and practice at AHM. As these confidential witnesses attest, at AHM underwriting guidelines were benchmarks against which exceptions were routinely granted; they were not "strict rules."

534. CW-30 was a senior underwriter at AHM in New York from 2000 through 2007. As an underwriter at AHM, CW-30 handled a lot of "No Income, No Asset" loans, known as "NINAs," as well as No Doc loans, which required little documentation or verification. Under the company's underwriting guidelines, these loans were supposed to have certain credit scores, assets, and post-closing reserves in order to be approved.

535. Notwithstanding these supposed underwriting guidelines, CW-30 confirmed "it was a given" that AHM would make exceptions to the underwriting guidelines. The mortgage aggregators or Sponsors to whom AHM sold the loans were aware that these guidelines were being abandoned, and usually willing to accept the risk.

536. "If the file was creditworthy other than the exception, American Home Mortgage got it approved," CW-30 said. A required credit score, asset amount or reserve level could be waived by the company and those to whom it sold the loans. "They were guidelines at the end of the day; they weren't strict rules."

537. CW-30 said that loans he did not believe were creditworthy, and which he rejected, were passed on to his managers. His managers would frequently approve those loan files, too.

538. CW-31 worked as an underwriter at American Brokers Conduit, a wholesale originator that was a division of American Home Mortgage Investment Corporation, in its Charlotte, North Carolina office from June 2006 to August 2007.

539. CW-31 was expected every day to review five residential home loans originated by independent brokers. "There was a push in the wholesale office to get loans closed," CW-31 said.

540. CW-31 objected to closing loans that lacked documentation, such as documentation of sufficient income or asset verification. Her supervisor derided her for being such a stickler. "She felt like I over-scrutinized the loans," CW-31 said. "I thought that was what was needed." CW-31 also said that her supervisor did not like it when CW-31 rejected a loan because it failed to meet guidelines. Her supervisor sometimes would override her decisions.

541. CW-31 was verbally reprimanded for rejecting too many loans. "I was spoken to more than once because I would not approve loans that did not meet the guidelines."

542. CW-31 also saw appraisals on properties in Atlanta that she felt were inflated. However, she did not have an option to order a second appraisal. "We couldn't do anything

about it," she said. When CW-31 brought to her managers' attention a loan with what she thought was an inflated appraisal, they did not want her to do any further research. Instead, they usually approved it on the spot. "We could take it to the managers and if they felt it was okay, we went with it."

b. The mortgages originated by AHM and securitized in the PLMBS purchased by the Bank provide further evidence of AHM's abandonment of sound underwriting practices.

543. AHM originated mortgages that secured at least 12 Certificates in this action. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of AHM's failure to observe its stated underwriting standards. AHM's actual practices—including the use of unreliable appraisals and routine granting of underwriting exceptions —caused it to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

544. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at AHM, and many loans were made with essentially little to no underwriting or effort to evaluate ability to

repay. Nowhere did any Offering Document apprise the Bank that AHM abandoned its underwriting guidelines.

10. MortgageIT, Inc.

545. MortgageIT, Inc. ("MortgageIT") originated underlying mortgage loans securing at least twelve of the Certificates purchased by the Bank: CWALT 2006-OA16 A2, DBALT 2006-AR3 A2, DBALT 2006-AR4 A1, DBALT 2007-AR1 A1, DBALT 2007-AR3 2A1, LUM 2006-6 A1, MARM 2005-7 2A1, MHL 2005-5 A1, MHL 2006-1 1A2, MSM 2006-16AX 2A1, RALI 2006-QA2 1A1 and RALI 2006-QA3 A1. MortgageIT abandoned sound underwriting practices.

a. The Bank's review of loan files demonstrates that MortgageIT abandoned sound underwriting practices.

546. The Bank recently obtained access to and reviewed the loan files for numerous mortgage loans originated by MortgageIT and securitized in MHL 2006-1 1A2.[13] The Bank's review of these loan files demonstrates that MortgageIT abandoned its stated underwriting standards. On information and belief, MortgageIT's abandonment of underwriting practices and failure to properly conduct appraisals with respect to these mortgage loans was repeated with other mortgage loans also backing this security.

547. For example, the Bank's review of a mortgage loan (#40507819), secured by property in Las Vegas, Nevada, reveals irregularities in the origination of this loan demonstrating that MortgageIT did *not* originate this loan in accordance with stated underwriting standards. The loan was originated without appropriate approvals of employment or income, despite red flags in the loan file indicating that these representations were falsified. The loan was not

[13] MortgageIT's abandonment of underwriting guidelines with respect to four of these loan files is described here. By way of example only, an additional six loan files originated by MortgageIT, which also reflect its abandonment of underwriting guidelines, are described in the attached Appendix VIII.

originated through an arms-length transaction, and a disqualifying prior delinquency on a prior mortgage loan was overlooked, all in violation of MortgageIT's underwriting guidelines.

548. The mortgage loan application for this property lists the borrower's employment as the self-employed owner of SK Appraisals working out of the home in Las Vegas, Nevada for the past two years, and with three years working in the field. However, the borrower's credit report does not reference this line of work and refers only to Ryan, Inc., and lists the borrower's occupation as a construction foreman or superintendent. For loan approval, the borrower needed to provide either a letter from a certified public accountant ("CPA") to prove the borrower had been self-employed for two years, or an appraisal license showing employment for 2 years. The CPA letter in the file dated January 9, 2006 indicates that the CPA prepared the borrower's tax return for only the prior year. The CPA letter bears a handwritten note indicating the letter is not acceptable. The loan file also contains a copy of the appraiser report confirming the borrower had been licensed since June 30, 2005, which is less than the 2 years required according to MortgageIT 206 Gold ARM guidelines posted December 13, 2005.

549. The mortgage loan application lists stated earnings of $22,577 per month, or $270,924 annually. Additional red flags were present in the loan file to indicate the borrower's income was overstated. The borrower had minimal verified assets in relation to his stated monthly earnings, and had only $4,112 in the business bank account, with no average balance available. Furthermore, the borrower had only been licensed for a short period of time, which would not appear sufficient to build a clientele to command the higher income stated. There was also no evidence the borrower employed a staff that would create a greater earning potential.

550. The borrower filed Chapter 13 bankruptcy on January 17, 2008. The statement of financial affairs filed with the bankruptcy court discloses the borrower's 2005 income as

$69,030, or one-fourth of the amount stated when the loan was originated. Evaluating the borrower's 2005 income results in a DTI at the time of loan origination of 80.7%, which well exceeds the maximum allowed rate of 40%.

551. Considering the lack of evidence of the borrower's employment as stated for the required length of time, the excessive income stated for the length of time employed, and the subsequent evidence that the borrower's income was overstated, it is clear that the mortgage loan underwriter did not ensure that the borrower's income could support the monthly housing expense and all recurring monthly obligations.

552. In addition, the guidelines under which this mortgage loan was originated require a housing history with no delinquencies for the past 24 months. The credit report dated October 19, 2005 confirms a 30-day delinquency on another loan with another lender in February, 2004. The borrower wrote a letter of explanation indicating he was disputing the reporting. The borrower indicates the delinquency occurred during a refinance transaction in February 2004 and that the loan was paid in full in March 2004. The borrower indicates the loan officer recommended not paying the mortgage in February 2004 due to the impending loan payoff. Although the credit report confirms the delinquency occurred in February 2004, the loan was not paid in full until August 2004. Regardless of the specific circumstances of the payoff, the borrower's explanation confirms that the borrower did not make the February 2004 payment in a timely manner, making the approval of this loan a violation of the underwriter's guidelines.

553. Finally, this mortgage loan was not an arms-length transaction. Shelley Prather is listed as the agent for the broker on this loan. Ms. Prather completed the application, the request for verification of deposit, and ordered the appraisal. The borrower's bankruptcy filing confirms the borrower is married to Shelley Kinner, also known as Shelley Prather.

554. The Bank's review of the loan file (#40433485) relating to a property in Sacramento, California also reveals irregularities in the origination of this loan demonstrating that MortgageIT did *not* originate this loan in accordance with stated underwriting standards. For example, MortgageIT did not ensure that the borrower's income would support its total housing expense and all recurring monthly debt. The borrower misrepresented the real estate it owned and its related liabilities. Although MortgageIT lent this borrower funds for the subject property ("Property A"), which was indicated as the borrower's primary residence, and which transaction closed on October 20, 2005, public records reveal that on October 18, 2005 the same borrower purchased an additional property ("Property B") also in Sacramento, which transaction was a matter of public record as of October 19, 2005, but which was not reflected in the loan file. The borrower took out two loans on Property B totaling $308,000, neither of which were reflected in or accounted for in the loan file for Property A. Based on these underwriting failures, MortgageIT was unable to ensure the borrower's ability to repay its ongoing housing payment and all recurring debt, which is a breach of the MortgageIT Underwriting Guidelines as described in the Offering Documents for this security.

555. The Bank's review of a third mortgage loan (#40469047), secured by property in Columbus, Ohio, also reveals irregularities in the origination of this loan demonstrating that MortgageIT did *not* originate this loan in accordance with stated underwriting standards. For example, MortgageIT approved and closed this loan under program A36SI-3PIO with guidelines (ALT-A Ver. 06/21/05 Rev. 09/19/05) using Stated Income/Stated Asset documentation. The maximum LTV allowed under that program for cash out refinance transactions is 70%. However, MortgageIT allowed this loan to close at an LTV of 80%, exceeding the guidelines for

maximum LTV based on this loan's criteria. Based on these underwriting failures, MortgageIT did not adhere to its stated underwriting standards.

556. The Bank's review of a fourth mortgage loan (#40457227), secured by property in Los Angeles, California, also reveals irregularities in the origination of this loan demonstrating that MortgageIT did *not* originate this loan in accordance with stated underwriting standards. For example, the property value that MortgageIT reflects in the loan file is not well supported. The property transferred in June 2004 for $519,000 and for the subject transaction just over a year later in October 2005 for $850,000. Although the subject property had been refurbished, the appraiser did not use comparables that supported the stated value. The appraiser used six comparable properties—only one of which is acceptable (at five blocks east) based on distance from the subject property. The other five comparable properties are one to two miles south of the subject property, in a different marketing area. In addition, the value of this property, as determined by the AVM as of the date of the subject transaction, is $547,000. This appraisal did not meet MortgageIT's guidelines, which require compliance with the Uniform Standards of Professional Appraisal Practice.

557. In addition, with respect to this third property, the borrower's housing payment is increasing from pre-purchase rent of $1,250/month to $5,067/month, or an over ***400% increase*** on a monthly basis. This borrower reports its highest credit limit on its credit report as $11,000. The borrower's credit profile as reflected on the credit report in the loan file does not demonstrate any current or past credit history showing that this first time home buyer has the capacity to carry this amount of debt service. Accordingly, by failing to ensure that this borrower had the capacity to make its ongoing monthly payments to service its housing debt, MortgageIT failed to adhere to its stated underwriting guidelines.

b. The mortgages originated by MortgageIT and securitized in the PLMBS purchased by the Bank provide further evidence that MortgageIT abandoned sound underwriting practices.

558. MortgageIT originated mortgages that secured numerous Certificates. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of MortgageIT's failure to observe its stated underwriting standards. MortgageIT's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

559. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at MortgageIT, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that MortgageIT abandoned its underwriting guidelines.

11. Silver State

560. Silver State Financial Services, Inc. and Silver State Mortgage (collectively, "Silver State") originated underlying mortgage loans securing at least five of the Certificates

purchased by the Bank: MLMI 2006-AF2 AV2A, NAA 2006-AR4 A2, NAA 2006-AF2 5A1, NAA 2007-1 2A1 and TMTS 2007-6ALT A1. Silver State abandoned sound underwriting practices.

a. Evidence from the Bank's review of loan files and a journalistic investigation indicates that Silver State abandoned sound underwriting practices.

561. The Bank recently obtained access to and reviewed the loan file for a mortgage loan on property in Las Vegas, Nevada (#1256031676), underwritten by Silver State Financial Services, Inc., and securitized in NAA 2006-AF2 5A1. On information and belief, Silver State's abandonment of its underwriting practices with respect to this mortgage loan was repeated by Silver State with other mortgage loans that also back securities the Bank purchased.

562. Further analysis regarding this borrower has uncovered debts that were not disclosed in the loan file, the disclosure of which would have placed the loan outside of the lender's underwriting guidelines. The loan application for this mortgage fails to reveal the borrower's ownership interest in a second home at a different address in Las Vegas, which obligation the borrower incurred one month prior. The borrower's obligation on the second property is substantial. The loan on the borrower's second property is for $400,000 with monthly payments of $2,625. In addition, the loan application fails to reveal a second lien that the borrower also originated a month prior, in the amount of $100,000, with a monthly payment of $1,175. In addition, the borrower has taxes and insurance obligations on this property of over $375/month. If these debts had been included in the borrower's loan application, it would have increased the borrower's DTI to 61%. The loan application misrepresented the outstanding obligations owed at the time of this transaction, the inclusion of which would have resulted in the DTI exceeding the lender's underwriting guidelines.

563. In May 2008, Public Radio International aired an episode of *This American Life* entitled "The Giant Pool of Money" exploring the relationship between the financial crisis and mortgage-backed securities. The episode included an interview with Mike Garner, who was hired to work at Silver State Mortgage straight from his previous job as a bartender, having no experience or knowledge of the mortgage industry. As Garner explained, he "was as green as you could be." Nonetheless, Silver State tasked Garner with purchasing mortgages from brokers, bundling two or three hundred of them together at a time, and selling them to Wall Street banks. When Garner started, the mortgages he bought and packaged were standard mortgages that required a down payment and proof of a steady income. However, Garner described that as the mortgage-backed-securities market began to take off, the guidelines governing his purchase of mortgages became looser and looser. He described the shift to "stated income, stated assets" loans, under which individual income is not verified, but rather "loan officers would have an accountant they could call up and say 'Can you write a statement saying a truck driver can make this much money?'" Garner stated that "[t]hen the next one came along, and it was no income, verified assets." Accordingly,

> You don't have to tell the people what you do for work. All you have to do is state you have a certain amount of money in your bank account. And then, the next one is just no income, no asset. You don't have to state anything. Just have to have a credit score and a pulse.

564. Garner further described the process by which Silver State accepted lower and lower quality loans. Silver State employees would complain to Garner about loans that some other mortgage company offered but that Silver State was not allowed to offer. Garner stated:

> Three of them would show up at your door first thing in the morning and say, I lost ten deals last week to Meridian Bank. They've got this loan. Look at the guidelines for this loan. Is there any way we can do this? We're losing deals left and right.

Garner would then "get on the phone and start calling all these [Wall S]treet firms or Countrywide and say 'Would you buy this loan?' Finally, you'd find out who was buying them." Moreover, according to Garner:

> [O]nce I got a hit, I'd call back and say, "Hey, Bear Stearns is buying this loan, I'd like to give you the opportunity to buy it too." Once one person buys them, all the rest of them follow suit.

b. The mortgages originated by Silver State and securitized in the PLMBS purchased by the Bank provide further evidence of Silver State's abandonment of sound underwriting practices.

565. Silver State originated mortgages that secured at least four Certificates in this action. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to the weighted average LTVs of the mortgage pools and the percentages of loans with LTVs in excess of 100%, 90% and 80%. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Silver State's failure to observe its stated underwriting standards. Silver State's practices caused it to originate loans whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

566. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at Silver State, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that Silver State abandoned its underwriting guidelines.

12. Alliance Bancorp

567. Alliance Bancorp originated underlying mortgage loans securing at least one of the Certificates, NAA 2006-AF2 5A1. Alliance Bancorp abandoned sound underwriting practices.

568. The Bank has recently obtained access to and reviewed the loan files for nine mortgage loans underwritten by Alliance Bancorp and securitized in NAA 2006-AF2 5A1.[14] The Bank's review of these loan files demonstrates that: (1) the originator did not follow stated underwriting guidelines in determining the borrower's ability to pay; (2) the borrower had significant undisclosed debts that were not taken into account in the underwriting process; and (3) the appraised values on the properties were unsupported or inadequately supported and therefore did not adhere to stated underwriting guidelines. On information and belief, Alliance Bancorp's abandonment of underwriting practices and failure to properly conduct appraisals with respect to these mortgage loans were repeated with other mortgage loans also backing this security.

569. The Bank's review of the loan file (#1256031968) secured by property in Antioch, California, is a cash-out refinance underwritten by Alliance Bancorp. With respect to the borrower's ability to pay, in this cash out refinance of the borrower's primary residence, the loan was approved using "No Ratio" documentation. The loan application lists two employers, for which the borrower is a "radiologic tech" and an "x-ray technician." Although there are verbal verifications of employment, it is unclear if these are full-time positions. The borrower owns six investment properties, three of which he purchased in 2005. His total monthly debt service for his investment properties alone is $25,738. The credit report confirmed the borrower

[14] The abandonment of underwriting guidelines with respect to three of these loan files are described here. The other six are described in the attached Appendix VIII.

was 120 days delinquent on an account with OMAX/CBUSA in the amount of $1,081. The account was to have been paid in full at closing. The HUD-1 confirms the debt was not paid, but is marked as "Buyer $1,081 POC." Furthermore, the preliminary report shows that the borrower was delinquent on the property taxes for the subject property. The delinquent taxes were also to have been paid at closing and are marked "Buyer $4,436.79 POC." The monthly obligations excluding the investment properties are $9,406.62. The borrower would need to earn upwards of $15,677 per month, or over $188,000 per year, in his capacity as an x-ray or CT technician to maintain a 60% DTI for the subject transaction and consumer debt alone. No rental income is listed on the application for the rental properties. The borrower would have required income of $58,574 per month, or over $702,000 per year, in order to maintain a DTI of 60% when accounting for all obligations. The salary estimated for a radiological technician in Antioch, CA in the 75th percentile is $90,389. Even assuming both positions were full time and the borrower's salary was in this top range, the borrower would still be over a 60% DTI considering the subject transaction and consumer debt alone. Alliance Bancorp did not ensure the borrower's ability to manage the monthly obligations with the closing of this transaction.

570. With respect to the borrower's undisclosed debts, the loan application for this cash out refinance does not correctly reflect all of the borrower's investment properties. The borrower also owns another property in Antioch, California, which is not listed on the schedule of real estate owned. Alliance Bancorp did not include the debt for the property as it appears on the credit report. The loan application also fails to disclose the acquisition of a property in El Dorado Hills, California. The website www.MERSonline.org confirms the borrower became indebted on a first and second mortgage on this property in the amounts of $588,000 and $147,000, respectively, on March 13, 2006. The Real Estate Owned report also indicates the

borrower purchased a property located in Rancho, California on February 17, 2006, which was not disclosed in the loan application.

571. With respect to the unsupported value of this cash out refinance, although the property last sold on April 7, 2004 for $649,500, it was appraised at $1,050,000 less than two years later, on February 7, 2006. This represents an appreciation of 61% in less than two years. A field review completed on March 7, 2006 suggests that this appraisal is high, based on comparables supposedly within one mile of the subject property. However, a search of Google Maps confirms the distance to the first comparable is 1.8 miles, and the distance to the second comparable is 1.6 miles. The second comparable was a sale that is approximately 10 months old. Furthermore, all of the comparables are located on larger lots. A retro value was obtained from DataVerify which estimates the value at origination at $787,000, which is a variance of 25%.

572. The Bank's review of the loan file (#1256031472) secured by property in Henderson, New York was also underwritten by Alliance Bancorp and securitized in NAA 2006-AF2 5A1. Plaintiff's review of this loan file reveals irregularities in the origination of this loan demonstrating that the originator did not satisfy its guideline requirement of obtaining a full appraisal and a review appraisal. The transaction is a cash-out refinance of the borrower's primary residence. The first appraisal assigned a value to the property of $2,800,000 on December 12, 2005. An additional appraisal on the same date completed by Brian Hineline also values the property at $2,800,000. A review of the appraisals confirms that the appraisers used exactly the same comparable and adjustments in arriving at the appraised value. The appraisals are identical in almost every detail. Both confirm that the property was purchased on August 26, 2004 for $1,550,000, and therefore represent an increase of $1,250,000 in less than 16 months. The appraisers did not give any explanation for the increase in value, and list neighborhood

values as stable. The invoice on Brian Hineline's appraisal listed a cost of $1,200, which is high for a standard appraisal fee. Given the similarities in the two appraisals which suggest that they were simply copied, the lender did not adequately meet its guideline requirement of obtaining a full appraisal and review appraisal.

573. The Bank's review of the loan file (#1256032007) secured by property in Vallejo, California, was also underwritten by Alliance Bancorp and securitized in NAA 2006-AF2 5A1. The loan file for this property included only a final title policy and recorded mortgage. Without any credit documentation, the lender was not able to evaluate the borrower's creditworthiness or ability to repay the loan. This loan was not originated in accordance with the lender's stated underwriting guidelines.

574. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, these examples indicate that at Alliance Bancorp, variance from the stated standards was the norm, and many loans were made with inflated appraisals and essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that Alliance Bancorp abandoned its underwriting guidelines.

13. Morgan Stanley Mortgage Capital Inc.

575. Morgan Stanley Mortgage Capital Inc. ("Morgan Stanley Mortgage") originated mortgage loans securing at least seven of the Certificates purchased by the Bank: MSM 2006-13AX A1, MSM 2006-16AX 2A1, MSM 2006-8AR 1A2, MSM 2006-9AR A3, MSM 2007-2AX 2A2, MSM 2007-5AX 2A2 and MSM 2007-7AX 2A1. Morgan Stanley Mortgage abandoned sound underwriting practices.

576. Morgan Stanley Mortgage was a mortgage aggregator that purchased loans from correspondent lenders. According to a company press release, beginning in October 2007, Morgan Stanley Mortgage was combined with Morgan Stanley & Co.'s servicing and loan origination business.

a. An investigation by the Massachusetts Attorney General provides evidence that Morgan Stanley & Co. abandoned sound underwriting practices.

577. In 2010, the Massachusetts Attorney General came to an "Assurance of Discontinuance" with Morgan Stanley & Co. stemming from Morgan Stanley & Co.'s funding of unfair and defective loans originated by one of the entities from whom Mortgage Stanley & Co. purchased loans for aggregation into loan pools underlying PLMBS, New Century Financial Corporation ("New Century"). *See* Assurance of Discontinuance, *In re Morgan Stanley & Co.*, No. 10-2538 (Mass. Dist. Ct. June 24, 2010). These allegations were based on the results of an investigation into the financing, purchase, and securitization of residential mortgage loans by Morgan Stanley & Co. and its affiliates during the period of late 2005 through the first half of 2007.

578. Morgan Stanley provided funding to New Century for new loan originations through warehouse facilities, which were lines of credit that gave New Century access to cash and "enabled New Century to quickly convert loans into cash to make additional loans." *Id.* at ¶ 10. "This enabled New Century to make more loans than it could have using only its own capital." *Id.* Of the investment banks providing billions of dollars, in the aggregate, in financing to New Century, Morgan Stanley & Co.'s warehouse line of credit was the largest; it committed to provide up to $3 billion of funding during 2006 and 2007. *Id.* ¶ 12. Morgan Stanley subsequently acted as an Underwriter for New Century's securitizations and purchased New Century's loans.

579. With respect to certain unfair and risky ARM loans issued by New Century, the Massachusetts Attorney General found that "Morgan Stanley was aware that New Century typically qualified borrowers based on the teaser rate, and that New Century made no effort to qualify borrowers at the Fully Indexed Rate." *Id.* ¶ 19. Such policies and procedures are presumptively unfair under Massachusetts law because state laws require a mortgage lender to determine ability to repay in accordance with the terms of the loan. Morgan Stanley & Co. conducted an analysis in 2006, based on a 2005 internal research report that predicted that, upon reset, borrowers could expect an increase in their DTI by a factor of 1.36. *Id.* ¶ 20. Morgan Stanley & Co. found "[o]n this basis, a 2006 'teaser'-based DTI ratio of 41% converts into a DTI of 56% at reset, and a 2006 teaser-based DTI ratio of 43% converts into a reset DTI ratio of 58%." *Id.* According to the Massachusetts Attorney General, "Morgan Stanley considered borrowers with DTI ratios in excess of 55% to be unable to afford their loans . . . ." *Id.* However, if this same calculus had been performed to estimate the post-reset DTI of the loans purchased by Morgan Stanley & Co., 41% would have had fully indexed DTIs greater than 55%, and 29% would have had fully indexed DTIs over 60%. *Id.* All told, "about 45% of the borrowers would not have qualified [for purchase by Morgan Stanley] had the borrower's ability to pay been assessed using Morgan Stanley's reset DTI analysis." *Id.*

580. The Massachusetts Attorney General found that, as a result of Morgan Stanley & Co.'s due diligence process, it was aware of quality problems with the subprime loans it was purchasing from New Century by late 2005, including "sloppy underwriting for many loans and stretching of underwriting guidelines to encompass or approve loans not written in accordance with the guidelines." *Id.* ¶ 23. Although Morgan Stanley & Co. began rejecting greater numbers of New Century loans in late 2005 and early 2006, it reversed course by April of 2006 when

faced with the prospect of losing New Century's business. At that point, one of Morgan Stanley & Co.'s senior bankers purchased 228 loans that Morgan Stanley & Co.'s diligence team had initially rejected. *Id.* ¶ 25. According to the Massachusetts Attorney General, "Morgan Stanley's diligence teams began to be more responsive to New Century's desire to include additional loans in the purchase pools." *Id.*

581. Consequently, "the large majority" of the loans in Morgan Stanley & Co.'s 2006-2007 New Century pools "were identified by Clayton as having some type of exception. Most loans had multiple exceptions." *Id.* ¶ 26. Moreover, in instances where Clayton found "material exceptions" to the guidelines, Clayton found that only 9% had sufficient compensating factors to offset such exceptions. *Id.* ¶ 27. Nonetheless, Morgan Stanley & Co. "waived exceptions on and purchased a large number of the loans found by Clayton to violate guidelines without sufficient compensating factors."[15] *Id.* ¶ 28. In fact, in the last three quarters of 2006, Morgan Stanley & Co. "waived more than half of all material exceptions found by Clayton" and "purchased a substantial number of New Century loans found by Clayton to violate guidelines without sufficient compensating factors." *Id.* Moreover, the Massachusetts Attorney General found that "loans with certain exceptions such as high DTIs or high LTVs or CLTVs that were in excess of underwriting guidelines but within a tolerance found acceptable to Morgan Stanley were purchased without a review by Clayton for compensating factors." *Id.* ¶ 29.

582. The Massachusetts Attorney General also found significant defects in Morgan Stanley & Co.'s valuation diligence process. Morgan Stanley & Co. employed "broker price opinions" to confirm the value of properties securing loans purchased from New Century. Despite Morgan Stanley & Co.'s stated policy to not purchase and securitize loans where the

[15] Clayton is a third party due-diligence firm. *See infra* § V.D.4.

LTV or CLTV exceeded 100%, the Attorney General found that Morgan Stanley & Co. purchased and securitized "numerous loans where the LTV or CLTV based on the [broker-price-opinion]-checked value . . . exceeded that threshold." *Id.* ¶ 34. Overall, 31% of the New Century loans securitized by Morgan Stanley & Co. in 2006 and 2007 upon which broker price opinions were received had broker-price-opinion-based CLTVs greater than 100%. *Id.* Of those loans, 60% had CLTVs greater than 105%, and 19% had CLTVs greater than 120%. *Id.*

583. Finally, the Massachusetts Attorney General discovered misrepresentations of the stated income for mortgages purchased by Morgan Stanley & Co. from New Century. "As early as October 2005, Morgan Stanley & Co.'s diligence team determined, in reviewing and rejecting loans for purchase, that the stated income on a number of New Century loans was unreasonable." *Id.* ¶ 39. Clayton found that of the New Century loans it reviewed that were stated income loans, "[o]n average, the stated income of these borrowers was approximately 42% higher than the income of fully documented borrowers." *Id.*

b. The mortgages originated by Morgan Stanley Mortgage and securitized in the PLMBS purchased by the Bank provide further evidence that Morgan Stanley Mortgage abandoned sound underwriting practices.

584. Morgan Stanley Mortgage originated (or aggregated) mortgages that secured at least the seven Certificates set forth above. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraph 723 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Morgan Stanley

Mortgage's failure to perform adequate due diligence with respect to the mortgages it purchased for deposit in the mortgage pools to determine if the mortgages were originated in accordance with stated underwriting standards. Morgan Stanley Mortgage's failure to perform adequate due diligence caused the deposit into the mortgage pool of mortgages whose actual LTVs were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

585. In summary, far from assuring compliance with the underwriting guidelines described in the Offering Documents, Morgan Stanley Mortgage purchased and deposited in the mortgage pools loans that had been originated under practices where variance from the stated standards was the norm; many of the loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that Morgan Stanley Mortgage's due diligence permitted this abandonment of stated underwriting guidelines and that it engaged in predatory lending.

14. Other Mortgage Originators Originating Loans Underlying the PLMBS Also Abandoned Sound Underwriting Practices and Engaged in Predatory Lending in Order to Issue Loans for Securitization

586. Other mortgage originators who originated loans underlying the Certificates in this action, including those whose origination practices are outlined in Appendix IX, also abandoned sound underwriting practices, did not conduct appraisals in conformance with applicable requirements, and engaged in predatory lending. The practices of these originators were not disclosed in the Offering Documents, rendering them materially false and misleading, as set forth in more detail below.

D. The Securitization Process Was Plagued by Conflicts of Interest and Misplaced Incentives

587. A handful of large financial institutions dominated every aspect of the mortgage securitization process. They owned many of the mortgage originators, and funded the lending activities of many of the originators they did not own outright. As a result, these financial institutions—and the Sponsors, Depositors and Underwriters that were divisions of these financial institutions—were in a position to scrutinize the practices of the originators and examine closely the mortgages placed in the pools. Indeed, they had the legal responsibility to do so and to provide investors with complete and accurate information.

1. The Vertical Integration of Many of the Firms Involved in the Issuance of the PLMBS Purchased by the Bank Provided the Securities Defendants with Access to Information Regarding the Abandonment of Underwriting Guidelines, the Manipulation of the Appraisal Process, and Predatory Lending Practices.

588. Many of the PLMBS purchased by the Bank were issued by vertically integrated firms which were involved in several if not all of the stages of the securitization of the PLMBS—loan origination, sponsoring, obtaining credit ratings, issuing, underwriting, and/or selling the securities. The following table summarizes the vertical integration of the entities involved in various stages of origination, securitization and sales of the PLMBS purchased by the Bank.

Sponsor	Certificate	Roles of Affiliated Entities
Bank of America, National Association	BAFC 2005-H 7A1 BAFC 2006-D 1A1	Originator: Bank of America, National Association Underwriter: Banc of America Securities LLC Depositor: Banc of America Funding Corporation Servicer: Bank of America, National Association
Barclays Bank PLC	BCAP 2006-AA1 A1	Underwriter: Barclays Capital Inc. Depositor: BCAP LLC

Sponsor	Certificate	Roles of Affiliated Entities	
EMC Mortgage Corporation	SAMI 2006-AR4 4A1 SAMI 2006-AR6 1A1 SAMI 2006-AR7 A1A SAMI 2005-AR6 2A1 SAMI 2005-AR3 1A1 SAMI 2005-AR2 1A1 LUM 2005-1 A1 LUM 2006-3 11A1 LUM 2006-7 2A1 BSMF 2006-AR1 1A1 BSMF 2006-AR2 1A1 BSMF 2006-AR3 1A1 BSMF 2006-AR5 1A1 BSMF 2007-AR1 1A1 BSMF 2007-AR4 1A1 BSMF 2007-AR5 1A1A BALTA 2005-8 11A1 BALTA 2005-9 11A1 BALTA 2005-10 11A1 BALTA 2006-1 11A1 BALTA 2006-2 11A1 BALTA 2006-3 1A1 BALTA 2006-4 11A1 BALTA 2006-4 13A1 BALTA 2006-5 1A1 BALTA 2006-6 1A1 BALTA 2006-7 1A1 BALTA 2007-1 1A1 BALTA 2007-2 1A1 BALTA 2007-3 1A1 GPMF 2005-AR1 A2 GPMF 2005-AR2 A1 GPMF 2005-AR4 4A1A GPMF 2006-AR3 4A1	Originator: Originator: Underwriter: Depositor: Depositor: (Master) Servicer:	Bear Stearns Residential Mortgage Corporation EMC Mortgage Corporation Bear, Stearns & Co. Inc Bear Stearns Asset Backed Securities I LLC Structured Asset Mortgage Investments II Inc. EMC Mortgage Corporation
Chevy Chase Bank, F.S.B.	CCMFC 2006-2A A1 CCMFC 2007-1A A1 CCMFC 2007-2A A1	Originator: Originator: Depositor: Master Servicer:	Chevy Chase Bank, F.S.B. B.F. Saul Mortgage Company Chevy Chase Funding LLC Chevy Chase Bank, F.S.B.

Sponsor	Certificate	Roles of Affiliated Entities
CitiMortgage, Inc. Citigroup Global Markets Realty Corp.	CMALT 2007-A4 1A7 CMLTI 2005-9 1A1	Originator: CitiMortgage, Inc. Underwriter: Citigroup Global Markets, Inc. Depositor: Citicorp Mortgage Securities, Inc. Master Servicer: CitiMortgage, Inc. Trust Administrator: CitiMortgage, Inc. Paying Agent: Citibank, N.A. Transfer Agent: Citibank, N.A. Authenticating Agent: Citibank, N.A. Certificate Registrar: Citibank, N.A.
Countrywide Home Loans, Inc.	CWALT 2005-16 A4 CWALT 2005-86CB A10 CWALT 2006-OA8 1A1 CWALT 2006-OA16 A2 CWALT 2007-OA4 A1 CWALT 2007-OA9 A1 CWHL 2005-2 2A1	Originator: Countrywide Home Loans, Inc. Depositor: CWALT, Inc. Depositor: CWMBS, Inc. Underwriter: Countrywide Securities Corporation Master Servicer: Countrywide Home Loans Servicing LP
Credit Suisse Securities (USA) LLC DLJ Mortgage Capital, Inc.	ARMT 2006-1 6A1 ARMT 2006-2 6A1 ARMT 2006-3 4A2 ARMT 2007-1 5A1 ARMT 2007-2 2A21	Originator: Credit Suisse Financial Corporation Originator: DLJ Mortgage Capital, Inc. Depositor: Credit Suisse First Boston Mortgage Securities Corp. Underwriter: Credit Suisse Securities (USA) LLC
DB Structured Products, Inc. MortgageIT, Inc. Mortgage IT Holdings, Inc.	MHL 2006-1 1A2 DBALT 2006-AR2 1A1 DBALT 2006-AR2 1A2 DBALT 2006-AR3 A2 DBALT 2006-AR4 A1 DBALT 2006-AR5 1A1 DBALT 2007-AR1 A1 DBALT 2007-AR3 2A1	Originator: MortgageIT, Inc. Depositor: Deutsche Alt-A Securities, Inc. Depositor: Mortgage IT Securities Corp. Underwriter: Deutsche Bank Securities Inc. Custodian: Deutsche Bank National Trust Company

Sponsor	Certificate	Roles of Affiliated Entities	
Greenwich Capital Financial Products, Inc.	DSLA 2005-AR1 2A1A DLSA 2005-AR2 2A1A HVMLT 2007-1 2A1A HVMLT 2006-8 2A1A HVMLT 2006-7 2A1A HVMLT 2005-10 2A1A MHL 2006-1 1A2	Depositor: Underwriter:	Greenwich Capital Acceptance, Inc. Greenwich Capital Markets, Inc.
Impac Funding Corporation Impac Mortgage Holdings, Inc.	IMSA 2006-2 1A2A IMSA 2005-2 A1 IMM 2005-7 A1	Originator: Depositor: Depositor: Master Servicer:	Impac Funding Corporation IMH Assets Corp. Impac Secured Assets Corp. Impac Funding Corporation
J.P. Morgan Mortgage Acquisition Corp.	JPALT 2006-A2 1A1 JPALT 2006-A1 1A1 JPALT 2007-A2 12A1 JPALT 2006-A3 1A1 JPMMT 2005-ALT1 2A1	Originator: Originator: Depositor: Underwriter: Custodian: Servicer:	Chase Home Finance LLC JPMorgan Chase Bank, N.A. J.P. Morgan Acceptance Corporation I J.P. Morgan Securities Inc. JPMorgan Chase Bank, N.A. JPMorgan Chase Bank, N.A.
Merrill Lynch Mortgage Lending, Inc.	MANA 2007-A3 A2A MLMI 2006-AF2 AV2A	Depositor: Underwriter:	Merrill Lynch Mortgage Investors, Inc. Merrill Lynch, Pierce, Fenner & Smith Incorporated
Morgan Stanley Mortgage Capital Inc.	MSM 2006-13AX A1 MSM 2006-16AX 2A1 MSM 2006-8AR 1A2 MSM 2006-9AR A3 MSM 2007-2AX 2A2 MSM 2007-5AX 2A2 MSM 2007-7AX 2A1	Originator: Depositor: Underwriter: Servicer:	Morgan Stanley Mortgage Capital Inc. Morgan Stanley Capital I Inc. Morgan Stanley & Co. Inc. Morgan Stanley Credit Corp.
Nomura Credit & Capital, Inc.	NAA 2006-AF2 5A1 NAA 2006-AR4 A2 NAA 2007-1 2A1 NAA 2007-3 A1	Depositor: Underwriter:	Nomura Asset Acceptance Corporation Nomura Securities International, Inc.

Sponsor	Certificate	Roles of Affiliated Entities
Residential Funding Company, LLC	RALI 2006-QO10 A1 RALI 2007-QS6 A29 RALI 2005-QA9 NB41 RALI 2006-QA2 1A1 RALI 2006-QA3 A1 LUM 2006-6 A1	Originator: Homecomings Financial, LLC Originator: GMAC Mortgage Corporation Originator: Residential Funding Company, LLC Depositor: Residential Accredit Loans, Inc. Master Servicer: Residential Funding Company, LLC Servicer: GMAC Mortgage Corporation Servicer: Homecomings Financial, LLC
UBS Real Estate Securities Inc. UBS Securities LLC	MARM 2005-7 2A1 MARM 2005-8 1A1 MARM 2007-R5 A1	Depositor: Mortgage Asset Securitization Transactions, Inc. Underwriter: UBS Securities LLC
Wells Fargo Bank, National Association	WFMBS 2006-AR12 1A1	Originator: Wells Fargo Bank, National Association Depositor: Wells Fargo Asset Securities Corp. Master Servicer: Wells Fargo Bank, National Association

589. Between 2005 and 2007, the number of vertically integrated firms grew significantly because investment banks and other issuers of mortgage-backed securities sought to ensure a steady supply of mortgage loans for securitization and sale to investors. Yet, as a result of the direct involvement in the origination of the loans they securitized, the vertically integrated firms, and specifically, the Sponsor, Depositor/Issuer and Underwriter affiliates of the firms, had access to and ignored red flags raised by information regarding the underwriting abuses of the mortgage originators.

590. For example, in securitizing the SAMI, LUM, BSMF, BALTA, and GPMF Certificates, EMC Mortgage Corporation—as Sponsor of the issuances—should have known what its affiliates EMC Mortgage Corporation and Bear Stearns Residential Mortgage

Corporation were doing when they originated the underlying mortgage loans. The same is true for the other vertically integrated entities listed above, many of whom, like the EMC and Bear Stearns entities, had corporate affiliates that originated the substandard loans underlying the Certificates purchased by the Bank, or had corporate affiliates that served as Sponsors that purchased and assembled the substandard loans into securities that were sold to the Bank. Unfortunately, the vertical integration of these firms created enormous incentives for affiliated originators and Sponsors to loosen standards so that more loans could be issued and more securitizations sold. In this regard, the Sponsor, Depositor/Issuer, and Underwriter Defendants should have been aware of the quality of the loans they were bundling for securitization and selling to investors, like the Bank.

591. Rather than use their superior access to information about the underlying mortgage pools, the Sponsor, Depositor/Issuer and/or Underwriter Defendants at the vertically integrated firms accepted defective loans that their affiliates purchased or originated for securitization. The reason was straightforward. They made more money that way on the front end, when issuing the loans, and on the back end, when securitizing them. Adequate due diligence and exclusion of defective loans would have cut into their profits and slowed down the securitization machine.

592. Moreover, even those Securities Defendants that did not have corporate affiliates involved in concocting the risky PLMBS sold to the Bank still had corporate affiliates intimately involved in the creation and marketing of mortgage-backed securities. Given these corporate affiliations, all of the Securities Defendants should have known, and failed to disclose, the substantial risks associated with mortgage-backed securities.

2. Financial Ties Between the Investment Banks and Non-Bank Lenders Provided the Securities Defendants with Access to Information Regarding

the Mortgage Originators' Failure to Adhere to Underwriting Guidelines and Predatory Lending Practices.

593. Even where the parties involved in the securitization were not all affiliated under a single parent—for example, where a Sponsor purchased the loans from an unaffiliated mortgage originator—the Depositor/Issuer and Underwriter Defendants had access to abundant information about the mortgage originators' abandonment of underwriting guidelines and predatory lending practices. This was the result of the close financial ties between the unaffiliated mortgage lenders and the financial institutions that funded them.

594. Examples of this relationship are the credit facilities that mortgage originators maintained with the financial institutions involved in the securitization and underwriting of the PLMBS backed by those originators' loans. For example, Countrywide Financial Corp., collectively with its origination subsidiary, Countrywide Home Loans, Inc., had credit agreements with Bank of America, J.P. Morgan Chase, Citicorp USA (part of Citigroup), Barclays, and Deutsche Bank, which funded Countrywide's origination business. *See* John Dunbar & David Donald, *The Roots of the Financial Crisis: Who Is to Blame?* (May 6, 2009), http://www.publicintegrity.org/investigations/economic_meltdown/articles/entry1286 (noting that 21 of the 25 largest subprime lenders were financed by Wall Street banks).

595. Mortgage originators, including those that issued loans backing the PLMBS purchased by the Bank, depended on credit facilities of this sort to fund their operations. The originators borrowed from these credit facilities, pursuant to "warehouse agreements" so that they could continue to make loans to home buyers. When loans were sold, the originators repaid the warehouse agreements. When loans serving as collateral lost value, the financial institutions made margin calls requiring the originators to pay cash to the institutions. In connection with this process, the mortgage originators provided the financial institutions with documents about

the underlying loans, including performance characteristics and early warning signs of poor credit quality. The files were then passed to other divisions of the financial institutions for review and securitization. *See* Mortgage Bankers Association Warehouse Flowchart: Securitization, *available at* http://www.mbaa.org/files/ResourceCenter/WarehouseLending/FlowchartSecuritization.pdf (last visited Apr. 15, 2011).

596. The financial institutions also entered into purchase agreements with unaffiliated originators so that the financial institutions were assured access to batches of mortgage loans to securitize, and the originators were guaranteed a buyer for the mortgage loans they made. As part of the agreement, the financial institutions typically set the prices and quantities of the types of loans they wanted to buy, and also gained access to loan information prior to purchase.

597. The investment banks that operated credit facilities for non-bank lenders and entered into purchase agreements did not limit their activities to just funding the lenders. To the contrary, they funded the lenders so that the lenders could issue more loans for the investment banks to purchase and securitize. These inter-relationships are illustrated by the warehouse lines of credit that were extended to AHM, an originator of loans that backed many Certificates in this action:

Certificate	**Warehouse Line of Credit with:	Sponsor of the PLMBS	Depositor/Issuer of the PLMBS	Underwriter Defendant for the PLMBS
LUM 2006-7 2A1	Barclays Bank PLC			Barclays Capital Inc.
LUM 2006-7 2A1	Bear, Stearns & Co. Inc			Bear, Stearns & Co. Inc

Certificate	**Warehouse Line of Credit with:	Sponsor of the PLMBS	Depositor/Issuer of the PLMBS	Underwriter Defendant for the PLMBS
DBALT 2006-AR5 1A1; DBALT 2007-AR1 A1	Deutsche Bank	DB Structured Products, Inc.	Deutsche Alt-A Securities, Inc.	Deutsche Bank Securities Inc.
HVMLT 2006-7 2A1A	Greenwich Capital Financial Products, Inc.	Greenwich Capital Financial Products, Inc.	Greenwich Capital Acceptance, Inc.	Greenwich Capital Markets, Inc.
JPALT 2007-A2 12A1	J.P. Morgan Chase	J.P. Morgan Mortgage Acquisition Corp.	J.P. Morgan Acceptance Corporation I	J.P. Morgan Securities Inc.

***Source:* American Home Mortgage Investment Corp., 2006 Annual Report (Form 10-K), at 57-58 (March 1, 2007).

598. As the chart shows, the same investment banks that offered warehouse lines of credit to AHM purchased the loans as Sponsor, deposited them into trusts as Depositor, securitized and issued them as Issuer, and as Underwriter underwrote the securities backed by the loans. Because the investment banks were involved in several if not all of the steps of securitization, they had access to information about the problems in the loan pools.

599. In addition, the Sponsor, Depositor/Issuer and Underwriter Defendants had access to knowledge about the mortgage originators' practices as a result of their direct role negotiating with the originators regarding the quality and characteristics of the loans in the mortgage pools they purchased.

3. Conflicts of Interest Undermined Adequate Due Diligence and Disclosure to Investors.

600. The multiple roles of large financial institutions in the securitization process created conflicts of interest that encouraged these institutions not to engage in adequate due diligence on the loan pools. For example, these financial institutions did not use their influence and control over the mortgage origination process to ensure that underwriting guidelines were

followed, because to do so might have jeopardized repayment of their warehouse lines of credit. By keeping the mortgage origination wheel turning, these financial institutions (by and through the Certificates' Sponsors, the Depositor/Issuer Defendants, and the Underwriter Defendants) not only ensured repayment on existing warehouse lines, but also paved the way for ever-increasing lines in the future, with additional short-term profits. While these financial institutions eventually shut down their lines of credit, they did so only after the originators' financial condition deteriorated to the point that the financial institutions faced the risk of non-payment on their lines of credit. Ironically, this risk was created by ever increasing numbers of repurchase demands by the financial institutions themselves for defective loans sold to the banks by the originators.

601. For example, Merrill Lynch Mortgage Capital, an affiliate of Underwriter Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., provided warehouse lines of credit to subprime originator OwnIt. Pleadings filed in OwnIt's bankruptcy reveal that Merrill Lynch Mortgage Capital was a secured creditor on its warehouse line of credit to OwnIt for $633 million.

602. Furthermore, papers filed in OwnIt's bankruptcy proceedings show that Merrill Lynch LP Holdings, Inc., another affiliate of Defendant Underwriter Merrill Lynch, Pierce, Fenner & Smith, Inc., holds an unsecured mortgage repurchase claim against OwnIt, arising from its right to compel repurchases of mortgage loans it purchased from OwnIt. The amount of such claim is estimated at $92.96 million, which is 20% of the principal balance of the mortgages loans subject to repurchase.

603. Similar conflicts prevented the investment banks from insisting on compliance with underwriting guidelines when they purchased loans at "loan auctions." At the loan

auctions, the mortgage originators set a date and time for the Sponsors to purchase a block of mortgage loans. In advance of the auction, the mortgage originator provided certain potential bidders with a bid stipulation sheet that described the general characteristics of the loan pool being auctioned and the variance rate of the pool. The investment banks depended on the auctions to feed loans into their securitization machines. But investment banks feared that they would lose access to the bid stipulations sheets and other information from mortgage originators if they conducted rigorous quality reviews of the subject mortgages and rejected loans as being non-compliant with the mortgage originators' stated guidelines. Thus, to curry favor with the mortgage originators and assure a continued pipeline of mortgages (however flawed) for securitization, the parties who should have protected the quality of the mortgages being deposited into the pools instead failed to conduct adequate due diligence.

604. Simply put, as a result of corporate affiliations and conflicted relationships in the industry, the investment banks, by and through the Securities Defendants, including the Sponsors and affiliated Depositor/Issuers, and Underwriters, failed to appropriately fulfill their due diligence function with respect to the mortgages placed in the pools. Rather than conducting the appropriate due diligence on the loan pools, and either rejecting loans that failed to meet underwriting standards or adequately disclosing the true risks of the Certificates, the Securities Defendants utilized the securitization process to pass the risk of default down the line to investors, such as the Bank, through the use of materially false and misleading Offering Documents.

605. Confidential witnesses confirmed the failings of the Securities Defendants' due diligence process, and their representations about the process. For example, CW-33, an associate

in RBS Greenwich Capital's[16] asset-backed finance modeling group from October 2004 to February 2006, explained that RBS Greenwich employees modeled the flow of funds for the PLMBS based upon superficial summary information even though more detailed information was available to RBS Greenwich. CW-33 also described how employees at RBS Greenwich turned a blind eye to red flags regarding the quality of the loans that were being packaged into mortgage-backed securities. For example, when CW-33 tried to discuss an article with his boss regarding an investigation into Ameriquest's lending practices, his boss told him: "You need to sit down and shut the f*** up." CW-33 explained that employees at RBS Greenwich ignored red flags because they stood to gain significant profits from securitization: "I knew we were destroying the economy. . . . But if you're making $40 million a year, do you care? No."

4. The Sponsor Defendants Limited Third-Party Firms' Due Diligence and Misused the Results of That Due Diligence.

a. The Sponsor Defendants directed the due diligence process and were provided with detailed reports describing the results of the process.

606. Information obtained from press reports, government investigations and confidential witnesses demonstrates that the Sponsor Defendants that retained third-party due diligence firms to conduct loan pool due diligence both limited the due diligence process and disregarded the results of the process.

607. The two firms that dominated the third-party due diligence market were Clayton Holdings, Inc. ("Clayton") and The Bohan Group ("Bohan"). Upon information and belief, both

[16] Until April 1, 2009, RBS Greenwich Capital was the marketing name which encompassed The Royal Bank of Scotland's North American broker-dealer entities, including: (1) Underwriter Defendant Greenwich Capital Markets, Inc., n/k/a RBS Securities Inc.; (2) Controlling Person Defendant Greenwich Capital Holdings, Inc., n/k/a RBS Holdings USA Inc.; and (3) Sponsor Defendant Greenwich Capital Financial Products, Inc., n/k/a RBS Financial Products Inc. *See* The Royal Bank of Scotland, "RBS Greenwich Capital Re-Name and Re-Brand FAQ's," Apr. 1, 2009, *available at* http://www.rbsbank.co.jp/gbmassets/documents/PDFs/gp1332/FAQ.pdf (last visited Apr. 15, 2011). As used herein, "RBS Greenwich" is meant to encompass all of these entities.

Clayton and Bohan were retained by the Sponsor Defendants to conduct third-party reviews of loans pools purchased by the Sponsors of the PLMBS. In 2006, Clayton monitored over $418 billion in loans underlying mortgage-backed Certificates, which represented 22.8% of the total outstanding U.S. non-GSE mortgage-backed Certificates at such date. During 2006, 2005, and 2004, Clayton worked with each of the ten largest non-GSE mortgage-backed securities Underwriters, as ranked by *Inside MBS & ABS* magazine, which accounted for 73%, 73%, and 78% of total underwriting volume during those respective periods.

608. Confidential witnesses, who worked at Clayton during the relevant time period and were familiar with the identity of Clayton's clients and the due diligence performed by Clayton during the relevant time period, named several different entities they knew had hired Clayton to perform due diligence on loan pools. These confidential witnesses include: CW-35, an underwriting consultant at Clayton from 1999 until 2006, who underwrote mortgage-backed securities for a "lot of investment banks" that hired Clayton; CW-36, an underwriter at Clayton from 2002 until 2008, who reviewed loans for financial institutions that hired Clayton; and CW-37, who worked as a valuation specialist at Clayton from January 2006 until March 2008 and reviewed appraisals and properties in loan files on behalf of investment banks that hired Clayton. Together, CW-35, CW-36, and CW-37 confirmed that Clayton was hired to perform due diligence on underlying loan pools by such Sponsors as Morgan Stanley, RBS Greenwich, Countrywide, Nomura, Washington Mutual, Deutsche Bank, and Lehman Brothers. Media reports also indicate that Clayton Holdings did work for Goldman Sachs and Merrill Lynch. Gretchen Morgenson, *Raters Ignored Proof of Unsafe Loans*, N.Y. Times, Sept. 26, 2010.

609. Less information is publicly available about Bohan's due diligence business because it is a privately held company. However, press reports and confidential witnesses

confirm that Bohan provided third-party loan pool due diligence to a large number of financial institutions. For example, CW-38, who worked as an underwriter at Bohan from 2003 to 2006 and reviewed loans that Bohan's clients were considering for securitization, said that Bohan's clients included Morgan Stanley, Chase, Deutsche Bank, J.P. Morgan, and others.

610. The Sponsors that retained Clayton and Bohan, and other third-party due diligence firms for loan pool review, maintained close contact with and influence over the process. As explained by Vicki Beal, Senior Vice President of Clayton Holdings in her September 23, 2010 written testimony before the FCIC:

> The loan review process is conducted as follows:
>
> - A client reviews a pool of loans and selects a sample of loans for diligence review. . . .
> - Client hires Clayton to perform diligence on the sample. Client gives Clayton's Client Services Manager instructions on the type and scope of review and the time frame for the deal.
> - Client sends or has sent to Clayton a tape containing loan information from the originator, which Clayton programmers "crack" and load into our CLAS system.
> - At the end of each day, the lead underwriter generates reports for the client that summarize Clayton's findings, including exception reports.

611. Numerous confidential witnesses confirm that due diligence reports are provided to the financial institutions that retained the third-party due diligence firms. According to CW-37, Clayton's clients "had access to our [Clayton's] databases," and "could see everything." CW-36 had similar experiences. CW-36 explained that Clayton's lead underwriters could consult with the Sponsor's representatives to determine if the Sponsor wanted particular loans "kicked out" of the mortgage pools.

612. As Ms. Beal reported to the FCIC: "The work product produced by Clayton is comprised of reports that include loan-level data reports and loan exception reports. Such reports

are "works for hire," the property of our clients and provided exclusively to our clients." Thus, on information and belief, the financial institutions that hired Clayton (including many of the Sponsor Defendants) should have known about the red flags that these third-party firms identified.

613. The Bank's recent review of certain loan files underlying the PLMBS, *see infra* ¶¶ 237-38, 546-57, 561-62, 568-573; Appx. VIII, makes clear that numerous red flags regarding the abandonment of stated underwriting guidelines and other material misstatements in the Offering Documents, which describe the loan pools on which the Bank's securities are based, were fully discoverable and should have been known by the Sponsor Defendants when they sold the securities to the Bank. Yet, despite their access to this information, the Sponsor Defendants neither disclosed these facts to the Bank in the Offering Documents, nor sought to substitute or replace the defective loans. Rather, they simply passed along the pools of loans to unsuspecting investors, like the Bank.

614. Similarly, Bohan employed "lead" underwriters who communicated directly with the financial institutions that retained them to review loan pools. As was the case with Clayton, CW-38 said that many of the Sponsors sent their own employees to the originator's sites to review the loans that were being considered for inclusion in a mortgage pool and subsequent securitization. CW-38 also explained that the PLMBS sponsors had access to Bohan's computer system and could view which loans were being approved or rejected. Thus, on information and belief, the investment banks (including the Sponsor Defendants) should have known about the red flags that the third-party firms identified.

b. The Sponsor Defendants both limited the due diligence performed on the loan pools and misused the results of the limited diligence that was performed.

615. As Ms. Beal testified with regard to Clayton, the client financial institutions determined the type and scope of review performed on the loan pools. According to confidential witnesses, third-party due diligence firms felt pressured to depart from the standards so that loans were not tagged as defective. For example, CW-36, a Clayton underwriter from 2002 to 2008, stated that one out of every four or five loans that he reviewed on behalf of client financial institutions did not meet the originator's guidelines. Although he felt many of the loans were "dead assets" (the lowest rating Clayton gave), he was required to provide "compensating factors," which were reasons why the loan should be considered for inclusion in the mortgage pool.

616. The FCIC Report confirms that the Sponsor financial institutions who hired Clayton "ineffectively sampled loans they were purchasing to package and sell to investors." FCIC Report at xxii.

617. Bohan employees felt pressured to leave information out of their reports that detailed non-compliant or predatory loans that should have been excluded from the pool. For example, CW-38, a Bohan underwriter, explained that many underwriters at Bohan did not include in their reviews the borrower's fee associated with rebates on wholesale loans. A rebate is negative points on a loan, whereby a borrower pays the lender for a higher interest rate in order to have lower up-front costs. The Bohan employees left such information out of their reports because if they mentioned it, the loans would often be considered predatory. CW-38 recalled one rebate situation in which the borrower refinanced a property three times over a one-year period. When she reviewed the loan on the third refinancing, she discovered that the borrower was seeking the loan to pay off $5,000 in bills and to obtain $8,000 cash, but the rebate

fees totaled $12,000. CW-38 thought the loan was ultimately included in the mortgage pool because nothing was wrong with the loan, except that the borrower was getting nothing out of it and was "an older person that was being taken advantage of."

618. Further compounding the problems, Clayton employees were instructed to review fewer loans in the loan pools as the securitization market grew. Frank P. Filipps, Clayton's chairman and CEO, stated that "[e]arly in the decade, a securities firm might have asked Clayton to review 25 to 40 percent of the sub-prime loans in a pool, compared with typically 10% in 2006." *See* E. Scott Reckard, *Sub-Prime Mortgage Watchdogs Kept on Leash; Loan Checkers Say Their Warnings of Risk Were Met with Indifference*, L.A. Times, March 17, 2008, at C1.

619. According to Ms. Beal's 2010 testimony before the FCIC, as the securitization markets grew even more frenzied and "lenders and securitizers were trying to sell off as much as they could before the market collapsed, that figure reached as low as 5 percent."

620. Bohan President Mark Hughes stated: "By contrast, loan buyers who kept the mortgages as an investment instead of packaging them into securities would have 50% to 100% of the loans examined." *See* Reckard, *supra*, at C1.

621. As explained by Paul Muolo and Matthew Padilla:

> There were two reasons the [Wall] Street firms reviewed only a small sample of the loans they were buying . . . . The most important reason was the relationship with the lender. "The lower the sample you requested [of the lender], the more likely it was that you'd win the bid." . . . . Lenders like Aegis and First Franklin had so many Street firms interested in buying their subprime and alt-A mortgages they could tell potential suitors that if they wanted to win the bid for the loan pool they should agree to review just a fraction of the mortgages.

Paul Muolo & Matthew Padilla, *Chain of Blame* 228 (2010).

622. Even though the third-party due diligence providers were instructed to review smaller samples of the mortgage pools over time, the demand for mortgage-backed certificates was so great that, in the aggregate, the third-party due diligence firms were reviewing staggering

quantities of loans. According to *Chain of Blame*, "[i]n 2006, rank-and-file clerks hired by Clayton vetted a million individual mortgages for Wall Street firms." *Id.*

c. The Sponsor Defendants should have known that they included defective loans in the pools.

623. The third-party due diligence process should have provided the Sponsor Defendants with extensive information about loan pool defects. As reported by the *Los Angeles Times*, Clayton and Bohan employees (including eight former loan reviewers who were cited in the article) "raised plenty of red flags about flaws so serious that mortgages should have been rejected outright—such as borrowers' incomes that seemed inflated or documents that looked fake—but the problems were glossed over, ignored, or stricken from reports." Reckard, *supra*, at C1.

624. Ironically, while third-party reviewers state that the sponsoring financial institutions pressured them to make exceptions for seemingly defective loans, these financial institutions often utilized information about these loans to negotiate a lower price for the pool of loans from the seller (*i.e.* originator of the loans).

625. CW-38, who worked as an underwriter at Bohan from 2003 to 2006, confirmed that Bohan's review was used in price negotiations between the Sponsor Defendants and the mortgage originators. The Sponsors could request a discount if Bohan's reviewers rejected a large number of the loans. This is not to say that the financial institutions actually eliminated all of the defective loans from the pools. To the contrary, they obtained a lower price for the pools from the originators because the defective loans *stayed in the pools*.

626. Recent testimony before the FCIC reveals the extent of this activity with regard to loans reviewed by Clayton. During 2006 and the first half of 2007, Clayton reviewed 911,039 loans issued by originators including Countrywide, Decision One, and New Century for

securitization by its clients (including Bank of America, JPMorgan Chase, Citigroup, Deutsche Bank, Goldman Sachs, Morgan Stanley, Bear, Stearns. and Lehman Brothers). Clayton determined that 28%, or 255,802, of the mortgages they reviewed did not satisfy applicable underwriting guidelines. Of this number, Clayton's Wall Street clients "waived" 39%, or 100,653, of those loans. *See* Testimony of Beal, Johnson, and supporting waiver reports documents, attached hereto at Appendix II.

627. Clayton provided the FCIC with documents showing the defect and waiver rate of the financial institutions that had retained Clayton to conduct loan pool due diligence. Clayton's documents reveal the following rejection and waiver rates for entities that were involved in the securitization of the PLMBS purchased by the Bank:

Client:	**Percentage of Mortgages Initially Rejected by Clayton:**	**Percentage of Rejected Mortgages Subsequently Waived by Client:**
Bank of America	30%	27%
Barclays	27%	28%
Bear Stearns EMC Mortgage Corporation	16%	42%
Citigroup	41%	31%
Countrywide	26%	12%
Credit Suisse	37%	32%
Citigroup	42%	31%
Deutsche Bank	35%	50%
Goldman Sachs	23%	29%
Greenwich	18%	53%
HSBC	27%	62%
JP Morgan Chase	27%	51%
Lehman	26%	37%
Merrill	23%	32%

Client:	Percentage of Mortgages Initially Rejected by Clayton:	Percentage of Rejected Mortgages Subsequently Waived by Client:
Morgan Stanley	37%	56%
Nomura	38%	58%
UBS	20%	33%
WaMu	27%	29%

628. The Offering Documents fail to state that: (1) Clayton had informed the Sponsor Defendants and Underwriters that a substantial percentage of loans in the loans pools backing PLMBS were defective; (2) that the Sponsor and Underwriter Defendants, nonetheless, waived the defects as to a substantial percentage of these loans; and (3) that the Sponsor Defendants used the due diligence reports to negotiate a lower price for the loans pools. As Keith Johnson, the former President of Clayton, testified to the FCIC, Clayton "looked at a lot of prospectuses" and the firm wasn't aware of any disclosure to investors of Clayton's "alarming findings." The 2011 FCIC Report concurs: the disclosures in the Offering Documents were "insufficient for investors to know what criteria the mortgages they were buying actually did meet." FCIC Report at 169.

629. The 2011 FCIC Report reveals that Clayton would approve no more than 54% of the loans it reviewed as satisfying stated underwriting standards. FCIC Report at 166. In testimony before the FCIC in September 2010, Keith Johnson said that "54% to me says there [was] a quality control issue in the factory" for mortgage-backed securities. Johnson concluded that Clayton's clients often waived in loans to preserve their business relationship with the loan originator, because a high number of rejections might lead the originator to sell the loans to a competitor. *Id.*

630. As set forth above, the Sponsor Defendants improperly used the purported "due diligence" review to waive loans that they should have known were defective.

5. The Sponsor Defendants' Own Due Diligence Identified Defective Loans in the Mortgage Pools Backing PLMBS.

631. Likewise, in its investigation into the "causes . . . of the current financial and economic crisis in the United States," the FCIC examined Citigroup's securitization practices. The FCIC heard testimony from Richard M. Bowen III, the former Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for CitiFinancial Mortgage (Citigroup's subprime mortgage lending subsidiary from 2002-2005) and starting in 2006, Business Chief Underwriter for Correspondent Lending in Citigroup's Consumer Lending Group. In the latter position, Mr. Bowen supervised 220 professional underwriters and exercised direct oversight over the underwriting of more than $90 billion of mortgages annually.

632. Mr. Bowen testified that each year since 2005, Citigroup's mortgage operation systematically acquired tens of billions of dollars of risky loans that violated Citigroup's own underwriting criteria and were likely to default. He also testified that Citigroup's Wall Street Chief Risk Officer routinely overruled underwriters' rejections of pools of mortgages that did not satisfy Citigroup's underwriting criteria for purchase, causing Citigroup to purchase billions of dollars of loan pools that fell short of underwriting standards. Mr. Bowen testified that "[d]uring 2006 and 2007, I witnessed business risk practices which made a mockery of Citi credit policy."

633. Mr. Bowen reported that he discovered that of the $50 billion of prime mortgages purchased in 2006, "over 60% of these mortgages purchased and sold were defective." He testified further that he "started issuing warnings in June of 2006 and attempted to get management to address these critical risk issues. These warnings continued through 2007 and went to all levels of the Consumer Lending Group."

634. Mr. Bowen recommended that Citigroup not purchase Ameriquest, because his due diligence found that the loans originated by Ameriquest's affiliate, Argent, did not meet the standards they had represented to Citigroup. Specifically, Mr. Bowen testified that "we sampled the loans that were originated by [Ameriquest affiliate] Argent and we found large numbers that did not—that were not underwritten according to the representations that were there."

635. Mr. Bowen submitted with his testimony an email that he sent to Citigroup's then CEO, Robert Rubin, in late 2007 documenting his concerns. One email indicated, among abundant other information of abuses, that:

> During 2006-7 there were pools of mortgage loans aggregating $10 billion which were purchased from large mortgage companies with significant numbers of files identified as "exceptions" (higher risk and substantially outside of our credit policy criteria). These exceptions were approved by the Wall Street Channel Chief Risk Officer, many times over underwriting objections and with the files having been turned down by underwriting. These pools involved files aggregated and originated by Merrill Lynch, Residential Funding Corp, New Century, First NLC and others.

Available at http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0407-Bowen.pdf. Citigroup disregarded the red flags and completed the acquisition.

636. Citigroup's practices were not unique. For example, on June 24, 2010, the Massachusetts Attorney General announced that Morgan Stanley had agreed to pay $102 million to the Commonwealth and borrowers in the Commonwealth to settle charges related to "Morgan Stanley's role in facilitating predatory lending by New Century." The Attorney General reported that: "our investigation revealed that Morgan Stanley backed loans for homeowners that they knew, or should have known, were destined to fail and they failed to disclose the riskiness of those loans to investors." She noted as well that:

> Morgan Stanley funded, purchased and securitized New Century loans. Morgan developed an intimate knowledge of New Century's business over time. And they uncovered signals pretty early on that the lending practices of New Century

> were not sound. Morgan Stanley continued to fund and securitize subprime loans even as New Century's bad loans were causing the lender to collapse . . . .

Attorney General Martha Coakley, Transcript of Press Conference (June 24, 2010), *available at* http://www.mass.gov/Cago/docs/press/2010_06_24_ms_settlement_attachment4.pdf.

637. Upon information and belief, the Sponsor Defendants should have known as a result of the red flags generated by their own due diligence as well by third-party due diligence firms that the pools of loans they purchased and sold in securitizations were far riskier than was represented to investors, including the Bank.

E. The Vertical Integration of Many of the Firms Involved in the Issuance of the PLMBS Purchased by the Bank Enabled the Controlling Person Defendants to Control the Management and Policies of the Controlled Entities

638. The Controlling Person Defendants, which had a 100% or substantial majority direct or indirect ownership in the respective Sponsor Defendants, Depositor/Issuer Defendants, Underwriter Defendants, and/or originators, as well as the other entities identified herein, had the power to, and did, conduct and participate, directly and indirectly, in the management and control of all aspects of the management and policies of the Controlled Entities, as evidenced by the following facts, among others:

A. The Controlling Person Defendants created the respective Depositor/Issuer Defendants as their special purpose entities for the purpose of issuing the Certificates that are the subject of this action;

B. The Controlling Person Defendants played other vital roles regarding the structuring and administration of the issuing trusts and Certificates, which allowed them to exercise substantial control over many parties to the securitization, including the respective Sponsor, Depositor/Issuer, and/or Underwriter Defendants;

C. Revenue from the securitizations inured to the benefit of the Controlling Person Defendants;

D. Statements in the Controlling Person Defendants' SEC filings show control through comprehensive involvement with the Controlled Entities' operations;

E. The financial result of the Controlled Entities were often combined and reported as part of the Controlling Person's reported financial results;

F. The Controlling Person Defendants directly participated in the issuance of the Certificates that are the subject of this action, including touting their extensive activity and experience in the securitization market, particularly in initiating securitization of the residential mortgage loans they originated or acquired in the secondary mortgage market and transferring those loans to Depositor/Issuer Defendants, for sale through the trust to purchasers such as the Bank;

G. The Controlling Person Defendants frequently and prominently identified themselves in the Offering Documents; and

H. Officers and/or directors of the Controlling Person Defendants frequently signed the respective registration statements.

639. In addition, the Controlling Person Defendants were frequently parties to the agreements necessary to the securitizations, such as the Pooling and Servicing Agreement, Mortgage Loan Purchase Agreement, Servicing Agreement, Assignment, Assumption and Recognition Agreement, including amendments, restatements and exhibits thereto—agreements that frequently:

A. Were between vertically integrated entities;

B. Were signed by the same officer or director of the Controlling Person Defendant on behalf of the Controlled Entity;

C. For purposes of providing formal notice under the agreement, identified a single individual and/or address as the notice recipient for two or more parties to the agreement; and

D. Provided for indemnification by the Controlling Person Defendant.

640. Control over the vertically integrated firms in all aspects of the securitization is apparent in language in the Offering Documents that shows the relationship among the Controlling Person Defendants and the controlled entities. For example, the prospectus for the CMLTI 2005-9 1A1 Certificate states:

> [Depositor Defendant] Citigroup Mortgage Loan Trust Inc., as depositor, was incorporated in the State of Delaware on July 16, 2003 as an indirect wholly-owned subsidiary of [Controlling Person Defendant] Citigroup Financial Products Inc. and is an affiliate of [Underwriter Defendant] Citigroup Global Markets Inc.

CMLTI 2005-9 Pros. 39.

641. In sum, the Controlling Person Defendants controlled, influenced, or participated in essentially all material aspects relating to the acquisition, structure and sale of the Certificates purchased by the Bank identified herein.

642. The Controlling Person Defendants' control, position and influence over the Defendants they controlled gave them access to the material facts and omissions concealed from the Bank with regard to the underlying mortgage pools.

F. The Rating Agency Defendants Knew, and the Securities Defendants Should Have Known, That the Securitization Process Was Supported by Credit Ratings That Materially Misstated the Credit Risk of the PLMBS.

643. The triple-A credit ratings of the PLMBS played a crucial role in the Bank's purchase of PLMBS. Indeed, by policy and regulatory guidance, the Bank could only purchase

triple-A-rated tranches of the Certificates. Without the triple-A rating, no purchase would have occurred.

644. The Securities Defendants well understood (and banked on) the important role the credit ratings played in the PLMBS markets. They featured the ratings prominently in the Offering Documents and discussed at length the ratings received by the different tranches of the PLMBS, and the bases for the ratings. Yet, the Rating Agency Defendants knew, and the Securities Defendants should have known, that the ratings were not reliable.

1. The Rating Agency Defendants Knew That the Credit Ratings Were Unreliable, Based As They Were on Underwriting Standards That the Rating Agency Defendants Knew Had Been Abandoned.

645. The Rating Agency Defendants knew that many mortgage originators had abandoned their stated mortgage underwriting guidelines, and thus knew that the ratings were false when made.

646. The Senate Subcommittee on Investigations, for example, uncovered internal rating agency emails from the summer and fall of 2006 noting that "there has been rampant appraisal and underwriting fraud in the industry for quite some time"; that "underwriting fraud[,] appraisal fraud and the general appetite for new product among originators [are] resulting in loans being made that shouldn't be made"; and that "this is like another banking crisis potentially looming."

647. S&P became so concerned with underwriting standards that, when it was asked to rate certificates backed by subprime loans that Fremont Investment and Loan had originated, one analyst asked his supervisors whether he should treat Fremont collateral differently. "No," one of his supervisors responded, "we don't treat their collateral any differently." The other supervisor said that as long as there were current FICO scores for the borrowers, then the analyst was "good to go," no matter how little documentation the origination process required, and

regardless of any other characteristic of the mortgage loans. While Fremont Investment and Loan is not identified in the Offering Documents as a relevant originator in this case, its underwriting standards – in the documentation they required and otherwise – were typical of the underwriting standards of the relevant originators here. The concerns the analyst expressed about Fremont were just as applicable to other originators, whose underwriting standards the Rating Agency Defendants knew just as well as they did Fremont's.

648. Based on its investigation, the Senate Subcommittee on Investigations found that from 2004 to 2007, all three the Rating Agency Defendants knew of the increased risks caused by mortgage fraud and lax underwriting standards, but failed to factor those risks into their rating models. S. Subcomm. on Investigations, 112th Cong., *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* 311-12 (2011) (hereinafter S. Subcomm., *Anatomy of a Financial Collapse*).

649. In June 2005, for example, an outside mortgage broker wrote to Susan Barnes, the head of the S&P group that rated PLMBS, advising her that "attention to loan risk" had drastically deteriorated among mortgage originators. *Id.* at 269.

650. Here, just as in other cases, the Rating Agency Defendants did not factor the abandonment of underwriting standards into their analysis of the PLMBS that are the subject of this lawsuit. Instead, they based their ratings on underwriting standards they knew to have been abandoned in practice.

651. The problem, then, may be briefly stated: garbage in, garbage out. The Rating Agency Defendants based their ratings on underwriting standards they knew to have been abandoned. They thus knew those ratings to be unreliable.

2. The Credit Ratings Were Compromised by Conflicts of Interest, Manipulation and Misinformation.

652. The Rating Agency Defendants received enormous revenues from the Sponsor Depositors and Underwriters who paid them for rating the products they sold.

653. Because the desired rating of a securitized product was the starting point for any securities offering, the Rating Agency Defendants were actively involved in helping Depositors, Sponsors, and Underwriters structure the products to achieve the requested rating. As a result, the Rating Agency Defendants essentially worked backwards, starting with the clients' target rating and thereafter working toward a structure that could conceivably yield the desired rating.

654. A 2008 SEC Report entitled "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies" ("Summary Report") revealed that the Depositors, Sponsors, Underwriters and the Rating Agency Defendants worked together so that securities would receive the highest ratings:

> Typically, if the analyst concludes that the capital structure of the [PLMBS] does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche—as the highest rated tranche—pays the lowest coupon rate of the [PLMBS] tranches and, therefore, costs the arranger the least to fund.

655. As a result of this collaboration with the Rating Agency Defendants, Depositors/Issuers, Sponsors, and Underwriters were able to manipulate the system to achieve inflated ratings. For example, through repeated interactions with the Rating Agency Defendants, the Sponsors and Depositors/Issuers—and the Underwriters working with them—could effectively reverse engineer aspects of the ratings models and then modify the structure of a financing to improve its ratings without actually improving its credit quality. In this process, the

Depositors/Issuers, Sponsors, and Underwriters could change aspects of PLMBS very slightly—but without any real effect on the economic reality of the instruments—or simply present the same data in a different way, and get better ratings. Gretchen Morgenson & Louise Story, *Rating Agency Data Aided Wall Street in Deals*, N.Y. Times, Apr. 23, 2010.

656. This rating process was further compromised by "ratings shopping." The Securities Defendants did not pay for the Rating Agency Defendants' services until after the Rating Agency Defendants gave a preliminary rating to the clients. This practice created what were essentially bidding wars—contests in which the clients would hire the agency that provided the highest rating for the lowest price. The Rating Agency Defendants were paid only if they provided the desired ratings, and only if the transaction closed with those ratings. "Ratings shopping" jeopardized the integrity and independence of the rating process.

657. The Senate Subcommittee on Investigations has detailed numerous instances in which the Rating Agency Defendants' gave "special treatment" to investment bankers who complained about rating decisions. "In many instances," the Subcommittee concluded, this special treatment "cross[ed] over form the healthy give and take involved in complex analysis to concessions made to prevent the loss of business." S. Subcomm., *Anatomy of a Financial Collapse, supra*, at 280. Thus, even the *threat* of ratings shopping had a real effect on the Rating Agency Defendants' ratings.

658. Raymond McDaniel, Moody's CEO, realized that the market-share war had undermined the Ratings Agencies' work product. In an internal presentation to Moody's Board of Directors in 2007, he stated:

> The real problem is not that the market does underweights [sic] ratings quality but rather that . . . it actually penalizes quality by awarding rating mandates based on

> the lowest credit enhancement needed for the highest rating. Unchecked, competition on this basis can place the entire financial system at risk.[17]

659. McDaniel described to the board how Moody's has "erected safeguards to keep teams from too easily solving the market share problem by lowering standards" but then stated, **"This does NOT solve the problem."** Turning then to a topic he referred to as "Rating Erosion by Persuasion," McDaniel observed, "Analysts and [managing directors] are continually 'pitched' by bankers, issuers, investors" and sometimes "we 'drink the kool-aid.'"

660. As these examples illustrate, the Rating Agency Defendants were aware that clients were able to—and did—manipulate the system to receive the highest possible rating without actually structuring their deals so as to merit that rating.

3. The Credit Ratings Were Unreliable Due to the Use of Inaccurate, Outdated Models, and Inadequate Resources.

661. The outdated models used by the Rating Agency Defendants turned out PLMBS ratings that the Rating Agency Defendants knew to be inaccurate.

662. The models relied on pre-2000 data—reliance that, for a number of reasons, produced wildly inaccurate results. First, this pre-2000 data ignored the dramatic changes in the mortgage industry following 2000: increased lending to riskier borrowers, increased origination of riskier kinds of mortgage loans, and a dramatic rise in housing prices. Second, the pre-2000 data, as the Congressional Research Service reported in 2009, was based on a "benign period of economic moderation in financial markets and rising house prices." Congressional Research Serv., *Credit Rating Agencies and Their Regulation* 7 (2009); *accord*, S. Subcomm, *Anatomy of a Financial Collapse, supra*, at 288-89. They were useless in predicting the likelihood of default in a time of macroeconomic crisis and falling housing prices.

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[17] Exhibit to October 22, 2008, hearing before the House Oversight Committee.

663. The models had other flaws too. The Rating Agency Defendants failed to account for any risk of a nationwide decline in home prices, and they miscalculated the interdependence among loan defaults—the likelihood that an economic storm would sink more than one financial ship.

664. The Rating Agency Defendants knew of these flaws, but did nothing to fix them.

665. In 2007, for example, Vickie Tillman, an S&P Executive Vice President, stated before the Senate Banking Committee: "We are fully aware that, for all our reliance on our historically rooted data that sometimes went as far back as the Great Depression, some of that data has proved no longer to be as useful or reliable as it has historically been."

666. In an April 27, 2008 article in the New York Times Magazine, Mark Adelson, a former Managing Director in Moody's structured finance division, criticized Moody's use of historical data about 30-year fixed mortgages to predict defaults and delinquencies in the new mortgage market—describing it as "observing 100 years of weather in Antarctica to forecast the weather in Hawaii."

667. In fact, the Rating Agency Defendants themselves did not believe the results their models turned out.

668. In an April 2007 electronic communication uncovered by the Senate Subcommittee on Investigations, two S&P analysts agreed that a particular mortgage-backed deal was "ridiculous," and that the model "definitely does not capture half the ris[k]." A month later, one of those analysts complained that "no body [sic] gives a straight answer about anything around here," and that there were no "clear cut parameters on what the hell we are supposed to do."

669. Eric Kolchinsky, a former managing director at Moody's, testified before the House Oversight and Government Reform Committee on September 30, 2009 that "[m]ethodologies produced by Moody's for rating structured finance securities are inadequate and do not realistically reflect the underlying credits. Rating models are put together in a haphazard fashion and are not validated if doing so would jeopardize revenues."

670. Compounding the inherent problems with the rating models was the fact that the Rating Agency Defendants simply did not commit the resources necessary to adequately rate residential-mortgage-backed financial products.

671. Frank L. Raiter, who from 1995 until 2005 was a Managing Director at S&P and head of its Residential Mortgage Rating Group, stated in prepared testimony before the Senate Subcommittee on Investigations that "in the residential ratings group[,] . . . between 1995 and 2005[,] rating volumes grew five or six fold without similar increases in staffing. Rating production was achieved at the expense of maintaining criteria quality."

672. This inadequate staffing had practical consequences: it meant that the Rating Agency Defendants were not able to improve the models that they knew produced inaccurate and misleading ratings. As Raiter testified, by early 2004 S&P had developed a model that took into account much more historical data than had been analyzed previously—a new model suggesting that the model then in use "was underestimating the risk of some Alt-A and subprime products." Due to inadequate staffing, this model "was never implemented." If S&P had implemented the new model, stated Raiter, it would have required much greater credit enhancement from PLMBS issuers in 2005, 2006, 2007—without which the PLMBS would have been assigned much less favorable ratings.

673. Similarly, Jerome Fons, a former Managing Director of Credit Policy at Moody's, testified before the House Oversight Committee on October 22, 2008 that when evidence arose that previously assigned ratings of PLMBS were inaccurate, the Rating Agency Defendants "did not update their models or their thinking."

674. As these examples illustrate, the Rating Agency Defendants knew that the unreliability of their models meant that their ratings of PLMBS did not accurately reflect the likelihood of payment.

4. The Rating Agency Defendants Knew That Their PLMBS Ratings Fundamentally Differed from Their Ratings of Corporate Bonds.

675. Neither the Rating Agency Defendants nor the Securities Defendants disclosed to investors that the ratings of PLMBS were materially different from, and less reliable than, standard corporate bond ratings.

676. Instead, the Rating Agency Defendants represented that the credit ratings were comparable to corporate bonds. Moody's stated in a 2004 presentation that, "The comparability of these opinions holds regardless of the country of the issuer, its industry, asset class, or type of fixed-income debt." A May 2007 S&P document on rating methodology stated: "Our ratings represent a uniform measure of credit quality globally and across all types of debt instruments. In other words, an 'AAA' rated corporate bond should exhibit the same degree of credit quality as an 'AAA' rated securitized debt issue."

677. In fact, however, the Rating Agency Defendants did not simply estimate expected loss and/or probability of default in determining the PLMBS ratings in this case, as they do with corporate bonds. Rather, they employed mathematical credit risk models based on random event simulations to determine the estimated loss distributions associated with the great many separate assets that back the PLBMS. These models required the Rating Agency Defendants to make

many estimates and assumptions regarding each of the various assets, including the degree to which losses or defaults on these assets would be correlated with each other.

678. The Rating Agency Defendants in this case knowingly made unreasonable assumptions about how frequently defaults on the assets would be correlated with each other. *See supra* § V.F.3. And, unlike the assumptions the Rating Agency Defendants use for rating other instruments, such as corporate bonds, the correlation assumptions used to rate the PLMBS in this case were based on dramatically incomplete historical data or on pure speculation.

679. In short, the Rating Agency Defendants knowingly misrepresented that their PLMBS ratings were as accurate as their ratings of other instruments.

5. Subsequent Downgrades Confirm that the Investment-Grade Ratings Reported in the Offering Documents Were Unjustifiably High and Misstated the True Credit Risk of the PLMBS Purchased by the Bank.

680. "Investment-grade" products are understood in the marketplace to be stable, secure and safe. Using S&P's scale, "investment-grade" ratings are AAA, AA, A and BBB, and represent, respectively, extremely strong credit quality, very strong credit quality, strong credit quality, and adequate credit quality. Any instrument rated below BBB is considered below investment-grade or "junk bond."

681. The Securities Defendants' Offering Documents stated that the issuance of the PLMBS was conditioned on the assignment of particular, investment-grade ratings, and listed the ratings in a chart.

682. As noted, the Bank purchased only triple-A-rated tranches of PLMBS. However, the triple-A ratings of the PLMBS misstated the credit quality of the underlying loans. The triple-A rating denotes extremely strong credit quality and is the same rating as those typically assigned to bonds backed by the full faith and credit of the United States Government, such as Treasury Bills.

683. On or about July 10, 2007, S&P publicly announced it was revising the methodologies used to rate numerous mortgage-backed securities because the performance of the underlying collateral "called into question" the accuracy of the loan data. S&P announced it was revising its methodology assumption to require increased "credit protection" for rated transactions. S&P reiterated that it would seek in the future to review and minimize the incidence of potential underwriting abuse given "the level of loosened underwriting at the time of loan origination, misrepresentation and speculative borrower behavior reported for the 2006 vintage" of mortgage-backed securities.

684. One day later, on July 11, 2007, Moody's announced it was also revising its methodology used to rate PLMBS, and anticipated downgrades of PLMBS. Moody's did in fact significantly downgrade many PLMBS, noting "aggressive underwriting" used in the origination of the collateral.

685. At the time these statements were made in July 2007, all of the PLMBS retained their investment-grade ratings.

686. Historically, investments with triple-A ratings had a very low expected default rate. The default rate on investment-grade corporate bonds from 1981 to 2008, for example, averaged about 0.08%, with no year's default rate higher than 0.51%.

687. Beginning in the summer of 2008, the PLMBS purchased by the Bank were downgraded. One hundred thirteen of the one hundred fifteen triple-A rated Certificates (originally valued at over $5.9 billion) now have been downgraded to non-investment-grade ratings, *i.e.* junk status. *See infra* ¶ 777.

688. The en masse downgrade of triple-A rated PLMBS indicates that the ratings set forth in the Offering Documents were false, unreliable and inflated. As the SEC has noted, "[a]s

the performance of these securities continued to deteriorate, the three rating agencies most active in rating these instruments downgraded a significant number of their ratings. The rating agencies[']' performance in rating these structured finance products raised questions about the accuracy of their credit ratings generally as well as the integrity of the ratings process as a whole." *Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies by the Staff of the Securities and Exchange Commission* at 2 (July 2008). The Securities Defendants should have known the Offering Documents' statements with respect to these ratings were misleading because of their direct involvement in and manipulation of the rating process, and awareness of the poor credit quality of the underlying loan collateral.

6. The Bank Reasonably Relied on the Credit Ratings Reported in the Prospectuses.

689. The market—including both sophisticated and unsophisticated investors—has come to rely on the Rating Agency Defendants for accurate and unbiased assessments of credit quality.

690. Fitch; Moody's Investors Service, Inc.; and Standard & Poor's Ratings Services are "Nationally Recognized Statistical Rating Organizations," or NRSROs—a special status that the SEC created in 1975 to distinguish the most credible and reliable rating agencies and to ensure the integrity of the ratings process. According to the SEC, the "single most important criterion" in their granting of NRSRO status is that "the rating organization is recognized in the United States as an issuer of credible and reliable ratings by the predominant users of securities ratings." Further, in grating NRSRO status, the SEC determines that the rating organization is independent from the firms whose issuances it rates.

691. It was thus reasonable for the Bank to rely on the Rating Agency Defendants' ratings of the PLMBS.

692. The Bank did not know, and reasonably could not have known, that the credit ratings were flawed. The Bank did not know that the credit ratings were impaired by conflicts of interest and were susceptible to manipulation. Moreover, the Bank did not know that the ratings did not in fact address the risk of the Certificates and the likelihood of payment by borrowers on the underlying mortgage loans. Indeed, no disclosure informed the Bank that the rating was the unreliable result of inaccurate information and deficient modeling, as opposed to a legitimate evaluation of credit risk.

693. The Rating Agency Defendants continued to assure the market of the integrity of their ratings of mortgage-backed securities long after the PLMBS were purchased by the Bank. In a letter to the editor of The Wall Street Journal dated September 17, 2007, Vickie Tillman, then Executive Vice President of Credit Market Services at S&P, stated: "We have numerous safeguards in place that have helped us effectively manage" potential conflicts of interest. "Our credit ratings provide objective, impartial opinions on the credit quality of bonds." Tillman likewise testified before the Senate Committee on Banking, Housing and Urban Affairs on September 26, 2007:

> S&P maintains rigorous policies and procedures designed to ensure the integrity of our analytical processes. For example, analysts are not compensated based upon the amount of revenue they generate. Nor are analysts involved in negotiating fees. Similarly, individuals responsible for our commercial relationships with issuers are not allowed to vote at rating committees. These policies, and others, have helped ensure our long-standing track record of excellence.

694. The Rating Agency Defendants also assured the market that the ratings assigned to PLMBS were just as reliable as ratings assigned to corporate bonds. *See supra* ¶ 676.

695. At the time these statements were made in September 2007, all of the PLMBS retained their investment-grade ratings.

G. The Proper Steps Were Not Taken To Ensure That the Mortgage Loans Underlying the Trusts Were Enforceable.

696. For PLMBS to have any value, the issuing trust must own and be able to enforce the mortgage loans that back the PLMBS. If the trust cannot enforce the loans, they are effectively worthless—and so are the PLMBS secured by those loans.

697. It is not the issuing trust but the mortgage originator that originated the mortgage loans. If the trustee is to enforce the loans—and if PLMBS are to have any value—both the promissory note executed by the borrower and the mortgage itself must be validly transferred to the trust in the securitization process.

698. The promissory notes and mortgages are not transferred directly from the loan originator to the trust. Instead, they are typically transferred to a Depositor, or to a Sponsor and then to a Depositor, and then to the trust. *See supra* ¶¶ 172-79.

699. Whether a mortgage loan has been validly transferred to the issuing trust is determined by state law and the pooling and servicing agreement, indenture trust agreement, or other agreement under which the issuing trust operates. State law generally requires that the promissory note, a negotiable instrument, be transferred by endorsement, and that the party seeking to enforce the loan physically possess the originally executed note. *See* U.C.C. §§ 3-201, 3-301. Each of the transfers made, or purportedly made, in the securitization process must be valid before the trust may enforce a mortgage loan.

700. Pooling and servicing agreements usually add the further requirement that the transfers of the mortgage loans be made within a particular time after the trust is formed. Under the common law of trusts, failure to comply within this set time limit renders the loans unenforceable by the trust.

701. The Offering Documents for all of the PLMBS in this action represented that the issuing trust could legally enforce the mortgage loans in its loan pool.

702. A trust that issues PLMBS must be able to enforce not only the mortgage loans that back the PLMBS, but also the mortgages that secure the mortgage loans. If the mortgages cannot be enforced, then the properties that secure the mortgage loans cannot be foreclosed on if the borrower defaults. If the mortgages that secure the mortgage loans are not enforceable, PLMBS are to that extent worthless.

703. Before mortgages can be enforced by the trustee, however, they must be validly assigned to the issuing trust.

704. Before a purported mortgage holder can foreclose on a mortgaged property, state law generally requires that the purported holder—if it is not the original mortgagee—prove that it is a valid assignee of the mortgage. The assignment, or chain of assignment, must trace back without gaps to the original mortgagee, it must be in writing, and it must identify the mortgage that is assigned.

705. A material number of the promissory notes underlying the issuing trusts have not been validly transferred so as to be enforceable.

706. The best known example of this is *Kemp v. Countrywide Home Loans, Inc. (In re Kemp)*, No. 08-18700 (Bankr. D.N.J.), in which Linda DeMartini, whom Countrywide had employed for a decade and who testified that in her employment, she had been "involved in every aspect of the servicing," and "had to know about everything,"[18] testified—on direct

[18] *Kemp*, Hr'g Tr. 45:7, 45:9-10 (Aug. 11, 2009).

examination—that failure to deliver the promissory note to the trust was normal operating procedure for Countrywide.[19]

707. In *Kemp*, the U.S. Bankruptcy Court for the District of New Jersey, applying New Jersey law, held that because the debtor's mortgage loan had not been physically transferred to the issuing trust's trustee, or properly indorsed, it was enforceable by neither the issuing trust's trustee nor the trustee's agent. *Kemp v. Countrywide Home Loans, Inc. (In re Kemp)*, 440 B.R. 624, 630-34 (Bankr. D.N.J. 2010).

708. Similarly, a material number of the mortgages backing the PLMBS were not validly assigned to the issuing trusts, as recent months have revealed. *U.S. Bank N.A. v. Ibanez*, 941 N.E. 2d 40 (Mass. 2011), for example, consisted of two consolidated cases arising out of two different mortgages purportedly assigned to two different mortgage-backed trusts. In both, there was no evidence that, prior to the foreclosure sales, the mortgage had ever been assigned to the relevant Depositors. *See id.* at 52.

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[19] As DeMartini testified:

> Q. [I]s it generally the custom . . . for [the trust] to hold the documents?
> A. No. They would stay with us as the servicer.
> . . .
> Q. So I believe you testified Countrywide was the originator of this loan?
> A. Yes.
> . . .
> Q. So the physical documents were retained within the corporate entity Countrywide or Bank of America?
> A. Correct.
> Q. . . . [W]ould you say that this is standard operating procedure in the mortgage banking business?
> A. Yes. It would be . . . the normal course of business . . . , as we're the ones that are doing all the servicing, and that would include retaining the documents.

Id. at 14:5-15:6.

709. These failures appear to be systemic in the industry. Even if they do not affect every mortgage underlying every issuing trust, the failures affect a sufficient number of the mortgages and materially impair the value of the PLMBS.

710. Multiple cases have been filed in courts across the country by homeowners challenging the right of financial institutions to foreclose on behalf of issuing trusts. *See, e.g.*, *In re Mims*, 438 B.R. 52 (Bankr. S.D.N.Y. 2010); *Deutsche Bank Nat'l Trust Co. v. Tarantola (In re Tarantola)*, No. 09-09703, 2010 WL 3022038 (Bankr. D. Ariz. July 29, 2010); *In re Weisband*, 427 B.R. 13 (Bankr. D. Ariz. 2010); *Wells Fargo Bank, N.A. v. Marchione*, 887 N.Y.S.2d 615 (App. Div. 2009); *IndyMac Bank F.S.B. v. Garcia*, 28 Misc. 3d 1202(A) (N.Y. Sup. Ct. 2010); *Deutsche Bank Nat'l Trust Co. v. McRae*, 894 N.Y.S.2d 720 (Sup. Ct. 2010); *Citigroup Global Markets Realty Corp. v. Bowling*, 25 Misc. 3d 1244(A) (N.Y. Sup. Ct. 2009); *HSBC Bank USA, N.A. v. Miller*, 889 N.Y.S.2d 430 (Sup. Ct. 2009); *Deutsche Bank Nat'l Trust Co. v. Abbate*, 25 Misc. 3d 1216(A) (N.Y. Sup. Ct. 2009); *In re Adams*, 693 S.E.2d 705 (N.C. Ct. App. 2010); *HSBC Bank USA v. Thompson*, No. 23761, 2010 WL 3451130 (Ohio. Ct. App. Sept. 3, 2010); *Bank of N.Y. v. Gindele*, No. C-090251, 2010 WL 571981 (Ohio Ct. App. Feb. 19, 2010).

711. According to the *New York Times*, the United States Trustee Program—the division of the Department of Justice responsible for overseeing the administration of bankruptcy cases—has taken the unusual step of intervening in bankruptcy proceedings to force the mortgage companies to prove that they own, or otherwise have the standing required to enforce, the mortgages on which they are seeking to foreclose. *See* Gretchen Morgenson, *Don't Just Tell Us. Show Us That You Can Foreclose*, N.Y. Times, Nov. 27, 2010. The *Times* article noted the

Trustee's intervention in two Atlanta bankruptcy cases, one involving Wells Fargo and the other involving J.P. Morgan Chase.

712. The failure to properly assign mortgages or mortgage loans is also shown by the recent drop in foreclosures system-wide, which is attributable to lack of necessary documentation. *See, e.g.*, Dan Levy & John Gittelsohn, *Foreclosure Filings Hit Three-Year Low As U.S. Servicers in "Dysfunction"*, Bloomberg News, Mar. 9, 2011, http://www.bloomberg.com/news/2011-03-10/foreclosure-filings-drop-to-3-year-low-as-u-s-servicers-in-dysfunction-.html. In addition, in the Fall of 2010, major financial institutions such as Bank of America (which acquired Countrywide) and J.P. Morgan Chase, both originators of mortgages underlying the Certificates purchased by the Bank, announced they were suspending mortgage foreclosures because they had discovered significant problems in their ability to locate and document the ownership of mortgage notes.

713. The evidence of misconduct in this regard has been so severe and pervasive that the Attorneys General of all fifty states have announced an investigation into the Defendants' practices. *See, e.g.*, Gretchen Morgenson, *New York Subpoenas 2 Foreclosure-Related Firms*, New York Times, Apr. 9, 2011 (at B1). In addition, major financial institutions have reserved hundreds of millions, if not billions, of dollars to address litigation and losses stemming from the financial crisis and foreclosure problems.

714. Also telling is a recent proposal by a group friendly to the mortgage industry to enact federal legislation to loosen the standards for foreclosure. Jason Gold & Anne Kim, Third Way, *Fixing "Foreclosure-gate"* (Jan. 2011), *available at* http://content.thirdway.org/publications/362/Third_Way_Memo_-_Fixing_Foreclosure-gate.pdf. The proposal would not be necessary if the industry's house were in order.

VI. DEFENDANTS' MATERIAL UNTRUE STATEMENTS AND OMISSIONS IN CONNECTION WITH THE SALE OF PLMBS TO THE BANK

715. As detailed above, the Sponsor Defendants purchased mortgage loans and deposited them into issuing trusts, from which the Depositor/Issuer Defendants issued Certificates, and the Underwriter Defendants and other Securities Defendants offered and sold the Certificates to the Bank through the Offering Documents for each securitization. The Depositor/Issuer and Underwriter Defendants drafted the Offering Documents. In addition, each Sponsor, Depositor/Issuer, and Underwriter Defendant was identified in these documents as the Sponsor, Depositor/Issuer or Underwriter, respectively, of the Certificates, and approved the versions of these documents that were delivered to the Bank.

716. The Offering Documents contained extensive material misstatements and omissions of material fact with regard to the underwriting guidelines and practices purportedly applied by the mortgage originators whose loans backed the PLMBS purchased by the Bank, the appraisal process underlying the loan-to-value ratios ("LTVs"), predatory lending abuses by the mortgage originators, and a number of key characteristics of the mortgage pools that pertain to the risk of the Certificates. These misstatements are not predictions of future events or subjective opinions. Rather, these misstatements constitute misrepresentations of material facts that were false when made. Moreover, the misstatements all concern information that the Bank did not have access to and could not independently verify—this information was only available to the Defendants, and thus the Bank relied upon the Securities Defendants to accurately present the information. Specifically, the misstatements and omissions of material fact are as follows:

A. The Securities Defendants Misrepresented Underwriting Guidelines Utilized by Mortgage Lenders

1. The Materiality of Underwriting Guidelines

717. As alleged above, an originator's underwriting standards, and the extent to which an originator departs from its standards, are key indicators of the risk of the mortgage loans made by that originator. And because mortgage loans back the PLMBS that are issued to investors such as the Bank, the loan underwriting standards are also material to assessing the risk of the PLMBS. For these reasons, the originators' underwriting standards as described in the Offering Documents were material to the Bank's decision to purchase the PLMBS.

2. Misstatements Regarding Underwriting Guidelines

718. The Offering Documents contained material untrue or misleading statements and omissions regarding the underwriting guidelines allegedly employed in the origination of the mortgage loans that secure the PLMBS. Appendix III attached hereto and incorporated herein sets forth those statements and omissions and the reasons each is misleading. The following are examples of these materially misleading statements and omissions regarding mortgages originated or acquired by Countrywide Home Loans, taken from the Banc of America Funding 2006-D Trust Prospectus Supplement (incorporated herein by this reference):

A. Countrywide's underwriting standards were used "to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral." BAFC 2006-D Pros. Sup. S-57.

B. "For all mortgage loans originated or acquired by Countrywide":

> Countrywide . . . obtains a credit report relating to the applicant from a credit reporting company. The credit report typically contains information relating to such matters as credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcy, dispossession, suits or judgments. ***All***

> ***adverse information in the credit report is required to be explained by the prospective borrower to the satisfaction of the lending officer.***

BAFC 2006-D Pros. Sup. S-58 (emphasis added).

C. "[A] prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses . . . to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the 'debt-to-income' ratios) are within acceptable limits," which vary "depending on a number of underwriting criteria, including the Loan-to-Value Ratio, loan purpose, loan amount and credit history of the borrower." BAFC 2006-D Pros. Sup. S-57-58.

D. Under its Standard Underwriting Guidelines, Countrywide "generally permits a debt-to-income ratio based on the borrower's monthly housing expenses of up to 33% and a debt-to-income ratio based on the borrower's total monthly debt of up to 38%." BAFC 2006-D Pros. Sup. S-59.

E. "Exceptions to Countrywide Home Loans' underwriting guidelines may be made if compensating factors are demonstrated by a prospective borrower." BAFC 2006-D Pros. Sup. S-58.

F. According to Countrywide's "Full Documentation Program," "the underwriter *verifies the information contained in the application relating to employment, income, assets or mortgages*." BAFC 2006-D Pros. Sup. S-58 (emphasis added),

G. "A prospective borrower ***may be eligible*** for a loan approval process that limits or eliminates Countrywide Home Loans' standard disclosure or verification requirements or both." BAFC 2006-D Pros. Sup. S-58 (emphasis added).

719. These statements were materially misleading for multiple reasons, which are described in detail on Appendix III hereto. Fundamentally, they grossly distort the underwriting

process that was actually employed by indicating that it was a principled process that followed stated standards and employed enumerated safeguards. Unfortunately, as described above, both Countrywide and the other originators of mortgage loans that secured the PLMBS purchased by the Bank effectively abandoned their stated underwriting standards in an effort to maximize their mortgage origination volume. Thus Countrywide and other originators did not follow the underwriting standards set forth or otherwise referred to in the Offering Documents. "Exceptions" to standards became the rule. Reduced documentation was employed not to streamline the process where the borrower met eligibility requirements or where otherwise warranted, but instead to mask the borrower's disqualification. Requirements for verification of borrower income, assets, or employment were routinely ignored. Measurements of LTV and DTI were meaningless because the appraised values were unreliable and the borrowers' income assertions were unverified and total debt obligations undisclosed.

720. In addition, the statements were materially misleading because they fail to disclose that Countrywide lacked any reasonable basis for its determination of "acceptable limits" for DTIs. Due to the industry's inexperience with lending to borrowers with increased credit risks, including the explosion in Alt-A, subprime and other nontraditional lending as described *supra*, § V.B.1, Countrywide lacked sufficient data regarding historical patterns of borrower behavior in relation to default experience for similar types of borrower profiles. Consequently, Countrywide's assignment of "maximum acceptable debt-to-income ratio" had no reliable connection to the actual risk of default presented by borrowers assigned to each classification. But Countrywide, and others in the industry, continued to use this data to construct "models" to justify their ever-less rigorous underwriting programs, and continued to

present these models and programs to investors as prudent, thoroughly tested and well-grounded in reliable and objective data.

721. The statements were further materially misleading because they fail to disclose that Countrywide, like the other originators of mortgages that secured the PLMBS purchased by the Bank, lacked adequate procedures and practices to monitor or evaluate their mortgage loan underwriters' exercise of judgment, or to provide appropriate training and education to their mortgage loan underwriters.

3. Evidence Demonstrating Misstatements in the Offering Documents Regarding the Originators' Underwriting Practices.

a. Government investigations, actions and settlements, confidential witnesses, and evidence developed in other private lawsuits demonstrate systematic and pervasive abandonment of stated underwriting practices by the originators.

722. As alleged in detail above, the failure of the mortgage originators who issued the loans backing the PLMBS purchased by the Bank to apply their stated underwriting guidelines, to ensure that compensating factors justified exceptions, and to obtain accurate appraisals is well documented in government investigations and lawsuits, press reports, and statements of confidential witnesses who are former employees of the mortgage originators. Additional evidence has been generated by the many other private lawsuits against many of the same Securities Defendants in connection with the sale of mortgage-backed securities and related Certificates. This evidence—and the allegations herein based on this evidence—demonstrates that the statements in the Offering Documents regarding the mortgage originators' underwriting and appraisal practices are false and misleading. Contrary to the representations in the Offering Documents, the mortgage originators did not genuinely attempt to determine the borrowers' ability to pay, or the adequacy of the collateral provided for the loans they issued, but instead abandoned these efforts in order to issue and sell for securitization as many loans possible.

b. Analysis of loans that backed the PLMBS purchased by the Bank demonstrates the abandonment of stated underwriting practices by the originators.

723. Analysis of the specific loans that remain in the mortgage pools show high rates of delinquency and foreclosure evidencing a pervasive disregard of sound underwriting practices in the origination of those loans. The following table shows the percentages of the loans in the mortgage pools as of March 31, 2011, as to which the borrower was at least 90 days delinquent, foreclosure proceedings were pending, or the mortgage holder had recovered title from the borrower. While the percentages on this table are stark evidence of the flawed underwriting employed in the origination of the mortgages in the pools, they in fact understate the problem because they do not include mortgages that were foreclosed prior to March 31, 2011, but as to which the mortgage holder no longer held title to the underlying property as of this date.

Sponsor	Total Delinquency (%)
American Home Mortgage Acceptance, Inc.	
AHM 2005-2 1A1	32.50
Average - American Home Mortgage Acceptance, Inc.	**32.50**
American Home Mortgage Corp.	
AHMA 2006-6 A1A	35.80
AHMA 2007-2 A1	36.87
AHMA 2007-5 A1	35.19
Average - American Home Mortgage Corp.	**35.95**
Bank of America, National Association	
BAFC 2005-H 7A1	31.57
BAFC 2006-D 1A1	38.75
Average - Bank of America, National Association	**35.16**
Barclays Bank PLC	
BCAP 2006-AA1 A1	46.70
Average - Barclays Bank PLC	**46.70**

Sponsor	Total Delinquency (%)
Chevy Chase Bank, FSB	
CCMFC 2006-2A A1	23.34
CCMFC 2007-1A A1	32.76
CCMFC 2007-2A A1	32.62
Average - Chevy Chase Bank, FSB	**29.57**
Citigroup Global Markets Realty Corp.	
CMLTI 2005-9 1A1	32.75
Average - Citigroup Global Markets Realty Corp.	**32.75**
CitiMortgage, Inc.	
CMALT 2007-A4 1A7	19.02
Average - CitiMortgage, Inc.	**19.02**
Countrywide Home Loans, Inc.	
CWALT 2005-16 A4	45.68
CWALT 2005-86CB A10	27.75
CWALT 2006-OA16 A2	59.43
CWALT 2006-OA8 1A1	58.15
CWALT 2007-OA4 A1	56.73
CWALT 2007-OA9 A1	52.61
CWHL 2005-2 2A1	48.75
Average - Countrywide Home Loans, Inc.	**49.87**
Credit Suisse Securities (USA) LLC	
ARMT 2006-2 6A1	46.64
Average - Credit Suisse Securities (USA) LLC	**46.64**
DB Structured Products, Inc.	
DBALT 2006-AR2 1A1	29.43
DBALT 2006-AR2 1A2	29.43
DBALT 2006-AR3 A2	38.21
DBALT 2006-AR4 A1	37.50
DBALT 2006-AR5 1A1	43.96
DBALT 2007-AR1 A1	53.66
DBALT 2007-AR3 2A1	44.52
Average - DB Structured Products, Inc.	**39.53**

Sponsor	Total Delinquency (%)
DLJ Mortgage Capital, Inc.	
ARMT 2006-1 6A1	44.85
ARMT 2006-3 4A2	52.41
ARMT 2007-1 5A1	45.30
ARMT 2007-2 2A21	40.66
Average - DLJ Mortgage Capital, Inc.	**45.81**
EMC Mortgage Corporation	
BALTA 2005-10 11A1	49.79
BALTA 2005-8 11A1	36.84
BALTA 2005-9 11A1	39.62
BALTA 2006-1 11A1	37.40
BALTA 2006-2 11A1	56.97
BALTA 2006-3 1A1	47.55
BALTA 2006-4 11A1	51.34
BALTA 2006-4 13A1	55.12
BALTA 2006-5 1A1	52.33
BALTA 2006-6 1A1	54.91
BALTA 2006-7 1A1	47.61
BALTA 2007-1 1A1	60.48
BALTA 2007-2 1A1	54.35
BALTA 2007-3 1A1	52.79
BSMF 2006-AR1 1A1	49.99
BSMF 2006-AR2 1A1	47.48
BSMF 2006-AR3 1A1	51.44
BSMF 2006-AR5 1A1	48.35
BSMF 2007-AR1 1A1	45.39
BSMF 2007-AR4 1A1	49.74
BSMF 2007-AR5 1A1A	49.15
GPMF 2005-AR1 A2	44.24
GPMF 2005-AR2 A1	43.10
GPMF 2005-AR4 4A1A	53.42
GPMF 2006-AR3 4A1	37.10
SAMI 2005-AR2 1A1	47.38
SAMI 2005-AR3 1A1	43.76
SAMI 2005-AR6 2A1	40.43
SAMI 2006-AR4 4A1	59.67
SAMI 2006-AR6 1A1	63.86
SAMI 2006-AR7 A1A	61.39
Average - EMC Mortgage Corporation	**49.45**

Sponsor	Total Delinquency (%)
Greenwich Capital Financial Products, Inc.	
DSLA 2005-AR1 2A1A	34.90
DSLA 2005-AR2 2A1A	26.24
HVMLT 2005-10 2A1A	50.26
HVMLT 2006-7 2A1A	39.89
HVMLT 2006-8 2A1A	41.17
HVMLT 2007-1 2A1A	60.86
Average - Greenwich Capital Financial Products, Inc.	**42.22**
Impac Funding Corporation	
IMSA 2005-2 A1	20.91
IMSA 2006-2 1A2A	21.39
Average - Impac Funding Corporation	**21.15**
Impac Mortgage Holdings, Inc	
IMM 2005-7 A1	18.94
Average - Impac Mortgage Holdings, Inc	**18.94**
IndyMac Bank, F.S.B.	
INDX 2005-AR12 2A1A	31.62
INDX 2005-AR4 2A1A	30.00
INDX 2005-AR8 2A1A	29.70
INDX 2006-AR19 1A1	40.13
Average - IndyMac Bank, F.S.B.	**32.86**
J.P. Morgan Mortgage Acquisition Corp.	
JPALT 2006-A1 1A1	47.14
JPALT 2006-A2 1A1	44.42
JPALT 2006-A3 1A1	42.57
JPALT 2007-A2 12A1	57.51
JPMMT 2005-ALT1 2A1	23.05
Average - J.P. Morgan Mortgage Acquisition Corp.	**42.94**
Lehman Brothers Holdings Inc.	
LXS 2005-8 1A2	32.44
LXS 2006-15 A1	38.24
LXS 2007-11 A1	43.33
LXS 2007-9 1A1	53.61
Average - Lehman Brothers Holdings Inc.	**41.91**

Sponsor	Total Delinquency (%)
Luminent Mortgage Capital, Inc.	
LUM 2006-3 11A1	33.24
LUM 2006-6 A1	43.60
LUM 2006-7 2A1	41.77
LUM 2007-2 1A1	36.85
Average - Luminent Mortgage Capital, Inc.	**38.87**
Mercury Mortgage Finance Statutory Trust	
LUM 2005-1 A1	36.35
Average - Mercury Mortgage Finance Statutory Trust	**36.35**
Merrill Lynch Mortgage Lending, Inc.	
MANA 2007-A3 A2A	42.52
MLMI 2006-AF2 AV2A	34.18
Average - Merrill Lynch Mortgage Lending, Inc.	**38.35**
Morgan Stanley Mortgage Capital Inc.	**41.00**
MSM 2006-13AX A1	40.41
MSM 2006-16AX 2A1	42.07
MSM 2006-8AR 1A2	48.07
MSM 2006-9AR A3	35.77
MSM 2007-2AX 2A2	39.29
MSM 2007-5AX 2A2	37.66
MSM 2007-7AX 2A1	43.70
Average - Morgan Stanley Mortgage Capital Inc.	
MortgageIT Holdings, Inc.	
MHL 2005-5 A1	15.86
Average - MortgageIT Holdings, Inc.	**15.86**
MortgageIT, Inc.	
MHL 2006-1 1A2	23.05
Average - MortgageIT, Inc.	**23.05**

Sponsor	Total Delinquency (%)
Nomura Credit & Capital, Inc.	
NAA 2006-AF2 5A1	45.64
NAA 2006-AR4 A2	39.96
NAA 2007-1 2A1	46.23
NAA 2007-3 A1	51.28
Average - Nomura Credit & Capital, Inc.	**45.78**
Residential Funding Company, LLC	
RALI 2006-QO10 A1	52.31
RALI 2007-QS6 A29	31.57
Average - Residential Funding Company, LLC	**41.94**
Residential Funding Corporation	
RALI 2005-QA9 NB41	17.92
RALI 2006-QA2 1A1	21.64
RALI 2006-QA3 A1	30.22
Average - Residential Funding Corporation	**23.26**
Terwin Advisors, LLC	
TMTS 2007-6ALT A1	54.32
Average - Terwin Advisors, LLC	**54.32**
Thornburg Mortgage Home Loans, Inc.	
TMST 2007-1 A2A	17.63
Average - Thornburg Mortgage Home Loans, Inc.	**17.63**
UBS Real Estate Securities Inc.	
MARM 2005-7 2A1	18.90
MARM 2005-8 1A1	23.75
Average - UBS Real Estate Securities Inc.	**21.33**
UBS Sec, LLC	
MARM 2007-R5 A1	19.31
Average - UBS Sec, LLC	**19.31**
Wells Fargo Bank, N.A.	
WFMBS 2006-AR12 1A1	17.22
Average - Wells Fargo Bank, N.A.	**17.22**
Total Average	**40.84**

724. Analysis of three key metrics with respect to individual mortgage loans provides further evidence of the abandonment of stated underwriting guidelines. The LTV, DTI and credit score ("FICO") metrics are each key indicators of the riskiness of a loan and, according to the statements in the Offering Documents, were fundamental components of the underwriting process. Because the underwriting process as described in the Offering Documents was ostensibly aimed at assessing the risk of default on a mortgage, the mortgages should exhibit a balancing of these key risk indicators—for example, mortgages with higher LTVs or DTIs should tend to exhibit compensatingly higher FICO scores. But analysis of the underlying mortgages indicates otherwise. The Bank has been able to obtain individual loan FICO score and LTV information for 111 of the Certificates, and individual loan DTI information for 78 of the Certificates. The Bank has analyzed these loans to see how the data are *correlated*—that is, the extent to which changes in one metric are associated with changes in another. The Bank has also analyzed whether the loans exhibit *more than one* high-risk characteristic—also known as "compounded" high-risk characteristics.

725. Mortgage underwriting of the type described in the Offering Documents, which balances negative characteristics against compensating positive ones, should result in discernible correlation among the DTI, LTV and FICO metrics (*i.e.*, higher LTVs should correlate with higher FICO scores and lower DTIs, higher DTIs with higher FICO scores and lower LTVs, and lower FICO scores with lower LTVs and DTIs), and should result in the absence of compounded high-risk factors in individual mortgages.

726. However, the Bank's analysis of the individual loan level data indicates otherwise. For 63 of the Certificates, there is either no correlation between higher LTVs and higher FICOs, or the correlation is *negative* (*i.e.*, higher LTVs are associated with *lower* FICOs).

In addition, for 50 of the Certificates as to which the Bank has been able to obtain FICO and DTI information for individual loans, there is no correlation between higher DTIs and higher FICOs, or the correlation is *negative* (*i.e.*, higher DTIs are correlated with *lower* FICOs. Further, for 65 of the Certificates as to which the Bank has been able to obtain LTV and DTI information for individual loans, there is either no correlation between higher LTVs and lower DTIs, or the correlation is *negative* (*i.e.*, higher LTVs are correlated with *higher* DTIs). These results are summarized on the following table:

Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Higher FICOs	**Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Lower DTIs**	**Certificates Exhibiting No Correlation or a Negative Correlation Between Higher DTIs Higher FICOs**
AHMA 2007-5 A1	AHM 2005-2 1A1	AHM 2005-2 1A1
ARMT 2007-1 5A1	AHMA 2007-2 A1	AHMA 2007-2 A1
BAFC 2005-H 7A1	BAFC 2005-H 7A1	BAFC 2006-D 1A1
BAFC 2006-D 1A1	BAFC 2006-D 1A1	BALTA 2005-10 11A1
BALTA 2006-3 1A1	BALTA 2005-10 11A1	BALTA 2005-9 11A1
BALTA 2006-5 1A1	BALTA 2005-9 11A1	BALTA 2006-2 11A1
BALTA 2006-7 1A1	BALTA 2006-1 11A1	BALTA 2006-3 1A1
BCAP 2006-AA1 A1	BALTA 2006-2 11A1	BALTA 2006-4 11A1
BSMF 2006-AR1 1A1	BALTA 2006-3 1A1	BALTA 2006-4 13A1
BSMF 2006-AR3 1A1	BALTA 2006-4 11A1	BALTA 2006-5 1A1
BSMF 2007-AR4 1A1	BALTA 2006-4 13A1	BALTA 2006-6 1A1
BSMF 2007-AR5 1A1A	BALTA 2006-6 1A1	BALTA 2006-7 1A1
CMALT 2007-A4 1A7	BALTA 2006-7 1A1	BALTA 2007-1 1A1
CWALT 2005-16 A4	BALTA 2007-1 1A1	BALTA 2007-2 1A1
CWALT 2006-OA16 A2	BALTA 2007-2 1A1	BCAP 2006-AA1 A1
CWALT 2007-OA4 A1	BALTA 2007-3 1A1	BSMF 2006-AR3 1A1
CWALT 2007-OA9 A1	BCAP 2006-AA1 A1	DBALT 2006-AR2 1A1

Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Higher FICOs	Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Lower DTIs	Certificates Exhibiting No Correlation or a Negative Correlation Between Higher DTIs Higher FICOs
CWHL 2005-2 2A1	BSMF 2006-AR1 1A1	DBALT 2006-AR4 A1
DBALT 2006-AR2 1A1	BSMF 2006-AR2 1A1	DBALT 2006-AR5 1A1
DBALT 2006-AR4 A1	BSMF 2006-AR3 1A1	DBALT 2007-AR1 A1
DBALT 2006-AR5 1A1	BSMF 2006-AR5 1A1	GPMF 2005-AR2 A1
DBALT 2007-AR1 A1	BSMF 2007-AR1 1A1	GPMF 2005-AR4 4A1A
DBALT 2007-AR3 2A1	DBALT 2006-AR2 1A1	HVMLT 2005-10 2A1A
DSLA 2005-AR1 2A1A	DSLA 2005-AR1 2A1A	DSLA 2005-AR1 2A1A
DSLA 2005-AR2 2A1A	DSLA 2005-AR2 2A1A	GPMF 2006-AR3 4A1
GPMF 2005-AR2 A1	DBALT 2006-AR3 A2	HVMLT 2006-7 2A1A
GPMF 2005-AR4 4A1A	DBALT 2006-AR4 A1	IMSA 2005-2 A1
GPMF 2006-AR3 4A1	DBALT 2006-AR5 1A1	IMM 2005-7 A1
HVMLT 2005-10 2A1A	DBALT 2007-AR1 A1	INDX 2005-AR12 2A1A
HVMLT 2006-7 2A1A	DBALT 2007-AR3 2A1	LXS 2005-8 1A2
HVMLT 2006-8 2A1A	GPMF 2005-AR2 A1	LXS 2006-15 A1
HVMLT 2007-1 2A1A	GPMF 2005-AR4 4A1A	LUM 2006-7 2A1
IMSA 2005-2 A1	GPMF 2006-AR3 4A1	MANA 2007-A3 A2A
IMM 2005-7 A1	HVMLT 2005-10 2A1A	MARM 2007-R5 A1
INDX 2005-AR12 2A1A	HVMLT 2006-7 2A1A	MHL 2006-1 1A2
JPALT 2006-A1 1A1	HVMLT 2007-1 2A1A	MSM 2006-13AX A1
LXS 2005-8 1A2	IMSA 2005-2 A1	MSM 2006-16AX 2A1
LUM 2006-6 A1	IMM 2005-7 A1	MSM 2006-8AR 1A2
LUM 2006-7 2A1	INDX 2005-AR12 2A1A	MSM 2006-9AR A3
LUM 2007-2 1A1	LXS 2005-8 1A2	MSM 2007-2AX 2A2
MARM 2005-7 2A1	LXS 2006-15 A1	MSM 2007-5AX 2A2
MARM 2005-8 1A1	LXS 2007-9 1A1	MSM 2007-7AX 2A1
MANA 2007-A3 A2A	LXS 2007-11 A1	NAA 2006-AF2 5A1

Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Higher FICOs	Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Lower DTIs	Certificates Exhibiting No Correlation or a Negative Correlation Between Higher DTIs Higher FICOs
MHL 2006-1 1A2	LUM 2006-3 11A1	NAA 2006-AR4 A2
MHL 2005-5 A1	LUM 2006-6 A1	NAA 2007-1 2A1
MLMI 2006-AF2 AV2A	LUM 2006-7 2A1	RALI 2006-QO10 A1
MSM 2006-8AR 1A2	MARM 2007-R5 A1	RALI 2007-QS6 A29
MSM 2007-2AX 2A2	MHL 2006-1 1A2	SAMI 2005-AR6 2A1
MSM 2007-7AX 2A1	MSM 2006-13AX A1	SAMI 2006-AR6 1A1
NAA 2006-AF2 5A1	MSM 2006-16AX 2A1	TMST 2007-1 A2A
NAA 2006-AR4 A2	MSM 2006-8AR 1A2	
NAA 2007-3 A1	MSM 2006-9AR A3	
RALI 2005-QA9 NB41	MSM 2007-2AX 2A2	
RALI 2006-QA2 1A1	MSM 2007-5AX 2A2	
RALI 2006-QA3 A1	MSM 2007-7AX 2A1	
RALI 2007-QS6 A29	NAA 2006-AF2 5A1	
SAMI 2005-AR2 1A1	NAA 2006-AR4 A2	
SAMI 2005-AR3 1A1	RALI 2006-QO10 A1	
SAMI 2005-AR6 2A1	RALI 2007-QS6 A29	
SAMI 2006-AR4 4A1	SAMI 2005-AR3 1A1	
SAMI 2006-AR6 1A1	SAMI 2005-AR6 2A1	
SAMI 2006-AR7 A1A	SAMI 2006-AR4 4A1	
WFMBS 2006-AR12 1A1	SAMI 2006-AR6 1A1	
	SAMI 2006-AR7 A1A	
	TMST 2007-1 A2A	

728. The absence of correlation among these important risk measures, and the presence of negative correlations among them, indicate that the risk factors present in a loan

application were *not* appropriately balanced. This is contrary to the assurances in the Offering Documents. Those assurances were thus demonstrably false and materially misleading.

B. The Securities Defendants Misrepresented the Appraisal Process and LTVs That Were Based Upon Those "Appraisals."

1. The Materiality of Representations Regarding Appraisals and LTVs

729. The LTV of a mortgage loan is the ratio of the amount of the mortgage loan to the value of the mortgaged property when the loan is made. For example, a loan of $200,000 secured by property valued at $500,000 has an LTV of 40%; a loan of $450,000 on the same property has an LTV of 90%. The LTV is one of the most important measures of the risk of a mortgage loan because it is a primary determinant of the likelihood of default. The lower the LTV, the greater the borrower's equity relative to the value of the house. Thus, when an LTV is low, it is less likely that a decline in the property's value will wipe out the owner's equity and give the owner an incentive to stop making mortgage payments and abandon the property (a "strategic default"). Additionally, lower LTVs indicate that the losses on loans that do default will be less severe—*i.e.*, loans with lower LTVs provide a greater equity "cushion" because there is an increased likelihood that the proceeds of foreclosure will cover the unpaid balance on the mortgage loan.

730. Because the numerator (the amount of the loan) is predetermined, the key to an accurate LTV is an accurate denominator (the value of the property). The key to an accurate denominator, in turn, is an accurate appraisal of the property. In a purchase of a property, the denominator in the LTV is usually determined by choosing the lower of the purchase price or the appraised value. In a refinancing or home equity loan, the denominator is always an appraised value because there is no purchase price. Accordingly, an inflated appraisal will inflate the denominator of the LTV. Here, as explained below, *see infra* ¶¶ 739-48, what the Offering

Documents refer to as "appraisals" are in fact not appraisals at all because they fail to satisfy the definition of an appraisal as set forth in controlling regulations. For example, it is not an "appraisal" as that term is defined in the regulations to conclude based on pressure from the mortgage underwriter that a home's value is equal to its purchase price. The originators accepted inflated valuations, whether based on appraisals performed without regard for applicable appraisal standards, or through alternative valuation processes aimed at producing the result necessary to permit the loan to be made.

731. A denominator that is too high will understate, sometimes greatly, the risk of a loan. In the example above, if the property's actual value is $500,000, but is valued incorrectly at $550,000, then the LTV of the $200,000 loan falls from 40% to 36.4%, and the LTV of the $450,000 loan falls from 90% to 81.8%. In either case, an LTV that is based upon an improperly inflated appraisal value understates the risk of the loan.

732. Additionally, it is important to note that at higher LTVs or higher loan amounts, even minor inflations in a property's value can translate into significantly riskier loans. In the example above, although the risk of a loan with an LTV of 40% is greater than the risk of one with an LTV of 36.4%, both imply a relatively safe loan because of the large equity cushions. By contrast, a loan with an LTV of 90% is much riskier than one with an LTV of 81.8%. In the case of a loan with an LTV of 81.8%, there is an equity cushion of 18.2% of the value of the property, while in the case of the 90% LTV loan, the equity cushion is only 10%—just over half as much. Thus, in the example in the preceding paragraph, the $50,000 overstatement in the appraisal has a far more dramatic effect on the risk profile of the $450,000 loan than on the $200,000 loan.

733. Because the riskiness of the underlying loans in the asset pool (including the risk of default and the severity of the losses on default) impacts the risk of the associated PLMBS, aggregate LTV metrics are material to an investor's decision to purchase PLMBS, and specifically, were material to the Bank. The sole source of payment on the Certificates is the cash flow from the mortgage loans that back them. If borrowers fail to make their payments, there is less cash to pay the investors in the Certificates. The safety of the Certificates consequently depends upon the quality of the loans, and a key indicator of loan quality is an LTV resulting from an appraisal conducted in accordance with governing standards. If the LTVs of the mortgage loans in the asset pool of the securitization are not based on appraisals conducted in accordance with governing standards, as the Bank alleges here, *see infra* ¶¶ 739-52, the ratings of the Certificates sold in that securitization will also be incorrect. Investors will therefore be misled about the risk of investing in a particular PLMBS.

734. LTVs also serve as indicators of prepayment patterns—that is, the number of borrowers who pay off their mortgage loans before maturity. LTVs thus predict the expected lives of the loans and the associated PLMBS that are backed by the loans. Prepayment patterns affect many aspects of the PLMBS that are material to the investors purchasing them, such as the life of the Certificate and the timing and amount of cash that the investor will receive during that life.

735. Even seemingly minor differences in the aggregate LTV metrics had a significant effect on both the risk and rating of each Certificate sold in the securitization. For example, assume the Offering Documents assert that the loan pool had a weighted average LTV (*i.e.*, the average of the LTVs for the mortgages in the pool, weighted by each mortgage's principal amount) of 80%. If that true weighted average LTV (after correcting flawed procedures in

"appraisals" that overstated the value of the properties securing the mortgages) were 82%, the Offering Documents' assertion would constitute a material misstatement of the risk profile of the mortgage pool—and the PLMBS it secured—because the equity cushion (and the borrowers' equity interest in the properties) would be eroded by 10 percent.

736. Finally, because an LTV is only as reliable as the appraisal used to determine the value of the collateral, individual and aggregate LTVs are meaningless to PLMBS investors unless the appraisals underlying the LTVs are done in accordance with governing standards. Thus statements regarding the valuation of collateral—including that "appraisals" were conducted in calculating the LTVs and that such appraisals conformed to uniform standards—are material to an investor's decision to purchase PLMBS, and specifically, were material to the Bank:

> Mortgage bankers and investors consider the property appraisal one of the most important documents contained in the loan file since it establishes the value of the property securing the mortgage loan. In fact, investors put review of the appraisal on the same level as the review of credit. The appraisal assists the mortgage banker in assessing the collateral risk . . . . Obviously, the ultimate investor wants to mitigate such risk and relies on the appraisal to ensure that the property falls within the investor's valuation parameters.

Handbook of Mortgage Lending 165 (Mortgage Bankers Ass'n of Am. 2003).

737. Furthermore, assertions that appraisals conformed to the applicable standards are material to PLMBS investors like the Bank because investors like the Bank have no reasonable means of verifying the LTVs asserted in the Offering Documents at the time of sale. When conducted in accordance with governing standards, appraisals and their resulting LTVs are based on knowledge of particular facts that are not available to investors in mortgage-backed securities—an investor simply does not have access to the data, let alone the time and resources, necessary to conduct an independent valuation of each piece of collateral underlying each Certificate.

738. Statements regarding appraiser independence and impartiality are important as they provide assurance that the LTVs were not artificially inflated due to mortgage originator manipulation. Likewise, statements in the Offering Documents that the appraisals conformed to USPAP or Fannie Mae and Freddie Mac standards, including requirements that appraisals be independently and impartially conducted, indicate that the appraisals and the aggregate data included in the Offering Documents based on the appraisals properly assess the value of the collateral, and provide a reliable measure of the risk of the loan pools.

2. Misstatements Regarding Appraisals and LTVs

a. The Offering Documents falsely state that the LTVs were based upon appraisals

739. The Offering Documents contained numerous material untrue or misleading statements regarding the valuation of collateral and the "appraisal" process conducted upon the origination of the mortgages underlying the PLMBS. The Prospectus or Prospectus Supplement for each Certificate states that the LTV represents a "ratio" or "fraction," the numerator of which is the "principal balance" or "principal amount" of the mortgage loan, and the denominator of which is the "lesser" or "least" of (1) the "sales price" or "purchase price" or "selling price" of the mortgaged property and (2) the "appraised value" or "appraisal" or "the appraised value determined in an appraisal" or "the appraised value . . . as established by an appraisal." *See* Appendix VII.

740. These are false statements of material fact because, contrary to the Securities Defendants' representations that the LTVs were based on "appraisals" or "appraised values," in reality the biased and coerced valuations of collateral that the Securities Defendants labeled as "appraisals" failed to meet the federally required definition of "appraisal" applicable to entities that are regulated by the Office of Thrift Supervision (OTS), the Office of the Comptroller of the

Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), or the Board of Governors of the Federal Reserve System (FRB) (collectively the "Bank Regulators"). Thus, the LTVs were not based on appraisals at all as that term is used and understood in the industry.

741. The following originators of the mortgages underlying the PLMBS were regulated by the Bank Regulators:

- Bank of America, National Association, First National Bank of Nevada, and Wells Fargo Bank, National Association, are "national banking associations" chartered with the OCC pursuant to 12 U.S.C. § 21. Therefore, under U.S.C. § 1813(q)(1), the OCC is the "appropriate Federal banking agency" with jurisdiction to regulate these banks.

- Downey Savings and Loan Association, F.A., First Federal Bank of California, IndyMac Bank, F.S.B., Ohio Savings Bank, and Washington Mutual Bank are "federal savings associations" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(5). Pursuant to 12 U.S.C. § 1813(q)(4), the OTS is the "appropriate Federal banking agency" with jurisdiction to regulate these originators.

- First Republic Bank was a "state nonmember bank" within the meaning of 12 U.S.C. § 1813(e). Pursuant to 12 U.S.C. § 1813(q), the FDIC is the "appropriate Federal banking agency" with jurisdiction to regulate this originator.

- GreenPoint Mortgage Funding, Inc., was a subsidiary of North Fork Bank, which was a "state nonmember bank" within the meaning of 12 U.S.C. § 1813(e). Any subsidiary of such a "state nonmember bank" is regulated by the FDIC. *See* 12 U.S.C. § 1831a(d)(1); 12 C.F.R. § 362.4(a).

- Subsidiaries of "bank holding companies" are regulated by the FRB pursuant to 12 U.S.C. §§ 1813(q), 1841(n). *See also* 12 C.F.R. §§ 225.21-225.28. Countrywide Home Loans, Inc., Decision One Mortgage Company LLC, and OwnIt Mortgage Solutions were nonbank subsidiaries of the following "bank holding companies" within the meaning of 12 U.S.C. §§ 1841 and 1843, and thus were regulated by the FRB:

Originator	Controlling "Bank Holding Company"
Countrywide Home Loans, Inc.	Countrywide Financial Corporation[20]
Decision One Mortgage Company, LLC	HSBC North America
OwnIt Mortgage Solutions	Bank of America Corporation

742. Morgan Stanley Mortgage Capital, Inc., was a non-savings association subsidiary of Morgan Stanley, which was a "Thrift Holding Company" or "savings and loan holding company" within the meaning of 12 U.S.C. § 1813(w) and 12 U.S.C. § 1467a(a)(1)(D). A non-savings association subsidiary of a holding company is regulated by the OTS. *See* 12 U.S.C. § 1467a; 12 C.F.R. §§ 584.2, 584.2-1.

743. Credit Suisse Financial Corporation and DLJ Mortgage Capital, Inc., were subsidiaries of Credit Suisse Group, a foreign "financial holding company" pursuant to 12 U.S.C. § 3106(a). *See also* 12 C.F.R. § 225.90. Subsidiaries of "financial holding companies" are regulated by the FRB pursuant to 12 U.S.C. §§ 1813(q), 1841(n).

744. SunTrust Mortgage, Inc. is a subsidiary of SunTrust Bank, which is a "state member bank" within the meaning of 12 U.S.C. § 1813(d). Any subsidiary of a "state member bank" is regulated by the FRB. *See* 12 U.S.C. § 330; 12 U.S.C. § 1831a(d)(1); 12 C.F.R. § 362.4(a).

745. Subsidiaries of "national banking associations" are regulated by the OCC pursuant to 12 U.S.C. § 24a and 12 C.F.R. §§ 5.34, 5.39. Chase Home Finance LLC, First Horizon Home Loan Corporation, National City Mortgage Co., and Wachovia Mortgage

[20]Countrywide Financial Corporation was a "bank holding company" until March 12, 2007.

Corporation were subsidiaries of the following "national banking associations," and hence were regulated by the OCC:

Originator	Controlling "National Banking Association"
Chase Home Finance LLC	JPMorgan Chase Bank, National Association
First Horizon Home Loan Corporation	First Tennessee Bank National Association
National City Mortgage Co.	National City Bank[21]
Wachovia Mortgage Corporation	Wachovia Bank, National Association

746. Each of the Bank Regulators has issued regulations pursuant to Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989, 12 U.S.C. § 1339, that govern the appraisal practices of the institutions they regulate. These regulations define an "appraisal" as a "written statement *independently and impartially prepared* by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s)." 12 C.F.R. § 564.2 (OTS); 12 C.F.R. § 34.42 (OCC); 12 C.F.R. § 323.2 (FDIC); 12 C.F.R. § 225.62 (FRB) (emphasis added). Therefore, by representing that the LTVs were based on "appraisals" of the collateral, the Securities Defendants represented that the LTVs were based on independent and impartial valuations of the collateral.

747. The Bank Regulators define appraiser independence as follows:

> (a) Staff appraisers. If an appraisal is prepared by a staff appraiser, that *appraiser must be independent of the lending, investment, and collection functions* and not involved, except as an appraiser, in the federally related transaction, and *have no direct or indirect interest, financial or otherwise, in the property* . . . .

[21] National City Bank was a national bank until it was acquired by PNC Bank, N.A., on November 11, 2009.

> (b) Fee appraisers. (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and *have no direct or indirect interest, financial or otherwise, in the property or the transaction* . . . .

12 C.F.R. § 564.5 (OTS); 12 C.F.R. § 34.45 (OCC); 12 C.F.R. § 323.5 (FDIC); 12 C.F.R. § 225.65 (FRB) (emphasis added). In 2005 the Bank Regulators further elaborated on the standards for appraiser independence, stating that "[l]oan production staff should not select appraisers." Additionally, the Bank Regulators specified that although loan production staff may use a "revolving, board approved list to select a residential appraiser," the "[s]taff responsible for the development and maintenance of the list should be independent of the loan production process." *See "Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions."* (Questions 3, 5).

748. The Securities Defendants' statements in the Offering Documents are materially misleading because the LTVs were not based on impartial and independent appraisals, but rather were the result of manipulation and coercion by loan production staff. As described above in sections V.B and V.C, the originators' loan production staff pressured and coerced appraisers to inflate values, demanded and obtained the ability to have "business managers" overrule staff and third party appraisers, and routinely fed improper information to appraisers in an effort to manipulate their valuations, all of which served to undermine the independence of the appraisal process. Contrary to the interagency guidance, the originators' lending departments constantly pressured appraisers to increase their valuations, made clear that their continued access to work from these originators depended upon the appraisers coming in "at value," and in some cases simply overruled appraisers that refused to cooperate. The originators ultimately resorted to using lists of approved appraisers that excluded appraisers whose appraisals in the past had come in "too low" and who were unwilling to increase their appraisals to satisfy the lending

departments. All of this resulted in appraisers having an indirect financial interest in each property they appraised, since their ability to obtain future work was impacted by their willingness to come in "at value" for each property they appraised. Simply put, as a result of this coercion, appraisers provided appraisals that they did not believe accurately reflected the value of the appraised property, but nevertheless was sufficiently high—i.e., "at value"—to enable the deal to close. Because these valuations were not "independently and impartially prepared" as required by the federal definition of "appraisal," the Securities Defendants made false statements of material fact in the Offering Documents by stating that the LTVs were based on "appraisals" or "appraised values."

b. Misstatements regarding the standards to which the purported "appraisals" conformed

749. In addition, the Offering Documents contained materially untrue or misleading statements and omissions regarding the standards to which the purported "appraisals" conformed. The underwriting guidelines for each of the following originators—as stated in the Offering Documents—state that the appraisals are required to conform to USPAP: American Home Mortgage Corp; Ameriquest Mortgage Company; Aurora Loan Services LLC; Lehman Brothers Bank, F.S.B.; Bear Stearns Residential Mortgage Corporation; Credit Suisse Financial Corporation; DLJ Mortgage Capital; Decision One Mortgage; Downey Savings and Loan Association, F.A., EMC Mortgage Corporation; First Horizon Home Loan Corporation; First National Bank of Nevada; GreenPoint Mortgage Funding, Inc.; IndyMac Bank, F.S.B.; Morgan Stanley Mortgage Capital, Inc.; MortgageIT, Inc.; National City Mortgage Co.; Silver State Mortgage; Silver State Financial Services, Inc.; and Washington Mutual Mortgage Securities Corp. *See* Appendix III.

750. Additionally, the underwriting guidelines for each of the following originators—as stated in the Offering Documents—state that the appraisals conformed to Fannie Mae and Freddie Mac appraisal standards: Countrywide; Just Mortgage, Inc.; Metrocities Mortgage LLC; PHH Mortgage Corporation; SouthStar Funding LLC; Thornburg Mortgage Home Loans, Inc.; and WinStar Mortgage Partners, Inc. *See* Appendix III. The Fannie Mae and Freddie Mac appraisal standards require that appraisals be conducted in accordance with USPAP. *See* 2006 Single Family Selling Guide, Part XI, 102.02.

751. These statements in the Offering Documents were materially misleading because the mortgage originators routinely accepted—and in fact overtly sought—valuations of collateral that were conducted in violation of the appraisal standards of USPAP, Fannie Mae and Freddie Mac. For example, as detailed above, the USPAP requires that an appraiser "perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests." Similarly, the Fannie Mae appraisal standards provide that "it is essential that a lender obtain an independent, disinterested examination." As alleged in paragraph 748 and further described in sections V.B and V.C, the appraisals used by the mortgage originators were the product of manipulation and coercion and thus were not impartial, objective, and independent as required by USPAP.

752. Additionally, USPAP precludes acceptance of an appraisal assignment where compensation is contingent upon "reporting a predetermined result" or "a direction in assignment results that favors the cause of a client." Similarly, it is an "unacceptable appraisal practice" under Fannie Mae standards to develop and report an appraisal "that favors either the cause of the client . . . [or] the attainment of a specific result . . . in order to receive compensation . . . and/or in anticipation of receiving future assignments." However, these are precisely the

conditions that loan production staff for the mortgage originators forced upon appraisers when they repeatedly pressured appraisers to increase their valuations, implicitly or explicitly linked the receipt of continued work to "at value" appraisals, and even threatened to place appraisers on a blacklist if they did not "come back at value."

c. Misstatements regarding aggregate LTVs

753. Because the LTVs were not based on "appraisals" conducted in conformance with applicable appraisal standards, the statements in the Offering Documents regarding the aggregate LTVs of the mortgage pools were materially untrue and misleading. These statements concern the extent to which loans in the pools underlying each Certificate had LTVs in excess of 100%, 90% or 80%, and the weighted average LTV of the pools. Section VI.B.3 below sets forth those materially untrue and misleading statements as well as the reasons each is misleading.

3. Evidence Demonstrating Misstatements about Appraisals and LTVs in the Offering Documents

a. Government investigations, press reports, and confidential witnesses demonstrate systemic and pervasive appraisal manipulation by the mortgage originators

754. As alleged in detail above, *see supra* §§ V.B and V.C, the mortgage originators' failure to obtain accurate appraisals for the loans backing the PLMBS has been well documented in government investigations and lawsuits, press reports, and statements of confidential witnesses. Furthermore, as alleged above, this evidence demonstrates that the mortgage originators manipulated the appraisal process and undermined the independence and impartiality of appraisers that is crucial to the determination of credible collateral valuations. This evidence—and the allegations herein based on this evidence—demonstrates that the statements in the Offering Documents regarding the appraisals and appraisal process are false and misleading.

755. The Offering Documents misrepresented that the LTVs were based upon appraisals conducted pursuant to governing standards. In fact, the "appraisals" underlying the LTVs were not appraisals at all—they were not independent assessments of a property's value, but rather were simply coerced or otherwise misleading statements from appraisers to enable loans to close.

756. As set forth above, many of the Depositor, Underwriter, and Sponsor Defendants, by virtue of being vertically integrated with the mortgage originators that originated the loans underlying the Certificates purchased by the Bank, *see supra* § V.D.1, should have known that the appraisals were inflated and were the product of manipulation and coercion in violation of the requirements of the USPAP.

b. Analysis of loans that backed the PLMBS purchased by the Bank demonstrate that appraisals were materially inflated and the LTVs were materially understated.

757. As part of its investigation of the claims asserted herein, the Bank has analyzed the LTVs of mortgage loans that secure each of the PLMBS that it purchased. The Bank has tested the LTVs as represented in the Offering Documents against the LTVs that would have been calculated had the properties been valued at the time of loan origination in accordance with accepted and reliable appraisal practices (as was represented in the Offering Documents). To perform this analysis, the Bank has employed an industry-standard automated valuation model ("AVM") that reliably calculates the values of the subject properties as of the date of mortgage loan origination. The AVM draws upon a database of 500 million sales covering ZIP codes that represent 98.7% of the homes, occupied by 99.8% of the population, in the United States, and calculates a valuation based on criteria including the type, condition, and location of the property, as well as the actual sale prices of comparable properties in the same locale shortly before the specified date. The extensive independent testing of the AVM confirms that the AVM

is highly reliable and accurate means of determining the value that would have been determined for a property as of a historical date had that property been valued in accordance with accepted and reliable appraisal practices.

758. This analysis demonstrates stark misstatements in the LTV information as represented in the Offering Documents. Because the LTV calculation is simply a ratio of loan amount to value, and because the loan amounts are unquestioned, the reason for the discrepancies is inescapable: the LTVs represented in the Offering Documents were the result of inflated and unreliable collateral valuations that were misleadingly labeled as "appraisals." Had the collateral valuation practices comported with the Bank Regulators' definition of "appraisal" and the interagency guidance on appraiser independence, as well as with and with the USPAP and Fannie Mae/ Freddie Mac standards as represented in the Offering Documents, the resulting aggregate LTVs would have been materially different from those represented in the Offering Documents and the Certificates would not have been triple-A rated.

759. The Offering Documents' misrepresentations about the aggregate LTV were material to the Bank's decision to purchase the PLMBS. Moreover, because they should have known of the manipulation of the appraisal process in the origination of mortgage loans as described herein, *see supra* § VI.B.3.a, the Securities Defendants should have known that the collateral valuations were unreliable and that statements made in the Offering Documents based in whole or in part on the collateral values, including statements regarding LTVs and credit ratings, were false and misleading.

760. The following summarizes four types of material LTV-related understatements contained in the Offering Documents: the percentage of loans with over 100% LTV; the percentage of loans with over 90% LTV; the percentage of loans with over 80% LTV; and the

weighted average LTV for the mortgage pool. Each is a distinct and significant representation in the Offering Documents.

761. The 100% LTV representation is obviously significant because loans with over 100% LTV afford the lender no equity cushion and leave the lender with inadequate collateral from the outset. The Offering Documents consistently assured the Bank that there were no such loans in the mortgage pools. As the following table indicates, the recalculated LTVs (which, based on the AVM, indicate what the reported LTV would have been had proper appraisal methods been employed) indicate that in each pool there was a material number of mortgage loans with LTVs in excess of 100%:

Certificate	% of Loans with Greater than 100% LTV Per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Offering Documents Understatement
ARMT 2006-1 6A1	0.00%	15.51%	15.51%
ARMT 2006-2 6A1	0.00%	14.88%	14.88%
ARMT 2006-3 4A2	0.00%	11.90%	11.90%
ARMT 2007-1 5A1	0.00%	16.98%	16.98%
ARMT 2007-2 2A21	0.00%	20.75%	20.75%
AHMA 2006-6 A1A	0.00%	27.02%	27.02%
AHMA 2007-2 A1	0.00%	39.66%	39.66%
AHMA 2007-5 A1	0.00%	39.35%	39.35%
BCAP 2006-AA1 A1	0.00%	14.40%	14.40%
BSMF 2006-AR1 1A1	0.00%	11.72%	11.72%
BSMF 2006-AR2 1A1	0.00%	16.30%	16.30%
BSMF 2006-AR3 1A1	0.00%	15.38%	15.38%
BSMF 2006-AR5 1A1	0.00%	14.18%	14.18%
BSMF 2007-AR1 1A1	0.00%	21.17%	21.17%
BSMF 2007-AR4 1A1	0.00%	23.85%	23.85%
BSMF 2007-AR5 1A1A	0.00%	20.45%	20.45%
BALTA 2005-8 11A1	0.00%	10.20%	10.20%
BALTA 2005-9 11A1	0.00%	13.17%	13.17%
BALTA 2005-10 11A1	0.19%	14.33%	14.14%
BALTA 2006-1 11A1	0.04%	14.53%	14.49%
BALTA 2006-2 11A1	0.00%	12.70%	12.70%

Certificate	% of Loans with Greater than 100% LTV Per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Offering Documents Understatement
BALTA 2006-3 1A1	0.00%	13.08%	13.08%
BALTA 2006-4 11A1	0.00%	14.35%	14.35%
BALTA 2006-5 1A1	0.00%	13.01%	13.01%
BALTA 2006-6 1A1	0.00%	11.84%	11.84%
BALTA 2006-7 1A1	0.00%	17.81%	17.81%
BALTA 2007-1 1A1	0.00%	18.86%	18.86%
BALTA 2007-2 1A1	0.00%	24.26%	24.26%
BALTA 2007-3 1A1	0.00%	26.37%	26.37%
BAFC 2005-H 7A1	0.00%	8.84%	8.84%
BAFC 2006-D 1A1	0.00%	13.27%	13.27%
CMLTI 2005-9 1A1	0.00%	23.61%	23.61%
CMALT 2007-A4 1A7	0.00%	11.36%	11.36%
CWALT 2005-16 A4	0.00%	14.29%	14.29%
CWALT 2005-86CB A10	0.00%	5.47%	5.47%
CWALT 2006-OA16 A2	0.00%	18.89%	18.89%
CWALT 2006-OA8 1A1	0.00%	19.26%	19.26%
CWALT 2007-OA4 A1	0.00%	20.86%	20.86%
CWALT 2007-OA9 A1	0.00%	21.37%	21.37%
CWHL 2005-2 2A1	0.00%	4.88%	4.88%
DBALT 2006-AR2 1A1	0.00%	11.85%	11.85%
DBALT 2006-AR3 A2	0.00%	16.11%	16.11%
DBALT 2006-AR4 A1	0.00%	11.33%	11.33%
DBALT 2006-AR5 1A1	0.00%	12.50%	12.50%
DBALT 2007-AR1 A1	0.00%	8.96%	8.96%
DBALT 2007-AR3 2A1	0.00%	19.44%	19.44%
GPMF 2005-AR1 A2	0.00%	7.38%	7.38%
GPMF 2005-AR2 A1	0.00%	5.95%	5.95%
GPMF 2005-AR4 4A1A	0.00%	7.86%	7.86%
HVMLT 2005-10 2A1A	0.00%	10.94%	10.94%
HVMLT 2006-7 2A1A	0.00%	28.82%	28.82%
HVMLT 2006-8 2A1A	0.00%	15.84%	15.84%
HVMLT 2007-1 2A1A	0.00%	30.14%	30.14%
IMSA 2005-2 A1	0.00%	11.59%	11.59%
IMSA 2006-2 1A2A	0.00%	9.81%	9.81%
IMM 2005-7 A1	0.00%	15.54%	15.54%
INDX 2005-AR4 2A1A	0.00%	10.17%	10.17%
INDX 2005-AR8 2A1A	0.00%	4.23%	4.23%

Certificate	% of Loans with Greater than 100% LTV Per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Offering Documents Understatement
INDX 2006-AR19 1A1	0.00%	5.19%	5.19%
JPMMT 2005-ALT1 2A1	0.00%	12.36%	12.36%
JPALT 2006-A1 1A1	0.00%	17.26%	17.26%
JPALT 2006-A2 1A1	0.00%	14.29%	14.29%
JPALT 2006-A3 1A1	0.00%	16.38%	16.38%
JPALT 2007-A2 12A1	0.00%	20.32%	20.32%
LUM 2005-1 A1	0.00%	9.09%	9.09%
LUM 2006-6 A1	0.00%	14.38%	14.38%
LUM 2006-7 2A1	0.00%	23.23%	23.23%
LUM 2007-2 1A1	.0017%	23.50%	23.33%
LXS 2005-8 1A2	0.00%	10.60%	10.49%
LXS 2006-15 A1	0.00%	22.09%	21.95%
LXS 2007-9 1A1	0.00%	10.64%	12.24%
LXS 2007-11 A1	0.00%	23.36%	25.93%
MARM 2005-7 2A1	0.00%	10.26%	10.26%
MARM 2005-8 1A1	0.00%	10.64%	10.64%
MANA 2007-A3 A2A	0.00%	18.75%	18.75%
MSM 2006-13AX A1	0.00%	10.25%	10.25%
MSM 2006-16AX 2A1	0.00%	9.35%	9.35%
MSM 2006-8AR 1A2	0.00%	14.17%	14.17%
MSM 2006-9AR A3	0.00%	9.96%	9.96%
MSM 2007-2AX 2A2	0.00%	10.83%	10.83%
MSM 2007-5AX 2A2	0.00%	20.72%	20.72%
MSM 2007-7AX 2A1	0.00%	16.10%	16.10%
MHL 2006-1 1A2	0.00%	9.76%	9.76%
NAA 2007-1 2A1	0.00%	18.44%	18.44%
NAA 2007-3 A1	0.00%	16.14%	16.14%
NAA 2006-AF2 5A1	0.00%	20.24%	20.24%
NAA 2006-AR4 A2	0.00%	10.67%	10.67%
RALI 2005-QA9 NB41	0.00%	7.69%	7.69%
RALI 2006-QA2 1A1	0.00%	9.30%	9.30%
RALI 2006-QA3 A1	0.00%	7.19%	7.19%
RALI 2006-QO10 A1	0.00%	25.63%	25.63%
RALI 2007-QS6 A29	0.00%	12.70%	12.70%
SAMI 2005-AR2 1A1	0.00%	7.32%	7.32%
SAMI 2005-AR3 1A1	0.00%	13.68%	13.68%
SAMI 2005-AR6 2A1	0.00%	12.23%	12.23%

Certificate	% of Loans with Greater than 100% LTV Per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Offering Documents Understatement
SAMI 2006-AR4 4A1	0.00%	17.43%	17.43%
SAMI 2006-AR6 1A1	0.00%	20.44%	20.44%
SAMI 2006-AR7 A1A	0.00%	19.66%	19.66%
TMST 2007-1 A2A	0.00%	21.11%	21.11%

762. The following table compares the representations in the Offering Documents with respect to the percentage of the mortgages in the subject pools with LTVs greater than 90%, to the percentages of mortgages in the pools in which the LTV calculated using the AVM exceeds 90%. An LTV in excess of 90% represents an extremely risky mortgage for the investor, as the borrower has little equity in the property and there is a significant risk that upon foreclosure the collateral will be inadequate to pay the debt. Accordingly, for each of the Certificates listed in the following table, the statement regarding the mortgages in the subject pool with LTVs in excess of 90% was materially misleading.

Certificate	% of Loans with Greater than 90% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 90% LTV	Offering Documents Understatement
ARMT 2006-1 6A1	2.83%	30.6%	27.8%
ARMT 2006-2 6A1	3.24%	32.5%	29.3%
ARMT 2006-3 4A2	2.36%	29.0%	26.7%
ARMT 2007-1 5A1	5.40%	37.2%	31.8%
ARMT 2007-2 2A21	5.73%	41.5%	35.8%
AHMA 2006-6 A1A	6.66%	49.4%	42.7%
AHMA 2007-2 A1	11.73%	63.5%	51.8%
AHMA 2007-5 A1	0.09%	57.8%	57.7%
BCAP 2006-AA1 A1	0.46%	37.6%	37.1%
BSMF 2006-AR1 1A1	0.25%	32.8%	32.6%
BSMF 2006-AR2 1A1	0.06%	34.8%	34.8%
BSMF 2006-AR3 1A1	0.00%	40.8%	40.8%
BSMF 2006-AR5 1A1	0.09%	38.8%	38.7%

Certificate	% of Loans with Greater than 90% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 90% LTV	Offering Documents Understatement
BSMF 2007-AR1 1A1	0.14%	51.1%	51.0%
BSMF 2007-AR4 1A1	0.44%	44.0%	43.6%
BSMF 2007-AR5 1A1A	0.10%	41.7%	41.6%
BALTA 2005-8 11A1	0.69%	23.1%	22.4%
BALTA 2005-9 11A1	1.50%	29.6%	28.1%
BALTA 2005-10 11A1	1.48%	27.5%	26.0%
BALTA 2006-1 11A1	1.52%	33.3%	31.8%
BALTA 2006-2 11A1	0.33%	34.4%	34.1%
BALTA 2006-3 1A1	1.26%	31.8%	30.5%
BALTA 2006-4 11A1	0.83%	38.3%	37.4%
BALTA 2006-5 1A1	0.50%	31.8%	31.3%
BALTA 2006-6 1A1	0.21%	26.2%	26.0%
BALTA 2006-7 1A1	1.98%	40.5%	38.5%
BALTA 2007-1 1A1	6.93%	37.7%	30.8%
BALTA 2007-2 1A1	10.76%	41.7%	31.0%
BALTA 2007-3 1A1	4.38%	46.2%	41.8%
BAFC 2005-H 7A1	1.77%	18.4%	16.6%
BAFC 2006-D 1A1	0.00%	24.8%	24.8%
CMLTI 2005-9 1A1	0.00%	44.4%	44.4%
CMALT 2007-A4 1A7	0.09%	31.1%	31.0%
CWALT 2005-16 A4	0.94%	22.4%	21.5%
CWALT 2005-86CB A10	1.72%	14.1%	12.3%
CWALT 2006-OA16 A2	3.93%	38.9%	35.0%
CWALT 2006-OA8 1A1	2.10%	37.8%	35.7%
CWALT 2007-OA4 A1	1.77%	42.3%	40.6%
CWALT 2007-OA9 A1	0.95%	42.7%	41.8%
CWHL 2005-2 2A1	1.27%	16.3%	15.0%
DBALT 2006-AR2 1A1	2.73%	26.8%	24.0%
DBALT 2006-AR3 A2	0.54%	32.9%	32.3%
DBALT 2006-AR4 A1	1.62%	27.3%	25.7%
DBALT 2006-AR5 1A1	1.72%	29.8%	28.1%
DBALT 2007-AR1 A1	0.71%	31.3%	30.6%
DBALT 2007-AR3 2A1	3.45%	33.3%	29.9%
GPMF 2005-AR1 A2	0.09%	19.6%	19.5%
GPMF 2005-AR2 A1	0.09%	17.9%	17.8%
GPMF 2005-AR4 4A1A	0.27%	22.7%	22.4%
HVMLT 2005-10 2A1A	1.43%	24.0%	22.5%

Certificate	% of Loans with Greater than 90% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 90% LTV	Offering Documents Understatement
HVMLT 2006-7 2A1A	17.28%	47.6%	30.4%
HVMLT 2006-8 2A1A	7.68%	32.7%	25.0%
HVMLT 2007-1 2A1A	2.80%	52.1%	49.3%
IMSA 2005-2 A1	4.18%	24.2%	20.0%
IMSA 2006-2 1A2A	7.63%	22.9%	15.3%
IMM 2005-7 A1	4.43%	33.2%	28.7%
INDX 2005-AR4 2A1A	0.35%	15.3%	14.9%
INDX 2005-AR8 2A1A	0.00%	11.3%	11.3%
INDX 2006-AR19 1A1	1.44%	25.3%	23.9%
JPMMT 2005-ALT1 2A1	9.89%	24.7%	14.8%
JPALT 2006-A1 1A1	10.47%	38.7%	28.2%
JPALT 2006-A2 1A1	2.62%	34.7%	32.1%
JPALT 2006-A3 1A1	3.47%	25.9%	22.4%
JPALT 2007-A2 12A1	2.67%	33.5%	30.8%
LUM 2005-1 A1	9.02%	18.2%	9.2%
LUM 2006-6 A1	2.71%	36.3%	33.6%
LUM 2006-7 2A1	2.56%	46.5%	43.9%
LUM 2007-2 1A1	0.00%	41.0%	41.0%
LXS 2005-8 1A2	0.28%	40.85%	24.20%
LXS 2006-15 A1	15.50%	41.10%	27.18%
LXS 2007-9 1A1	0.41%	32.98%	30.20%
LXS 2007-11 A1	0.13%	38.32%	46.17%
MARM 2005-7 2A1	2.32%	21.8%	19.5%
MARM 2005-8 1A1	2.61%	25.5%	22.9%
MANA 2007-A3 A2A	2.38%	36.5%	34.1%
MSM 2006-13AX A1	1.39%	28.3%	26.9%
MSM 2006-16AX 2A1	1.91%	25.2%	23.3%
MSM 2006-8AR 1A2	0.43%	28.3%	27.9%
MSM 2006-9AR A3	0.88%	24.7%	23.8%
MSM 2007-2AX 2A2	2.35%	27.5%	25.2%
MSM 2007-5AX 2A2	5.18%	37.8%	32.7%
MSM 2007-7AX 2A1	4.86%	32.2%	27.3%
MHL 2006-1 1A2	0.66%	17.1%	16.4%
NAA 2007-1 2A1	3.96%	37.5%	33.5%
NAA 2007-3 A1	1.21%	40.7%	39.5%
NAA 2006-AF2 5A1	16.96%	38.1%	21.1%
NAA 2006-AR4 A2	2.39%	26.7%	24.3%

Certificate	% of Loans with Greater than 90% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 90% LTV	Offering Documents Understatement
RALI 2005-QA9 NB41	0.00%	23.1%	23.1%
RALI 2006-QA2 1A1	1.18%	25.0%	23.8%
RALI 2006-QA3 A1	0.51%	20.9%	20.4%
RALI 2006-QO10 A1	2.24%	44.4%	42.1%
RALI 2007-QS6 A29	2.50%	32.8%	30.3%
SAMI 2005-AR2 1A1	2.81%	20.3%	17.5%
SAMI 2005-AR3 1A1	2.51%	22.1%	19.6%
SAMI 2005-AR6 2A1	2.14%	24.5%	22.3%
SAMI 2006-AR4 4A1	2.30%	36.7%	34.4%
SAMI 2006-AR6 1A1	2.90%	40.3%	37.4%
SAMI 2006-AR7 A1A	3.17%	41.6%	38.4%
TMST 2007-1 A2A	1.17%	33.9%	32.7%

763. The following table compares the representations in the Offering Documents with respect to the percentage of the mortgages in the subject pool with LTVs greater than 80%, to the percentages of mortgages in the pools in which the LTV calculated using the AVM exceeds 80%. The 80% LTV metric is very significant to a PLMBS investor such as the Bank, because in traditional mortgage underwriting an LTV in excess of 80% was generally considered as affording the lender little value cushion to protect against borrower default and loss upon foreclosure. Accordingly, for each of the Certificates listed in the following table, the statement regarding the percentage of mortgages in the subject pool with LTVs in excess of 80% was materially misleading.

Certificate	% of Loans with Greater than 80% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 80% LTV	Offering Documents Understatement
ARMT 2006-1 6A1	6.36%	66.1%	59.8%
ARMT 2006-2 6A1	8.25%	64.4%	56.1%
ARMT 2006-3 4A2	7.29%	62.6%	55.3%
ARMT 2007-1 5A1	9.43%	70.9%	61.5%
ARMT 2007-2 2A21	12.31%	73.8%	61.5%
AHMA 2006-6 A1A	24.31%	72.5%	48.2%
AHMA 2007-2 A1	40.71%	82.7%	42.0%
AHMA 2007-5 A1	42.04%	77.8%	35.7%
BCAP 2006-AA1 A1	2.73%	72.8%	70.1%
BSMF 2006-AR1 1A1	1.76%	76.6%	74.8%
BSMF 2006-AR2 1A1	4.23%	78.5%	74.3%
BSMF 2006-AR3 1A1	4.55%	78.5%	73.9%
BSMF 2006-AR5 1A1	3.91%	76.9%	73.0%
BSMF 2007-AR1 1A1	3.14%	84.7%	81.5%
BSMF 2007-AR4 1A1	2.01%	70.6%	68.6%
BSMF 2007-AR5 1A1A	2.24%	67.4%	65.2%
BALTA 2005-8 11A1	2.58%	59.2%	56.6%
BALTA 2005-9 11A1	3.80%	60.1%	56.3%
BALTA 2005-10 11A1	4.11%	55.8%	51.7%
BALTA 2006-1 11A1	3.91%	61.5%	57.6%
BALTA 2006-2 11A1	1.68%	65.1%	63.4%
BALTA 2006-3 1A1	3.65%	68.2%	64.6%
BALTA 2006-4 11A1	2.60%	72.7%	70.1%
BALTA 2006-5 1A1	1.80%	68.7%	66.9%
BALTA 2006-6 1A1	1.04%	62.0%	61.0%
BALTA 2006-7 1A1	3.61%	72.9%	69.3%
BALTA 2007-1 1A1	10.09%	69.3%	59.2%
BALTA 2007-2 1A1	15.50%	74.9%	59.4%
BALTA 2007-3 1A1	8.04%	80.2%	72.2%
BAFC 2005-H 7A1	4.24%	51.0%	46.8%
BAFC 2006-D 1A1	0.00%	59.3%	59.3%
CMLTI 2005-9 1A1	46.59%	68.1%	21.5%
CMALT 2007-A4 1A7	3.34%	60.6%	57.3%
CWALT 2005-16 A4	4.49%	52.0%	47.6%
CWALT 2005-86CB A10	4.67%	45.3%	40.6%
CWALT 2006-OA16 A2	8.76%	64.4%	55.7%
CWALT 2006-OA8 1A1	9.08%	65.2%	56.1%

Certificate	% of Loans with Greater than 80% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 80% LTV	Offering Documents Understatement
CWALT 2007-OA4 A1	8.74%	64.4%	55.7%
CWALT 2007-OA9 A1	3.78%	66.7%	62.9%
CWHL 2005-2 2A1	2.71%	47.2%	44.4%
DBALT 2006-AR2 1A1	10.53%	55.9%	45.4%
DBALT 2006-AR3 A2	2.01%	61.7%	59.7%
DBALT 2006-AR4 A1	4.61%	64.0%	59.4%
DBALT 2006-AR5 1A1	3.33%	64.9%	61.6%
DBALT 2007-AR1 A1	1.14%	65.7%	64.5%
DBALT 2007-AR3 2A1	6.19%	74.3%	68.1%
GPMF 2005-AR1 A2	2.01%	55.7%	53.7%
GPMF 2005-AR2 A1	2.35%	58.3%	56.0%
GPMF 2005-AR4 4A1A	2.59%	57.2%	54.6%
HVMLT 2005-10 2A1A	5.69%	51.0%	45.4%
HVMLT 2006-7 2A1A	22.32%	74.1%	51.8%
HVMLT 2006-8 2A1A	10.95%	58.4%	47.5%
HVMLT 2007-1 2A1A	4.97%	80.8%	75.9%
IMSA 2005-2 A1	13.30%	54.6%	41.3%
IMSA 2006-2 1A2A	11.00%	50.5%	39.5%
IMM 2005-7 A1	12.96%	65.8%	52.8%
INDX 2005-AR4 2A1A	1.55%	37.3%	35.7%
INDX 2005-AR8 2A1A	0.24%	39.4%	39.2%
INDX 2006-AR19 1A1	5.21%	60.4%	55.2%
JPMMT 2005-ALT1 2A1	15.45%	57.3%	41.9%
JPALT 2006-A1 1A1	23.08%	62.5%	39.4%
JPALT 2006-A2 1A1	7.21%	69.4%	62.2%
JPALT 2006-A3 1A1	11.58%	63.8%	52.2%
JPALT 2007-A2 12A1	6.72%	67.7%	61.0%
LUM 2005-1 A1	15.57%	51.5%	35.9%
LUM 2006-6 A1	8.94%	58.9%	50.0%
LUM 2006-7 2A1	21.78%	73.7%	52.0%
LUM 2007-2 1A1	0.00%	74.5%	74.5%
LXS 2005-8 1A2	1.76%	57.95%	54.18%
LXS 2006-15 A1	19.61%	69.94%	51.12%
LXS 2007-9 1A1	2.04%	75.53%	71.43%
LXS 2007-11 A1	0.93%	75.70%	84.26%
MARM 2005-7 2A1	6.95%	52.6%	45.6%
MARM 2005-8 1A1	4.58%	54.3%	49.7%

Certificate	% of Loans with Greater than 80% LTV Per the Offering Documents	Recalculated % of Loans with Greater than 80% LTV	Offering Documents Understatement
MANA 2007-A3 A2A	4.39%	74.0%	69.6%
MSM 2006-13AX A1	4.86%	67.2%	62.4%
MSM 2006-16AX 2A1	4.42%	61.2%	56.7%
MSM 2006-8AR 1A2	3.43%	60.7%	57.3%
MSM 2006-9AR A3	3.67%	66.2%	62.6%
MSM 2007-2AX 2A2	5.62%	57.5%	51.9%
MSM 2007-5AX 2A2	9.55%	70.7%	61.2%
MSM 2007-7AX 2A1	7.43%	72.0%	64.6%
MHL 2006-1 1A2	1.97%	69.5%	67.5%
NAA 2007-1 2A1	7.78%	72.8%	65.0%
NAA 2007-3 A1	2.98%	71.2%	68.2%
NAA 2006-AF2 5A1	22.82%	62.5%	39.7%
NAA 2006-AR4 A2	4.66%	68.4%	63.8%
RALI 2005-QA9 NB41	0.84%	63.5%	62.6%
RALI 2006-QA2 1A1	3.73%	61.6%	57.9%
RALI 2006-QA3 A1	2.89%	55.4%	52.5%
RALI 2006-QO10 A1	5.68%	71.3%	65.6%
RALI 2007-QS6 A29	8.61%	65.6%	57.0%
SAMI 2005-AR2 1A1	8.09%	43.1%	35.0%
SAMI 2005-AR3 1A1	7.83%	55.8%	48.0%
SAMI 2005-AR6 2A1	3.81%	54.0%	50.1%
SAMI 2006-AR4 4A1	11.70%	67.0%	55.3%
SAMI 2006-AR6 1A1	11.54%	73.5%	61.9%
SAMI 2006-AR7 A1A	11.62%	77.0%	65.3%
TMST 2007-1 A2A	2.50%	57.8%	55.3%

764. The following table lists mortgage pools securing the PLMBS purchased by the Bank in which the representation contained in the related Offering Documents with respect to the weighted average LTV of the mortgage pool securing those PLMBS was materially understated. The weighted average LTV representation is significant because it provides the investor with an important gauge as to the overall riskiness of the mortgage pool.

Certificate	Weighted Average LTV Per Prospectus	AVM Calculated Weighted Average LTV	Offering Documents Understatement
AHMA 2006-6 A1A	76.73%	87.13%	10.40%
AHMA 2007-2 A1	79.48%	93.68%	14.20%
AHMA 2007-5 A1	79.04%	90.60%	11.56%
ARMT 2006-1 6A1	77.47%	83.58%	6.11%
ARMT 2006-2 6A1	76.31%	82.78%	6.47%
ARMT 2006-3 4A2	77.51%	83.60%	6.09%
ARMT 2007-1 5A1	78.00%	87.11%	9.11%
ARMT 2007-2 2A21	78.95%	86.99%	8.04%
BAFC 2006-D 1A1	75.94%	80.51%	4.57%
BALTA 2005-10 11A1	77.21%	82.67%	5.46%
BALTA 2005-8 11A1	78.08%	82.53%	4.45%
BALTA 2005-9 11A1	77.70%	83.53%	5.83%
BALTA 2006-1 11A1	75.42%	83.94%	8.52%
BALTA 2006-2 11A1	77.52%	84.70%	7.18%
BALTA 2006-3 1A1	77.32%	83.35%	6.03%
BALTA 2006-4 11A1	75.20%	86.01%	10.81%
BALTA 2006-4 13A1	77.38%	84.55%	7.17%
BALTA 2006-5 1A1	76.69%	84.39%	7.70%
BALTA 2006-6 1A1	75.69%	83.76%	8.07%
BALTA 2006-7 1A1	75.47%	87.29%	11.82%
BALTA 2007-1 1A1	78.11%	87.23%	9.12%
BALTA 2007-2 1A1	78.86%	90.74%	11.88%
BALTA 2007-3 1A1	77.28%	92.84%	15.56%
BCAP 2006-AA1 A1	74.18%	84.81%	10.63%
BSMF 2006-AR1 1A1	77.78%	85.92%	8.14%
BSMF 2006-AR2 1A1	77.83%	85.41%	7.58%
BSMF 2006-AR3 1A1	77.40%	88.22%	10.82%
BSMF 2006-AR5 1A1	77.64%	86.55%	8.91%
BSMF 2007-AR1 1A1	77.45%	89.60%	12.15%
BSMF 2007-AR4 1A1	74.02%	82.27%	8.25%
BSMF 2007-AR5 1A1A	72.43%	82.01%	9.58%
CMALT 2007-A4 1A7	71.91%	78.89%	6.98%
CWALT 2005-16 A4	74.09%	78.99%	4.90%
CWALT 2006-OA16 A2	75.12%	85.05%	9.93%
CWALT 2006-OA8 1A1	75.31%	82.62%	7.31%
CWALT 2007-OA4 A1	73.10%	87.35%	14.25%
CWALT 2007-OA9 A1	74.29%	83.45%	9.16%

Certificate	Weighted Average LTV Per Prospectus	AVM Calculated Weighted Average LTV	Offering Documents Understatement
CWHL 2005-2 2A1	73.70%	75.35%	1.65%
DBALT 2006-AR2 1A1	76.43%	80.29%	3.86%
DBALT 2006-AR3 A2	76.12%	84.95%	8.83%
DBALT 2006-AR4 A1	75.99%	82.84%	6.85%
DBALT 2006-AR5 1A1	76.52%	83.27%	6.75%
DBALT 2007-AR1 A1	75.65%	82.65%	7.00%
DBALT 2007-AR3 2A1	75.83%	85.65%	9.82%
GPMF 2005-AR4 4A1A	76.02%	79.08%	3.06%
HVMLT 2005-10 2A1A	74.63%	80.46%	5.83%
HVMLT 2006-7 2A1A	75.27%	88.01%	12.74%
HVMLT 2006-8 2A1A	75.14%	79.36%	4.22%
HVMLT 2007-1 2A1A	74.64%	90.75%	16.11%
IMM 2005-7 A1	76.90%	81.11%	4.21%
JPALT 2006-A1 1A1	77.87%	82.29%	4.42%
JPALT 2006-A2 1A1	76.88%	84.82%	7.94%
JPALT 2006-A3 1A1	76.03%	82.66%	6.63%
JPALT 2007-A2 12A1	76.22%	88.06%	11.84%
LUM 2005-1 A1	76.15%	78.46%	2.31%
LUM 2006-3 11A1	76.97%	80.57%	3.60%
LUM 2006-6 A1	73.96%	81.61%	7.65%
LUM 2006-7 2A1	76.56%	85.93%	9.37%
LUM 2007-2 1A1	79.01%	87.20%	8.19%
LXS 2005-8 1A2	75.89%	81.62%	5.73%
LXS 2006-15 A1	80.57%	87.87%	7.30%
LXS 2007-9 1A1	75.14%	85.29%	6.15%
LXS 2007-11 A1	78.34%	87.97%	9.63%
MANA 2007-A3 A2A	77.34%	83.25%	5.91%
MARM 2005-7 2A1	75.25%	78.92%	3.67%
MARM 2005-8 1A1	71.84%	80.25%	8.41%
MHL 2006-1 1A2	76.92%	82.98%	6.06%
MSM 2006-13AX A1	77.52%	83.58%	6.06%
MSM 2006-16AX 2A1	76.78%	81.16%	4.38%
MSM 2006-8AR 1A2	74.58%	80.70%	6.12%
MSM 2006-9AR A3	76.83%	82.27%	5.44%
MSM 2007-2AX 2A2	76.98%	80.47%	3.49%
MSM 2007-5AX 2A2	77.44%	87.69%	10.25%
MSM 2007-7AX 2A1	77.31%	85.53%	8.22%

Certificate	Weighted Average LTV Per Prospectus	AVM Calculated Weighted Average LTV	Offering Documents Understatement
NAA 2006-AF2 5A1	77.54%	79.57%	2.03%
NAA 2006-AR4 A2	76.38%	82.14%	5.76%
NAA 2007-1 2A1	77.67%	86.92%	9.25%
NAA 2007-3 A1	77.27%	86.28%	9.01%
RALI 2005-QA9 NB41	75.99%	80.67%	4.68%
RALI 2006-QA2 1A1	76.76%	81.14%	4.38%
RALI 2006-QA3 A1	75.65%	78.88%	3.23%
RALI 2006-QO10 A1	74.76%	86.52%	11.76%
RALI 2007-QS6 A29	74.02%	80.12%	6.10%
SAMI 2005-AR2 1A1	73.17%	76.09%	2.92%
SAMI 2005-AR3 1A1	75.50%	78.08%	2.58%
SAMI 2005-AR6 2A1	73.52%	79.07%	5.55%
SAMI 2006-AR4 4A1	73.91%	80.49%	6.58%
SAMI 2006-AR6 1A1	74.37%	85.00%	10.63%
SAMI 2006-AR7 A1A	75.68%	86.55%	10.87%
TMST 2007-1 A2A	68.62%	83.84%	15.22%

C. The Offering Documents Were Materially Misleading Because They Failed to Inform Investors of the Presence of Compounded High-Risk Mortgages in the Loan Pools.

765. The Bank has analyzed the individual loan data it has been able to obtain to assess the extent to which the loan pools contained loans – referred to herein as "Compounded High-Risk Mortgages" – that exhibited multiple high risks (*i.e.*, above the 75th percentile in the pool) for two or more of the LTV, DTI or FICO metrics, which are the key quantitative metrics generally employed in the underwriting process, but which did not exhibit compensating low risk for the remaining metric. If risk balancing underwriting of the type described in the Offering Documents (*i.e.*, requiring that high risk factors in one or more areas be compensated for by low risk in one or more other areas) had been employed, the loan pools would be expected to contain few, if any, Compounded High-Risk Mortgages.

766. The Bank's analysis indicates that for the vast majority of the loan pools, the incidence of Compounded High-Risk Mortgages was much higher than what would be expected if risk balancing underwriting of the type described in the Offering Documents had been employed. For example, for the following 99 Certificates, the incidence of Compounded High-Risk Mortgages is greater than 80% of the rate that would be expected if the LTV, DTI and FICO metrics were independent measures. Risk balancing underwriting of the type described in the Offering Documents should produce an incidence much lower than 80% of the independent rate, however. Accordingly, the incidence of Compounded High-Risk Mortgages in the pools securing the following certificates indicates that the Offering Documents' statements regarding risk balancing underwriting were materially misleading:

AHM 2005-2 1A1	DBALT 2006-AR5 1A1	LUM 2006-7 2A1
AHMA 2007-2 A1	DBALT 2006-AR2 1A1	MANA 2007-A3 A2A
ARMT 2006-1 6A1	DBALT 2006-AR3 A2	MARM 2007-R5 A1
ARMT 2006-2 6A1	DBALT 2006-AR4 A1	MHL 2005-5 A1
ARMT 2006-3 4A2	DBALT 2007-AR1 A1	MHL 2006-1 1A2
BAFC 2006-D 1A1	DBALT 2007-AR3 2A1	MLMI 2006-AF2 AV2A
BAFC 2005-H 7A1	DSLA 2005-AR1 2A1A	MSM 2006-13AX A1
BCAP 2006-AA1 A1	DSLA 2005-AR2 2A1A	MSM 2006-16AX 2A1
BALTA 2005-8 11A1	GPMF 2005-AR1 A2	MSM 2006-8AR 1A2
BALTA 2005-9 11A1	GPMF 2005-AR2 A1	MSM 2006-9AR A3
BALTA 2005-10 11A1	GPMF 2005-AR4 4A1A	MSM 2007-2AX 2A2
BALTA 2006-1 11A1	GPMF 2006-AR3 4A1	MSM 2007-7AX 2A1
BALTA 2006-2 11A1	HVMLT 2006-8 2A1A	MSM 2007-5AX 2A2
BALTA 2006-3 1A1	HVMLT 2005-10 2A1A	NAA 2006-AF2 5A1

BALTA 2006-4 11A1	HVMLT 2006-7 2A1A	NAA 2006-AR4 A2
BALTA 2006-4 13A1	HVMLT 2007-1 2A1A	NAA 2007-1 2A1
BALTA 2006-5 1A1	IMSA 2005-2 A1	NAA 2007-3 A1
BALTA 2006-6 1A1	IMSA 2006-2 1A2A	RALI 2005-QA9 NB41
BALTA 2006-7 1A1	IMM 2005-7 A1	RALI 2006-QA2 1A1
BALTA 2007-1 1A1	INDX 2005-AR4 2A1A	RALI 2006-QA3 A1
BALTA 2007-2 1A1	INDX 2005-AR8 2A1A	SAMI 2005-AR2 1A1
BALTA 2007-3 1A1	INDX 2005-AR12 2A1A	RALI 2006-QA2 1A1
BSMF 2006-AR5 1A1	INDX 2006-AR19 1A1	RALI 2006-QA3 A1
BSMF 2007-AR4 1A1	JPALT 2006-A1 1A1	RALI 2007-QS6 A29
BSMF 2007-AR5 1A1A	JPALT 2006-A2 1A1	SAMI 2005-AR2 1A1
BSMF 2006-AR2 1A1	JPALT 2007-A2 12A1	SAMI 2005-AR3 1A1
CMALT 2007-A4 1A7	LUM 2007-2 1A1	SAMI 2005-AR6 2A1
CMLTI 2005-9 1A1	MARM 2005-7 2A1	SAMI 2006-AR4 4A1
CWALT 2005-16 A4	MARM 2005-8 1A1	SAMI 2006-AR6 1A1
CWALT 2005-86CB A10	LXS 2005-8 1A2	SAMI 2006-AR7 A1A
CWALT 2006-OA8 1A1	LXS 2006-15 A1	TMST 2007-1 A2A
CWALT 2007-OA4 A1	LXS 2007-9 1A1	
CWALT 2007-OA9 A1	LXS 2007-11 A1	
CWHL 2005-2 2A1	LUM 2006-3 11A1	

767. Further, the Bank's analysis indicates that for 74 of the Certificates the incidence of Compounded High-Risk mortgages in the pool was *above 100% of* the rate that would be expected if the metrics were independent. This data indicates for these pools that not only was risk balancing underwriting of the type described in the Offering Documents not employed, but also that the underwriting process that was employed was so deeply flawed that it produced more mortgages at

extremely high risk of failure than would have resulted from a random process. For these pools, not only were the statements in the Offering Documents regarding the underwriting process misleading, but the failure to disclose the incidence of Compounded High-Risk Mortgages was itself a materially misleading omission. The following table lists the certificates for which the incidence of Compounded High-Risk mortgages in the pool was *above 100% of* the rate that would be expected if the metrics were independent, and lists the actual incidence of Compounded High-Risk Mortgages in the pool as a percentage of the rate that would be expected from a random distribution:

Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence	Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence
AHM 2005-2 1A1	**117%**	HVMLT 2006-7 2A1A	**116%**
ARMT 2006-2 6A1	**125%**	HVMLT 2007-1 2A1A	**108%**
ARMT 2006-3 4A2	**138%**	IMSA 2005-2 A1	**102%**
BCAP 2006-AA1 A1	**173%**	IMSA 2006-2 1A2A	**146%**
BAFC 2005-H 7A1	**103%**	IMM 2005-7 A1	**158%**
BAFC 2006-D 1A1	**115%**	INDX 2005-AR4 2A1A	**155%**
BSMF 2007-AR5 1A1A	**119%**	INDX 2005-AR8 2A1A	**178%**
BALTA 2005-9 11A1	**125%**	INDX 2005-AR12 2A1A	**135%**
BALTA 2005-10 11A1	**145%**	INDX 2006-AR19 1A1	**176%**
BALTA 2006-1 11A1	**115%**	LXS 2005-8 1A2	**129%**
BALTA 2006-2 11A1	**131%**	LXS 2006-15 A1	**111%**
BALTA 2006-3 1A1	**116%**	LXS 2007-9 1A1	**115%**
BALTA 2006-4 11A1	**110%**	LXS 2007-11 A1	**111%**
BALTA 2006-4 13A1	**112%**	LUM 2006-3 11A1	**113%**
BALTA 2006-5 1A1	**158%**	MANA 2007-A3 A2A	**102%**
BALTA 2006-6 1A1	**134%**	MARM 2005-7 2A1	**124%**
BALTA 2006-7 1A1	**138%**	MARM 2005-8 1A1	**125%**
BALTA 2007-1 1A1	**110%**	MHL 2005-5 A1	**163%**
BALTA 2007-2 1A1	**107%**	MLMI 2006-AF2 AV2A	**123%**
BALTA 2007-3 1A1	**109%**	MSM 2006-13AX A1	**116%**
CMALT 2007-A4 1A7	**117%**	MSM 2006-16AX 2A1	**135%**

Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence	Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence
CMLTI 2005-9 1A1	**113%**	MSM 2006-8AR 1A2	**132%**
CWALT 2005-16 A4	**149%**	MSM 2006-9AR A3	**107%**
CWALT 2005-86CB A10	**104%**	MSM 2007-2AX 2A2	**131%**
CWHL 2005-2 2A1	**152%**	MSM 2007-7AX 2A1	**112%**
DBALT 2006-AR5 1A1	**137%**	MHL 2006-1 1A2	**109%**
DBALT 2006-AR2 1A1	**164%**	NAA 2006-AF2 5A1	**145%**
DBALT 2006-AR3 A2	**123%**	NAA 2006-AR4 A2	**131%**
DBALT 2006-AR4 A1	**150%**	NAA 2007-3 A1	**128%**
DBALT 2007-AR1 A1	**123%**	RALI 2005-QA9 NB41	**273%**
DBALT 2007-AR3 2A1	**166%**	RALI 2006-QA2 1A1	**134%**
DSLA 2005-AR1 2A1A	**114%**	RALI 2007-QS6 A29	**112%**
GPMF 2005-AR1 A2	**118%**	SAMI 2005-AR2 1A1	**216%**
GPMF 2005-AR2 A1	**136%**	SAMI 2005-AR3 1A1	**123%**
GPMF 2005-AR4 4A1A	**135%**	SAMI 2005-AR6 2A1	**113%**
GPMF 2006-AR3 4A1	**131%**	SAMI 2006-AR4 4A1	**112%**
HVMLT 2005-10 2A1A	**126%**	WFMBS 2006-AR12 1A1	**168%**

768. As the foregoing tables indicate, the risk profiles of the loans backing a substantial majority of the Certificates were seriously affected by the presence of Compounded High-Risk Mortgages. The number of compounded high-risk loans not only indicates that the statements in the Offering Documents regarding mortgage underwriting were materially misleading, but also indicates that the risk of default in the loan pools was materially higher than was indicated by the averages and other pool-level data provided in the Offering Documents. Omitting to disclose information with respect to the presence and extent of compounded high-risk mortgages caused the Offering Documents to be materially misleading.

D. Defendants' Statements Regarding the Triple-A Rating of the PLMBS Were False and Misleading.

1. The Materiality of the Credit Rating Process and Ratings

769. The Bank only was authorized to purchase investment-grade, triple-A-rated tranches of the Certificates. Hence, the ratings issued by the Rating Agency Defendants were manifestly material to the Bank's decision to purchase the PLMBS. The ratings were not mere subjective opinions. Rather, they were factual representations that purported to assess the risk of the Certificates based on factual information pertaining to the loans in the mortgage pools and modeling based on this factual information and the likelihood that the Bank would receive the payments contemplated by the Certificates. Thus, the ratings provided material information for investors, including the Bank.

2. False Representations That the Certificates the Bank Purchased Would Not Be Issued Unless They Earned Triple-A Ratings

770. As alleged above, the Rating Agency Defendants knew, and the Securities Defendants should have known, that the ratings were unreliable and substantially understated the riskiness of the mortgage loans which underlie the PLMBS. Consequently, the Rating Agency Defendants knew, and the Securities Defendants should have known, that the PLMBS did not in fact possess the characteristics necessary to qualify for accurate, bona fide triple-A ratings.

771. All the Offering Documents for the PLMBS in this action stated that it was "a condition to the issuance of the offered certificates" purchased by the Bank that those Certificates received triple-A ratings. *See* Appendix IV. The representation that the Certificates the Bank purchased would not have been issued unless they had received triple-A ratings was misleading because the Certificates had not received accurate, bona fide triple-A ratings. The triple-A ratings the Certificates received were fundamentally flawed because they were based on information about the underlying assets that was factually inaccurate.

3. Misstatements about the Credit Rating Process and Ratings

772. The Offering Documents misstated and omitted information about the ratings issued by the Rating Agency Defendants and the rating process. Each Prospectus contained disclosures regarding the ratings process, and the purpose and bases of the ratings. Appendix IV attached hereto and incorporated herein sets forth those statements and omissions. For example, the Prospectus Supplement for JPMMT 2005-ALT1, dated August 25, 2005, states:

> The ratings assigned to mortgage pass through certificates address the likelihood of the receipt of all payments on the mortgage loans by the related Certificate holders under the agreements pursuant to which such certificates are issued. Such ratings take into consideration the credit quality of the related mortgage pool, including any credit support providers, structural and legal aspects associated with such certificates, and the extent to which the payment stream on the mortgage pool is adequate to make the payments required by such certificates. Ratings on such certificates do not, however, constitute a statement regarding frequency of prepayments of the Mortgage Loans.

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773. These disclosures, however, were incomplete, inaccurate and misleading. Specifically, the Offering Documents misrepresented and omitted the following material information:

- The ratings did not "take into consideration the credit quality of the mortgage pool," because the credit ratings were based on false factual information about the underwriting standards, the "appraisals" and their resulting LTVs, and similar characteristics of the loan.
- The ratings did not "address the likelihood of the receipt of all payments on the mortgage loans by the related Certificate holders," because—for the reasons just given—the ratings did not take into consideration the true characteristics of the mortgage loans, and thus could not address the true likelihood of the receipt of distribution on those loans.
- The Offering Documents did not disclose the Rating Agency Defendants' conflicts of interest, which compromised the rating process;
- The Offering Documents did not disclose the manipulation of the credit rating process and "ratings shopping" by Depositors/Issuers and Underwriters;

- The Offering Documents did not disclose that the credit ratings were based on false and misleading information with respect to underwriting standards, LTVs and other matters pertaining to the mortgages that secured the PLMBS purchased by the Bank;

- The Offering Documents did not disclose the scope and limitations of the Rating Agency Defendants' rating models, including that they relied on outdated data and failed to adequately protect against misinformation provided by issuers and borrowers;

- The Offering Documents did not disclose that the investment-grade ratings given to the PMLBS were not, in fact, comparable to investment-grade ratings given to corporate bonds or other instruments;

- The Offering Documents did not disclose that the investment-grade ratings stated and discussed in Offering Documents failed to reflect the true credit risk of the PLMBS purchased by the Bank.

774. In sum, the ratings provided by the Rating Agency Defendants did not assess the likelihood of the receipt of all payments on the mortgage loans by the related Certificate holders under the agreements pursuant to which such Certificates are issued, the credit quality of the related mortgage pool, or the extent to which the payment stream on the mortgage pool was adequate to make the payments required by such Certificates. As a result, the statements in the Offering Documents regarding the ratings assigned by the Rating Agency Defendants and the rating process materially misled the Bank regarding the true risk of the Certificates it purchased.

4. Evidence Demonstrating Misstatements about the Ratings and Ratings Process

775. As alleged in detail above, *see supra* § V.F, the credit rating process was subject to false information about underwriting standards, conflicts of interest, Depositor and Underwriter manipulation, inflated appraisals, and faulty and outdated models. Furthermore, as alleged above, the Securities Defendants reverse-engineered the rating process through ratings shopping, and through their direct involvement in the rating process. As set forth above, these allegations are all well documented in government investigations, other litigation, and press

reports. This evidence—and the allegations herein based on this evidence—demonstrates that the statements in the Offering Documents regarding the ratings and the rating process are false and misleading.

776. In addition, the en masse downgrade of the PLMBS purchased by the Bank from triple-A to junk status indicates that the initial ratings were incorrect and without any legitimate basis. Likewise, delinquency and foreclosure rates indicate that the PLMBS were far riskier and more prone to loss than the initial ratings indicated. As explained above, the Securities Defendants, by virtue of their access to information held by their corporate affiliates and their intimate involvement in the securitization and due diligence process, *see supra* § V.D, had access to ample information about the quality of the loan pools and should have known that the bundled Certificates, even though tranched and credit-enhanced, did not possess the characteristics of a triple-A-rated investment; and that the rating was the direct product of inaccurate information about the underwriting standards actually used in originating the mortgages backing the PLMBS. No Defendant informed the Bank that the ratings were unreliable as a result of the Rating Agency Defendants' failure to take into account the actual underwriting standards being used by mortgage originators, that the models used to produce the credit ratings were inaccurate and outdated, that the ratings were the product of reverse-engineering and conflicts of interest, and that the ratings were not anywhere near as reliable as the ratings given to other financial instruments such as corporate bonds. As a result, the rating misrepresented the risk of the PLMBS purchased by the Bank.

777. The following table sets forth the original face amounts and ratings of the securities that are the subject of this action, and the first date on which such securities' ratings were downgraded to below investment-grade:

Certificate	Original Face Value	Original Rating by Fitch	Original Rating by Moody's	Original Rating by S&P	Date of First Downgrade to Junk Status
AHM 2005-2 1A1	$50,000,000	NR	Aaa	AAA	8/23/10
AHMA 2006-6 A1A	$49,500,000	NR	Aaa	AAA	2/23/09
AHMA 2007-2 A1	$40,000,000	NR	Aaa	AAA	2/23/09
AHMA 2007-5 A1	$75,000,000	NR	Aaa	AAA	2/23/09
ARMT 2006-1 6A1	$75,000,000	NR	Aaa	AAA	2/4/09
ARMT 2006-2 6A1	$33,000,000	NR	Aaa	AAA	2/4/09
ARMT 2006-3 4A2	$25,000,000	NR	Aaa	AAA	2/4/09
ARMT 2007-1 5A1	$40,000,000	NR	Aaa	AAA	2/4/09
ARMT 2007-2 2A21	$25,000,000	NR	Aaa	AAA	9/2/08
BAFC 2005-H 7A1	$80,000,000	AAA	NR	AAA	12/18/08
BAFC 2006-D 1A1	$40,000,000	AAA	NR	AAA	2/26/09
BALTA 2005-10 11A1	$67,000,000	NR	Aaa	AAA	2/11/09
BALTA 2005-8 11A1	$50,000,000	NR	Aaa	AAA	2/11/09
BALTA 2005-9 11A1	$50,000,000	NR	Aaa	AAA	9/2/09
BALTA 2006-1 11A1	$49,656,000	NR	Aaa	AAA	1/30/09
BALTA 2006-2 11A1	$54,000,000	NR	Aaa	AAA	1/30/09
BALTA 2006-3 1A1	$48,000,000	NR	Aaa	AAA	1/30/09
BALTA 2006-4 11A1	$61,000,000	NR	Aaa	AAA	1/30/09
BALTA 2006-4 13A1	$79,000,000	NR	Aaa	AAA	1/30/09
BALTA 2006-5 1A1	$25,000,000	NR	Aaa	AAA	1/30/09
BALTA 2006-6 1A1	$50,000,000	NR	Aaa	AAA	1/30/09
BALTA 2006-7 1A1	$68,000,000	NR	Aaa	AAA	1/30/09
BALTA 2007-1 1A1	$26,520,000	NR	Aaa	AAA	10/27/08
BALTA 2007-2 1A1	$46,000,000	NR	Aaa	AAA	10/6/08
BALTA 2007-3 1A1	$50,000,000	NR	Aaa	AAA	11/5/08
BCAP 2006-AA1 A1	$50,000,000	NR	Aaa	AAA	1/29/09
BSMF 2006-AR1 1A1	$74,594,000	NR	Aaa	AAA	2/23/09
BSMF 2006-AR2 1A1	$22,000,000	NR	Aaa	AAA	2/23/09
BSMF 2006-AR3 1A1	$20,348,000	NR	Aaa	AAA	2/23/09
BSMF 2006-AR5 1A1	$85,207,000	NR	Aaa	AAA	2/23/09
BSMF 2007-AR1 1A1	$30,000,000	NR	Aaa	AAA	2/23/09
BSMF 2007-AR4 1A1	$58,000,000	NR	Aaa	AAA	9/1/09
BSMF 2007-AR5 1A1A	$15,000,000	NR	Aaa	AAA	9/2/09
CCMFC 2006-2A A1	$40,000,000	NR	Aaa	AAA	4/13/09
CCMFC 2007-1A A1	$45,000,000	NR	Aaa	AAA	8/13/09
CCMFC 2007-2A A1	$20,000,000	NR	Aaa	AAA	4/13/09
CMALT 2007-A4 1A7	$27,000,000	AAA	Aaa	NR	12/16/08
CMLTI 2005-9 1A1	$25,000,000	AAA	NR	AAA	3/24/09
CWALT 2005-16 A4	$100,000,000	NR	Aaa	AAA	11/23/10
CWALT 2005-86CB A10	$60,500,000	NR	Aaa	AAA	2/20/09
CWALT 2006-OA16 A2	$30,000,000	NR	Aaa	AAA	2/19/09

Certificate	Original Face Value	Original Rating by Fitch	Original Rating by Moody's	Original Rating by S&P	Date of First Downgrade to Junk Status
CWALT 2006-OA8 1A1	$25,000,000	NR	Aaa	AAA	2/19/09
CWALT 2007-OA4 A1	$28,786,000	AAA	Aaa	AAA	2/19/09
CWALT 2007-OA9 A1	$70,000,000	NR	Aaa	AAA	2/19/09
CWHL 2005-2 2A1	$80,000,000	NR	Aaa	AAA	12/5/10
DBALT 2006-AR2 1A1	$50,000,000	NR	Aaa	AAA	2/2/09
DBALT 2006-AR2 1A2	$50,000,000	NR	Aaa	AAA	2/2/09
DBALT 2006-AR3 A2	$25,000,000	NR	Aaa	AAA	9/17/08
DBALT 2006-AR4 A1	$73,000,000	NR	Aaa	AAA	2/2/09
DBALT 2006-AR5 1A1	$48,000,000	NR	Aaa	AAA	2/2/09
DBALT 2007-AR1 A1	$97,965,000	NR	Aaa	AAA	2/2/09
DBALT 2007-AR3 2A1	$46,370,000	NR	Aaa	AAA	2/2/09
DSLA 2005-AR1 2A1A	$25,000,000	NR	Aaa	AAA	12/3/10
DSLA 2005-AR2 2A1A	$30,000,000	NR	Aaa	AAA	12/3/10
GPMF 2005-AR1 A2	$50,000,000	NR	Aaa	AAA	12/9/10
GPMF 2005-AR2 A1	$25,000,000	NR	Aaa	AAA	8/19/09
GPMF 2005-AR4 4A1A	$47,837,000	NR	Aaa	AAA	2/20/09
GPMF 2006-AR3 4A1	$12,086,000	NR	Aaa	AAA	2/20/09
HVMLT 2005-10 2A1A	$30,000,000	NR	Aaa	AAA	4/9/09
HVMLT 2006-7 2A1A	$40,000,000	NR	Aaa	AAA	2/20/09
HVMLT 2006-8 2A1A	$37,384,000	NR	Aaa	AAA	2/20/09
HVMLT 2007-1 2A1A	$25,000,000	NR	Aaa	AAA	2/20/09
IMM 2005-7 A1	$39,370,000	NR	Aaa	AAA	4/13/09
IMSA 2005-2 A1	$75,000,000	NR	Aaa	AAA	2/20/09
IMSA 2006-2 1A2A	$79,384,000	NR	Aaa	AAA	6/18/09
INDX 2005-AR4 2A1A	$19,745,000	NR	Aaa	AAA	2/20/09
INDX 2005-AR8 2A1A	$49,000,000	NR	Aaa	AAA	2/20/09
INDX 2005-AR12 2A1A	$50,000,000	NR	Aaa	AAA	12/1/10
INDX 2006-AR19 1A1	$75,000,000	NR	Aaa	AAA	11/11/08
JPALT 2006-A1 1A1	$29,250,000	AAA	Aaa	AAA	1/29/09
JPALT 2006-A2 1A1	$47,787,000	AAA	Aaa	AAA	12/17/08
JPALT 2006-A3 1A1	$50,000,000	AAA	Aaa	AAA	1/29/09
JPALT 2007-A2 12A1	$20,000,000	AAA	Aaa	AAA	12/16/08
JPMMT 2005-ALT1 2A1	$109,751,000	AAA	NR	AAA	8/6/09
LUM 2005-1 A1	$25,250,000	NR	Aaa	AAA	2/20/09
LUM 2006-3 11A1	$30,858,000	NR	Aaa	AAA	2/20/09
LUM 2006-6 A1	$20,000,000	NR	Aaa	AAA	2/20/09
LUM 2006-7 2A1	$60,000,000	NR	Aaa	AAA	2/20/09
LUM 2007-2 1A1	$50,000,000	NR	Aaa	AAA	2/20/09
LXS 2005-8 1A2	$75,000,000	NR	Aaa	AAA	8/14/09
LXS 2006-15 A1	$50,000,000	NR	Aaa	AAA	2/4/09
LXS 2007-11 A1	$75,000,000	NR	Aaa	AAA	9/2/08

Certificate	Original Face Value	Original Rating by Fitch	Original Rating by Moody's	Original Rating by S&P	Date of First Downgrade to Junk Status
LXS 2007-9 1A1	$50,000,000	NR	Aaa	AAA	9/2/08
MANA 2007-A3 A2A	$30,000,000	NR	Aaa	AAA	8/8/08
MARM 2005-7 2A1	$85,000,000	NR	Aaa	AAA	2/20/09
MARM 2005-8 1A1	$71,987,000	NR	Aaa	AAA	2/20/09
MARM 2007-R5 A1	$75,000,000	NR	Aaa	AAA	5/15/09
MHL 2005-5 A1	$45,000,000	NR	Aaa	AAA	8/5/10
MHL 2006-1 1A2	$40,000,000	NR	Aaa	AAA	8/4/08
MLMI 2006-AF2 AV2A	$58,502,500	NR	Aaa	AAA	10/1/10
MSM 2006-13AX A1	$72,500,000	NR	Aaa	AAA	2/4/09
MSM 2006-16AX 2A1	$24,000,000	NR	Aaa	AAA	2/4/09
MSM 2006-8AR 1A2	$74,000,000	NR	Aaa	AAA	2/4/09
MSM 2006-9AR A3	$73,000,000	NR	Aaa	AAA	7/24/09
MSM 2007-2AX 2A2	$15,000,000	NR	Aaa	AAA	10/6/08
MSM 2007-5AX 2A2	$28,250,000	NR	Aaa	AAA	8/21/08
MSM 2007-7AX 2A1	$45,563,000	NR	Aaa	AAA	8/21/08
NAA 2006-AF2 5A1	$81,610,000	NR	Aaa	AAA	7/25/08
NAA 2006-AR4 A2	$146,940,000	NR	Aaa	AAA	7/25/08
NAA 2007-1 2A1	$107,500,000	NR	Aaa	AAA	10/6/08
NAA 2007-3 A1	$70,000,000	NR	Aaa	AAA	10/30/08
RALI 2005-QA9 NB41	$76,103,000	NR	Aaa	AAA	2/20/09
RALI 2006-QA2 1A1	$100,000,000	NR	Aaa	AAA	10/6/08
RALI 2006-QA3 A1	$50,000,000	NR	Aaa	AAA	1/29/09
RALI 2006-QO10 A1	$25,000,000	NR	Aaa	AAA	2/20/09
RALI 2007-QS6 A29	$29,710,479	AAA	Aaa	AAA	10/27/08
SAMI 2005-AR2 1A1	$48,000,000	NR	Aaa	AAA	2/23/09
SAMI 2005-AR3 1A1	$72,000,000	NR	Aaa	AAA	3/1/10
SAMI 2005-AR6 2A1	$75,000,000	NR	Aaa	AAA	12/14/10
SAMI 2006-AR4 4A1	$67,607,000	NR	Aaa	AAA	2/23/09
SAMI 2006-AR6 1A1	$50,000,000	NR	Aaa	AAA	2/23/09
SAMI 2006-AR7 A1A	$97,500,000	NR	Aaa	AAA	2/23/09
TMST 2007-1 A2A	$30,000,000	NR	Aaa	AAA	5/1/09
TMTS 2007-6ALT A1	$67,018,000	NR	Aaa	AAA	
WFMBS 2006-AR12 1A1	$50,000,000	AAA	Aaa	NR	4/6/09

E. The Securities Defendants Misrepresented the Mortgage Originators' Compliance with Predatory Lending Restrictions.

1. The Materiality of Predatory Lending Practices and the Issuance of Loans that Violate Other State and Federal Lending Statutes.

778. By regulatory directive, the Bank was not permitted to purchase PLMBS backed by mortgage pools that contained predatory loans. The Federal Housing Finance Board Advisory Bulletin, 2005-AB-08 (August 25, 2005) states that:

> As Government Sponsored Enterprises (GSEs), the FHLBanks carry out their housing finance mission by serving as a source of liquidity for the nation's housing and community investment needs. Predatory lending practices that erode homeowners' equity in their homes or contribute to homeowners losing their homes are inconsistent with advancing homeownership and are incompatible with the FHLBanks' responsibility to carry out their housing finance mission in a safe and sound manner.
>
> . . . .
>
> Each FHLBank must have in place comprehensive anti-predatory lending policies to govern the FHLBank's purchasing of mortgages and calculating the level of advances that can be made to its members.
>
> In developing those policies, the FHLBanks must review the predatory lending policies of other large financial institutions, including other GSEs. The FHLBanks must also review HUD's regulation on the types of loans that may be used in meeting the GSE housing goals, as well as any predatory lending guidance developed by other federal and state regulators, including their members' primary federal regulators. *To ensure that the FHLBanks do not support predatory practices, the FHLBanks' policies must preclude purchasing mortgages that violate applicable federal, state, or local predatory lending laws or including such loans when calculating the level of advances that can be made to a member.*

(emphasis added).

779. On July 10, 2007, the OCC, FRB, FDIC, OTS and the National Credit Union Administration (collectively, "the Agencies") issued their Final Guidance – Statement on Subprime Mortgage Lending (72 Fed. Reg. 37569). The Agencies' Guidance required that "institutions should ensure that they do not engage in the types of predatory lending practices discussed in the Expanded Subprime Guidance," and explained:

Typically predatory lending involves at least one of the following elements:

- Making loans based predominantly on the foreclosure or liquidation value of a borrower's collateral rather than on the borrower's ability to repay the mortgage according to its terms;
- Inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced ("loan flipping"); or
- Engaging in fraud or deception to conceal the true nature of the mortgage loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.

780. The same Guidance states that: "Institutions should develop strong control procedures to monitor whether actual practices are consistent with their policies and procedures." In addition to monitoring, the Guidance notes that, "[i]nstitutions also should design compensation programs that avoid providing incentives for originations inconsistent with sound underwriting and consumer protection principles, and that do not result in the steering of consumers to these products to the exclusion of other products for which the consumer may qualify."

781. In keeping with the regulatory guidance of the Federal Housing Finance Board, the Bank required that as to any security it purchased, the Offering Documents warrant that none of the underlying mortgages violated any state or federal law concerning predatory lending.

782. Thus, statements in the Offering Documents representing and warranting that the mortgage pools did not contain loans that violated state or federal predatory lending laws were material to the Bank's decision to purchase the PLMBS.

2. Misstatements about Predatory Lending Compliance

783. The Offering Documents contained material untrue or misleading statements and omissions regarding compliance with applicable predatory lending laws. For example, the Prospectus Supplement for BALTA 2006-3 1A1, dated April 27, 2006, states:

> On the closing date, the sponsor will represent that each mortgage loan at the time it was made complied in all material respects with all applicable laws and regulations, including, without limitation, usury, equal credit opportunity, disclosure and recording laws and all predatory lending laws . . . .

BALTA 2006-3 Pros. Sup. S-47. Appendix V attached hereto and incorporated herein sets forth the statements in the other Prospectus Supplements regarding compliance with applicable predatory lending laws.

3. Evidence Demonstrating Misstatements about Predatory Lending Practices of the Mortgage Originators

a. Government investigations, actions and settlements, confidential witnesses and evidence developed in other private lawsuits demonstrate predatory lending by the mortgage originators.

784. As alleged in detail above, predatory lending practices by mortgage originators, including those who issued the loans backing the PLMBS purchased by the Bank, is well documented in government investigations and lawsuits, press reports, and statements of confidential witnesses who are former employees of the mortgage originators. Additional evidence has been generated by the many other private lawsuits against many of the same Securities Defendants in connection with the sale of mortgage-backed securities and related Certificates. This evidence—and the allegations herein based on this evidence—demonstrates that the statements in the Offering Documents regarding compliance with state and federal predatory lending rules are false and misleading. Contrary to the representations in the Offering Documents, the mortgage originators underlying these PLMBS engaged in predatory lending, and often issued loans to borrowers who lacked the ability to make the required payments. Indeed, eight of the lenders classified by the OCC as the "worst of the worst" based on foreclosure rates in the ten hardest hit metropolitan areas issued loans that backed PLMBS purchased by the Bank.

b. Analysis of loans that backed the PLMBS purchased by the Bank demonstrate that loans in the mortgage pools were the result of predatory lending.

785. An examination of the underlying mortgage loans that back the PLMBS purchased by the Bank provides strong evidence of the violation of predatory lending restrictions by the mortgage originators. This evidence takes several forms. First, given that the issuance of a loan to a borrower who is not qualified for the loan is itself a form of predatory lending, delinquency in the mortgage pools suggest predatory lending. Hence the data presented in paragraph 723 provides strong evidence of predatory lending practices of the mortgage originators who issued loans that back the PLMBS purchased by the Bank.

786. For many of the securities purchased by the Bank the data is telling. For example, mortgage loans underlying the securities sponsored by Defendants Countrywide Home Loans, Inc. and EMC Mortgage Corporation reflected total delinquencies as of March 31, 2011 averaging over 49%. As of the same date, total delinquencies for mortgage loans underlying the securities sponsored by Defendant Nomura Credit & Capital, Inc. average over 45%.

787. This analysis demonstrates that the representation and warranty of no predatory lending or high cost loans made with respect to that pool are materially inaccurate and misleading.

F. The Securities Defendants Misrepresented the Due Diligence Performed on the Mortgage Pools that Backed the PLMBS Purchased by the Bank.

1. The Materiality of Due Diligence on the Mortgage Pools

788. As alleged in detail above, the Bank did not have access to the mortgage loan files when it purchased the Certificates; it was the Securities Defendants that had access to this information. Consequently, the Bank was dependent on representations made by the Securities Defendants regarding the quality of the mortgage loans backing the PLMBS it purchased.

789. The Securities Defendants made two types of representations regarding the acquisition of mortgages that were originated by third-party originators. First, the Securities Defendants represented that certain of the originators that are identified in the Offering Documents conducted post-purchase due diligence reviews of a sampling of mortgages they acquired from third-party originators. Second, with respect to certain PLMBS backed by mortgages acquired by Sponsors from unaffiliated originators, the Securities Defendants represented that the Sponsors conducted due diligence reviews of the mortgages prior to their acquisition and securitization. In both cases, these due diligence reviews allegedly were undertaken to ensure that the mortgages were of adequate credit quality and that they were underwritten in compliance with applicable underwriting standards.

790. The representations regarding the underwriting standards employed by the originators and those regarding the Sponsor's due diligence reviews of the mortgage loans provided the Bank with critical reassurances that the overall credit quality of the mortgage pools securing the PLMBS it purchased were as represented in the Offering Documents. The Bank relied on these representations in making its decisions to purchase these Certificates.

2. Misstatements about Due Diligence

791. The Offering Documents provided to the Bank contained material untrue or misleading statements and omitted material information regarding the due diligence purportedly conducted by the Sponsors and originators when they acquired mortgages from third-party originators. For example, Banc of America Funding 2006-D Trust Prospectus Supplement, provides the following with respect to mortgages acquired by Countrywide from third-parties:

> Countrywide Home Loans may acquire mortgage loans from approved correspondent lenders under a program pursuant to which Countrywide Home Loans delegates to the correspondent the obligation to underwrite the mortgage loans to Countrywide Home Loans' standards. Under these circumstances, the underwriting of a mortgage loan may not have been reviewed by Countrywide

> Home Loans before acquisition of the mortgage loan and the correspondent represents that Countrywide Home Loans' underwriting standards have been met. After purchasing mortgage loans under those circumstances, Countrywide Home Loans conducts a quality control review of a sample of the mortgage loans. The number of loans reviewed in the quality control process varies based on a variety of factors, including Countrywide Home Loans' prior experience with the correspondent lender and the results of the quality control review process itself.

BAFC 2006-D Pros. Sup. S-57. Substantially similar provisions regarding each mortgage originator's due diligence reviews of acquired mortgages were included in the Offering Documents for many of the PLMBS purchased by the Bank. Appendix VI attached hereto and incorporated herein sets forth those statements.

792. Additionally, as an example of the representations made regarding a Sponsor's due diligence reviews of acquired mortgages, the prospectus supplement for BALTA 2006-1 11A1, dated January 30, 2006, provides:

> Performing loans acquired by the Sponsor are subject to varying levels of due diligence prior to purchase. Portfolios may be reviewed for credit, data integrity, appraisal valuation, documentation, as well as compliance with certain laws. Performing loans purchased will have been originated pursuant to the Sponsor's underwriting guidelines or the originator's underwriting guidelines that are acceptable to the Sponsor.

BALTA 2006-1 Pros. Sup. S-47.

793. Substantially similar provisions were included in the Offering Documents for many of the PLMBS purchased by the Bank. Appendix VI attached hereto and incorporated herein sets forth those statements. These statements were materially misleading because they omit to state the following information:

- The Sponsors and originators skewed the due diligence process by limiting the type and scope of review performed and pressuring the third-party due diligence firms to ignore deviations from the applicable underwriting criteria if alleged "compensating factors" were present;
- The level of due diligence performed by Sponsors and originators of mortgages backing PLMBS deviated substantially from the level of due diligence performed by purchasers of mortgages who retained those mortgages as investments;

- Due diligence review conducted by third-party firms often overlooked questionable claims by borrowers in stated income and other reduced documentation loans;

- The third-party due diligence firms informed the Sponsors that a substantial percentage of loans in the loans pools backing PLMBS were defective;

- The Sponsors nonetheless waived the defects as to a substantial percentage of these loans;

- In many cases, these reportedly defective loans were not removed from PLMBS deals, but rather were used by the Sponsors to negotiate lower prices for the pools of mortgages they acquired and subsequently securitized; and

- Where defective loans in the sample were removed from the pool, the Sponsors conducted no further review to ensure that none of the remaining mortgages was plagued by similar defects as those in the sample.

3. Evidence of Misstatements about Due Diligence

794. As alleged in detail above, *see supra* §§ V.D.4 and V.D.5, the limitations that Sponsors and originators placed on the third-party due diligence process—and the extent to which they disregarded the results of that process—are documented by public testimony and press reports, as well as by confidential witness testimony. This evidence—and the allegations herein based on this evidence—demonstrates, and the Securities Defendants should have known, that the statements in and omissions from the Offering Documents regarding the due diligence review process were materially false and misleading.

G. The Securities Defendants Misrepresented That Mortgages and Mortgage Loans Were Validly Assigned and Transferred to the Issuing Trusts

1. The Materiality of Valid Assignment and Transfer

795. PLMBS have value because they are backed by both income streams from loans and by the collateral that secure the loans. If mortgage loans and mortgages are not enforceable by the trust that issues the PLMBS, then the PLMBS have no value. For that reason, the valid

assignment and transfer of mortgage loans and mortgages were material to the Bank's decision to purchase the PLMBS.

2. Misstatements Regarding Valid Assignment and Transfer

796. The Offering Documents misrepresented that all promissory notes had been or would be validly transferred to the trusts that issued the PLMBS.

797. By way of example, the Offering Documents for CWALT 2005-86CB state:

> [T]he depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to all other assets included in Alternative Loan Trust 2005-86CB, including all principal and interest received on or with respect to the Closing Date Mortgage Loans . . . .
>
> In connection with the transfer and assignment of a mortgage loan, the depositor will deliver or cause to be delivered to the trustee, or a custodian for the trustee, . . . the original mortgage note . . . endorsed in blank without recourse . . . .
>
> The trustee will review each mortgage file relating to the Closing Date Mortgage Loans within 90 days of the closing date . . . , and if any document in a mortgage file is found to be missing or defective in a material respect and [the defect is not cured within 90 days of notice, the defective mortgage loan must be repurchased].
>
> . . . .
>
> At the time of issuance of the certificates of a series, the depositor will cause the mortgage loans comprising the related trust fund to be assigned to the trustee, together with all principal and interest received by or on behalf of the depositor on or with respect to the mortgage loans after the cut-off date, other than principal and interest due on or before the cut-off date and other than any retained interest specified in the related prospectus supplement. . . . In addition, the depositor will deliver or cause to be delivered to the trustee (or to the custodian) for each mortgage loan the mortgage note endorsed without recourse in blank or to the order of the trustee, except that the depositor may deliver or cause to be delivered a lost note affidavit in lieu of any original mortgage note that has been lost . . . .
>
> . . . .
>
> The trustee (or the custodian) will review the mortgage loan documents within [90 days] . . . . Generally, if the document is found to be missing or defective in any material respect, the trustee (or the custodian) will notify the master servicer and the depositor, and the master servicer will notify the related seller. If the seller

> cannot cure the omission or defect within [90 days], the seller will be obligated to purchase the related mortgage loan from the trustee at the purchase price or, if so specified in the related prospectus supplement, replace the mortgage loan with another mortgage loan that meets specified requirements.

CWALT 2005-86CB Pros. Sup. S-24; CWALT 2005-86CB Pros. 44-45.

798. As *Kemp* and other cases show, *see supra* § V.G, the procedures specified in the Offering Documents were not followed. Mortgage notes were not properly endorsed by the originators, such that the Depositor could in turn properly endorse the note. Possession of the notes was not transferred to the trustee, custodian, or agent of the trustee.

799. Further, where the procedure was not followed, the defective loans have not been repurchased or substituted, as represented in the Offering Documents.

800. The Offering Documents also misrepresented that all mortgages had been or would be validly assigned to the trusts that issued the PLMBS.

801. By way of example, the Offering Documents for CWALT 2005-86CB state:

> [T]he depositor will deliver or cause to be delivered to the trustee (or to the custodian) for each mortgage loan . . . the mortgage, deed of trust or similar instrument with evidence of recording indicated on it (except for any mortgage not returned from the public recording office, in which case the depositor will deliver or cause to be delivered a copy of the mortgage together with a certificate that the original of the mortgage was delivered to the recording office or some other arrangement will be provided for), [and] an assignment of the mortgage to the trustee in recordable form . . . .

CWALT 2005-86CB Pros. 44.

802. The procedures specified in the Offering Documents were not followed. The mortgages were not properly assigned and physical transfer of the mortgages was not effected.

803. Further, where the procedures were not followed, the defective loans were not repurchased or substituted, as represented in the Offering Documents.

3. A Material Number of Mortgages and Mortgage Loans Were Not Validly Transferred or Assigned to the Issuing Trusts.

804. As alleged above, *see supra* ¶¶ 705-07, a material number of the promissory notes backing the PLMBS were not validly transferred to the trust, as is necessary before those notes can be enforced under applicable state law.

805. As alleged above, *see supra* ¶ 708, a material number of the mortgages backing the PLMBS were not validly assigned to the trust, as is necessary before those mortgages may be enforced under applicable state law.

806. Thus, statements in relevant Offering Documents that mortgages and mortgage loans were validly assigned and transferred to the issuing trust were false and misleading.

VII. COUNTS

FIRST CAUSE OF ACTION
Primary Violations of the Massachusetts Uniform Securities Act

807. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if set forth herein.

808. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Corporate Defendant	As	Certificate(s)
Banc of America Funding Corporation	Depositor/Issuer	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
Bank of America, National Association	Sponsor	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
Barclays Capital Inc.	Underwriter	BCAP 2006-AA1 A1
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		RALI 2007-QS6 A29
BCAP LLC	Depositor/Issuer	BCAP 2006-AA1 A1
Bear Stearns Asset Backed Securities I LLC	Depositor/Issuer	BALTA 2006-1 11A1

Corporate Defendant	As	Certificate(s)
Bear, Stearns & Co. Inc	Underwriter/ Corporate Seller	AHM 2005-2 1A1
		BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		CWHL 2005-2 2A1
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A
		LUM 2005-1 A1
		LUM 2006-3 11A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		MHL 2005-5 A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
		TMST 2007-1 A2A

Corporate Defendant	As	Certificate(s)
Chevy Chase Funding LLC	Depositor/Issuer	CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
Citicorp Mortgage Securities, Inc.	Depositor/Issuer	CMALT 2007-A4 1A7
Citigroup Global Markets Inc.	Underwriter/ Corporate Seller	CMLTI 2005-9 1A1
		GPMF 2006-AR3 4A1
		LUM 2007-2 1A1
		MARM 2005-7 2A1
		RALI 2006-QA2 1A1
Citigroup Global Markets Realty Corp.	Sponsor	CMLTI 2005-9 1A1
Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer	CMLTI 2005-9 1A1
CitiMortgage, Inc.	Sponsor	CMALT 2007-A4 1A7
Countrywide Home Loans, Inc.	Sponsor	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
		CWHL 2005-2 2A1
Countrywide Securities Corp.	Underwriter	AHMA 2006-6 A1A
		AHMA 2007-2 A1
		AHMA 2007-5 A1
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2007-OA9 A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A
Credit Suisse First Boston Mortgage Securities Corp.	Depositor/Issuer	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
Credit Suisse Securities (USA) LLC	Sponsor	ARMT 2006-2 6A1
	Underwriter	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		MHL 2006-1 1A2
		TMST 2007-1 A2A
		WFMBS 2006-AR12 1A1

Corporate Defendant	As	Certificate(s)
CWALT, Inc.	Depositor/Issuer	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
CWMBS, Inc.	Depositor/Issuer	CWHL 2005-2 2A1
DB Structured Products, Inc.	Sponsor	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
Deutsche Alt-A Securities, Inc.	Depositor/Issuer	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
Deutsche Bank Securities Inc.	Underwriter/ Corporate Seller	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
		JPMMT 2005-ALT1 2A1
		RALI 2006-QA3 A1
DLJ Mortgage Capital, Inc.	Sponsor	ARMT 2006-1 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
EMC Mortgage Corporation	Sponsor	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1

Corporate Defendant	As	Certificate(s)
EMC Mortgage Corporation (cont'd)	Sponsor (cont'd)	BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
Goldman, Sachs & Co.	Underwriter	AHM 2005-2 1A1
		CWALT 2007-OA4 A1
		RALI 2006-QO10 A1
Greenwich Capital Acceptance, Inc.	Depositor/Issuer	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		MHL 2006-1 1A2
Greenwich Capital Financial Products, Inc.	Sponsor	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A

Corporate Defendant	As	Certificate(s)
Greenwich Capital Markets, Inc.	Underwriter	AHM 2005-2 1A1
		CMALT 2007-A4 1A7
		DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		INDX 2005-AR4 2A1A
		INDX 2005-AR8 2A1A
		INDX 2005-AR12 2A1A
		LUM 2007-2 1A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		TMST 2007-1 A2A
IMH Assets Corp.	Depositor/Issuer	IMM 2005-7 A1
Impac Funding Corporation	Sponsor	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
Impac Mortgage Holdings, Inc	Sponsor	IMM 2005-7 A1
Impac Secured Assets Corp.	Depositor/Issuer	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
J.P. Morgan Acceptance Corporation I	Depositor/Issuer	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
J.P. Morgan Mortgage Acquisition Corp.	Sponsor	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
J.P. Morgan Securities Inc.	Underwriter	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
Merrill Lynch Mortgage Lending, Inc.	Sponsor	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter	IMSA 2006-2 1A2A
		INDX 2006-AR19 1A1
		MANA 2007-A3 A2A
		MHL 2005-5 A1
		MLMI 2006-AF2 AV2A
		NAA 2006-AF2 5A1

Corporate Defendant	As	Certificate(s)
Morgan Stanley & Co. Inc.	Underwriter	CMALT 2007-A4 1A7
		CWALT 2005-86CB A10
		LUM 2005-1 A1
		MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Morgan Stanley Capital I Inc.	Depositor/Issuer	MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer	MARM 2005-7 2A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
MortgageIT, Inc.	Sponsor	MHL 2006-1 1A2
MortgageIT Holdings, Inc.	Sponsor	MHL 2005-5 A1
MortgageIT Securities Corp.	Depositor/Issuer	MHL 2005-5 A1
Nomura Asset Acceptance Corporation	Depositor/Issuer	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
Nomura Credit & Capital, Inc.	Sponsor	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
Nomura Securities International, Inc.	Underwriter	NAA 2006-AF2 5A1
Residential Accredit Loans, Inc.	Depositor/Issuer	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
Residential Funding Company, LLC	Sponsor	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
Sandler O'Neil & Partners, L.P.	Corporate Seller	TMTS 2007-6ALT A1

Corporate Defendant	As	Certificate(s)
Structured Asset Mortgage Investments II Inc.	Depositor/Issuer	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		LUM 2005-1 A1
		LUM 2006-3 11A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
UBS Real Estate Securities Inc.	Sponsor	MARM 2005-7 2A1
		MARM 2005-8 1A1
UBS Securities LLC	Sponsor	MARM 2007-R5 A1
	Underwriter/ Corporate Seller	AHM 2005-2 1A1
		CWALT 2005-16 A4
		CWALT 2006-OA8 1A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		LUM 2006-3 11A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		RALI 2005-QA9 NB41

Corporate Defendant	As	Certificate(s)
WaMu Capital Corp.	Underwriter	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
Wells Fargo Asset Securities Corp.	Depositor/Issuer	WFMBS 2006-AR12 1A1
Wells Fargo Bank, National Association	Sponsor	WFMBS 2006-AR12 1A1

Individual Defendant	As	Certificate(s)
Edward Grieb	Individual Seller	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
James J. Sullivan	Individual Seller	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Kristine Smith	Individual Seller	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Lana Franks	Individual Seller	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Mark L. Zusy	Individual Seller	LXS 2005-8 1A2
Richard McKinney	Individual Seller	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Samir Tabet	Individual Seller	LXS 2005-8 1A2

Successor Defendant	Succeeded Entity	As
Bank of America Corporation	Banc of America Securities LLC	Underwriter
	Countrywide Home Loans, Inc.	Sponsor
	Countrywide Securities Corp.	Underwriter
	CWALT, Inc.	Depositor/Issuer
	CWMBS, Inc.	Depositor/Issuer
	Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer
	Merrill Lynch Mortgage Lending, Inc.	Sponsor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter / Successor
Capital One Financial Corporation	Chevy Chase Bank, FSB	Sponsor
Capital One, National Association	Chevy Chase Bank, FSB	Sponsor
DB Structured Products, Inc.	MortgageIT Holdings, Inc.	Sponsor
	MortgageIT Securities Corp.	Depositor/Issuer
	MortgageIT, Inc.	Sponsor

Successor Defendant	Succeeded Entity	As
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Banc of America Securities LLC	Underwriter
Morgan Stanley Mortgage Capital Holdings LLC	Morgan Stanley Mortgage Capital Inc.	Sponsor

809. Under Massachusetts General Laws, Chapter 110A, Section 410(a)(2), any person who "offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading," is liable to the purchaser of the security.

810. The Sponsors, Depositors, Underwriters and/or Corporate Sellers, and Individual Seller Defendants are sellers of the Certificates because they issued, marketed, and/or sold the Certificates to the public for their own financial benefit.

811. In addition, the Individual Seller Defendants named in this First Count signed the registration statements for the Lehman Certificates, which registration statements are included as part of the Offering Documents for the Certificates.

812. The Defendants named in this First Count offered to sell and sold the Certificates to the Bank in the Commonwealth of Massachusetts, when they directed their offers to sell the securities to the Bank at its offices in the Commonwealth of Massachusetts.

813. The Defendants named in this First Count offered and sold the Certificates to the Bank by means of false and misleading statements of material fact and omissions of material facts necessary to make the statements made not misleading.

814. As set forth in more detail in Section VI above and Appendices III – VI referenced therein, the statements set forth in the Offering Documents were materially false and

misleading. The material misstatements and omissions pertain to the following non-exclusive list: (a) adherence to the originators' stated underwriting guidelines, and related matters; (b) the LTVs of the mortgage loans in the collateral pools of these securitizations; (c) the rating process by which triple-A ratings were assigned; (d) compliance with predatory lending restrictions; (e) the purported due diligence on the loan pools that backed the PLMBS; (f) the enforceability of the mortgages; and (g) the compounded high-risk of the mortgage loans within the underlying mortgage pools. As set forth above, the Defendants named in this First Count had access to the underlying loan files and the purported "due diligence" review on which these statements are based, and thus should have known of these untruths and omissions in the Offering Documents.

815. The Bank did not know, and in the exercise of due diligence could not have known, of these untruths and omissions. The Bank did not have access to the underlying loan files, or the purported "due diligence" review on which these statements were allegedly based.

816. The Bank did not and could not reasonably have known of the material misstatements and omissions alleged herein earlier than four years before the date of filing this action.

817. The Bank will elect its remedy before the entry of judgment. For each security, the Bank will seek statutory damages, including interest, or will make or arrange a tender before entry of judgment.

SECOND CAUSE OF ACTION

Joint and Several Liability under the Massachusetts Uniform Securities Act

818. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if fully set forth herein.

819. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Corporate Controlling Person	Controlled Entities	Certificate(s)
Bank of America Corporation	Banc of America Funding Corporation	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
	Banc of America Securities LLC	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
		NAA 2007-3 A1
		WFMBS 2006 AR12 1A1
	Bank of America, N.A.	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
Citigroup Financial Products, Inc.	Citigroup Global Markets Inc.	CMLTI 2005-9 1A1
		GPMF 2006-AR3 4A1
		LUM 2007-2 1A1
		MARM 2005-7 2A1
		RALI 2006-QA2 1A1
	Citigroup Global Markets Realty Corp.	CMLTI 2005-9 1A1
	Citigroup Mortgage Loan Trust Inc.	CMLTI 2005-9 1A1
Citigroup Inc.	Citicorp Mortgage Securities, Inc.	CMALT 2007-A4 1A7
	Citigroup Financial Products, Inc.	CMLTI 2005-9 1A1
		GPMF 2006-AR3 4A1
		LUM 2007-2 1A1
		MARM 2005-7 2A1
		RALI 2006-QA2 1A1
	Citigroup Global Markets Inc.	CMLTI 2005-9 1A1
		GPMF 2006-AR3 4A1
		LUM 2007-2 1A1
		MARM 2005-7 2A1
		RALI 2006-QA2 1A1
	Citigroup Global Markets Realty Corp.	CMLTI 2005-9 1A1
	Citigroup Mortgage Loan Trust Inc.	CMLTI 2005-9 1A1
	CitiMortgage, Inc.	CMALT 2007-A4 1A7
CitiMortgage, Inc.	Citicorp Mortgage Securities, Inc.	CMALT 2007-A4 1A7
Countrywide Financial Corporation	Countrywide Home Loans, Inc.	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
		CWHL 2005-2 2A1

Corporate Controlling Person	Controlled Entities	Certificate(s)
Countrywide Financial Corporation (cont'd)	Countrywide Securities Corp.	AHMA 2006-6 A1A
		AHMA 2007-2 A1
		AHMA 2007-5 A1
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2007-OA9 A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A
	CWALT, Inc.	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
	CWMBS, Inc.	CWHL 2005-2 2A1
Credit Suisse (USA), Inc.	Credit Suisse Securities (USA) LLC	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		MHL 2006-1 1A2
		TMST 2007-1 A2A
		WFMBS 2006-AR12 1A1
	DLJ Mortgage Capital, Inc.	ARMT 2006-1 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
Credit Suisse Holdings (USA), Inc.	Credit Suisse (USA), Inc.	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		MHL 2006-1 1A2
		TMST 2007-1 A2A
		WFMBS 2006-AR12 1A1
	Credit Suisse First Boston Mortgage Securities Corp.	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
	Credit Suisse Securities (USA) LLC	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2

Corporate Controlling Person	Controlled Entities	Certificate(s)
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		MHL 2006-1 1A2
		TMST 2007-1 A2A
		WFMBS 2006-AR12 1A1
	DLJ Mortgage Capital, Inc.	ARMT 2006-1 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
DB Structured Products, Inc.	Deutsche Alt-A Securities, Inc.	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
DB U.S. Financial Market Holding Corporation	DB Structured Products, Inc.	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
	Deutsche Alt-A Securities, Inc.	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
	Deutsche Bank Securities Inc.	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
		JPMMT 2005-ALT1 2A1
		RALI 2006-QA3 A1
GMAC LLC	GMAC Mortgage Group, Inc.	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
	Residential Accredit Loans, Inc.	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1

Corporate Controlling Person	Controlled Entities	Certificate(s)
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
	Residential Funding Company, LLC	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
GMAC Mortgage Group, Inc.	Residential Accredit Loans, Inc.	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
	Residential Funding Company, LLC	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
Greenwich Capital Holdings, Inc.	Greenwich Capital Acceptance, Inc.	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		MHL 2006-1 1A2
	Greenwich Capital Financial Products, Inc.	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
	Greenwich Capital Markets, Inc.	AHM 2005-2 1A1
		CMALT 2007-A4 1A7
		DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		INDX 2005-AR12 2A1A
		INDX 2005-AR4 2A1A
		INDX 2005-AR8 2A1A
		LUM 2007-2 1A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		TMST 2007-1 A2A
Impac Funding Corporation	Impac Secured Assets Corp.	IMSA 2005-2 A1
		IMSA 2006-2 1A2A

Corporate Controlling Person	Controlled Entities	Certificate(s)
Impac Mortgage Holdings, Inc	IMH Assets Corp.	IMM 2005-7 A1
	Impac Funding Corporation	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
	Impac Secured Assets Corp.	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
JPMorgan Chase & Co.	J.P. Morgan Acceptance Corporation I	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
	J.P. Morgan Mortgage Acquisition Corp.	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
	J.P. Morgan Securities Inc.	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
	JPMorgan Securities Holdings LLC	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
JPMorgan Securities Holdings LLC	J.P. Morgan Acceptance Corporation I	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
	J.P. Morgan Securities Inc.	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
Merrill Lynch & Co., Inc.	Merrill Lynch Mortgage Investors, Inc.	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
	Merrill Lynch Mortgage Lending, Inc.	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	IMSA 2006-2 1A2A
		INDX 2006-AR19 1A1
		MANA 2007-A3 A2A
		NAA 2006-AF2 5A1

Corporate Controlling Person	Controlled Entities	Certificate(s)
Morgan Stanley	Morgan Stanley & Co. Inc.	CMALT 2007-A4 1A7
		CWALT 2005-86CB A10
		LUM 2005-1 A1
		MHL 2005-5 A1
		MLMI 2006-AF2 AV2A
		MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
	Morgan Stanley Capital I Inc.	MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
	Morgan Stanley Mortgage Capital Inc.	MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Morgan Stanley & Co. Inc.	Morgan Stanley Mortgage Capital Inc.	MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Mortgage IT, Inc.	MortgageIT Securities Corp.	MHL 2005-5 A1
Nomura Holding America, Inc.	Nomura Asset Acceptance Corporation	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
	Nomura Credit & Capital, Inc.	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
	Nomura Securities International, Inc.	NAA 2006-AF2 5A1

Corporate Controlling Person	Controlled Entities	Certificate(s)
The Bear Stearns Companies Inc.	Bear Stearns Asset Backed Securities I LLC	BALTA 2006-1 11A1
	Bear, Stearns & Co. Inc.	AHM 2005-2 1A1
		BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		CWHL 2005-2 2A1
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A
		LUM 2005-1 A1
		LUM 2006-3 11A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		MHL 2005-5 A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
		TMST 2007-1 A2A
	EMC Mortgage Corporation	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1

Corporate Controlling Person	Controlled Entities	Certificate(s)
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
	Structured Asset Mortgage Investments II Inc.	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1

Corporate Controlling Person	Controlled Entities	Certificate(s)
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		LUM 2005-1 A1
		LUM 2006-3 11A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
UBS Americas Inc.	Mortgage Asset Securitization Transactions, Inc.	MARM 2005-7 2A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
	UBS Real Estate Securities Inc.	MARM 2005-7 2A1
		MARM 2005-8 1A1

Individual Defendant	As	Certificate(s)
Barry J. O'Brien	Individual Controlling Person	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Christopher M. O'Meara	Individual Controlling Person	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Edward Grieb	Individual Controlling Person	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
James J. Sullivan	Individual Controlling Person	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Kristine Smith	Individual Controlling Person	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Lana Franks	Individual Controlling Person	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Mark L. Zusy	Individual Controlling Person	LXS 2005-8 1A2
Richard McKinney	Individual Controlling Person	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Richard S. Fuld, Jr.	Individual Controlling Person	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1

Individual Defendant	As	Certificate(s)
Samir Tabet	Individual Controlling Person	LXS 2005-8 1A2

Successor Defendant	Succeeded Entity	As
Bank of America Corporation	Countrywide Financial Corporation	Corporate Controlling Person
	Merrill Lynch & Co., Inc.	Corporate Controlling Person
Capital One Financial Corporation	Chevy Chase Bank, FSB	Corporate Controlling Person
Capital One, National Association	Chevy Chase Bank, FSB	Corporate Controlling Person
DB Structured Products, Inc.	MortgageIT Holdings, Inc.	Corporate Controlling Person
	MortgageIT, Inc.	Corporate Controlling Person

820. Under Massachusetts General Laws, Chapter 110A, Section 410(b), "[e]very person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, [and] every person occupying a similar status or performing similar functions" is liable jointly and severally with and to the same extent as the seller.

821. The Corporate Controlling Person Defendants named in this count are liable under Massachusetts General Laws, Chapter 110A, Section 410(b) because, as set forth *supra* in § III.E above and elsewhere herein, they directly or indirectly controlled the Sponsor, Depositor, Underwriter, or other Seller identified in the First Cause of Action above, each of which is liable as a seller under Massachusetts General Laws, Chapter 110A, Section 410. The Corporate Controlling Entity Defendants possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of the primary violators, whether through the ownership of voting securities, by contract, or otherwise.

822. In addition, the Individual Controlling Person Defendants are jointly and severally liable to the same extent as the primary violators because each of them was an officer, director, partner, or occupied a similar status or performed similar functions of such officer, director or

partner, of Lehman Brothers entities Lehman Brothers, Inc., Lehman Brothers Holdings Inc. and/or Lehman subsidiary and Depositor/Issuer Structured Asset Securities Corporation (the "Lehman Entities"), which were primary violators of Massachusetts General Laws, Chapter 110A, Section 410(a), and directly or indirectly controlled the primary violators' operations, including the securitizations at issue here. The Individual Controlling Person Defendants possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of the Lehman Entities, whether through the ownership of voting securities, by contract, or otherwise.

823. As controlling persons pursuant to Massachusetts General Laws, Chapter 110A, Section 410(b), the Corporate and Individual Controlling Person Defendants are jointly and severally liable with the controlled person or entity to the Bank for the violations of Massachusetts General Laws, Chapter 110A, Section 410(a) alleged herein.

824. The Bank did not and could not reasonably have known of the facts giving rise to this cause of action any earlier than four years before the date of filing this action.

825. The Bank will elect its remedy before the entry of judgment. For each security, the Bank will seek statutory damages, including interest, or will make or arrange a tender before entry of judgment.

THIRD CAUSE OF ACTION

Negligent Misrepresentation by Certain Securities Defendants

826. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if fully set forth herein.

827. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Corporate Defendant	As	Certificate(s)
Banc of America Funding Corporation	Depositor/Issuer	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
Bank of America, National Association	Sponsor	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
Barclays Capital Inc.	Underwriter	BCAP 2006-AA1 A1
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		RALI 2007-QS6 A29
BCAP LLC	Depositor/Issuer	BCAP 2006-AA1 A1
Bear Stearns Asset Backed Securities I LLC	Depositor/Issuer	BALTA 2006-1 11A1
Bear, Stearns & Co. Inc	Underwriter/ Corporate Seller	AHM 2005-2 1A1
		BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		CWHL 2005-2 2A1
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A
		LUM 2005-1 A1

Corporate Defendant	As	Certificate(s)
		LUM 2006-3 11A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		MHL 2005-5 A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
		TMST 2007-1 A2A
Chevy Chase Funding LLC	Depositor/Issuer	CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
Citicorp Mortgage Securities, Inc.	Depositor/Issuer	CMALT 2007-A4 1A7
Citigroup Global Markets Inc.	Underwriter/ Corporate Seller	CMLTI 2005-9 1A1
		GPMF 2006-AR3 4A1
		LUM 2007-2 1A1
		MARM 2005-7 2A1
		RALI 2006-QA2 1A1
Citigroup Global Markets Realty Corp.	Sponsor	CMLTI 2005-9 1A1
Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer	CMLTI 2005-9 1A1
CitiMortgage, Inc.	Sponsor	CMALT 2007-A4 1A7
Countrywide Home Loans, Inc.	Sponsor	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
		CWHL 2005-2 2A1
Countrywide Securities Corp.	Underwriter	AHMA 2006-6 A1A
		AHMA 2007-2 A1
		AHMA 2007-5 A1
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2007-OA9 A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A

Corporate Defendant	As	Certificate(s)
Credit Suisse First Boston Mortgage Securities Corp.	Depositor/Issuer	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
Credit Suisse Securities (USA) LLC	Sponsor	ARMT 2006-2 6A1
	Underwriter	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		MHL 2006-1 1A2
		TMST 2007-1 A2A
		WFMBS 2006-AR12 1A1
CWALT, Inc.	Depositor/Issuer	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
CWMBS, Inc.	Depositor/Issuer	CWHL 2005-2 2A1
DB Structured Products, Inc.	Sponsor	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
Deutsche Alt-A Securities, Inc.	Depositor/Issuer	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
Deutsche Bank Securities Inc.	Underwriter/ Corporate Seller	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
		JPMMT 2005-ALT1 2A1
		RALI 2006-QA3 A1

Corporate Defendant	As	Certificate(s)
DLJ Mortgage Capital, Inc.	Sponsor	ARMT 2006-1 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
EMC Mortgage Corporation	Sponsor	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
Goldman, Sachs & Co.	Underwriter	AHM 2005-2 1A1
		CWALT 2007-OA4 A1
		RALI 2006-QO10 A1
Greenwich Capital Acceptance, Inc.	Depositor/Issuer	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		MHL 2006-1 1A2

Corporate Defendant	As	Certificate(s)
Greenwich Capital Financial Products, Inc.	Sponsor	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
Greenwich Capital Markets, Inc.	Underwriter	AHM 2005-2 1A1
		CMALT 2007-A4 1A7
		DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		INDX 2005-AR4 2A1A
		INDX 2005-AR8 2A1A
		INDX 2005-AR12 2A1A
		LUM 2007-2 1A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		TMST 2007-1 A2A
IMH Assets Corp.	Depositor/Issuer	IMM 2005-7 A1
Impac Funding Corporation	Sponsor	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
Impac Mortgage Holdings, Inc	Sponsor	IMM 2005-7 A1
Impac Secured Assets Corp.	Depositor/Issuer	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
J.P. Morgan Acceptance Corporation I	Depositor/Issuer	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
J.P. Morgan Mortgage Acquisition Corp.	Sponsor	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
J.P. Morgan Securities Inc.	Underwriter	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A

Corporate Defendant	As	Certificate(s)
Merrill Lynch Mortgage Lending, Inc.	Sponsor	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter	IMSA 2006-2 1A2A
		INDX 2006-AR19 1A1
		MANA 2007-A3 A2A
		MHL 2005-5 A1
		MLMI 2006-AF2 AV2A
		NAA 2006-AF2 5A1
Morgan Stanley & Co. Inc.	Underwriter	CMALT 2007-A4 1A7
		CWALT 2005-86CB A10
		LUM 2005-1 A1
		MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Morgan Stanley Capital I Inc.	Depositor/Issuer	MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer	MARM 2005-7 2A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
MortgageIT, Inc.	Sponsor	MHL 2006-1 1A2
MortgageIT Holdings, Inc.	Sponsor	MHL 2005-5 A1
MortgageIT Securities Corp.	Depositor/Issuer	MHL 2005-5 A1
Nomura Asset Acceptance Corporation	Depositor/Issuer	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
Nomura Credit & Capital, Inc.	Sponsor	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
Nomura Securities International, Inc.	Underwriter	NAA 2006-AF2 5A1
Residential Accredit Loans, Inc.	Depositor/Issuer	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29

Corporate Defendant	As	Certificate(s)
Residential Funding Company, LLC	Sponsor	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
Sandler O'Neil & Partners, L.P.	Corporate Seller	TMTS 2007-6ALT A1
Structured Asset Mortgage Investments II Inc.	Depositor/Issuer	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		LUM 2005-1 A1
		LUM 2006-3 11A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
UBS Real Estate Securities Inc.	Sponsor	MARM 2005-7 2A1
		MARM 2005-8 1A1

Corporate Defendant	As	Certificate(s)
UBS Securities LLC	Sponsor	MARM 2007-R5 A1
	Underwriter/ Corporate Seller	AHM 2005-2 1A1
		CWALT 2005-16 A4
		CWALT 2006-OA8 1A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		LUM 2006-3 11A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		RALI 2005-QA9 NB41
WaMu Capital Corp.	Underwriter	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
Wells Fargo Asset Securities Corp.	Depositor/Issuer	WFMBS 2006-AR12 1A1
Wells Fargo Bank, National Association	Sponsor	WFMBS 2006-AR12 1A1

Individual Defendant	As	Certificate(s)
Edward Grieb	Individual Seller	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
James J. Sullivan	Individual Seller	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Kristine Smith	Individual Seller	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Lana Franks	Individual Seller	LXS 2005-8 1A2
		LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Mark L. Zusy	Individual Seller	LXS 2005-8 1A2
Richard McKinney	Individual Seller	LXS 2006-15 A1
		LXS 2007-11 A1
		LXS 2007-9 1A1
Samir Tabet	Individual Seller	LXS 2005-8 1A2

Successor Defendant	Succeeded Entity	As
Bank of America Corporation	Banc of America Securities LLC	Underwriter
	Countrywide Home Loans, Inc.	Sponsor
	Countrywide Securities Corp.	Underwriter
	CWALT, Inc.	Depositor/Issuer
	CWMBS, Inc.	Depositor/Issuer
	Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer
	Merrill Lynch Mortgage Lending, Inc.	Sponsor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter / Successor
Capital One Financial Corporation	Chevy Chase Bank, FSB	Sponsor
Capital One, National Association	Chevy Chase Bank, FSB	Sponsor
DB Structured Products, Inc.	MortgageIT Holdings, Inc.	Sponsor
	MortgageIT Securities Corp.	Depositor/Issuer
	MortgageIT, Inc.	Sponsor
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Banc of America Securities LLC	Underwriter
Morgan Stanley Mortgage Capital Holdings LLC	Morgan Stanley Mortgage Capital Inc.	Sponsor

828. As set forth above, in the course of their business dealings, the Defendants named in this Third Count made numerous representations to the Bank regarding the collateral underlying the Certificates and the underwriting guidelines that were supposedly applied in originating the mortgage loans underlying those Certificates. These material misrepresentations pertain to the following non-exclusive list: (a) adherence to the originators' stated underwriting guidelines; and related matters; (b) the LTVs of the mortgage loans in the collateral pools of these securitizations; (c) the rating process by which triple-A ratings were assigned; (d) compliance with predatory lending restrictions; (e) purported due diligence on the loan pools that backed the PLMBS; (f) the enforceability of the mortgages; and (g) the compounded high-risk of the mortgage loans within the underlying mortgage pools.

829. The Defendants named in this Third Count made the representations in the Offering Documents with the intent to influence the Bank's decision to purchase the securities.

830. These Defendants should have known that those statements were false when made, and these Defendants failed to exercise reasonable care or competence in obtaining or verifying these representations.

831. The Defendants named in this Third Count were in a position of superior knowledge as to these representations because such Defendants had access to the loan files on which these statements were based, as well as the purported "due diligence" review of the loan files, and the Bank did not have access to either the loan files or the purported "due diligence" review. Accordingly, the Bank justifiably relied on these representations by these Defendants in making its decision to purchase the securities.

832. The Bank did not and could not reasonably have known of these Defendants' misrepresentations alleged herein earlier than three years before the date of filing this action.

833. As a result of these Defendants' misrepresentations alleged herein, the Bank has suffered damages in an amount to be proven at trial, plus interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION

Violations of the Massachusetts General Law c. 93A by Certain Securities Defendants

834. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if set forth herein.

835. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Corporate Defendant	As	Certificate(s)
Banc of America Funding Corporation	Depositor/Issuer	BAFC 2005-H 7A1
		BAFC 2006-D 1A1
Bank of America, National Association	Sponsor	BAFC 2005-H 7A1
		BAFC 2006-D 1A1

Corporate Defendant	As	Certificate(s)
Barclays Capital Inc.	Underwriter	BCAP 2006-AA1 A1
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		RALI 2007-QS6 A29
BCAP LLC	Depositor/Issuer	BCAP 2006-AA1 A1
Bear Stearns Asset Backed Securities I LLC	Depositor/Issuer	BALTA 2006-1 11A1
Bear, Stearns & Co. Inc	Underwriter/ Corporate Seller	AHM 2005-2 1A1
		BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		CWHL 2005-2 2A1
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2 1A2A
		LUM 2005-1 A1
		LUM 2006-3 11A1
		LUM 2006-6 A1
		LUM 2006-7 2A1
		MHL 2005-5 A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1

Corporate Defendant	As	Certificate(s)
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
		TMST 2007-1 A2A
Chevy Chase Funding LLC	Depositor/Issuer	CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
Citicorp Mortgage Securities, Inc.	Depositor/Issuer	CMALT 2007-A4 1A7
Citigroup Global Markets Inc.	Underwriter/ Corporate Seller	CMLTI 2005-9 1A1
		GPMF 2006-AR3 4A1
		LUM 2007-2 1A1
		MARM 2005-7 2A1
		RALI 2006-QA2 1A1
Citigroup Global Markets Realty Corp.	Sponsor	CMLTI 2005-9 1A1
Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer	CMLTI 2005-9 1A1
CitiMortgage, Inc.	Sponsor	CMALT 2007-A4 1A7
Countrywide Home Loans, Inc.	Sponsor	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
		CWHL 2005-2 2A1
Countrywide Securities Corp.	Underwriter	AHMA 2006-6 A1A
		AHMA 2007-2 A1
		AHMA 2007-5 A1
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2007-OA9 A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		IMSA 2006-2-1A2A
Credit Suisse First Boston Mortgage Securities Corp.	Depositor/Issuer	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21

Corporate Defendant	As	Certificate(s)
Credit Suisse Securities (USA) LLC	Sponsor	ARMT 2006-2 6A1
	Underwriter	ARMT 2006-1 6A1
		ARMT 2006-2 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
		CCMFC 2006-2A A1
		CCMFC 2007-1A A1
		CCMFC 2007-2A A1
		MHL 2006-1 1A2
		TMST 2007-1 A2A
		WFMBS 2006-AR12 1A1
CWALT, Inc.	Depositor/Issuer	CWALT 2005-16 A4
		CWALT 2005-86CB A10
		CWALT 2006-OA16 A2
		CWALT 2006-OA8 1A1
		CWALT 2007-OA4 A1
		CWALT 2007-OA9 A1
CWMBS, Inc.	Depositor/Issuer	CWHL 2005-2 2A1
DB Structured Products, Inc.	Sponsor	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
Deutsche Alt-A Securities, Inc.	Depositor/Issuer	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
Deutsche Bank Securities Inc.	Underwriter/ Corporate Seller	DBALT 2006-AR2 1A1
		DBALT 2006-AR2 1A2
		DBALT 2006-AR3 A2
		DBALT 2006-AR4 A1
		DBALT 2006-AR5 1A1
		DBALT 2007-AR1 A1
		DBALT 2007-AR3 2A1
		JPMMT 2005-ALT1 2A1
		RALI 2006-QA3 A1
DLJ Mortgage Capital, Inc.	Sponsor	ARMT 2006-1 6A1
		ARMT 2006-3 4A2
		ARMT 2007-1 5A1
		ARMT 2007-2 2A21
EMC Mortgage Corporation	Sponsor	BALTA 2005-10 11A1

Corporate Defendant	As	Certificate(s)
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-1 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
Goldman, Sachs & Co.	Underwriter	AHM 2005-2 1A1
		CWALT 2007-OA4 A1
		RALI 2006-QO10 A1
Greenwich Capital Acceptance, Inc.	Depositor/Issuer	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		MHL 2006-1 1A2
Greenwich Capital Financial Products, Inc.	Sponsor	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A

Corporate Defendant	As	Certificate(s)
Greenwich Capital Markets, Inc.	Underwriter	AHM 2005-2 1A1
		CMALT 2007-A4 1A7
		DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
		HVMLT 2005-10 2A1A
		HVMLT 2006-7 2A1A
		HVMLT 2006-8 2A1A
		HVMLT 2007-1 2A1A
		INDX 2005-AR4 2A1A
		INDX 2005-AR8 2A1A
		INDX 2005-AR12 2A1A
		LUM 2007-2 1A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		TMST 2007-1 A2A
IMH Assets Corp.	Depositor/Issuer	IMM 2005-7 A1
Impac Funding Corporation	Sponsor	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
Impac Mortgage Holdings, Inc	Sponsor	IMM 2005-7 A1
Impac Secured Assets Corp.	Depositor/Issuer	IMSA 2005-2 A1
		IMSA 2006-2 1A2A
J.P. Morgan Acceptance Corporation I	Depositor/Issuer	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
J.P. Morgan Mortgage Acquisition Corp.	Sponsor	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
		JPMMT 2005-ALT1 2A1
J.P. Morgan Securities Inc.	Underwriter	JPALT 2006-A1 1A1
		JPALT 2006-A2 1A1
		JPALT 2006-A3 1A1
		JPALT 2007-A2 12A1
Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
Merrill Lynch Mortgage Lending, Inc.	Sponsor	MANA 2007-A3 A2A
		MLMI 2006-AF2 AV2A
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter	IMSA 2006-2 1A2A
		INDX 2006-AR19 1A1
		MANA 2007-A3 A2A
		MHL 2005-5 A1
		MLMI 2006-AF2 AV2A
		NAA 2006-AF2 5A1

Corporate Defendant	As	Certificate(s)
Morgan Stanley & Co. Inc.	Underwriter	CMALT 2007-A4 1A7
		CWALT 2005-86CB A10
		LUM 2005-1 A1
		MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Morgan Stanley Capital I Inc.	Depositor/Issuer	MSM 2006-13AX A1
		MSM 2006-16AX 2A1
		MSM 2006-8AR 1A2
		MSM 2006-9AR A3
		MSM 2007-2AX 2A2
		MSM 2007-5AX 2A2
		MSM 2007-7AX 2A1
Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer	MARM 2005-7 2A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
MortgageIT, Inc.	Sponsor	MHL 2006-1 1A2
MortgageIT Holdings, Inc.	Sponsor	MHL 2005-5 A1
MortgageIT Securities Corp.	Depositor/Issuer	MHL 2005-5 A1
Nomura Asset Acceptance Corporation	Depositor/Issuer	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
Nomura Credit & Capital, Inc.	Sponsor	NAA 2006-AF2 5A1
		NAA 2006-AR4 A2
		NAA 2007-1 2A1
		NAA 2007-3 A1
Nomura Securities International, Inc.	Underwriter	NAA 2006-AF2 5A1
Residential Accredit Loans, Inc.	Depositor/Issuer	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
Residential Funding Company, LLC	Sponsor	RALI 2005-QA9 NB41
		RALI 2006-QA2 1A1
		RALI 2006-QA3 A1
		RALI 2006-QO10 A1
		RALI 2007-QS6 A29
Sandler O'Neil & Partners, L.P.	Corporate Seller	TMTS 2007-6ALT A1

Corporate Defendant	As	Certificate(s)
Structured Asset Mortgage Investments II Inc.	Depositor/Issuer	BALTA 2005-10 11A1
		BALTA 2005-8 11A1
		BALTA 2005-9 11A1
		BALTA 2006-2 11A1
		BALTA 2006-3 1A1
		BALTA 2006-4 11A1
		BALTA 2006-4 13A1
		BALTA 2006-5 1A1
		BALTA 2006-6 1A1
		BALTA 2006-7 1A1
		BALTA 2007-1 1A1
		BALTA 2007-2 1A1
		BALTA 2007-3 1A1
		BSMF 2006-AR1 1A1
		BSMF 2006-AR2 1A1
		BSMF 2006-AR3 1A1
		BSMF 2006-AR5 1A1
		BSMF 2007-AR1 1A1
		BSMF 2007-AR4 1A1
		BSMF 2007-AR5 1A1A
		GPMF 2005-AR1 A2
		GPMF 2005-AR2 A1
		GPMF 2005-AR4 4A1A
		GPMF 2006-AR3 4A1
		LUM 2005-1 A1
		LUM 2006-3 11A1
		SAMI 2005-AR2 1A1
		SAMI 2005-AR3 1A1
		SAMI 2005-AR6 2A1
		SAMI 2006-AR4 4A1
		SAMI 2006-AR6 1A1
		SAMI 2006-AR7 A1A
UBS Real Estate Securities Inc.	Sponsor	MARM 2005-7 2A1
		MARM 2005-8 1A1
UBS Securities LLC	Sponsor	MARM 2007-R5 A1
	Underwriter/ Corporate Seller	AHM 2005-2 1A1
		CWALT 2005-16 A4
		CWALT 2006-OA8 1A1
		IMM 2005-7 A1
		IMSA 2005-2 A1
		LUM 2006-3 11A1
		MARM 2005-8 1A1
		MARM 2007-R5 A1
		MHL 2006-1 1A2
		NAA 2006-AR4 A2
		RALI 2005-QA9 NB41

Corporate Defendant	As	Certificate(s)
WaMu Capital Corp.	Underwriter	DSLA 2005-AR1 2A1A
		DSLA 2005-AR2 2A1A
Wells Fargo Asset Securities Corp.	Depositor/Issuer	WFMBS 2006-AR12 1A1
Wells Fargo Bank, National Association	Sponsor	WFMBS 2006-AR12 1A1

Successor Defendant	Succeeded Entity	As
Bank of America Corporation	Banc of America Securities LLC	Underwriter
	Countrywide Home Loans, Inc.	Sponsor
	Countrywide Securities Corp.	Underwriter
	CWALT, Inc.	Depositor/Issuer
	CWMBS, Inc.	Depositor/Issuer
	Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer
	Merrill Lynch Mortgage Lending, Inc.	Sponsor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter / Successor
Capital One Financial Corporation	Chevy Chase Bank, FSB	Sponsor
Capital One, National Association	Chevy Chase Bank, FSB	Sponsor
DB Structured Products, Inc.	MortgageIT Holdings, Inc.	Sponsor
	MortgageIT Securities Corp.	Depositor/Issuer
	MortgageIT, Inc.	Sponsor
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Banc of America Securities LLC	Underwriter
Morgan Stanley Mortgage Capital Holdings LLC	Morgan Stanley Mortgage Capital Inc.	Sponsor

836. Under Massachusetts General Laws, Chapter 93A, Section 11, "[a]ny person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice . . . may . . . bring an action in superior court" for relief.

837. In connection with their offer and sale of these securities to the Bank, the Defendants named in this Fourth Count made numerous documents available to the Bank at its office in Boston, Massachusetts. For issuances that were not private placement deals, the Offering Documents that such Defendants sent to the Bank included the prospectus and prospectus supplement filed with the SEC for each securitization, registration statements, summary term sheets, and other documents. For private placement deals, the Offering Documents included private placement memoranda. In these Offering Documents, such Defendants made misrepresentations and omissions of fact that a reasonable person would find deceptive, the truth about which facts was reasonably ascertainable by Defendants but not by the Bank.

838. Both the Bank and the Defendants named in this Fourth Count were engaged in trade or commerce at the time of the misrepresentations and omissions described above, and the interaction between the parties was commercial in nature, in that such Defendants were engaged in offering securities for sale.

839. Such Defendants' misrepresentations and omissions reached the Bank, and the Bank was deceived, in Massachusetts.

840. The actions and transactions that constitute such Defendants' deceptive acts occurred primarily and substantially within Massachusetts.

841. The Bank did not and could not reasonably have known of such Defendants' material misstatements and omissions alleged herein earlier than four years before the date of filing this action.

842. As a result of such Defendants' deceptive acts, the Bank suffered a loss of money or property in an amount to be proved at trial.

FIFTH CAUSE OF ACTION

Fraud by Rating Agency Defendants

843. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if set forth herein.

844. The Bank alleges fraud against the Rating Agency Defendants. The following table specifies which ratings were fraudulent, what such ratings were, who issued such ratings, and the date on which the ratings were communicated to the Bank:

Certificate	Rating by Fitch	Rating by Moody's	Rating by S&P	Date of Communication of the Rating
AHM 2005-2 1A1	Not rated	Aaa	AAA	6/13/05
AHMA 2006-6 A1A	Not rated	Aaa	AAA	10/13/06
AHMA 2007-2 A1	Not rated	Aaa	AAA	2/21/07
AHMA 2007-5 A1	Not rated	Aaa	AAA	6/26/07
ARMT 2006-1 6A1	Not rated	Aaa	AAA	2/27/06
ARMT 2006-2 6A1	Not rated	Aaa	AAA	4/27/06
ARMT 2006-3 4A2	Not rated	Aaa	AAA	6/28/06
ARMT 2007-1 5A1	Not rated	Aaa	AAA	2/23/07
ARMT 2007-2 2A21	Not rated	Aaa	AAA	5/23/07
BAFC 2005-H 7A1	AAA	Not rated	AAA	10/26/05
BAFC 2006-D 1A1	AAA	Not rated	AAA	4/26/06
BALTA 2005-8 11A1	Not rated	Aaa	AAA	8/4/05
BALTA 2005-9 11A1	Not rated	Aaa	AAA	9/7/05
BALTA 2005-10 11A1	Not rated	Aaa	AAA	11/7/05
BALTA 2006-1 11A1	Not rated	Aaa	AAA	1/6/06
BALTA 2006-2 11A1	Not rated	Aaa	AAA	1/25/06
BALTA 2006-3 1A1	Not rated	Aaa	AAA	4/27/06
BALTA 2006-4 11A1	Not rated	Aaa	AAA	5/18/06
BALTA 2006-4 13A1	Not rated	Aaa	AAA	6/6/06
BALTA 2006-5 1A1	Not rated	Aaa	AAA	7/11/06
BALTA 2006-6 1A1	Not rated	Aaa	AAA	8/29/06
BALTA 2006-7 1A1	Not rated	Aaa	AAA	10/3/06
BALTA 2007-1 1A1	Not rated	Aaa	AAA	1/18/07
BALTA 2007-2 1A1	Not rated	Aaa	AAA	2/23/07
BALTA 2007-3 1A1	Not rated	Aaa	AAA	4/25/07
BCAP 2006-AA1 A1	Not rated	Aaa	AAA	8/30/06
BSMF 2006-AR1 1A1	Not rated	Aaa	AAA	7/18/06
BSMF 2006-AR2 1A1	Not rated	Aaa	AAA	9/6/06
BSMF 2006-AR3 1A1	Not rated	Aaa	AAA	10/3/06

Certificate	Rating by Fitch	Rating by Moody's	Rating by S&P	Date of Communication of the Rating
BSMF 2006-AR5 1A1	Not rated	Aaa	AAA	12/5/06
BSMF 2007-AR1 1A1	Not rated	Aaa	AAA	1/3/07
BSMF 2007-AR4 1A1	Not rated	Aaa	AAA	4/27/07
BSMF 2007-AR5 1A1A	Not rated	Aaa	AAA	6/4/07
CCMFC 2006-2A A1	Not rated	Aaa	AAA	5/19/06
CCMFC 2007-1A A1	Not rated	Aaa	AAA	3/13/07
CCMFC 2007-2A A1	Not rated	Aaa	AAA	5/25/07
CMALT 2007-A4 1A7	AAA	Aaa	Not rated	4/25/07
CMLTI 2005-9 1A1	AAA	Not rated	AAA	9/29/05
CWALT 2005-16 A4	Not rated	Aaa	AAA	3/8/05
CWALT 2005-86CB A10	Not rated	Aaa	AAA	12/27/05
CWALT 2006-OA16 A2	Not rated	Aaa	AAA	8/4/06
CWALT 2006-OA8 1A1	Not rated	Aaa	AAA	5/1/06
CWALT 2007-OA4 A1	AAA	Aaa	AAA	3/15/07
CWALT 2007-OA9 A1	Not rated	Aaa	AAA	7/27/07
CWHL 2005-2 2A1	Not rated	Aaa	AAA	12/9/04
DBALT 2006-AR2 1A1	Not rated	Aaa	AAA	6/29/06
DBALT 2006-AR2 1A2	Not rated	Aaa	AAA	6/29/06
DBALT 2006-AR3 A2	Not rated	Aaa	AAA	7/28/06
DBALT 2006-AR4 A1	Not rated	Aaa	AAA	9/18/06
DBALT 2006-AR5 1A1	Not rated	Aaa	AAA	9/22/06
DBALT 2007-AR1 A1	Not rated	Aaa	AAA	1/9/06
DBALT 2007-AR3 2A1	Not rated	Aaa	AAA	4/20/07
DSLA 2005-AR1 2A1A	Not rated	Aaa	AAA	2/23/05
DSLA 2005-AR2 2A1A	Not rated	Aaa	AAA	4/26/05
GPMF 2005-AR1 A2	Not rated	Aaa	AAA	3/9/05
GPMF 2005-AR2 A1	Not rated	Aaa	AAA	4/11/05
GPMF 2005-AR4 4A1A	Not rated	Aaa	AAA	7/18/05
GPMF 2006-AR3 4A1	Not rated	Aaa	AAA	4/27/06
HVMLT 2005-10 2A1A	Not rated	Aaa	AAA	8/26/05
HVMLT 2006-7 2A1A	Not rated	Aaa	AAA	7/19/06
HVMLT 2006-8 2A1A	Not rated	Aaa	AAA	7/27/06
HVMLT 2007-1 2A1A	Not rated	Aaa	AAA	1/30/07
IMM 2005-7 A1	Not rated	Aaa	AAA	9/9/05
IMSA 2005-2 A1	Not rated	Aaa	AAA	12/20/05
IMSA 2006-2 1A2A	Not rated	Aaa	AAA	6/28/06
INDX 2005-AR4 2A1A	Not rated	Aaa	AAA	1/19/05
INDX 2005-AR8 2A1A	Not rated	Aaa	AAA	4/18/05
INDX 2005-AR12 2A1A	Not rated	Aaa	AAA	6/2/05
INDX 2006-AR19 1A1	Not rated	Aaa	AAA	5/25/06
JPALT 2006-A1 1A1	AAA	Aaa	AAA	2/24/06
JPALT 2006-A2 1A1	AAA	Aaa	AAA	4/27/06

Certificate	Rating by Fitch	Rating by Moody's	Rating by S&P	Date of Communication of the Rating
JPALT 2006-A3 1A1	AAA	Aaa	AAA	6/6/06
JPALT 2007-A2 12A1	AAA	Aaa	AAA	5/23/07
JPMMT 2005-ALT1 2A1	AAA	Not rated	AAA	9/26/05
LUM 2005-1 A1	Not rated	Aaa	AAA	10/25/05
LUM 2006-3 11A1	Not rated	Aaa	AAA	4/27/06
LUM 2006-6 A1	Not rated	Aaa	AAA	9/27/06
LUM 2006-7 2A1	Not rated	Aaa	AAA	12/18/06
LUM 2007-2 1A1	Not rated	Aaa	AAA	4/26/07
LXS 2005-8 1A2	Not rated	Aaa	AAA	11/15/05
LXS 2006-15 A1	Not rated	Aaa	AAA	9/13/06
LXS 2007-11 A1	Not rated	Aaa	AAA	6/28/07
LXS 2007-9 1A1	Not rated	Aaa	AAA	4/20/07
MANA 2007-A3 A2A	Not rated	Aaa	AAA	3/22/07
MARM 2005-7 2A1	Not rated	Aaa	AAA	8/26/05
MARM 2005-8 1A1	Not rated	Aaa	AAA	12/22/05
MARM 2007-R5 A1	Not rated	Aaa	AAA	9/21/07
MHL 2005-5 A1	Not rated	Aaa	AAA	10/20/05
MHL 2006-1 1A2	Not rated	Aaa	AAA	2/17/06
MLMI 2006-AF2 AV2A	Not rated	Aaa	AAA	9/8/06
MSM 2006-13AX A1	Not rated	Aaa	AAA	9/13/06
MSM 2006-16AX 2A1	Not rated	Aaa	AAA	10/17/06
MSM 2006-8AR 1A2	Not rated	Aaa	AAA	5/18/06
MSM 2006-9AR A3	Not rated	Aaa	AAA	7/19/06
MSM 2007-2AX 2A2	Not rated	Aaa	AAA	1/16/07
MSM 2007-5AX 2A2	Not rated	Aaa	AAA	2/26/07
MSM 2007-7AX 2A1	Not rated	Aaa	AAA	4/16/07
NAA 2006-AF2 5A1	Not rated	Aaa	AAA	7/28/06
NAA 2006-AR4 A2	Not rated	Aaa	AAA	11/30/06
NAA 2007-1 2A1	Not rated	Aaa	AAA	4/24/07
NAA 2007-3 A1	Not rated	Aaa	AAA	6/27/07
RALI 2005-QA9 NB41	Not rated	Aaa	AAA	8/26/05
RALI 2006-QA3 A1	Not rated	Aaa	AAA	4/13/06
RALI 2006-QO10 A1	Not rated	Aaa	AAA	12/13/06
RALI 2006-QA2 1A1	Not rated	Aaa	AAA	2/24/06
RALI 2007-QS6 A29	AAA	Aaa	AAA	4/25/07
SAMI 2005-AR2 1A1	Not rated	Aaa	AAA	4/5/05
SAMI 2005-AR3 1A1	Not rated	Aaa	AAA	6/3/05
SAMI 2005-AR6 2A1	Not rated	Aaa	AAA	7/28/05
SAMI 2006-AR4 4A1	Not rated	Aaa	AAA	5/8/06
SAMI 2006-AR6 1A1	Not rated	Aaa	AAA	6/2/06
SAMI 2006-AR7 A1A	Not rated	Aaa	AAA	7/11/06
TMST 2007-1 A2A	Not rated	Aaa	AAA	2/16/07

Certificate	Rating by Fitch	Rating by Moody's	Rating by S&P	Date of Communication of the Rating
TMTS 2007-6ALT A1	Not rated	Aaa	AAA	6/18/07
WFMBS 2006-AR12 1A1	Not rated	Aaa	AAA	8/24/06

845. The ratings were communicated to the Bank by means of a preliminary term sheet, a prospectus supplement, a free writing prospectus, or through Bloomberg.

846. These ratings were material to the Bank's decision to purchase the above-named PLMBS because without the investment-grade ratings that the Rating Agency Defendants gave the PLMBS, the Bank, by policy, could not have purchased the PLMBS.

847. The Bank reasonably relied upon the ratings. As the U.S. District Court for the Southern District of New York recently noted: "[T]he market at large, including sophisticated investors, have come to rely on the accuracy of credit ratings and the independence of rating agencies because of their NRSRO status and, at least in this case, the Rating Agencies' access to non-public information that even sophisticated investors cannot obtain." *Abu Dhabi Commercial Bank v. Morgan Stanley & Co.*, 651 F. Supp. 2d 155, 181 (S.D.N.Y. 2009).

848. By providing ratings, the Rating Agency Defendants represented that they had a basis in fact to provide a rating. As alleged above in paragraphs 645-51, because the Rating Agency Defendants knew that the underwriting standards on which they based their ratings had been abandoned in practice, they knew that they lacked a basis in fact to provide the ratings that they did.

849. Further, the Rating Agency Defendants did not genuinely believe their own ratings. As alleged above in paragraphs 652-74, they knew that their models were inadequate to assess the risk of default of the underlying mortgages, and they knew that the ratings were compromised by conflicts of interest and manipulation. Thus, they did not believe that their

ratings indicated the likelihood that the Bank would receive the payments contemplated under the Certificates.

850. The Rating Agency Defendants also represented that their PLMBS ratings were as reliable as their ratings of other instruments, such as corporate bonds. As alleged above in paragraphs 675-79, however, they knew that this representation was not true.

851. The Rating Agency Defendants had a financial incentive to assign the PLMBS the fraudulent ratings that they assigned. *See supra* ¶¶ 652-60.

852. The Rating Agency Defendants knew that investors such as the Bank could buy only investment-grade-rated PLMBS, and knew that such a rating was a condition precedent to the offering of the PLMBS. Thus the Rating Agency Defendants had reason to expect the Bank to purchase the PLMBS in reliance on their misrepresentations and omissions.

853. By its reliance on, and as a result of, the Rating Agency Defendants' materially misleading misrepresentations and omissions, the Bank suffered damages in an amount to be proved at trial.

854. Those misrepresentations and omissions were the proximate cause of the Bank's injury.

855. The Bank did not and could not reasonably have known of the Rating Agency Defendants' material misstatements and omissions alleged herein earlier than three years before the date of filing this action.

SIXTH CAUSE OF ACTION

Violations of Massachusetts General Law c. 93A by the Rating Agency Defendants

856. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if set forth herein.

857. Under Massachusetts General Laws, Chapter 93A, Section 11, "[a]ny person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice . . . may . . . bring an action in superior court" for relief.

858. In connection with their offer and sale of these securities to the Bank, the Rating Agency Defendants assigned ratings to the PLMBS—ratings that were communicated to the Bank at its office in Boston, Massachusetts. The Rating Agency Defendants that assigned those ratings, the PLMBS to which the ratings were assigned, what the ratings were, and when the ratings were communicated to the Bank are listed above in paragraph 844.

859. For the reasons given above, these ratings lacked a basis in fact and the Rating Agency Defendants did not believe their ratings were reliable. *See supra* ¶¶ 848-51. Accordingly, the ratings were deceptive.

860. The truth about the ratings was not, however, reasonably ascertainable by the Bank.

861. The ratings that the Rating Agency Defendants assigned to the PLMBS were an integral part of the issuance of the PLMBS. Without those ratings, the PLMBS would not have been issued.

862. Further, the Rating Agency Defendants played a role in structuring the PLMBS.

863. Both the Bank and the Rating Agency Defendants were engaged in trade or commerce at the time of the misrepresentations and omissions described above, and the interaction between the parties was commercial in nature, in that the Rating Agency Defendants were rating securities that were being offered for sale, and were assigning those ratings for pay.

864. The Rating Agency Defendants' misrepresentations and omissions reached the Bank, and the Bank was deceived, in Massachusetts.

865. The actions and transactions that constitute the Rating Agency Defendants' deceptive acts occurred primarily and substantially within Massachusetts.

866. The Rating Agency Defendants' unfair and deceptive acts and practices complained of here were willful or knowing, in that those acts and practices constituted fraudulent representations made in knowing disregard of the truth.

867. The Bank did not and could not reasonably have known of the Rating Agency Defendants' material misstatements and omissions alleged herein earlier than four years before the date of filing this action.

868. As a result of the Rating Agency Defendants' deceptive acts, the Bank suffered a loss of money or property in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION

Negligent Misrepresentation by Moody's and S&P

869. The Bank incorporates by reference and realleges each and every allegation in this Complaint as if set forth herein.

870. The Bank alleges negligent misrepresentation against Moody's and S&P with respect to the following PLMBS, which were issued in private-placement deals:

Certificate	Rating by Moody's	Rating by S&P	Date of Communication of the Rating
CCMFC 2006-2A A1	Aaa	AAA	5/19/06
CCMFC 2007-1A A1	Aaa	AAA	3/13/07
CCMFC 2007-2A A1	Aaa	AAA	5/25/07
MARM 2007-R5 A1	Aaa	AAA	9/21/07
TMTS 2007-6ALT A1	Aaa	AAA	6/18/07

871. The ratings that Moody's and S&P assigned these PLMBS were false and misleading for the reasons given above in Sections V.F and VI.D.

872. These ratings were communicated to the Bank.

873. Moody's and S&P assigned these ratings in the course of their business as raters of equity and debt issuances. Moody's and S&P had a pecuniary interest in the ratings.

874. Moody's and S&P knew—and intended—that a limited number of institutional investors like the Bank would rely on their ratings for guidance in deciding whether to purchase the PLMBS at issue in this Seventh Cause of Action.

875. The Bank's reliance on the ratings was reasonable and justifiable. *See supra* ¶¶ 689-95.

876. Moody's and S&P held special expertise in rating PLMBS and had a duty to conduct a reasonable investigation of the truthfulness of their ratings—and of their representations regarding the ratings.

877. Moody's and S&P, however, failed to conduct a reasonable investigation of the truthfulness of their ratings and of their representations regarding the ratings. Moody's and S&P failed to exercise reasonable care in rating the PLMBS at issue in this Seventh Cause of Action.

878. The credit ratings were solicited and paid for by Sponsors, Depositors and/or Underwriters of the PLMBS at issue in this Seventh Cause of Action.

879. The ratings were not offered for free or as part of a report for a general-interest publication.

880. The ratings of the PLMBS at issue in this Seventh Cause of Action were not a matter of public interest or concern.

881. The Bank did not and could not reasonably have known of Moody's or S&P's material misstatements and omissions alleged herein earlier than three years before the date of filing this action.

882. As a result of the Rating Agency Defendants' deceptive acts, the Bank suffered a pecuniary loss.

VIII. PRAYER FOR RELIEF

883. WHEREFORE, the Bank prays for relief as follows:

884. On the first cause of action, for primary violations of the Massachusetts Uniform Securities Act, relief in the form of damages and/or statutory recovery upon tender, plus interest, attorneys' fees, and costs;

885. On the second cause of action, for joint and several liability under the Massachusetts Uniform Securities Act, relief in the form of damages and/or statutory recovery upon tender, plus interest, attorneys' fees, and costs; and

886. On the third cause of action, damages in an amount to be determined at trial;

887. On the fourth cause of action, damages in an amount to be determined at trial, plus attorneys' fees;

888. On the fifth cause of action, damages in an amount to be determined at trial;

889. On the sixth cause of action, three times the amount of damages determined at trial, plus attorneys' fees;

890. On the seventh cause of action, damages in an amount to be determined at trial;

891. Reasonable attorneys' fees and expenses or costs of suit, including expert witness fees; and

892. Such other and further relief as permitted by law or equity or as the Court may deem just.

IX. DEMAND FOR JURY TRIAL

893. The Bank demands a jury trial as to all issues and claims so triable.

Dated: April 20, 2011

By _____

Thomas G. Shapiro, BBO No. 454680
Adam M. Stewart, BBO No. 661090
SHAPIRO HABER & URMY LLP
53 State Street
Boston, MA 02109
(617) 439-3939, Fax: (617) 439-0134
tshapiro@shulaw.com
astewart@shulaw.com

KELLER ROHRBACK L.L.P.*
Lynn Lincoln Sarko
lsarko@kellerrohrback.com
Derek W. Loeser
dloeser@kellerrohrback.com
Amy Williams-Derry
awilliams-derry@kellerrohrback.com
Elizabeth A. Leland
bleland@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900, Fax (206) 623-3384

KELLER ROHRBACK P.L.C.*
Gary A. Gotto
ggotto@kellerrohrback.com
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
(602) 248-0088, Fax (602) 248-2822

Attorneys for Plaintiff Federal Home Loan Bank of Boston

****Pending admission pro hac vice***

GLOSSARY

Adjustable-rate mortgage:	See "ARM."
ARM:	*Adjustable-rate mortgage.* Also called a "variable rate mortgage." A mortgage loan whose interest rate changes periodically over time, rather than being fixed.
AUS:	*Automated Underwriting System.* A computer program that takes the data an employee enters about a prospective borrower, or data the program retrieves itself, and processes that data through an algorithm to determine whether the borrower qualifies for a credit product.
Automated Underwriting System:	See "AUS."
AVM:	*Automated valuation model.* An industry-standard valuation model that reliably calculates the value of real property.
Bank:	The Federal Home Loan Bank of Boston.
Board of Governors of the Federal Reserve System:	See "FRB."
CDO:	*Collateralized debt obligation.* A structured, asset-backed security often composed of portions of mortgage-backed securities.
Certificates:	Synonymous with "PLMBS" (see below).
CLTV:	*Combined loan-to-value ratio.* The ratio of all mortgage loans taken out on a real property to the total appraised value of that property.
Collateralized debt obligation:	See "CDO."
Combined loan-to-value ratio:	See "CLTV."
Corporate seller:	A corporate entity that sold a PLMBS directly to the Bank but that was not an Underwriter for that PLMBS.
Depositor (or	

Depositor/Issuer):	The entity that acquires mortgage loans and securitizes a pool of such loans. Interests in the pool are then issued by the Depositor through a trust in the form of securities.
DTI:	*Debt-to-income*. The ratio of a borrower's debt to his or her income—generally calculated as the ratio of a borrower's monthly debt payments to the borrower's monthly income.
FCIC:	*Financial Crisis Inquiry Commission*. A ten-member federal commission that investigated the causes of the financial crisis and issued a report on the crisis on January 27, 2011.
FDIC:	*Federal Deposit Insurance Corporation*. An independent federal agency that insures deposits at financial institutions, examines and supervises some of those institutions, and shuts down failing institutions.
Federal Deposit Insurance Corporation:	See "FDIC."
FGIC:	*Financial Guaranty Insurance Company*, a private insurer of mortgage-backed securities.
FICO:	A score developed by the Fair Isaac Corporation to assess consumer credit risk; the most widely used credit score in the United States.
FINRA:	*Financial Institutions Regulatory Authority*. A non-governmental, self-regulatory organization that performs financial regulation of member brokerage firms and exchange markets.
Flow of Funds:	Synonymous with "waterfall" (see below).
FRB:	*Board of Governors of the Federal Reserve System*.
GSE:	*Government-sponsored enterprise*. An entity such as the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).
Individual seller:	An individual who sold a PLMBS directly to the Bank but that was not an Underwriter for that PLMBS.
LTV:	*Loan-to-value*. The ratio of the amount of a mortgage loan to the total appraised value of real property.
Moody's:	Collectively, Moody's Investors Service, Inc. and Moody's Corporation.

Nationally Recognized Statistical Rating Organization:	See "NRSRO."
NINA:	*No income, no assets loan.* A loan whose underwriting requires no proof of income or assets.
NINJA:	*No income, no job or assets loan.* A loan whose underwriting requires no proof of income, employment or assets.
No doc:	A "no document" loan. The borrower is not required to submit proof of income, employment, and assets.
NRSRO:	*Nationally Recognized Statistical Rating Organization.* A special status that the SEC created in 1975 to distinguish the most credible and reliable rating agencies. The status of NRSRO has since been clarified and codified by the Credit Rating Agency Reform Act of 2006.
Office of the Comptroller of the Currency:	See "OCC."
Office of Thrift Supervision:	See "OTS."
OCC:	*Office of the Comptroller of the Currency.* Independent bureau within the U.S. Department of Treasury that charters, regulates and supervises all national banks and certain branches and agencies of foreign banks.
Offering Documents:	Registration statements, prospectuses, supplemental prospectuses, private placement memoranda and other written offering materials—the documents by means of which the securities at issue in this case were sold to the Bank.
Option ARM:	An *adjustable-rate mortgages* (q.v.) that typically permits borrowers to select from among a wide range of monthly payment choices. Because the borrower is allowed to make a monthly payment that is less than the accrued interest, the risk associated with Option ARMs is "negative amortization," in which the unpaid interest is added to the outstanding principal, thus increasing the overall loan balance.
OTS:	*Office of Thrift Supervision.* Independent bureau within the U.S. Department of Treasury that regulates all federally chartered and many state-chartered savings and loans ("thrifts") and their holding companies.

Overcollateralization:	The practice of ensuring that the aggregate principal balance of the mortgage pool that secures the PLMBS exceeds the aggregate principal balances of the PLMBS secured thereby.
PLMBS:	*Private Label Mortgage-Backed Securities*. Securities that are issued by private entities (rather than government-sponsored enterprises), and that entitle the security holder to income payments from pools of mortgage loans. As used in this Complaint, "PLMBS" usually refers to the specific PLMBS at issue in this action—those purchased by the Bank.
Rating Agency Defendants:	The three credit rating agencies that rated the PLMBS at issue in this case.
Reconsideration of Value:	A contractual arrangement that Washington Mutual Bank had with an appraisal management firm, eAppraiseIT. Under the arrangement, Washington Mutual could challenge an independent appraiser's conclusions by requesting a *Reconsideration of Value*—a second opinion from eAppraiseIT—if Washington Mutual disagreed with the appraisal.
S&P:	Collectively, The McGraw-Hill Companies, Inc. and Standard & Poor's Financial Services LLC.
Securities Defendants:	The Sponsors, Depositors/Issuers, Underwriters and individuals who packaged, marketed, offered and/or sold the PLMBS to the Bank.
Sponsor (or Seller):	An entity that originates mortgage loans itself or purchases loans from mortgage originators and then sells its loans to the Depositor.
Tranche:	The securities at issue in this case are divided into segments, or "tranches," with laddered payment priority and varying return potential.
Underwriter:	An entity that purchases the PLMBS from the issuing trust and resells them to investors such as the Bank.
USPAP:	*Uniform Standards of Professional Appraisal Practice*. A series of ethical rules promulgated by the Appraisal Standards Board designed to ensure the integrity of the appraisal process.
Waterfall:	Income from a PLMBS's underlying mortgage pool is allocated first to the most senior tranche, and then to the second-most senior, and so on. This hierarchy in the division of cash flows is called a *waterfall*.

Exhibit 6

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FEDERAL HOME LOAN BANK OF CHICAGO, Plaintiff, v. BANC OF AMERICA FUNDING CORPORATION; BANC OF AMERICA SECURITIES LLC; BANK OF AMERICA, NATIONAL ASSOCIATION; BANK OF AMERICA CORPORATION; SECURITIZED ASSET BACKED RECEIVABLES, LLC; BARCLAYS CAPITAL INC.; CITIGROUP MORTGAGE LOAN TRUST INC.; CITIGROUP GLOBAL MARKETS INC.; CITIGROUP FINANCIAL PRODUCTS, INC.; CITIGROUP INC.; COUNTRYWIDE SECURITIES CORPORATION; COUNTRYWIDE FINANCIAL CORPORATION; CREDIT SUISSE SECURITIES (USA) LLC F/K/A CREDIT SUISSE FIRST BOSTON LLC; FIRST HORIZON ASSET SECURITIES, INC.; FIRST TENNESSEE BANK, NATIONAL ASSOCIATION; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; RESIDENTIAL ASSET SECURITIES CORPORATION; RESIDENTIAL FUNDING MORTGAGE SECURITIES I, INC.; RESIDENTIAL FUNDING SECURITIES LLC F/K/A RESIDENTIAL FUNDING SECURITIES CORPORATION; RESIDENTIAL FUNDING CORPORATION; GMAC MORTGAGE GROUP LLC F/K/A GMAC MORTGAGE GROUP INC.; ALLY FINANCIAL INC. F/K/A GMAC INC.; GS MORTGAGE SECURITIES CORP.; GOLDMAN, SACHS & CO.; GOLDMAN SACHS MORTGAGE COMPANY; THE GOLDMAN SACHS GROUP INC.; FINANCIAL ASSET	)	No. 10 CH 45033 CORRECTED AMENDED COMPLAINT FOR RESCISSION AND DAMAGES **JURY TRIAL DEMANDED**

SECURITIES CORP.; RBS ACCEPTANCE INC. F/K/A GREENWICH CAPITAL ACCEPTANCE, INC.; RBS SECURITIES INC. F/K/A GREENWICH CAPITAL MARKETS, INC.; RBS HOLDINGS USA INC. F/K/A GREENWICH CAPITAL HOLDINGS, INC.; SAND CANYON ACCEPTANCE CORPORATION F/K/A OPTION ONE MORTGAGE ACCEPTANCE CORPORATION; AMERICAN ENTERPRISE INVESTMENT SERVICES, INC.; AMERIPRISE FINANCIAL SERVICES, INC.; AMERIPRISE ADVISOR SERVICES, INC. F/K/A H&R BLOCK FINANCIAL ADVISORS, INC.; SAND CANYON CORPORATION F/K/A OPTION ONE MORTGAGE CORPORATION; H&R BLOCK, INC.; HSBC SECURITIES (USA) INC.; INDYMAC MBS, INC.; J.P. MORGAN SECURITIES INC.; MERRILL LYNCH MORTGAGE INVESTORS, INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; MORGAN STANLEY ABS CAPITAL I INC.; MORGAN STANLEY & CO. INCORPORATED; MORGAN STANLEY; PNC INVESTMENTS LLC; THE PNC FINANCIAL SERVICES GROUP, INC.; NOMURA HOME EQUITY LOAN, INC.; NOMURA SECURITIES INTERNATIONAL, INC.; NOMURA HOLDING AMERICA INC.; SEQUOIA RESIDENTIAL FUNDING, INC.; RWT HOLDINGS, INC.; REDWOOD TRUST, INC.; MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC.; UBS SECURITIES LLC; UBS AMERICAS INC.; WELLS FARGO ASSET SECURITIES CORPORATION; WELLS FARGO BANK, NATIONAL ASSOCIATION; WELLS FARGO & COMPANY; and JOHN DOE DEFENDANTS 1-50,

Defendants.

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Plaintiff, FEDERAL HOME LOAN BANK OF CHICAGO (hereinafter the "FHLBC" or the "Bank") alleges the following based upon personal knowledge with regard to its own acts, and upon public information as well as information and belief as to all other matters. The Bank's information and belief is based on, among other things, the investigation by its counsel. The investigation included but was not limited to: (1) review and analysis of the Offering Documents for the certificates that are the subject of this action; (2) interviews with individuals with first hand knowledge of the events alleged herein; (3) examination of relevant SEC filings, press releases and other public statements; (4) review and analysis of pleadings in other civil actions involving certain Defendants; (5) review and analysis of investigations of and complaints filed by state and federal authorities against certain Defendants; (6) published materials, media reports, congressional testimony, and additional related materials; and (7) analysis of the performance and composition of the loan pools underlying the certificates. Many of the facts related to Plaintiff's allegations are known only by the Defendants, or are exclusively within their custody or control. Plaintiff believes that substantial additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION

1. This is an action for rescission and damages under: (a) Illinois State Securities Law, 815 ILCS § 5, *et seq.*; (b) North Carolina State Securities Law, N.C.G.S.A. § 78A-1, *et seq.*; (c) New Jersey Uniform Securities Law, N.J.S.A. § 49:3-47 *et seq.*; and (d) applicable common law.

2. The certificates are "securities" within the meaning of 815 ILCS § 5/2.1, N.C.G.S.A. § 78A-2(11) and N.J.S.A. § 49:3-49(m). Under these statutes, and as set forth in

Counts One through Four below, the Bank is entitled to rescind its purchase of the certificates and/or to be paid damages for its losses on the certificates.

3. The action arises from the sale of over $3.3 billion in Private Label Mortgage Backed Securities ("PLMBS"), a type of Residential Mortgage Backed Security ("RMBS") by the Defendants to the Bank. The Defendants include the depositors/issuers, underwriters/dealers, and certain entities controlling these parties, who offered and sold the PLMBS to the Bank. These Defendants' roles are described in detail below.

4. Accompanying Defendants' sales or offers of these PLMBS to the Bank were registration statements, prospectuses, supplemental prospectuses, and other written offering materials (collectively, "Offering Documents") that Defendants wrote, signed, and/or circulated, and which contained untrue statements of material facts and omitted to state material facts necessary in order to make the Offering Documents not misleading. Attached as Appendix I is a list of the PLMBS certificates purchased by the Bank that are the subject of this Action due to the Defendants' material misstatements in and omissions from the Offering Documents described herein.

5. PLMBS are mortgage pass-through certificate securities entitling the holder to income payments from pools of mortgage loans.[1] The securities are referred to as "private label" because they are issued by private entities instead of the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which are U.S. government-sponsored enterprises ("GSEs"). Mortgage securities issued by Fannie Mae and Freddie Mac are referred to as "agency" mortgage securities.

[1] The terms "PLMBS" and "certificate(s)" are used interchangeably herein. Plaintiff identifies the PLMBS certificates herein using the ticker symbols for each certificate as created by Bloomberg.

6. Traditionally, the GSEs provided liquidity for the residential mortgage market by buying loans that conformed to their underwriting standards and dollar limits. In the early 2000s, PLMBS became an increasingly important adjunct to the GSEs, forming a capital market for mortgages that could not be sold to the GSEs. Certain PLMBS were secured by "prime/alt-a" mortgages. These were mortgages that allegedly met the credit score and other underwriting criteria of the GSEs, but were ineligible for GSE purchase either because the mortgages exceeded the applicable GSE dollar limit, were supported by reduced documentation, or contained disqualifying terms, such as certain types of adjustable rates. Other PLMBS were secured by "subprime" mortgages. These were mortgages that did not meet the GSE criteria for creditworthiness of the borrower but purportedly satisfied loan underwriting criteria developed by their originators.

7. Fundamentally, the value of a mortgage pass-through certificate depends on the ability of borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral the borrowers provide in the event of default. In the event that borrowers fall behind or default, the investor is exposed to loss. For this reason, rigorous and effective loan underwriting by the mortgage originators, performed in accordance with stated underwriting criteria, is of paramount importance; the absence of it – as demonstrated by this case – renders unreliable any credit rating or other attempt to assess the credit risk of the certificates.

8. PLMBS are segmented into "tranches" with laddered payment priority and varying return potential for certificate holders. Interests in each tranche are issued in the form of certificates identified by a CUSIP code unique to that tranche. Mortgage payments are collected by the servicing agent and provided to a trustee, who then distributes payments to the investors who hold the certificates in accordance with the priority scheme among the various tranches.

The most senior tranches enjoy the highest payment priority and lowest risk of default. Thus, if mortgage payments are not made, the losses are allocated first to the most junior tranches and move upward as the junior tranches are wiped out.

9. By policy, and in order to minimize the risk of loss, for the certificates at issue the Bank purchased only the most senior, triple-A rated PLMBS tranches. These tranches were backed by pools of prime/alt-a as well as subprime mortgage loans. Unfortunately, as detailed herein, the Offering Documents contained material misstatements and omitted to disclose material information with respect to the mortgage pools, the creditworthiness of the borrowers, and quality of the collateral. As a result, despite their original AAA ratings and the abundant representations and warranties regarding the underlying mortgage pools, the Bank has incurred massive losses on these securities.

10. In general, each senior tranche of a PLMBS is primarily secured by an interest in a particular pool of mortgages, although other tranches of that PLMBS may be primarily secured by interests in separate pools of mortgages. Often, however, PLMBS trusts provide for cross-collateralization, in which a mortgage pool that is not the primary security for a particular senior tranche may provide additional security for that senior tranche under certain circumstances. As a result, the holders of certificates in a senior tranche may be adversely affected by defaults in mortgages in pools that, while not the primary collateral for the senior tranche, provide additional security for that tranche. In fact, the failure of mortgages in one segment of a collateral pool often results in a ratings downgrade for many, if not all, of the certificates that were part of the offering.

11. Though the securities themselves are complex, the abuses by the Defendants can be put in simple terms. *The Defendants' Offering Documents did not provide truthful, accurate*

and complete information about the loans that comprised the mortgage pools securing the PLMBS. The Bank believed it was buying safe and secure securities with an extremely low risk of default – equivalent, from an investment quality standpoint, to other AAA rated investments – but in fact, the Bank purchased a toxic stew of doomed mortgage loans.

12. It is not happenstance that the PLMBS failed to perform, plunged in value, and were ultimately severely downgraded. To the contrary, the PLMBS purchased by the Bank collapsed because they are not what the Defendants' Offering Documents claimed they were. Contrary to what Offering Documents represented, the PLMBS at issue in this case are simply not pools of loans issued to borrowers based on the application of stated underwriting standards or considerations and the performance of a valid appraisal. The ability of the borrowers to pay was not genuinely taken into account by the mortgage originators for loans that were to be securitized. Instead, the primary motivation was the desire to issue and securitize as many loans as possible in order to receive substantial fees. As a result, exceptions to underwriting standards became the norm, and, contrary to Defendants' representations, were not based on the presence of "compensating circumstances." Likewise, legitimate efforts to appraise the value of homes that served as collateral for the loans in the pools through application of governing appraisal standards were abandoned, and, instead, appraisers provided values that they knew to be inflated. In sum, Defendants packaged and sold these certificates without regard to whether the underlying mortgage pools comported with the detailed descriptions contained in the Offering Documents.

13. The sale of each PLMBS purchased by the Bank was effected through the Offering Documents which include a registration statement, prospectus, prospectus supplement, and other documents that were provided to the Bank in connection with the offer and sale of the

PLMBS that are the subject of this action. The Offering Documents contained extensive statements regarding underwriting guidelines purportedly used by the mortgage originators, and extensive data supporting the credit quality of the mortgage loans. However, the statements and data and the omissions pertaining to them were materially false and misleading. Had the Bank been provided with truthful, complete and accurate information, it would not have purchased the PLMBS, and would not have suffered hundreds of millions of dollars of losses.

14. Defendants untrue statements and omissions of material fact went to the heart of the risk of the mortgage pools underlying the PLMBS. Specifically, Defendants failed to accurately describe key characteristics of the mortgages and the securitization of the mortgages, including, but not limited to:

a. **The Mortgage Originators' Underwriting Guidelines**. The Offering Documents contained material misstatements and omitted to disclose material information regarding the underwriting guidelines purportedly utilized by the mortgage originators. The Defendants represented that the mortgage originators applied their stated underwriting guidelines and standards when issuing loans to borrowers. However, as set forth in more detail below, in pursuit of their goal to securitize as many loans as possible, mortgage originators routinely disregarded their own guidelines and granted exceptions without proper justification. Consequently, the statements in and omissions from the Offering Documents regarding the mortgage originators underwriting guidelines rendered the Offering Documents materially false and misleading.

b. **The Loan-to-Value Ratios of the Mortgage Loans and the Appraisal Standards Used to Determine the Ratios**. The Offering Documents contained material misstatements and omitted to disclose material information regarding the loan-to-value (LTV) ratios of the loans in the mortgage pools underlying PLMBS, and the appraisal standards that were purportedly applied to determine the home values. The LTV ratios were purportedly based on appraisals but in fact were based on valuations of collateral that were inflated as a result of conflicts of interest and inappropriate influence by the mortgage originators who sought to ensure that the valuations came back at a high enough level to support the loan amount. But the severe flaws in the collateral valuation process were not disclosed in the Offering Documents. Consequently, the statements in and omissions from the Offering Documents regarding the LTV ratios, the use of appraisals, and standards applied in conducting the purported appraisals rendered the Offering Documents materially false and misleading.

c. **Primary Residency**. The Offering Documents contained material misstatements and omitted to disclose material information regarding the primary residency status of the mortgage properties – another key characteristic of the risk of the mortgage loans. The Defendants represented that certain specified percentages of the mortgage loan properties were primary residences of the borrower, instead of "second homes" or "investment properties," which carry more risk. However, in truth, the data provided by Defendants overstated the percentage of homes that were primary residences. Consequently, the statements in and omissions from the Offering Documents regarding the occupancy rates of the homes in the mortgage pools rendered the Offering Documents materially false and misleading.

d. **The Ratings Process**. Many of the Offering Documents contained material misstatements and omitted to disclose material information regarding the bases for the bonds' triple-A ratings and the ratings processes. The Defendants represented that the Credit Rating Agencies conducted analysis that was designed to assess the likelihood of delinquency and defaults in the underlying mortgage pools. However, in truth, the Ratings Agencies knew, and the Defendants should have known, that the ratings were based on unreliable data and faulty assumptions—all which caused the ratings to vastly understate the true risk of the PLMBS and overstate their creditworthiness. Consequently, the statements in and omissions from the Offering Documents regarding the PLMBS ratings rendered the Offering Documents materially false and misleading.

e. **Predatory Lending Representations and Warranties**. The Offering Documents contained material misstatements and omitted to disclose material information regarding the mortgage originators' compliance with state and federal predatory lending prohibitions. By policy, the Bank, was not permitted to purchase any mortgage backed securities that were secured by mortgage loans that violated these prohibitions. The Defendants represented that the mortgage pools did not contain any mortgage loans that violated state and federal predatory lending prohibitions. However, in truth, the mortgage originators engaged in predatory lending, and, thus, the mortgage pools contained many loans that violated state and federal predatory lending restrictions. Consequently, the statements in and omissions from the Offering Documents regarding predatory lending rendered the Offering Documents materially false and misleading.

f. **Due Diligence**. Many of the Offering Documents contained material misstatements and omitted to disclose material information regarding the due diligence on the mortgage loans in the PLMBS mortgage pools. The Offering Documents stated that the underlying mortgage loans were inspected for compliance with the mortgage originators' underwriting and appraisal guidelines, and documentation requirements. However, the Offering Documents omit to state that the third-party due diligence firms retained to conduct the due diligence were pressured to ignore deviations from the applicable underwriting criteria, and that

even with regard to loan defects identified through the due diligence process, the sponsors nonetheless waived the defects as to a substantial percentage of these loans and, in many cases, used this information about defective loans to negotiate lower prices for the loan pools. Consequently, the statements in and omissions from the Offering Documents regarding the due diligence performed on the mortgage loans in the PLMBS mortgage pools rendered the Offering Documents materially false and misleading.

g. Enforceability of Mortgages. Many of the Offering Documents contained material misstatements regarding the measures taken to ensure the enforceability of the mortgages and mortgage loans transferred to the trusts. In order for a mortgage to be enforced, basic steps need to be taken to validly assign the mortgage and mortgage loan to the trust and ensure that the trustee has the proper papers. These basic steps, and the representations made about these steps, were critical to investors (including the Bank), because if a mortgage cannot be enforced, then the mortgage loans, and the certificates dependent on these loans, are ultimately worthless. The Offering Documents fail to disclose that in fact basic steps regarding the transfer of mortgages and mortgage loans were not followed mortgage loans were not validly assigned, and papers necessary to ensure enforceability of the mortgages were never transferred to the trustee.

15. The untrue, incomplete and materially misleading statements summarized above and discussed in detail below were made with respect to the certificates purchased by the Bank that are the subject of this lawsuit. The Bank reasonably relied on these statements and was misled by the omissions when deciding to purchase the certificates, and the statements and omissions have caused them significant losses.

16. As a result of these untrue statements in and omissions from the Offering Documents, the Bank purchased certificates that were far riskier than represented by the Defendants, and that were not in truth highest investment grade as stated in the Offering Documents, but, instead, were low-quality, high-risk certificates. All but three of the certificates at issue in this case have been downgraded to below investment grade, *i.e.*, junk, indicating a high probability of default. Furthermore, the Bank has already experienced losses on all certificates in this action, including the three certificates which the Credit Rating Agencies, for whatever reason, have not yet downgraded below investment grade.

17. The value of these certificates has declined dramatically. Moreover, as a result of the current and anticipated future poor performance of the mortgages underlying these certificates, the Bank has had to impair the value of these assets, which has caused the Bank's earnings performance to decline. The Bank has taken significant write-downs on these certificates in the form of "other than temporary impairment" or OTTI charges, on these bonds.

II. JURISDICTION AND VENUE

18. This Court has jurisdiction over the claims alleged in this action.

19. This is an action for rescission and damages in an amount exceeding $30,000.

20. The Illinois Securities Law of 1953, 815 ILCS §§ 5/12 and 5/13 applies because the Bank's claims arise from its transaction of business with Defendants within this State. The offer and sale to the Bank of the Certificates that are the subject of this action, including certain Defendants' making of materially false and misleading statements and omission of material facts alleged herein, took place in Illinois when the Bank, from its offices in Illinois, accepted Defendants' offer to purchase these securities.

21. In addition to the Illinois Securities Law and the applicable common law, the North Carolina Securities Act, N.C.G.S.A. § 78A-1 *et seq.*, also applies to the ten certificates identified in Appendix IA because the offer of sale for these certificates took place in North Carolina in that the offers originated from North Carolina. The acceptance of the offer of sale took place in North Carolina in that the Bank (based in Illinois) communicated its acceptance to a dealer in North Carolina, reasonably believing the dealer to be in North Carolina, and the Bank's acceptance was received in North Carolina.

22. In addition to the Illinois Securities Law and the applicable common law, the New Jersey Uniform Securities Law, N.J.S.A. § 49:3-47 *et seq.*, also applies to Certificate CBASS

2006-CB4 because the offer of sale for this certificate and its acceptance occurred in New Jersey. The offer of sale took place in New Jersey in that the offer originated from New Jersey. Under the New Jersey Uniform Securities Law, the acceptance of the offer of sale took place in New Jersey in that the Bank (based in Illinois) communicated its acceptance to a dealer in New Jersey, reasonably believing the dealer to be in New Jersey, and the Bank's acceptance was received in New Jersey.

23. The Defendants are subject to personal jurisdiction in this State pursuant to the Illinois Long-Arm Statute, 735 ILCS § 5/2-209, because the Bank's claims arise from the transaction of business with Defendants within this State.

24. Venue is proper in this County pursuant to 735 ILCS § 5/2-101 and 815 ILCS § 5/13G(1). The Bank resides and has its principal office in this County, and the transactions that are the subject of this action took place in this County, including certain Defendants' making of materially false and misleading statements and omission of material facts alleged herein.

25. The Bank asserts no claims against any entity that has filed for bankruptcy protection.

III. THE PARTIES

A. Plaintiff

26. Plaintiff is a bank created by the Federal Home Loan Bank Act. The headquarters of the Bank are in the city of Chicago, County of Cook. Under its Organization Certificate, the Bank is to operate in Federal Home Loan Bank District 7, which comprises the states of Illinois and Wisconsin. The Bank does conduct business in each of those states. From time to time, the Bank also conducts business with the other 11 Federal Home Loan Banks. It also operates the Mortgage Partnership Finance Program®, a national mortgage purchase program.

27. The public policy mission of the Federal Home Loan Bank system is to support residential mortgage lending and related community investment. The individual Federal Home Loan Banks fulfill this role in housing finance by providing their member financial institutions with access to reliable, economical funding, technical assistance, and special affordable housing programs so that they can provide affordable housing and economic development in their communities.

28. The Bank's operations are funded solely by its earnings and funds raised by issuing debt instruments (bonds and notes) in the capital markets through the Office of Finance, a joint Federal Home Loan Bank Office located in Virginia.

29. The Bank is capitalized solely by the capital-stock investments of its members and by its retained earnings.

30. The Bank's members are all private financial institutions, including savings banks, savings and loan associations, cooperative banks, credit unions, and insurance companies.

31. The Bank is not a federal agency, and the Bank is not a citizen of any state. The Bank is federally chartered, but privately capitalized and independently managed. The federal government is not involved in the day-to-day management of the Bank's operations. Management of the Bank is vested by law in the Bank's board of directors, all of whom are either elected by the Bank's shareholder members or appointed by the board of directors. No tax dollars are involved in the operation of the Bank, and the federal government does not own any of the Bank's stock.

32. Members of the Bank's board of directors reside in both Wisconsin and Illinois.

33. Employees of the Bank routinely travel to the offices of the Bank's members. In 2009, employees of the Bank made more than 110 business trips to members outside of Illinois.

B. Defendants

34. The Banc of America Entities

A. Depositor Defendant Banc of America Funding Corporation is a Delaware corporation that was and is registered to do business in North Carolina. On information and belief, Banc of America Funding Corporation was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Banc of America Funding Corporation was the depositor for Certificates BAFC 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, and BAFC 2006-F 3A1.

B. Underwriter Defendant Banc of America Securities LLC was a Delaware limited liability company that maintained a securities broker-dealer FINRA registration in Illinois during the relevant period and that was registered to do business in Illinois. Banc of America Securities LLC also maintained a securities broker-dealer FINRA registration in North Carolina during the relevant period and was registered to do business in North Carolina. Banc of America Securities LLC underwrote the following Certificates that the Bank purchased: ARSI 2005-W5 A2C, BAFC 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, BAFC 2006-F 3A1, FHASI 2006-AR1 2A1, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, RASC 2005-KS12 A2, SEMT 2006-1 2A1, and SEMT 2006-1 3A1, and sold Certificates BAFC 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, BAFC 2006-F 3A1, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, RASC 2005-KS12 A2, SEMT 2006-1 2A1, and SEMT 2006-1 3A1 directly to the Bank. Effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. All references herein to Banc of America Securities LLC are also to Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of

America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

C. Sponsor Defendant Bank of America, National Association is a nationally chartered bank, regulated by the Office of the Comptroller of the Currency, Department of the Treasury that operates branches throughout Illinois and North Carolina. Bank of America, National Association was the sponsor of Certificates BAFC 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, and BAFC 2006-F 3A1, and also originated loans for the offerings in which the Bank purchased Certificates BAFC 2006-C 2A1, BAFC 2006-E 2A2, and BAFC 2006-E 3A1.

D. Controlling Person Defendant Bank of America Corporation is a Delaware corporation that was and is registered to do business in Illinois. Additionally, Bank of America Corporation was and is registered to do business in North Carolina. Bank of America Corporation is the parent company, with 100% direct or indirect ownership, and a controlling entity of Banc of America Funding Corporation. Bank of America Corporation is also the parent company, with at least 75% indirect ownership, and a controlling entity, under at least North Carolina law, of Banc of America Securities LLC. Bank of America Corporation is also the parent company, with at least 100% indirect ownership, and a controlling entity under at least North Carolina law, of Bank of America, National Association.

E. Defendant Bank of America Corporation is also named as a Successor Defendant to Underwriter Defendant Countrywide Securities Corporation and Controlling Person Defendant Countrywide Financial Corporation. *See infra* § III.C. As set forth below, on or about July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide

Financial Corporation and all of its subsidiaries, including Underwriter Defendant Countrywide Securities Corporation.

F. Defendant Bank of America Corporation is also named as a Successor Defendant to Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Mortgage Investors, Inc. *See infra* § III.C. As set forth below, on or about January 1, 2009, Successor Defendant Bank of America Corporation acquired Merrill Lynch & Co., Inc and all of its subsidiaries, including, including Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Mortgage Investors, Inc.

35. The Barclays Entities

A. Depositor Defendant Securitized Asset Backed Receivables, LLC is a Delaware Limited Liability Company. On information and belief, Securitized Asset Backed Receivables, LLC was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Securitized Asset Backed Receivables, LLC was the depositor for Certificates SABR 2006-FR3 A2 and SABR 2006-NC3 A2B.

B. Underwriter Defendant Barclays Capital Inc. is a Connecticut corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Barclays Capital Inc. underwrote the following Certificates: AMSI 2005-R10 A2B, ARSI 2005-W5 A2C, FHLT 2005-E 2A3, SABR 2006-FR3 A2, SABR 2006-NC3 A2B, and WFHET 2006-3 A2, and sold Certificates ARSI 2005-W5 A2C, SABR 2006-FR3 A2, SABR 2006-NC3 A2B, and WFHET 2006-3 A2 directly to the Bank.

36. The Citigroup Entities

A. Depositor Defendant Citigroup Mortgage Loan Trust Inc. is a Delaware corporation. On information and belief, Citigroup Mortgage Loan Trust Inc. was formed and

exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Citigroup Mortgage Loan Trust Inc. was the depositor for Certificates CMLTI 2006-NC1 A2C, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, and CMLTI 2006-NC2 A2B.

B. Underwriter Defendant Citigroup Global Markets Inc. is a New York corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Citigroup Global Markets Inc. has also, at all relevant times, maintained a securities broker-dealer FINRA registration in North Carolina and was and is registered to do business in North Carolina. Citigroup Global Markets Inc. underwrote the following Certificates: CMLTI 2006-NC1 A2C, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, CMLTI 2006-NC2 A2B, NHELI 2006-WF1 A3, and OOMLT 2005-5 A3, and sold Certificates CMLTI 2006-NC1 A2C, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, CMLTI 2006-NC2 A2B, and FHASI 2006-AR1 2A1 directly to the Bank.

C. Controlling Person Defendant Citigroup Financial Products, Inc. is a Delaware corporation. Citigroup Financial Products, Inc. is the parent company, with 100% direct ownership, and a controlling entity of Citigroup Mortgage Loan Trust Inc. Citigroup Financial Products, Inc. is also the parent company and a controlling entity, under at least North Carolina law, of Citigroup Global Markets Inc. Citigroup Financial Products, Inc., is also the parent company of Citigroup Global Markets Realty Corp. (sponsor of Certificates CMLTI 2006-NC1 A2C, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, and CMLTI 2006-NC2 A2B).

D. Controlling Person Defendant Citigroup Inc. is a Delaware corporation that was and is registered to do business in Illinois. Citigroup Inc. is the parent company, with 100% direct or indirect ownership, and a controlling entity of Citigroup Mortgage Loan Trust Inc., as

well as Citigroup Financial Products, Inc. Citigroup Inc. is also the parent company and a controlling entity, under at least North Carolina law, of Citigroup Global Markets Inc. Citigroup Inc. is also the parent company of Citigroup Global Markets Realty Corp. (sponsor of Certificates CMLTI 2006-NC1 A2C, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, and CMLTI 2006-NC2 A2B).

37. The Countrywide Entities

A. Underwriter Defendant Countrywide Securities Corporation is a California corporation that was registered to do business in Illinois at the time of the transactions at issue. Countrywide Securities Corporation underwrote the Certificates: HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, MSAC 2006-HE6 A2C, SEMT 2006-1 2A1, and SEMT 2006-1 3A1.

B. Controlling Person Defendant Countrywide Financial Corporation is a Delaware corporation and is the parent company, with 75% or more indirect ownership, and controlling entity under at least North Carolina law, of Countrywide Securities Corporation. At the time the Bank acquired the relevant Certificates, Countrywide Financial Corporation was a holding company which, through its subsidiaries, was engaged in mortgage lending and other real estate finance-related businesses, including mortgage banking, banking and mortgage warehouse lending, dealing in securities and insurance underwriting.

C. Defendant Bank of America Corporation is named as a Successor Defendant to Countrywide Securities Corporation and Countrywide Financial Corporation. *See infra* § III.C. As set forth below, on or about July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and all of its subsidiaries, including Underwriter Defendant Countrywide Securities Corporation.

38. Underwriter Defendant Credit Suisse First Boston LLC is a Delaware limited liability company which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Credit Suisse First Boston LLC underwrote the following two Certificates: FHLT 2005-E 2A3 and INABS 2005-D AII3, and sold Certificate FHLT 2005-E 2A3 directly to the Bank. On January 23, 2006, Credit Suisse First Boston LLC changed its name to Credit Suisse Securities (USA) LLC, effective January 16, 2006. All references herein to Underwriter Credit Suisse First Boston LLC are also to Credit Suisse Securities (USA) LLC.

39. The First Horizon Entities

A. Depositor Defendant First Horizon Asset Securities, Inc. is a Delaware corporation. On information and belief, First Horizon Asset Securities, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. First Horizon Asset Securities, Inc. was the depositor for Certificate FHASI 2006-AR1 2A1.

B. Controlling Person First Horizon Home Loan Corporation, a Kansas corporation, was the parent company, with 100% direct ownership, and a controlling entity of First Horizon Asset Securities, Inc., as well as sponsor of, and an originator of loans for, the offering in which the Bank purchased Certificate FHASI 2006-AR1 2A1. During 2001, First Horizon Home Loan Corporation merged with and into its parent corporation First Tennessee Bank National Association, a nationally chartered bank, and continues, through its divisions, to do business as divisions of First Tennessee Bank National Association. First Tennessee Bank National Association is therefore named herein as a Controlling Person Defendant, controlling both First Horizon Asset Securities, Inc. and First Horizon Home Loan Corporation.

C. First Tennessee Bank National Association, d/b/a FTN Financial Capital Markets (hereafter "First Tennessee Bank National Association") also underwrote Certificate FHASI 2006-AR1 2A1 and is therefore named as an Underwriter Defendant herein.

40. The GMAC Entities

A. Depositor Defendant Residential Asset Mortgage Products, Inc. is a Delaware corporation. On information and belief, Residential Asset Mortgage Products, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Residential Asset Mortgage Products, Inc. was the depositor for Certificates GMACM 2006-AR2 2A1 and GMACM 2006-AR2 4A1.

B. Depositor Defendant Residential Asset Securities Corporation is a Delaware corporation. On information and belief, Residential Asset Securities Corporation was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Residential Asset Securities Corporation was the depositor for Certificate RASC 2005-KS12 A2.

C. Depositor Defendant Residential Funding Mortgage Securities I, Inc. is a Delaware corporation. On information and belief, Residential Funding Mortgage Securities I, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Residential Funding Mortgage Securities I, Inc. was the depositor for Certificate RFMSI 2006-SA2 2A1.

D. Underwriter Defendant Residential Funding Securities Corporation, now known as Residential Funding Securities, LLC and also known at times relevant hereto as GMAC RFC Securities (hereafter together referred to as "Residential Funding Securities Corporation") is a Delaware corporation or limited liability company, respectively. Residential Funding Securities

Corporation underwrote Certificates GMACM 2006-AR2 2A1, GMACM 2006-AR2 4A1, and RASC 2005-KS12 A2, and sold Certificates GMACM 2006-AR2 2A1 and GMACM 2006-AR2 4A1 directly to the Bank.

E. Sponsor and Controlling Person Defendant Residential Funding Corporation, now known as Residential Funding Company, LLC (hereafter, together referred to as "Residential Funding Corporation") is a Delaware corporation that was and is registered to do business in both Illinois and North Carolina. Residential Funding Corporation was the sponsor of Certificates RFMSI 2006-SA2 2A1 and RASC 2005-KS12 A2 and originated loans for the offering in which the Bank acquired Certificate RASC 2005-KS12 A2. Residential Funding Corporation is also the parent company, with at least 100% indirect ownership, and a controlling entity under at least North Carolina law, of Residential Funding Securities Corporation.

F. Controlling Person Defendant GMAC Mortgage Group, Inc., now known as GMAC Mortgage Group LLC (hereafter, together referred to as "GMAC Mortgage Group, Inc."), is a Delaware corporation or limited liability company, respectively, that was and is registered to do business in Illinois. Additionally, GMAC Mortgage Group, Inc. was and is registered to do business in North Carolina. GMAC Mortgage Group, Inc. was the parent corporation, with 100% direct or indirect ownership, and controlling entity of Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, and Residential Funding Mortgage Securities I, Inc. GMAC Mortgage Group, Inc. was also the parent corporation of, and a controlling entity under at least North Carolina law of, Residential Funding Corporation and Residential Funding Securities Corporation. GMAC Mortgage Group, Inc. was also the parent corporation of GMAC Mortgage Corporation (an originator of loans for the offering in which the Bank purchased Certificates GMACM 2006-AR2 2A1, GMACM 2006-AR2 4A1, and RFMSI

2006-SA2 2A1 and sponsor of Certificates GMACM 2006-AR2 2A1 and GMACM 2006-AR2 4A1), and HomeComings Financial Network, Inc. (originator of loans for the offering in which the Bank purchased Certificate RFMSI 2006-SA2 2A1).

G. Controlling Person Defendant GMAC Inc., also known at times relevant hereto as GMAC LLC (hereafter, together referred to as "GMAC Inc."), is a Delaware corporation or limited liability company, respectively, that was and is registered to do business in Illinois. Additionally, GMAC Inc. was and is registered to do business in North Carolina. In addition to automobile financing, GMAC Inc. offers mortgage services, including originating, purchasing, selling, and securitizing residential mortgage loans; servicing residential mortgage loans; and providing collateralized lines of credit to other mortgage originators. GMAC Inc. is the parent corporation and controlling entity of Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Funding Mortgage Securities I, Inc., and GMAC Mortgage Group, Inc. GMAC Inc. is also the parent corporation and a controlling entity, under at least North Carolina law, of Residential Funding Corporation and Residential Funding Securities Corporation. GMAC Inc. is also the parent corporation of GMAC Mortgage Corporation (an originator of loans for the offering in which the Bank purchased Certificates GMACM 2006-AR2 2A1, GMACM 2006-AR2 4A1, and RFMSI 2006-SA2 2A1 and sponsor of Certificate GMACM 2006-AR2 2A1 and GMACM 2006-AR2 4A1), and HomeComings Financial Network, Inc. (originator of loans for the offering in which the Bank purchased Certificate RFMSI 2006-SA2 2A1).

H. On May 10, 2010, GMAC Inc. changed its corporate name to Ally Financial Inc. All references herein to GMAC Inc. are also to Ally Financial Inc.

41. The Goldman, Sachs Entities

A. Depositor Defendant GS Mortgage Securities Corp. is a Delaware corporation. On information and belief, GS Mortgage Securities Corp. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. GS Mortgage Securities Corp. was the depositor for Certificates FFML 2006-FF13 A2C and GSAMP 2006-NC2 A2C.

B. Underwriter Defendant Goldman, Sachs & Co. is a New York corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Goldman, Sachs & Co., underwrote the following three Certificates: FFML 2006-FF13 A2C, GSAMP 2006-NC2 A2C, and RFMSI 2006-SA2 2A1, and sold Certificates FFML 2006-FF13 A2C, GSAMP 2006-NC2 A2C, and RFMSI 2006-SA2 2A1 directly to the Bank.

C. Controlling Person Defendant Goldman Sachs Mortgage Company, a New York limited partnership, was the parent company, with 100% direct ownership, and a controlling entity of GS Mortgage Securities Corp. at the time the Bank purchased the Certificates, as well as the sponsor of Certificates FFML 2006-FF13 A2C and GSAMP 2006-NC2 A2C.

D. Controlling Person Defendant The Goldman Sachs Group Inc. is a Delaware corporation that was and is registered to do business in Illinois. The Goldman Sachs Group Inc. is the parent company, with at least 99% direct or indirect ownership, and a controlling entity of Goldman Sachs Mortgage Company and GS Mortgage Securities Corp. The Goldman Sachs Group Inc. is also the parent corporation of Goldman, Sachs & Co.

42. The Greenwich Entities

A. Depositor Defendant Financial Asset Securities Corp., is a Delaware corporation. On information and belief, Financial Asset Securities Corp. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Financial Asset Securities Corp. was the depositor for Certificate FFML 2006-FF8 IIA3.

B. Depositor Defendant Greenwich Capital Acceptance, Inc. is a Delaware corporation. On information and belief, Greenwich Capital Acceptance, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Greenwich Capital Acceptance, Inc. was the depositor for Certificates HVMLT 2006-2 2A1A and HVMLT 2006-2 3A1A. Pursuant to its Restated Certificate of Incorporation, dated July 8, 2009, Greenwich Capital Acceptance, Inc. legally changed its name to RBS Acceptance Inc. All references herein to Greenwich Capital Acceptance, Inc. are also to RBS Acceptance Inc.

C. Underwriter Defendant Greenwich Capital Markets, Inc. is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Greenwich Capital Markets, Inc. has also, at all relevant times, maintained a securities broker-dealer FINRA registration in North Carolina. Greenwich Capital Markets, Inc is a registered broker-dealer engaged in the U.S. government securities market and related capital markets business, and underwrote the following Certificates: AMSI 2005-R10 A2B, ARSI 2005-W5 A2C, FFML 2006-FF8 IIA3, FHLT 2005-E 2A3, HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, INABS 2005-D AII3, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, and RASC 2005-KS12 A2, and sold Certificates FFML 2006-FF8 IIA3, HVMLT 2006-2 2A1A, and HVMLT 2006-2 3A1A directly

to the Bank. Pursuant to its Restated Certificate of Incorporation, dated April 1, 2009, Greenwich Capital Markets, Inc. legally changed its name to RBS Securities Inc. All references herein to Greenwich Capital Markets, Inc. are also to RBS Securities Inc.

D. Controlling Person Defendant Greenwich Capital Holdings, Inc., a Delaware corporation, is the parent company, with 100% direct or indirect ownership, and a controlling entity of Financial Asset Securities Corp. and Greenwich Capital Acceptance, Inc. Greenwich Capital Holdings, Inc. is also the parent company, with 100% direct ownership, and a controlling entity, under at least North Carolina law, of Greenwich Capital Markets, Inc. Greenwich Capital Holdings, Inc., is also the parent company, with 100% direct ownership, of Greenwich Capital Financial Products, Inc. (sponsor of Certificates FFML 2006-FF8 IIA3, HVMLT 2006-2 2A1A, and HVMLT 2006-2 3A1A; now known as RBS Financial Products, Inc.). Greenwich Capital Holdings, Inc. legally changed its name to RBS Holdings USA Inc. All references herein to Greenwich Capital Holdings, Inc. are also to RBS Holdings USA Inc.

43. The H&R Block Companies

A. Depositor Defendant Option One Mortgage Acceptance Corporation is a Delaware corporation. On or about July 24, 2008, Option One Mortgage Acceptance Corporation legally changed its name to Sand Canyon Acceptance Corporation. All references herein to Option One Mortgage Acceptance Corporation are also to Sand Canyon Acceptance Corporation. On information and belief, Option One Mortgage Acceptance Corporation was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Option One Mortgage Acceptance Corporation was the depositor for Certificates OOMLT 2005-5 A3 and OOMLT 2006-2 2A3.

B. Underwriter Defendant H&R Block Financial Advisors, Inc. was a Michigan corporation that was registered to do business in Illinois at the time of the transactions at issue. Additionally, H&R Block Financial Advisors, Inc. was registered to do business in North Carolina at the time of the transactions at issue. H&R Block Financial Advisors, Inc. underwrote Certificates OOMLT 2005-5 A3 and OOMLT 2006-2 2A3. H&R Block Financial Advisors, Inc. was acquired by Ameriprise Financial, Inc. during 2008 as a wholly-owned subsidiary. That same year, H&R Block Financial Advisors, Inc. legally changed its name to Ameriprise Advisor Services, Inc. Thereafter, in October 2009, portions of Ameriprise Advisor Services, Inc. were combined with Ameriprise Financial, Inc.'s subsidiaries Successor Defendant American Enterprise Investment Services, Inc., a Minnesota corporation that, at all relevant times, has maintained securities broker-dealer FINRA registrations in both Illinois and North Carolina, and Successor Defendant Ameriprise Financial Services, Inc., a Delaware corporation that, at all relevant times, has maintained securities broker-dealer FINRA registration in both Illinois and North Carolina and was and is registered to do business in both Illinois and North Carolina, which are jointly liable as successors in interest to Ameriprise Advisor Services, Inc. (f/k/a H&R Block Financial Advisors, Inc.). All references herein to H&R Block Financial Advisors, Inc. are also to Ameriprise Advisor Services, Inc., American Enterprise Investment Services, Inc. and Ameriprise Financial Services, Inc.

C. Sponsor and Controlling Person Defendant Option One Mortgage Corporation is a California corporation that was and is registered to do business in Illinois. Additionally, Option One Mortgage Corporation was registered to do business in North Carolina at the time of the transactions at issue. Option One Mortgage Corporation is the parent corporation, 100% direct or indirect owner, and controlling entity of Option One Mortgage Acceptance Corporation.

Option One Mortgage Corporation was also the sponsor of Certificates OOMLT 2005-5 A3 and OOMLT 2006-2 2A3 and an originator of loans for the offerings in which the Bank purchased Certificates OOMLT 2005-5 A3 and OOMLT 2006-2 2A3. During 2008, Option One Mortgage Corporation legally changed its name to Sand Canyon Corporation. All references herein to Option One Mortgage Corporation are also to Sand Canyon Corporation.

D. Controlling Person Defendant H&R Block, Inc. is a Missouri corporation that was and is registered to do business in Illinois. Additionally, H&R Block, Inc. operates branches throughout North Carolina. H&R Block, Inc., through its subsidiaries, provides tax, retail banking, accounting, and business consulting services and products. H&R Block, Inc. is the parent corporation, with 100% direct or indirect ownership, and controlling entity of Option One Mortgage Corporation and Option One Mortgage Acceptance Corp. At the time the Bank purchased the relevant securities, H&R Block, Inc. was also the parent and a controlling entity, under at least North Carolina law, of H&R Block Financial Advisors, Inc.

44. Underwriter Defendant HSBC Securities (USA) Inc. is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. HSBC Securities (USA) Inc. has also, at all relevant times, maintained a securities broker-dealer FINRA registration in North Carolina and was and is registered to do business in North Carolina. HSBC Securities (USA) Inc. is a registered broker-dealer that leads or participates as underwriter of all domestic issuances of the company□s corporate and asset-backed securities. HSBC Securities (USA) Inc. underwrote the following two certificates: OOMLT 2005-5 A3 and OOMLT 2006-2 2A3.

45. Depositor Defendant IndyMac MBS, Inc. is a Delaware corporation. On information and belief, IndyMac MBS, Inc. was formed and exists solely for the purpose of

receiving and depositing loans into trusts for PLMBS securitization. IndyMac MBS, Inc. was the depositor for Certificate INDX 2006-AR15 A2.

46. Underwriter Defendant J.P. Morgan Securities Inc., now known as J.P. Morgan Securities LLC, following its name change on or about September 1, 2010 (referred to hereafter as J.P. Morgan Securities Inc.), is a Delaware corporation or limited liability company, respectively, which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. J.P. Morgan Securities Inc. has also, at all relevant times, maintained a securities broker-dealer FINRA registration in New Jersey. J.P. Morgan Securities Inc. underwrote the following Certificates: AMSI 2005-R10 A2B, CBASS 2006-CB4 AV3, and OOMLT 2005-5 A3, and sold Certificate AMSI 2005-R10 A2B directly to the Bank.

47. The Merrill Lynch Entities

A. Depositor Defendant Merrill Lynch Mortgage Investors, Inc., is a Delaware corporation. On information and belief, Merrill Lynch Mortgage Investors, Inc., was formed and exists solely for the purpose of receiving an depositing loans into trusts for PLMBS securitization. Merrill Lynch Mortgage Investors, Inc., was the depositor for Certificate CBASS 2006-CB4 AV3.

B. Underwriter Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Merrill Lynch, Pierce, Fenner & Smith Incorporated has also, at all relevant times, maintained securities broker-dealer FINRA registrations in both North Carolina and New Jersey and was registered to do business in North Carolina at the time of the transactions at issue. Merrill Lynch, Pierce, Fenner

& Smith Incorporated is a U.S.-based broker-dealer in securities and futures commission merchant, and underwrote the following certificates: CBASS 2006-CB4 AV3 and OOMLT 2006-2 2A3, and sold Certificate CBASS 2006-CB4 AV3 directly to the Bank. Effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. All references herein to Banc of America Securities LLC are also to Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

48. The Morgan Stanley Entities

A. Depositor Defendant Morgan Stanley ABS Capital I Inc. is a Delaware corporation. On information and belief, Morgan Stanley ABS Capital I Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Morgan Stanley ABS Capital I Inc. was the depositor for Certificates MSAC 2006-WMC2 A2C, MSAC 2006-HE5 A2C, and MSAC 2006-HE6 A2C.

B. Underwriter Defendant Morgan Stanley & Co. Incorporated is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Morgan Stanley & Co. Incorporated underwrote the following Certificates: INABS 2005-D AII3, MSAC 2006-WMC2 A2C, MSAC 2006-HE5 A2C, MSAC 2006-HE6 A2C, and WFMBS 2006-AR3 A4, and sold Certificates MSAC 2006-WMC2 A2C, MSAC 2006-HE5 A2C, MSAC 2006-HE6 A2C, and WFMBS 2006-AR3 A4 directly to the Bank.

C. Controlling Person Defendant Morgan Stanley is a financial holding company organized under the laws of Delaware that was and is registered with the Illinois Department of

Revenue. Morgan Stanley is the parent company, with 100% direct ownership, and controlling entity of Morgan Stanley ABS Capital I Inc. Morgan Stanley is also the parent corporation of Morgan Stanley Mortgage Capital Inc. (sponsor of Certificates MSAC 2006-WMC2 A2C, MSAC 2006-HE5 A2C, and MSAC 2006-HE6 A2C) and Morgan Stanley & Co. Incorporated.

49. The National City Entities

A. At all relevant times, Underwriter Defendant NatCity Investments, Inc. was an Indiana corporation. NatCity Investments, Inc. underwrote the following five certificates: FFML 2006-FF13 A2C, FFML 2006-FF12 A3, FFML 2006-FF12 A4, FFML 2006-FF14 A5, and FFML 2006-FF10 A7. On November 7, 2009, NatCity Investments, Inc. merged with and into Successor Defendant PNC Investments LLC, a Delaware limited liability company which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois. All references herein to NatCity Investments, Inc. are also to PNC Investments LLC, which is liable as the successor in interest to NatCity Investments, Inc.

B. National City Capital Markets was a trade name under which corporate and investment banking services of National City Corporation, a Delaware corporation, operated. National City Capital Markets was not a separate legal entity from National City Corporation. National City Capital Markets underwrote Certificate FFML 2006-FF8 IIA3. National City Corporation was also the parent corporation of NatCity Investments Inc.

C. Defendant PNC Financial Services Group, Inc., a Pennsylvania corporation that was and is registered to do business in Illinois, is named as a Successor Defendant to National City Corporation, including National City Corporation d/b/a National City Capital Markets, and those that National City Corporation controlled, including Underwriter Defendant NatCity Investments, Inc. *See infra* § III.C. Defendant PNC Financial Services Group, Inc. is a

Pennsylvania corporation that was and is registered to do business in Illinois. As set forth below, pursuant to an Agreement and Plan of Merger dated October 24, 2008, on or about December 31, 2008, National City Corporation and all of its subsidiaries, including NatCity Investments, Inc., merged with and into Successor Defendant The PNC Financial Services Group, Inc.

50. The Nomura Entities

A. Depositor Defendant Nomura Home Equity Loan, Inc. is a Delaware corporation. On information and belief, Nomura Home Equity Loan, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Nomura Home Equity Loan, Inc. was the depositor for Certificate NHELI 2006-WF1 A3.

B. Underwriter Defendant Nomura Securities International, Inc. is a Delaware corporation which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. Nomura Securities International, Inc. underwrote and sold Certificate NHELI 2006-WF1 A3 directly to the Bank.

C. Controlling Person Defendant Nomura Holding America, Inc., a Delaware corporation, is the parent company, with 100% direct ownership, and controlling entity of Nomura Home Equity Loan, Inc. Nomura Holding America, Inc. is also the parent corporation of Nomura Securities International, Inc., and Nomura Credit & Capital, Inc. (sponsor of Certificate NHELI 2006-WF1 A3).

51. The Sequoia Entities

A. Depositor Defendant Sequoia Residential Funding, Inc. is a Delaware corporation. On information and belief, Sequoia Residential Funding, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Sequoia

Residential Funding, Inc. was the depositor for Certificates SEMT 2006-1 2A1 and SEMT 2006-1 3A1.

B. Sponsor Defendant RWT Holdings, Inc. is a Delaware Corporation. RWT Holdings, Inc. was the sponsor for the offerings in which the Bank acquired Certificates SEMT 2006-1 2A1 and SEMT 2006-1 3A1.

C. Controlling Person Defendant Redwood Trust, Inc., a Maryland corporation, is the parent company, with 100% indirect ownership, and a controlling entity of Sequoia Residential Funding, Inc. Defendant Redwood Trust, Inc. is also the parent company, with 100% indirect ownership, and a controlling entity under at least North Carolina law of RWT Holdings, Inc.

52. The UBS Entities

A. Depositor Defendant Mortgage Asset Securitization Transactions, Inc. is a Delaware corporation. On information and belief, Mortgage Asset Securitization Transactions, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Mortgage Asset Securitization Transactions, Inc. was the depositor for Certificate MABS 2006-NC1 A3.

B. Underwriter Defendant UBS Securities LLC is a Connecticut limited liability company which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Illinois and was and is registered to do business in Illinois. UBS Securities LLC underwrote the following four Certificates: FHLT 2005-E 2A3, INABS 2005-D AII3, MABS 2006-NC1 A3, and SARM 2005-21 3A1, and sold INABS 2005-D AII3, MABS 2006-NC1 A3, and SARM 2005-21 3A1 directly to the Bank.

C. Controlling Person Defendant UBS Americas Inc. is a Delaware corporation that was and is registered to do business in Illinois. UBS Americas Inc. is the parent company, with 100% direct ownership, and controlling entity of Mortgage Asset Securitization Transactions, Inc. UBS Americas Inc. is also the parent of UBS Real Estate Securities Inc. (sponsor of Certificate MABS 2006-NC1 A3) and the parent company (owner of the preferred members interest) of UBS Securities LLC.

53. The Wells Fargo Entities

A. Depositor Defendant Wells Fargo Asset Securities Corporation is a Delaware corporation. On information and belief, Wells Fargo Asset Securities Corporation was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Wells Fargo Asset Securities Corp. was the depositor for Certificates WFHET 2006-3 A2 and WFMBS 2006-AR3 A4.

B. Controlling Person Defendant Wells Fargo Bank, National Association, a nationally chartered bank that was and is registered to do business in Illinois, is the parent corporation and controlling entity of Wells Fargo Asset Securities Corporation. Wells Fargo Bank, National Association was also the sponsor of Certificates WFHET 2006-3 A2 and WFMBS 2006-AR3 A4 and an originator of loans for the offering in which the Bank purchased Certificates BAFC 2006-F 2A1, BAFC 2006-F 3A1, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, NHELI 2006-WF1 A3, WFHET 2006-3 A2, and WFMBS 2006-AR3 A4.

C. Controlling Person Defendant Wells Fargo & Company, a Delaware corporation that was and is registered to do business in Illinois, is the parent corporation, with 100% direct or indirect ownership, and controlling entity of Wells Fargo Asset Securities Corporation and Wells Fargo Bank, National Association. Wells Fargo & Company is a financial services company that

provides retail, commercial and corporate banking services. It has banking stores located in 39 states and the District of Columbia. Wells Fargo & Company provides additional financial services through subsidiaries that are engaged in various businesses, including: wholesale banking, mortgage banking, consumer finance, commercial finance, securities brokerage and investment banking, and mortgage-backed securities servicing.

C. Successor Liability Allegations Against Certain Defendants

1. Successor Defendant Bank of America Corporation

54. On July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and those it controlled, including Countrywide Securities Corporation, through an all-stock merger. In this transaction, Countrywide Financial Corporation merged with and into Bank of America Corporation, which acquired substantially all Countrywide Financial Corporation assets and responsibility for all pre-merger liabilities. As consideration for the merger, Countrywide Financial s shareholders received stock in Bank of America. *See* Agreement and Plan of Merger, dated as of January 11, 2008, by and among Countrywide Financial Corporation (the Company), Bank of America Corporation, and Red Oak Merger Corporation.

55. At the time of the transaction, Bank of America announced that it intended to combine Countrywide s operations with its own and re-brand those combined operations with the Bank of America name. Bank of America further announced that Barbara Desoer would run the combined mortgage and consumer real estate operations from Calabasas, California, where Countrywide Financial had its headquarters, and that Countrywide Financial s incumbent president, David Sambol, would remain for at least some time to work on the transition.

56. On October 16, 2008, Bank of America announced that Countrywide Financial would no longer publicly report its own financial results and that Bank of America was transferring "substantially all of the assets and operations of Countrywide Financial Corporation and Countrywide Home Loans, Inc. to other subsidiaries of Bank of America."

57. On November 10, 2008, Bank of America publicly filed an 8-K announcing the integration of Countrywide Financial (and it subsidiaries) with Bank of America's other businesses and operations. That filing once again disclosed that Bank of America had transferred substantially all of Countrywide Financial's assets to Bank of America.

58. On April 27, 2009, Bank of America announced that it was retiring the Countrywide name and that the combined operations of Countrywide and Bank of America would do business as Bank of America Home Loans. Many former Countrywide locations, employees, assets, and business operations now continue under the Bank of America Home Loans name. Upon information and belief, Bank of America Home Loans is a brand name that Bank of America now uses for the Countrywide Financial mortgage origination and securitization operations that Bank of America has absorbed and consolidated with its own operations. The Form 10-K that Bank of America filed on February 26, 2010 lists both Underwriter Defendant Countrywide Securities and its direct parent corporation Countrywide Capital Markets, LLC as Bank of America subsidiaries.

59. Bank of America entered into this transaction with full knowledge that it was assuming substantial Countrywide liabilities. In a February 22, 2008 interview, Bank of America spokesman Scott Silvestri told Corporate Counsel that Bank of America had not overlooked Countrywide's legal expenses and liabilities when it decided to merge with Countrywide:

> Handling all this litigation won't be cheap, even for Bank of America, the soon-to-be largest mortgage lender in the country. Nevertheless, the banking giant says that Countrywide's legal expenses were not overlooked during negotiations. "We bought the company and all of its assets and liabilities," spokesman Scott Silvestri says. "We are aware of the claims and potential claims against the company and have factored these into the purchase."

60. A January 23, 2008 *New York Times* article similarly quotes former Bank of America Chairman and CEO Kenneth D. Lewis acknowledging that Bank of America had thought long and hard about acquiring Countrywide's liabilities:

> We did extensive due diligence. We had 60 people inside the company for almost a month. It was the most extensive due diligence we have ever done. So we feel comfortable with the valuation. We looked at every aspect of the deal, from their assets to potential lawsuits and we think we have a price that is a good price.

61. On November 16, 2010, Bank of America's Chief Executive Officer, Brian Moynihan, publicly admitted that Bank of America had accepted liability for investors' claims concerning Countrywide's mortgage-backed securities: "There's a lot of people out there with a lot of thoughts about how we should solve this [investor demands for refunds over faulty mortgages], but at the end of the day, we'll pay for the things that Countrywide did."

62. And in a December 12, 2010 *New York Times* profile, Moynihan again publicly admitted that Bank of America would be responsible for Countrywide's liabilities:

> <u>But what about Countrywide?</u>
>
> "A decision was made; I wasn't running the company," Mr. Moynihan says, although he was obviously a top bank official at the time. "Our company bought it and we'll stand up; we'll clean it up."

63. Bank of America's securities filings echo this position. In addition to significantly increased revenues due to Countrywide's contributions, Bank of America has reported its

payment on claims for defective legacy Countrywide mortgages and announced a $4.4 billion reserve fund to pay for similar claims in the future.

64. In October 2008, Bank of America agreed to pay $8.4 billion to settle predatory lending lawsuits that various state Attorneys General had filed against Countrywide. Although Countrywide originated the mortgages and was alleged to have committed the misconduct in question long before Bank of America's acquisition, Bank of America assumed financial responsibility for the settlement.

65. On January 3, 2011, Bank of America similarly announced that it had agreed to pay $2.8 billion to settle claims to repurchase mortgage loans that Fannie Mae and Freddie Mac had purchased from Countrywide Financial or its subsidiaries. In its press releases and presentation concerning the settlement, Bank of America admitted that it was paying to resolve claims concerning "alleged breaches of selling representations and warranties related to loans sold by legacy Countrywide."

66. Bank of America has completed a de facto merger with Controlling Person Defendant Countrywide Financial Corporation and its subsidiaries, including Underwriter Defendant Countrywide Securities, by absorbing Countrywide Financial and those entities controlled by it into Bank of America's own operations. Bank of America Corporation is the successor in liability to Countrywide Financial Corporation and Countrywide Securities Corporation, and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants alleged herein, including the liability with respect to the Certificates at issue in this case. Accordingly, the Bank seeks to recover any damages it recovers against Countrywide Financial Corporation and Countrywide Securities Corporation from Bank of America.

67. On January 1, 2009, Successor Defendant Bank of America Corporation, through a wholly owned subsidiary formed solely for the purpose of the merger, acquired Merrill Lynch & Co., Inc. and those it controlled, including Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Mortgage Investors, Inc., through an all-stock merger. In this transaction, Merrill Lynch & Co., Inc. merged with and into Bank of America Corporation, and Bank of America Corporation acquired substantially all Merrill Lynch & Co., Inc. assets and responsibility for all pre-merger liabilities. *See* Agreement and Plan of Merger by and between Merrill Lynch & Co., Inc. and Bank of America Corporation dated as of September 15, 2008; *see also* Bank of America Proxy Statement, Schedule 14A (describing the terms of the "strategic business combination"). The merger was intended to qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986.

68. Bank of America has completed a de facto merger with Merrill Lynch & Co., Inc. and its subsidiaries, including Underwriter Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated and Depositor Defendant Merrill Lynch Mortgage Investors, Inc. by absorbing Merrill Lynch & Co., Inc. and those entities controlled by it into Bank of America's own operations. Bank of America Corporation is the successor in liability to Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Mortgage Investors, Inc., and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants alleged herein, including the liability with respect to the Certificates at issue in this case. Accordingly, the Bank seeks to recover any damages it recovers against Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Mortgage Investors, Inc. from Bank of America.

2. Successor Defendants American Enterprise Investment Services, Inc. and Ameriprise Financial Services, Inc.

69. Defendants American Enterprise Investment Services, Inc. and Ameriprise Financial Services, Inc., also referred to herein as "Successor Defendants," are liable as the successors in liability to H&R Block Financial Advisors, Inc., as set forth below.

70. On August 12, 2008, H&R Block, Inc. entered into a Stock Purchase Agreement with Ameriprise Financial, Inc., to sell all of the outstanding shares of capital stock of HRB Financial Corporation, which included ownership of HRB Financial Corporation subsidiary H&R Block Financial Advisors, Inc., to Ameriprise Financial, Inc., a Michigan corporation. The sale was completed and became effective November 1, 2008.

71. According to a Form 8-K filed with the SEC by H&R Block, Inc., on November 6, 2008, H&R Block, Inc.:

> completed the sale of all the outstanding shares of capital stock of HRB Financial Corporation ("HRB Financial") to Ameriprise Financial, Inc. pursuant to a Stock Purchase Agreement dated August 12, 2008. HRB Financial owns H&R Block Financial Advisors, Inc., the Company's former securities brokerage business. Pursuant to the terms of the sale, Block Financial received sales proceeds of approximately $312 million in cash and repayment of approximately $48 million in intercompany liabilities, subject to post-closing adjustments.

72. By virtue of this agreement, HRB Financial Corporation, including subsidiary H&R Block Financial Advisors, Inc. merged into Ameriprise Financial, Inc. and HRB Financial Corporation and H&R Block Financial Advisors, Inc. were wholly owned subsidiaries of Ameriprise Financial, Inc. H&R Block Financial Advisors, Inc. thereafter did business as Ameriprise Advisor Services, Inc. As noted in Section III.B, above, in October 2009, portions of Ameriprise Advisor Services, Inc. were combined with Ameriprise Financial, Inc.'s subsidiaries Successor Defendants American Enterprise Investment Services, Inc. and Ameriprise Financial Services, Inc., which are jointly liable as successors in interest to Ameriprise Advisor Services,

Inc. (f/k/a H&R Block Financial Advisors, Inc.). Ameriprise Advisor Services, Inc. filed a certificate of dissolution with the Michigan Department of Energy, Labor & Economic Growth on January 5, 2011, and withdrew its active status from the Illinois Secretary of State on January 7, 2011.

73. American Enterprise Investment Services, Inc. and Ameriprise Financial Services, Inc., are the successors in liability to H&R Block Financial Advisors, Inc., including with respect to activities alleged herein involving H&R Block Financial Advisors, Inc., and are jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants alleged herein, including the liability with respect to the Certificates at issue in this case. American Enterprise Investment Services, Inc. and Ameriprise Financial Services, Inc. are named as a successors-in-interest to H&R Block Financial Advisors, Inc.

3. Successor Defendant The PNC Financial Services Group, Inc.

74. Defendant PNC Financial Services Group, Inc., is liable as the successor in liability to National City Corporation, as set forth below.

75. Pursuant to an Agreement and Plan of Merger dated October 24, 2008, on or about December 31, 2008, National City Corporation and its subsidiaries, including National City Capital Markets and NatCity Investments, Inc., merged with and into The PNC Financial Services Group, Inc., (also referred to herein as □PNC□) a Pennsylvania corporation with its principal executive offices located at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania.

76. Under the terms of the agreement, PNC acquired all outstanding shares of common stock in a stock-for-stock merger transaction. PNC also advised its shareholders and the public that □PNC [was] to acquire 100% of National City resulting in 5th largest U.S. deposit

franchise. *See* The PNC Financial Services Group, Inc. Form 8-K, dated October 24, 2008, and exhibits thereto. The PNC Financial Services Group, Inc., thus acquired National City Corporation's assets, responsibilities, and liabilities, including those relating to the Certificates at issue in this case.

77. The merger also resulted in combined company leadership. For example, upon closing, the chairman, president and chief executive officer of National City Corporation was to be appointed as a PNC Financial Services Group, Inc. vice chairman, and one National City Corporation director was to "join the board of the combined company." *Id.* To its shareholders and the public, the PNC Financial Services Group, Inc. also touted the synergies to be obtained from the transaction, estimated at $1.2 billion in annual expense reduction, and its success in integrating National City Corporation's balance sheets into its business model. *Id.* The PNC Financial Services Group, Inc. Chairman and chief executive officer stated that "[w]e believe this strategic combination will continue PNC's efforts to build capital strength and shareholder value." *Id.*

78. The merger became effective December 31, 2008. National City Corporation ceased filing its own financial statements in 2008. The merger was intended to qualify, and on information and belief, qualified as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, and its assets and liabilities are now set forth in the financial statements of The PNC Financial Services Group, Inc.

79. As the successor to National City Corporation, PNC Financial Services Group, Inc. assumed the obligations of National City's outstanding securities. The transaction included the integration of National City Corporation's business and operations (including those of its divisions and subsidiaries, including National City Capital Markets, which now does business as

the PNC Financial Services Group, Inc.), which includes the assets, responsibilities, and liabilities with respect to the Certificates at issue in this case. Therefore, The PNC Financial Services Group, Inc. is the successor in liability to National City Corporation, and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants alleged herein, including the liability with respect to the Certificates at issue in this case. PNC Financial Services Group Inc. is named as a successor-in-interest to National City Corporation, including with respect to activities alleged herein involving National City Corporation, NatCity Investments, Inc., and National City Capital Markets.

D. Summary Charts of Defendants and Certificates

80. In sum, the "**Depositor/Issuer Defendants**," listed below, received or purchased and transferred or sold pools of assets to the issuing trusts identified below, and securitized in the bonds listed below, and were the "issuers" of the securities:[2]

Depositor/Issuer Defendants	Issuing Trust	Securities
Banc of America Funding Corporation	Banc of America Funding 2006-C Trust	BAFC 2006-C 2A1
	Banc of America Funding 2006-E Trust	BAFC 2006-E 2A2 BAFC 2006-E 3A1
	Banc of America Funding 2006-F Trust	BAFC 2006-F 2A1 BAFC 2006-F 3A1
Citigroup Mortgage Loan Trust Inc.	Citigroup Mortgage Loan Trust 2006-NC1	CMLTI 2006-NC1 A2C
	Citigroup Mortgage Loan Trust 2006-NC2	CMLTI 2006-NC2 A2B
	Citigroup Mortgage Loan Trust 2006-WFHE2	CMLTI 2006-WFH2 A2B
	Citigroup Mortgage Loan Trust 2006-WFHE4	CMLTI 2006-WFH4 A3
Financial Asset Securities Corp.	First Franklin Mortgage Loan Trust 2006-FF8	FFML 2006-FF8 IIA3

[2] *See* 17 C.F.R. § 230.191 ("The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the issuer for purposes of the asset-backed securities of that issuing entity.").

Depositor/Issuer Defendants	Issuing Trust	Securities
First Horizon Asset Securities, Inc.	First Horizon Mortgage Pass-Through Trust 2006-AR1	FHASI 2006-AR1 2A1
Greenwich Capital Acceptance, Inc.	Harborview Mortgage Loan Trust 2006-2	HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A
GS Mortgage Securities Corp.	FFMLT Trust 2006-Ff13	FFML 2006-FF13 A2C
	GSAMP Trust 2006-NC2	GSAMP 2006-NC2 A2C
IndyMac MBS, Inc.	Indymac Indx Mortgage Loan Trust 2006-AR15	INDX 2006-AR15 A2
Merrill Lynch Mortgage Investors, Inc.	2006-CB4 Trust	CBASS 2006-CB4 AV3
Morgan Stanley ABS Capital I Inc.	Morgan Stanley ABS Capital I Inc. Trust 2006-HE5	MSAC 2006-HE5 A2C
	Morgan Stanley ABS Capital I Inc. Trust 2006-HE6	MSAC 2006-HE6 A2C
	Morgan Stanley ABS Capital I Inc. Trust 2006-WMC2	MSAC 2006-WMC2 A2C
Mortgage Asset Securitization Transactions, Inc.	Mastr Asset Backed Securities Trust 2006-NC1	MABS 2006-NC1 A3
Nomura Home Equity Loan, Inc.	Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2006-WF1	NHELI 2006-WF1 A3
Option One Mortgage Acceptance Corp.	Option One Mortgage Loan Trust 2005-5	OOMLT 2005-5 A3
	Option One Mortgage Loan Trust 2006-2	OOMLT 2006-2 2A3
Residential Asset Mortgage Products, Inc.	GMACM Mortgage Loan Trust 2006-AR2	GMACM 2006-AR2 2A1 GMACM 2006-AR2 4A1
Residential Asset Securities Corporation	RASC Series 2005-Ks12 Trust	RASC 2005-KS12 A2
Residential Funding Mortgage Securities I, Inc.	RFMSI Series 2006-Sa2 Trust	RFMSI 2006-SA2 2A1
Securitized Asset Backed Receivables, LLC	Securitized Asset Backed Receivables LLC Trust 2006-FR3	SABR 2006-FR3 A2
	Securitized Asset Backed Receivables LLC Trust 2006-NC3	SABR 2006-NC3 A2B
Sequoia Residential Funding, Inc.	Sequoia Mortgage Trust 2006-1	SEMT 2006-1 2A1 SEMT 2006-1 3A1
Wells Fargo Asset Securities Corporation	Wells Fargo Home Equity Asset-Backed Securities 2006-3 Trust	WFHET 2006-3 A2

Depositor/Issuer Defendants	Issuing Trust	Securities
	Wells Fargo Mortgage Backed Securities 2006-AR3 Trust	WFMBS 2006-AR3 A4

81. In sum, the "**Underwriter Defendants**," listed below, purchased the securities identified herein from the Depositor/Issuer Defendants (defined and identified above) and offered or sold the securities to the Bank. Together with the Depositor/Issuer Defendants, the Underwriter Defendants prepared the Offering Documents for the securities and provided them to the Bank:

Underwriter Defendants	Securities
Banc of America Securities LLC	ARSI 2005-W5 A2C BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1 FHASI 2006-AR1 2A1 OOMLT 2005-5 A3 OOMLT 2006-2 2A3 RASC 2005-KS12 A2 SEMT 2006-1 2A1 SEMT 2006-1 3A1
Barclays Capital Inc.	AMSI 2005-R10 A2B ARSI 2005-W5 A2C FHLT 2005-E 2A3 SABR 2006-FR3 A2 SABR 2006-NC3 A2B WFHET 2006-3 A2
Citigroup Global Markets Inc.	CMLTI 2006-NC1 A2C CMLTI 2006-WFH2 A2B CMLTI 2006-WFH4 A3 CMLTI 2006-NC2 A2B NHELI 2006-WF1 A3 OOMLT 2005-5 A3
Countrywide Securities Corporation	HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A MSAC 2006-HE6 A2C SEMT 2006-1 2A1 SEMT 2006-1 3A1

Underwriter Defendants	Securities
Credit Suisse First Boston LLC	FHLT 2005-E 2A3 INABS 2005-D AII3
First Tennessee Bank, National Association	FHASI 2006-AR1 2A1
Goldman, Sachs & Co.	FFML 2006-FF13 A2C GSAMP 2006-NC2 A2C RFMSI 2006-SA2 2A1
Greenwich Capital Markets, Inc.	AMSI 2005-R10 A2B ARSI 2005-W5 A2C FFML 2006-FF8 IIA3 FHLT 2005-E 2A3 HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A INABS 2005-D AII3 OOMLT 2005-5 A3 OOMLT 2006-2 2A3 RASC 2005-KS12 A2
H&R Block Financial Advisors, Inc.	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
HSBC Securities (USA) Inc.	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
J.P. Morgan Securities Inc.	AMSI 2005-R10 A2B CBASS 2006-CB4 AV3 OOMLT 2005-5 A3
Merrill Lynch, Pierce, Fenner & Smith Incorporated	CBASS 2006-CB4 AV3 OOMLT 2006-2 2A3
Morgan Stanley & Co. Incorporated	INABS 2005-D AII3 MSAC 2006-WMC2 A2C MSAC 2006-HE5 A2C MSAC 2006-HE6 A2C WFMBS 2006-AR3 A4
NatCity Investments, Inc.	FFML 2006-FF13 A2C FFML 2006-FF12 A3 FFML 2006-FF12 A4 FFML 2006-FF14 A5 FFML 2006-FF10 A7
National City Corporation	FFML 200-FF8 IIA3
Nomura Securities International, Inc.	NHELI 2006-WF1 A3
Residential Funding Securities Corporation	GMACM 2006-AR2 2A1 GMACM 2006-AR2 4A1 RASC 2005-KS12 A2

Underwriter Defendants	Securities
UBS Securities LLC	FHLT 2005-E 2A3 INABS 2005-D AII3 MABS 2006-NC1 A3 SARM 2005-21 3A1

In sum, the "**Sponsor Defendants**," listed below, organized and initiated these PLMBS transactions by acquiring the loans either from their own origination unit or from one or more third-party originators, and then offered and sold these securities to the Bank:

Sponsor Defendant	Securities
Bank of America, N.A.	BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1
Option One Mortgage Corporation	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
Residential Funding Corporation	RASC 2005-KS12 A2
RWT Holdings, Inc.	SEMT 2006-1 2A1 SEMT 2006-1 3A1

82. In sum, the following Defendants, collectively referred to as the "**Controlling Person Defendants**," controlled the Sponsor, Depositor/Issuer, and Underwriter Defendants:

Controlling Person Defendant	Controlled Defendant	Defendants
Bank of America Corporation	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America, National Association.	Sponsor
Citigroup Financial Products, Inc.	Citigroup Global Markets Inc.	Underwriter
	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
Citigroup Inc.	Citigroup Global Markets Inc.	Underwriter
	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Financial Products, Inc.	Controlling Person
Countrywide Financial Corporation	Countrywide Securities Corporation	Underwriter
First Tennessee Bank, National Association	First Horizon Asset Securities, Inc.	Depositor/Issuer

Controlling Person Defendant	Controlled Defendant	Defendants
GMAC Inc.	Residential Asset Mortgage Products, Inc.	Depositor/Issuer
	Residential Asset Securities Corporation	Depositor/Issuer
	Residential Funding Corporation	Sponsor/Controlling Person
	Residential Funding Mortgage Securities I, Inc.	Depositor/Issuer
	Residential Funding Securities Corporation	Underwriter
	GMAC Mortgage Group, Inc.	Controlling Person
GMAC Mortgage Group Inc.	Residential Asset Mortgage Products, Inc.	Depositor/Issuer
	Residential Asset Securities Corporation	Depositor/Issuer
	Residential Funding Corporation	Sponsor/Controlling Person
	Residential Funding Mortgage Securities I, Inc.	Depositor/Issuer
	Residential Funding Securities Corporation	Underwriter
Goldman Sachs Mortgage Company	GS Mortgage Securities Corp.	Depositor/Issuer
Greenwich Capital Holdings, Inc.	Financial Asset Securities Corp.	Depositor/Issuer
	Greenwich Capital Acceptance, Inc.	Depositor/Issuer
	Greenwich Capital Markets, Inc.	Underwriter
H&R Block, Inc.	H&R Block Financial Advisors, Inc.	Underwriter
	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Option One Mortgage Corporation	Sponsor/Controlling Person
Morgan Stanley	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
Nomura Holding America Inc.	Nomura Home Equity Loan, Inc.	Depositor/Issuer
Option One Mortgage Corporation	Option One Mortgage Acceptance Corp.	Depositor/Issuer
Redwood Trust, Inc.	RWT Holdings, Inc.	Sponsor
	Sequoia Residential Funding, Inc.	Depositor/Issuer
Residential Funding Corporation	Residential Funding Securities Corporation	Underwriter
The Goldman Sachs Group Inc.	GS Mortgage Securities Corp.	Depositor/Issuer
	Goldman Sachs Mortgage Company	Controlling Person
UBS Americas Inc.	Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer
Wells Fargo & Company	Wells Fargo Asset Securities Corporation	Depositor/Issuer
	Wells Fargo Bank, National Association	Controlling Person

Controlling Person Defendant	Controlled Defendant	Defendants
Wells Fargo Bank, National Association	Wells Fargo Asset Securities Corporation	Depositor/Issuer

83. In sum, the following Defendants, collectively referred to as the "**Successor Liability Defendants**," are liable as successors to the Succeeded Parties, as set forth above, and all references herein to the Suceeded Parties are also to their respective Successor:

Successor Defendant	Succeeded Parties	Securities
American Enterprise Investment Services, Inc.	H&R Block Financial Advisors, Inc.	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
Ameriprise Financial Services, Inc.	H&R Block Financial Advisors, Inc.	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
Bank of America Corporation	Countrywide Financial Corporation	SEMT 2006-1 2A1 SEMT 2006-1 3A1
	Countrywide Securities Corporation	HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A MSAC 2006-HE6 A2C SEMT 2006-1 2A1 SEMT 2006-1 3A1
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	ARSI 2005-W5 A2C BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1 CBASS 2006-CB4 AV3 FHASI 2006-AR1 2A1 OOMLT 2005-5 A3OOMLT 2006-2 2A3 RASC 2005-KS12 A2 SEMT 2006-1 2A1 SEMT 2006-1 3A1
	Merrill Lynch Mortgage Investors, Inc.	CBAS 2006-CB4 AV3

Successor Defendant	Succeeded Parties	Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Banc of America Securities LLC	ARSI 2005-W5 A2C BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1 FHASI 2006-AR1 2A1 OOMLT 2005-5 A3 OOMLT 2006-2 2A3 RASC 2005-KS12 A2 SEMT 2006-1 2A1 SEMT 2006-1 3A1
PNC Investments LLC	NatCity Investments, Inc.	FFML 2006-FF10 A7 FFML 2006-FF12 A3 FFML 2006-FF12 A4 FFML 2006-FF13 A2C FFML 2006-FF14 A5
The PNC Financial Services Group, Inc.	NatCity Investments, Inc.	FFML 2006-FF10 A7 FFML 2006-FF12 A3 FFML 2006-FF12 A4 FFML 2006-FF13 A2C FFML 2006-FF14 A5
	National City Corporation, d/b/a National City Capital Markets	FFML 2006-FF8 IIA3

E. The John Doe Defendants

84. Defendants John Doe 1-50 are other Depositor/Issuers, Underwriters, Controlling Persons, Successor Liability Defendants, and/or others who are jointly and severally or otherwise liable for the misstatements, omissions, and other wrongful conduct alleged herein, including the liability with respect to the Certificates at issue in this case. The John Doe Defendants may include persons or entities that are not named as Defendants at this time because Plaintiff has insufficient information as to the extent, if any, of their involvement in and liability for the matters alleged herein. Plaintiff will amend this Complaint to allege the true names and capacities of these Defendants when ascertained.

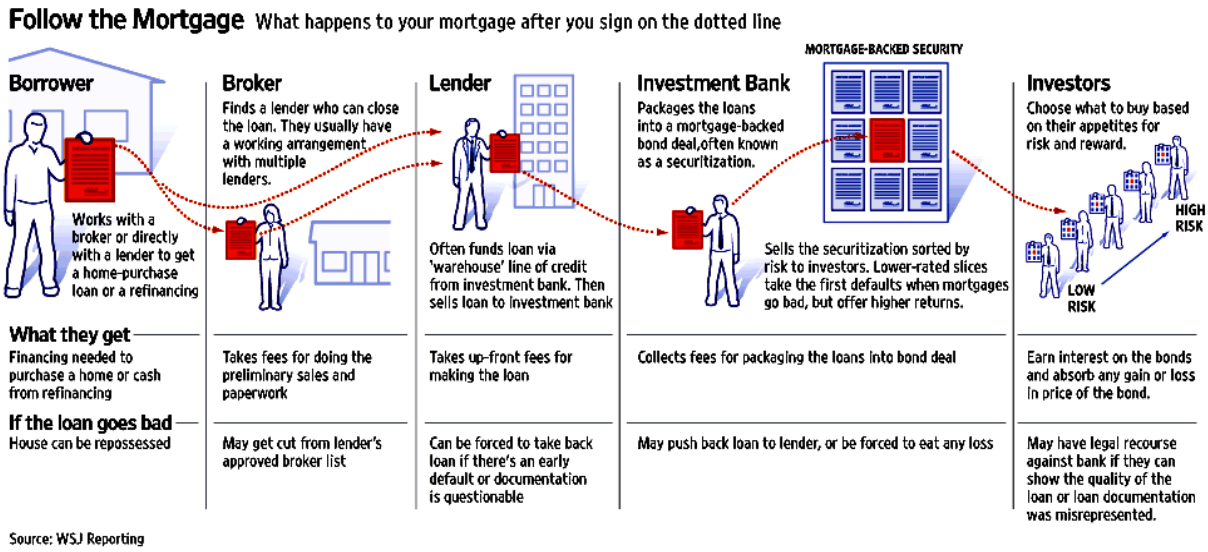
IV. FACTUAL BACKGROUND

A. Mechanics of Mortgage Backed Securities

1. The Securitization Process

85. The PLMBS purchased by the Bank were created in a process known as "mortgage securitization." Mortgage securitization is a process by which mortgage loans are acquired from "mortgage originators," pooled together, and certificates constituting interests in the cash flow from the mortgage pools are then sold to investors. The certificates are referred to as "mortgage pass-through certificates" because the cash flow from the pool of mortgages is "passed through" to the securities holders when payments are made by the underlying mortgage borrowers.

86. The following graphic illustrates the securitization process:



87. Securitization involves several entities who perform distinct tasks, though, as was the case here, many or all of the entities in a securitization may be subsidiaries or affiliates of a single parent or holding company. The first step in creating a mortgage pass-through security such as the PLMBS purchased by the Bank is the acquisition by the "**depositor**" (referred to

herein as "depositor" or "depositor/issuer") of an inventory of loans from a "**sponsor**" or "**seller**" which either originates the loans or acquires the loans from other mortgage originators in exchange for cash. The depositor/issuer is often a subsidiary or other affiliate of the sponsor.

88. The depositor then securitizes the pool of loans by forming one or more mortgage pools with the inventory of loans, and creating tranches of interests in the mortgage pools with various levels of seniority. Interests in these tranches are then issued by the depositor (who then serves as the "**issuer**") through a trust in the form of bonds or certificates.

89. Each tranche has a different level of purported risk and reward, and, often, a different rating. The most senior tranches often receive the highest investment grade rating, triple-A. Junior tranches, which usually have lower ratings, are more exposed to risk, but offer higher potential returns. The most senior tranches of certificates are entitled to payment in full before the junior tranches. Conversely, losses on the underlying loans in the asset pool – whether due to default, delinquency, or otherwise – are allocated first to the most subordinate or junior tranche of certificates, then to the tranche above that. This hierarchy in the division of cash flows is referred to as the "**flow of funds**" or "**waterfall**."

90. The depositor/issuer works with one or more of the nationally recognized credit rating agencies – Fitch Ratings, Standard & Poor's Rating Services (S&P), and Moody's Investor Services, Inc. (collectively, the "Credit Rating Agencies" or "Rating Agencies") – to ensure that each tranche of the mortgage pass-through certificate receives the rating desired by the depositor/issuer (and underwriter). For PLMBS, this meant a triple-A rating for the senior tranche, and lower ratings for the subordinated tranches Once the asset pool is securitized, the certificates are issued to one or more "**underwriters**" (typically Wall Street banks or other large financial institutions), who resell them to investors, such as the Bank.

91. Because the cash flow from the loans in the mortgage pool of a securitization is the source of funds to pay the holders of the certificates issued by the trust, the credit quality of the certificates depends largely on the credit quality of the loans in the mortgage pool. The collateral pool for PLMBS often includes thousands of loans. Detailed information about the credit quality of the loans is contained in the "loan files" developed and maintained by the mortgage originators when making the loans. For residential mortgage loans, such as the loans that backed the PLMBS purchased by the Bank, each loan file normally contains documents including the borrower's application for the loan, verification of income, assets, and employment, references, credit reports, an appraisal of the property that will secure the loan and provide the basis for other measures of credit quality, such as loan-to-value ratios, and occupancy status. The loan file also generally includes notes from the person who underwrote the loan describing the loan's purported compliance with underwriting guidelines and documentation of "compensating factors" that justified any departure from those standards.

92. Investors in RMBS, such as the Bank, do not have access to the loan files. Instead, the sponsors, depositors/issuers, and the underwriters are responsible for gathering and verifying information about the credit quality and characteristics of the loans that are deposited into the trust and presenting summaries of this information in prospectuses or other offering documents that are prepared for potential investors. This due diligence process is a critical safeguard for investors and a fundamental legal obligation of the sponsors, the depositor/issuers, and the underwriters. Accordingly, the due diligence process supposedly performed by Defendants was critical to the Bank's decision to purchase the certificates at issue.

2. The Rating Process for PLMBS

93. Because, like many institutional investors, the Bank was permitted to buy only triple-A rated tranches of these certificates, the credit rating of the tranches of PLMBS it purchased was also material to its investment decision.

94. In any PLMBS, the credit rating of each tranche is negotiated between the depositor/issuer of the certificates and the credit rating agencies. In this process, the depositor/issuer and/or the sponsor and underwriters provide the credit rating agency with information about the credit quality and characteristics of the loans that are deposited into the trust. The credit rating agency is then supposed to evaluate, among other things:

a. The credit quality of the collateral □*i.e.*, the underlying obligor□s ability to pay and the obligor□s equity in the asset;

b. The experience and underwriting standards of the originators of the underlying loans;

c. The loan characteristics reported by the depositor/issuer as underlying a particular transaction;

d. The default rates, historic recovery rates, and concentration of the loans;

e. The ability of the servicer to perform all the activities for which the servicer will be responsible; and

f. The extent to which the cash flow from the collateral can satisfy all of the obligations of the PLMBS transaction. The cash flow payments which must be made from the asset pool are interest and principal to investors, servicing fees, and any other expenses for which the depositor/issuer is responsible. The rating agencies are supposed to stress-test the flow of funds to determine whether the

cash flows match the payments that are required to be made to satisfy the depositor/issuer's obligations.

95. After evaluating these objective and verifiable factors, the credit rating agency issues a rating for the security. This rating is not a subjective opinion; rather it constitutes a factual representation regarding the risk of the security with reference to the above objective factors, and should therefore be a reflection of both the riskiness of the loans in the asset pool and the seniority of the tranche. If the rating that the credit rating agency assigns to the tranche is not in accord with the issuer's target, then the depositor/issuer may "**credit enhance**" the structure. Such credit enhancement may include overcollateralization (*i.e.*, including in the pool mortgages whose aggregate principal balance exceeds the aggregate principal balances of the certificates secured thereby), cash reserve accounts, excess spread (scheduled cash inflows from the mortgages in excess of the interest service requirements of the secured certificates), or third-party contracts (whereby losses suffered by the asset pool are absorbed by an insurer or other counter party). By using credit enhancement, a depositor/issuer may be able to elevate a bond to the highest credit rating.

96. All of the certificates that the Bank purchased were senior certificates that were rated triple-A when the Bank purchased them.

B. The Mortgage Originators Abandoned Underwriting and Appraisal Standards and Engaged in Predatory Lending.

1. The Shift from "Originate to Hold" to "Originate to Distribute" Securitization Incentivized Mortgage Originators to Disregard Loan Quality.

97. As noted above, the fundamental basis upon which mortgage pass-through certificates are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral for those loans. If the borrowers cannot pay,

and the collateral is insufficient, the cash flow from the certificate diminishes, and the investors are exposed to losses. For this reason, the underwriting standards and practices of the mortgage originators who issued loans that back MBS, and the representations in the Offering Documents regarding those standards, are critically important to the value of the certificates and the investors decisions to purchase the certificates.

98. Yet, unbeknownst to the Bank, during the time frame that the Bank purchased the PLMBS at issue in this case, mortgage originators: (a) effectively abandoned their stated underwriting standards as part of the securitization process; (b) allowed pervasive and systematic exceptions to their stated underwriting standards without proper justification; (c) adopted practices such that variance from their stated underwriting practices was the norm; (d) disregarded credit risk and quality controls in favor of generating loan volume; (e) pressured and coerced appraisers to inflate their collateral valuations in order to permit loans to close; and (f) engaged in predatory lending practices. As has become clear recently, this was the result of a fundamental shift in the mortgage securitization markets.

99. In the 1980s and 1990s, under the traditional model, mortgage originators held the mortgage loans they provided to borrowers through the term of the loan. They would therefore profit from the obligor s payment of interest and repayment of principal, but also bear the risk of loss if the obligor defaulted and the property value was insufficient to repay the loan. As a consequence of this arrangement, the originator was economically vested in establishing the creditworthiness of the obligor and the true value of the underlying property by appraising it before issuing the mortgage loans.

100. Additionally, the mortgage securitizations that took place in the 1980s and 1990s generally fell within the domain of GSEs Fannie Mae and Freddie Mac. These GSEs purchased

the loans from the originators, securitized them, and sold them to investors. Investors in the early GSE securitizations were provided protection because the underlying loans were originated pursuant to strict underwriting guidelines, and the GSEs guaranteed that the investors would receive timely payments of principal and interest. Because the GSEs were perceived as being backed by the federal government, investors viewed the guarantees as diminishing credit risk, if not removing it altogether.

101. Between 2001 and 2006, however, Wall Street banks moved aggressively into the securitization markets, taking market share away from the GSEs. Unlike the GSEs, the Wall Street banks focused primarily on Alt-A, subprime, and jumbo prime mortgage pools because of the higher fees that were available. Likewise, investors sought higher returns offered by non-agency MBS. As a result, non-agency loan originations and securitizations grew dramatically as shown by the following table:

	2001	**2006**
GSE Loan Originations	**$1.433 trillion**	**$1.040 trillion**
GSE Securitizations	**$1.087 trillion**	**$904 billion**
Non-GSE Loan Originations	**$680 billion**	**$1.480 trillion**
Non-GSE Securitizations	**$240 billion (including $87 billion of subprime and $11 billion of Alt-A securitizations)**	**$1.033 trillion (including $449 billion of subprime and $366 of Alt-A securitizations)**

Source: Inside Mortgage Finance (2007).

102. Thus, from 2001 to 2006, non-GSE loan originations more than doubled and non-GSE securitizations more than quadrupled, while GSE loan originations and securitizations

contracted. Moreover, during this time the non-GSE Alt-A and subprime securitization activity skyrocketed, increasing eight-fold during the period from $98 billion to $815 billion.

103. As the Financial Crisis Inquiry Commission (often "FCIC") reported in April 2010, "[t]he amount of all outstanding mortgages held in non[Agency] MBS rose notably from only $670 billion in 2004 to over $2,000 billion in 2006." This statistic demonstrates the dramatic growth of the PLMBS market during this time. FCIC, "Preliminary Staff Report: Securitization and the Mortgage Crisis," April 7, 2010.

104. This enormous increase in PLMBS securitization is reflected in the securitization volume of the sponsors of the PLMBS purchased by the Bank. For example, between 2003 and 2006, Citigroup reported that its Prime/Alt-A securitization nearly quintupled, from $2.2 billion to $10.9 billion, and its subprime securitization increased from $306 million to $10.3 billion (an over 3000% increase). Other sponsors "primarily Wall Street banks "similarly expanded their securitization business during the same time period.

105. This shift was fueled by the complex interaction between record-high global savings, referred to by Federal Reserve Chairman Ben Bernanke as the "global savings glut," and exceedingly low interest rates. Low interest rates made it easier and more appealing for consumers to take out home mortgage loans. But the low Federal Reserve rate also meant that the global pool of investors received only marginal returns on traditional low-risk investments, in particular, U.S. Government Bonds. This created an incentive for Wall Street banks to create seemingly low-risk investment options that produced returns in excess of those of government bonds. PLMBS securitization was their answer. Thus, following the model created by the GSEs, the Wall Street banks began buying pools of mortgages from mortgage originators, securitizing the pools, and selling the bonds to global investors. Because mortgage interest rates

(and even more so Alt-A and subprime rates) generally exceeded those of U.S. Government bonds, the resulting PLMBS could provide investors with the higher rate of return they were seeking.

106. The one complication that the Wall Street banks needed to solve was the rating of the certificates. Debt securities secured by pools of mortgages made to lower credit quality borrowers would generally fail to meet the investment grade requirements of most institutional investors. The Wall Street banks solution was to structure the financings through the creation of tranches as discussed above. As a general rule, the result was that up to 80% of any particular PLMBS would receive an investment grade rating. The remaining 20% was often purchased by hedge funds and other entities that were able to buy non-investment grade certificates. The development opened the floodgates for the securitization and sale of PLMBS.

107. To ensure that the flood of securitizations and sale of PLMBS did not abate, the Wall Street banks bankrolled the lenders (both the ones they owned and those that were independent) so that the lenders had ample capital to issue loans. A recent study by The Center for Public Integrity found that 21 of the top 25 subprime lenders (in terms of loan volume) were either owned outright by the biggest banks or former investment houses, or had their subprime lending hugely financed by those banks, either directly or through lines of credit. *See* Who Is Behind The Financial Meltdown: The Top 25 Subprime Lenders and their Wall Street Backers, The Center for Public Integrity (May 6, 2009), *available at* http://www.publicintegrity.org/investigations/economic_meltdown/ (visited Sept. 20, 2010).

108. As the PLMBS market expanded, the traditional originate to hold model morphed into the originate to distribute model. Under the new originate to distribute model, mortgage originators no longer held the mortgage loans to maturity. Rather, mortgage

originators sold the loans to Wall Street banks and other major financial institutions and shifted the risk of loss to the investors who purchased an interest in the securitized pool of loans.

109. The new distribution model was highly profitable for the mortgage originators in the short-term. By securitizing and selling the mortgages to investors through underwriter/dealers, the mortgage originators shifted loans off their books, earned fees, and, thus, were able to issue more loans. Additionally, the securitization process enabled the originators to earn most of their income from transaction and loan-servicing fees, rather than (in the traditional model) from the spread between interest rates paid on deposits and interest rates received on mortgage loans. This created an unchecked incentive to originate more and more loans to feed into the securitization machine.

110. In testimony before the FCIC, Sheila C. Bair, Chair of the Federal Deposit Insurance Corporation, explained both the misalignment of incentives arising from the sale of loans and the misalignment created by flawed compensation practices within the origination industry:

> The standard compensation practice of mortgage brokers and bankers was based on the volume of loans originated rather than the performance and quality of the loans made. From the underwriters perspective, it was not important that consumers be able to pay their mortgages when interest rates reset, because it was assumed the loans would be refinanced, generating more profit by ensuring a steady stream of customers. The long-tail risk posed by these products did not affect mortgage brokers and bankers incentives because these mortgages were sold and securitized.

111. The Attorney General for the Commonwealth of Massachusetts came to the same conclusion when she issued the results of her investigation into the subprime mortgage industry, THE AMERICAN DREAM SHATTERED: THE DREAM OF HOMEOWNERSHIP AND THE REALITY OF PREDATORY LENDING (The AG Report). This report explained:

> Historically, the vast majority of home mortgages were written by banks which held the loans in their own portfolios, knew their borrowers, and earned profit by writing good loans and collecting interest over many years. Those banks had to live with their "bad paper" and thus had a strong incentive to avoid making bad loans. In recent years, however, the mortgage market has been driven and funded by the sale and securitization of the vast majority of loans. Lenders now frequently make mortgage loans with the intention to promptly sell the loan and mortgage to one or more entities. . . . The lenders' incentives thus changed from writing good loans to writing a huge volume of loans to re-sell, extracting their profit at the front end, with considerably less regard to the ultimate performance of the loans.

112. An internal memorandum drafted by the former Credit Risk Officer at Countrywide Financial demonstrates how originators recognized the link between reduced underwriting standards and the ability to pass the resultant associated risks on to third parties. The Credit Risk Officer explained that "[Underwriting] Guidelines have become more aggressive. . . . Furthermore, the portion of our nonconforming loans that are expanded criteria has increased. Because the sub holders bear most of the credit risk we are not directly exposed to the expansion of guidelines or change of mix." Declaration of Paris Wynn In Support of Plaintiff SEC's Ex Parte Application for Relief from Deposition Duration Limit for Deposition of John P. McMurray, *SEC v. Mozilo, et al*., No. 09-3994 (C.D. Cal.), Ex. 1.

113. As far as lenders were concerned, their profits were generated by origination of as many loans as possible, and once these loans were packaged and securitized, repayment risk was someone else's problem. According to the FCIC, Wall Street's approach to securitization was reflected by its embrace of a new term—"IBGYBG," standing for "I'll be gone, you'll be gone." FCIC Majority Report at 8. This term referred to deals that brought in big fees up front for the financial institutions involved in securitization, while risking much larger losses in the future for the investors that purchased the securities. As the FCIC noted, "for a long time, IBGYBG worked at every level." *Id.*

114. As Ben Bernanke, Chairman of the Federal Reserve Bank, explained in Congressional testimony:

> When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.

2. Mortgage Originators Abandoned Underwriting Guidelines in Order to Initiate High Cost Loans for Securitization.

115. The misalignment of incentives following the shift to the "originate to distribute model," noted by Mr. Bernanke and others following the collapse of the mortgage market, caused mortgage originators to systematically violate their stated underwriting and appraisal standards, and to accept, encourage, and even fabricate their own untrue information from loan applicants. As recent studies and reports have shown, this was not a problem limited to one or a few mortgage originators, but, rather, was pervasive among mortgage originators, including those that issued the loans that backed the PLMBS purchased by the Bank. Mortgage originators and the financial institutions that bankrolled them sought loan volume, not loan quality, in order to profit from the securitization market. As the FCIC concluded, "there was a systematic breakdown in accountability and ethics." FCIC Majority Report, Conclusions of the Financial Crisis Inquiry Commission, at xxii. According to the FCIC, "major financial institutions ineffectively sampled loans they were purchasing to package and sell to investors. They knew a significant percentage of the sampled loans did not meet their own underwriting standards or those of the originators. Nonetheless, they sold those securities to investors. The Commission's review of many prospectuses provided to investors found that this critical information was not disclosed." *Id.*

116. In addition, coincident with the widespread transfer to MBS purchasers of the default risk attached to mortgage loans, mortgage originators expanded the practice of originating highly risky nontraditional loans. In a marked departure from traditional mortgage origination procedures, originators offered a variety of reduced documentation programs in which the verification or substantiation of the applicants statements as to income, assets, and employment history was limited or non-existent. Although these programs were touted as providing for streamlined but nonetheless effective underwriting, unbeknownst to the Bank, the programs were engineered to enable originators to make loans to borrowers who otherwise never would have qualified. When these loans were securitized, investors were assured that reduced documentation programs were available only where the borrower satisfied certain FICO criteria, such as minimum FICO scores, or loan-to-value and debt-to-income ratios. In fact, the originators lacked any principled basis on which to evaluate the increased credit risk posed by such loans, notwithstanding representations to the contrary in the offering documents. Moreover, the widespread granting of exceptions to underwriting standards without legitimate compensating factors meant that the minimal safeguards associated with the reduced documentation programs were often abandoned in the headlong rush to maximize origination volume. Additionally, mortgage underwriters would often begin the underwriting of an applicant s loan under full documentation procedures, only to transfer the loan applicant to a No Doc program upon learning of information that would disqualify the applicant under the full documentation procedures.

117. Indeed, the President s Working Group on Financial Markets concluded in its Policy Statement on Financial Market Developments that, [t]he turmoil in financial markets

clearly was triggered by *a dramatic weakening of underwriting standards for U.S. subprime mortgages* beginning in late 2004 and extending into early 2007. (emphasis in original).

118. As John C. Dugan, Comptroller of the Currency testified to the FCIC on April 8, 2010, following his description of poor underwriting practices:

> The combination of all the factors I have just described produced, on a nationwide scale, the worst underwritten mortgages in our history. When house prices finally stopped rising, borrowers could not refinance their way out of financial difficulty. And not long after, we began to see the record levels of delinquency, default, foreclosures, and declining house prices that have plagued the United States for the last two years both directly and through the spillover effects to financial institutions, financial markets, and the real economy.

3. Mortgage Originators Manipulated Appraisals of Collateralized Real Estate in Order to Initiate High Cost Loans for Securitization.

119. Accurate appraisals prepared in accordance with established appraisal standards are essential for MBS investors to evaluate the credit risk associated with their investment. An accurate appraisal is necessary to calculate an accurate loan-to-value (LTV) ratio, which is the ratio of the amount of the mortgage loan to the value of the collateral determined by the lower of the appraised value or the sale price of the mortgaged property when the loan is made. The LTV ratio is strongly indicative of the borrowers likelihood of defaulting. As a borrower s equity decreases (and the corresponding LTV ratio increases), particularly to where equity is less than 10% and LTV ratios are greater than 90%, the borrower s incentive to keep the mortgage current, or the collateral in good condition, decreases dramatically. Consequently, aggregate LTV calculations are among the most significant characteristics of a mortgage pool because LTV ratios both define the extent of the investor s equity cushion (*i.e.*, the degree to which values may decline without the investor suffering a loss), and are strongly indicative of a borrower s incentive to pay. But in the absence of properly prepared appraisals, the value component of the LTV ratio is unreliable, and the aggregate LTV metrics become meaningless. The appraisal

practices of the mortgage originators who issued loans that back PLMBS, and the accuracy of the representations in the Offering Documents regarding those practices, therefore, were critically important to the value of the certificates, and to the investors decisions to purchase the certificates.

120. Appraisers are governed by the Uniform Standards of Professional Appraisal Practice (USPAP), which are promulgated by the Appraisal Standards Board. The USPAP contain a series of ethical rules designed to ensure the integrity of the appraisal process. For example, the USPAP Ethics Conduct Rule provides: An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

121. The USPAP Ethics Conduct Rule states: An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

122. The USPAP Ethics Management Rule states:

> It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:
>
> 1. the reporting of a predetermined results;
>
> 2. a direction in assignment results that favors the cause of a client;
>
> 3. the amount of a value opinion;
>
> 4. the attainment of a stipulated results; or
>
> 5. the occurrence of a subsequent event directly related to the appraiser s opinions and specific to the assignment s purpose.

123. The USPAP Scope of Work Acceptability Rule states: An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

124. The Appraisal Standards Board also issues Advisory Opinions regarding appropriate appraisal conduct. For example, Advisory Opinion 19 states in part:

> Certain types of conditions are unacceptable in any assignment because performing an assignment under such condition violates USPAP. Specifically, an assignment condition is unacceptable when it:
>
> - precludes an appraiser□s impartiality because such a condition destroys the objectivity and independence required for the development of credible results;
>
> - limits the scope of work to such a degree that the assignment results are not credible, given the intended use of the assignment; or
>
> - limits the content of a report in a way that results in the report being misleading.

125. The USPAP Scope of Work Rule states: □For each appraisal . . . an appraiser must . . . determine and perform the scope of work necessary to develop credible assignment results.□

126. Additionally, USPAP Standard 1 states: □In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.□

127. USPAP Standards Rule 2-1 states that □[e]ach written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and

(c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.□

128. Despite the importance of accurate appraisals and the requirements that are designed to ensure them, during the time frame that the Bank purchased the PLMBS at issue in this case, mortgage originators routinely manipulated the process for appraising the collateralized real estate properties. They did so by pressuring and coercing appraisers and blacklisting those that would not "come back at value." The prevalence of this problem and its impact on the financial crisis has been extensively investigated and examined in the aftermath of the market collapse.

129. According to his statements submitted in connection with his April 7, 2010 testimony before the FCIC, Richard Bitner, a former executive of a subprime lender for 15 years and author of the book *Confessions of a Subprime Lender*, explains:

> [T]he appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted . . . .[and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value. . . . Throwing a dart at a board while blindfolded would've produced more accurate results.
>
> "
>
> If the appraisal process had worked correctly, a significant percentage of subprime borrowers would've been denied due to lack of funds. Inevitably, this would have forced sellers to drop their exorbitant asking price to more reasonable levels. The rate of property appreciation experienced on a national basis from 1998 to 2006 was not only a function of market demand, but was due, in part, to the subprime industry's acceptance of overvalued appraisals, coupled with a high percentage of credit-challenged borrowers who financed with no money down.
>
> "
>
> [T]he demand from Wall Street investment banks to feed the securitization machine couple[d] with an erosion in credit standards led the industry to drive itself off the proverbial cliff.

The Financial Crisis Inquiry Commission, Official Transcript, Commission Hearing, Apr. 7, 2010, Session 2, at 9-10.

130. In her testimony before the FCIC, Patricia Lindsay, a former New Century Financial Corporation wholesale lender, described widespread appraisal fraud and abuse:

> The role and practices of appraisers in subprime mortgage origination:
>
> Properly valuing a property . . . is one of the most important components in a loan. In my experience at New Century, fee appraisers hired to go to the properties were often times pressured into coming in "at value", fearing if they didn't, they would lose future business and their livelihoods. They would charge the same fees as usual, but would find properties that would help support the needed value rather than finding the best comparables to come up with the most accurate value. Some appraisers would take boards off boarded up windows, to take the needed photos, then board the properties back up once the shots were taken. Or they would omit certain important elements of a property by angling the camera a certain way or zooming close in to make the property look the best possible. This level of appraiser activism compromises their objectivity.

131. Alan Hummel, Chair of the Appraisal Institute, testified before the Senate Committee on Banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraisers "experience[d] systemic problems with coercion" and were "ordered to doctor their reports or else never see work from those parties again."

132. In his testimony before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, Jim Amorin, President of the Appraisal Institute, testified similarly that:

> In recent years, many financial institutions have lost touch with fundamental risk management practices, including the separation between loan production and risk management. Unfortunately, parties with a vested interest in a transaction are often the same people managing the appraisal process within many financial institutions: a flagrant conflict of interest. Appraisers are ordered to doctor their reports or else never receive work from those parties again. This was evident in a recent case involving nearly all state Attorneys General against Ameriquest, which resulted in an out-of-court settlement imposing new standards to prevent unfair and deceptive practices.
>
> "
>
> Another coercion tactic is the threat of being placed on a "blacklist" (aka "exclusionary appraiser list"), commonly used to blackball appraisers. It is one

> thing to maintain a list of reputable businesses to work with, or to maintain a list of firms to avoid as a result of poor performance. However, [it] is another to place an appraiser on a blacklist for refusal to hit a predetermined value.

133. Confirming the extent of the problem, a survey of 1,200 appraisers conducted by October Research Corp. found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through during the relevant period. The study also found that 75% of appraisers reported negative ramifications if they did not cooperate, alter their appraisal, and provide a higher valuation.

134. In 2010, as a result of widespread appraisal abuse, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1472, which amended Chapter 2 of the Truth in Lending Act, 15 U.S.C. § 1631, *et seq*., to specifically prohibit actions that violate appraisal independence. Under the new Act, acts or practices that violate appraisal independence include:

> (1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;
>
> (2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;
>
> (3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and
>
> (4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

135. All of the abuses targeted by the amended Truth in Lending Act were widespread during the time frame that the Bank purchased the PLMBS at issue, causing the appraisals of the collateralized real estate backing the PLMBS to be inflated. As the FCIC noted:

> [a]s the housing market expanded, another problem emerged, in subprime and prime mortgages alike: inflated appraisals. For the lender, inflated appraisals meant greater losses if a borrower defaulted. But for the borrower or for the broker or loan officer who hired the appraiser, an inflated value could make the difference between closing and losing the deal. Imagine a home selling for $200,000 that an appraiser says is actually worth only $175,000. In this case, a bank won't lend a borrower, say, $180,000 to buy the home. The deal dies. Sure enough, appraisers began feeling pressure. One 2003 survey found that 55% of the appraisers had felt pressed to inflate the value of homes; by 2006, this had climbed to 90%. The pressure came most frequently from the mortgage brokers, but appraisers reported it from real estate agents, lenders, and in many cases borrowers themselves. Most often, refusal to raise the appraisal meant losing the client.

FCIC Majority Report at 91.

4. Mortgage Originators Engaged in Predatory Lending in Order to Initiate High Cost Loans for Securitization.

136. Under state and federal predatory lending laws, predatory loans are characterized by excessively high interest rates or fees, and abusive or unnecessary provisions that do not benefit the borrower, including balloon payments, and underwriting that ignores a borrower's repayment ability. Moreover, according to the Office of the Comptroller of the Currency ("OCC"), "a fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered." OCC Advisory Letter, Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices, AL 2003-2, at 2 (Feb. 21, 2003). The Defendants represented and warranted that the mortgage pools that backed the PLMBS purchased by the Bank did not contain predatory loans. This was false.

137. Predatory lending was part of the mortgage lenders effort to increase volume at any cost. The Wall Street banks and other financial institutions that issued and underwrote PLMBS depended on a steady stream of higher interest subprime loans, which often were the result of predatory lending practices. As Federal Reserve Bank Chairman Bernanke explained: [a]lthough the high rate of delinquency has a number of causes, it seems clear that unfair or deceptive acts and practices by lenders resulted in the extension of many loans, particularly high-cost loans, that were inappropriate for or misled the borrower. Written statement by Federal Reserve Bank Chairman Bernanke, July 14, 2008.

138. The truth is that many of us in the industry were deeply distressed by the growing practice of pushing high risk loans on borrowers who had no reasonable expectation of being able to repay the mortgage. Disclosures were often less than adequate, and faced with a bewildering array of loan terms, borrowers tended to trust their mortgage banker or broker. . . . In our industry, we have frankly seen too much mortgage malpractice. Scott Stern, CEO of Lenders One, in Testimony before the Senate Banking Committee, Apr. 10, 2008.

139. Too often, mortgage loans were issued to a borrower who ha[d] little or no ability to repay the loan from sources other than the collateral pledged, a predatory practice explicitly identified by the Expanded Guidance for Subprime Lending Programs issued by the OCC, the Board of Governors of the Federal Reserve System, the FDIC, and the Office of Thrift Supervision. Expanded Guidance for Subprime Lending Programs at 10 (Jan. 31, 2001). The Expanded Guidance stated:

> Loans to borrowers who do not demonstrate the capacity to repay the loan, as structured, from sources other than the collateral pledged are generally considered unsafe and unsound. Such lending practices should be criticized in the Report of Examination as imprudent.

Id. at 11. Additionally, the OCC warned:

> When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit. Not surprisingly, such credits experience foreclosure rates higher than the norm.
>
> [S]uch disregard of basic principles of loan underwriting lies at the heart of predatory lending . . . .

OCC Advisory Letter, Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices, AL 2003-2, at 2 (Feb. 21, 2003).

140. Numerous state, federal, and private investigations have revealed the extent of predatory lending conduct amongst almost every significant mortgage originator, including those responsible for originating many of the loans underlying the securities at issue here.

141. In November 2007, the Office of the Attorney General for the Commonwealth of Massachusetts issued *The American Dream Shattered: The Dream of Homeownership and the Reality of Predatory Lending* (the "AG Report"). The AG Report explained how:

> Subprime ARM loans typically carry an artificially low, fixed interest rate for two or three years, sometimes called a "teaser" rate. That initial rate eventually adjusts to a higher, variable rate for the remaining term of the loan, causing monthly payments to increase, often dramatically. In recent years, many subprime lenders qualified borrowers based only on their ability to make payments during the "teaser" rate period, ignoring the fact that the borrowers would not be able to make payments when the rate adjusted upwards. As a result, many borrowers had to continually refinance. Borrowers were forced to obtain new loans, each one higher than the last, at increasingly high loan to value (LTV) ratios. . . . Exacerbating the effects of serial refinancing, subprime mortgages often carry burdensome prepayment penalties, as well as high transaction costs including lender and broker commissions and other fees. . . . [T]his cycle could continue only so long as home valuations continued to increase[]. As soon as real estate prices flattened, however, homeowners "especially those who used high LTV loans "no longer had the same options when monthly payments began to adjust upward.

142. The AG Report also notes that "lax or sometimes nonexistent underwriting . . . fueled bad subprime loans."

143. The AG Report specifically lists numerous types of novel, risky mortgage loan features and explains that "[t]he collection of layers of risk, however, into a single loan product – for instance, a stated income, 100 percent LTV loan with a 2/28 ARM, qualified only on the "teaser" rate – is usually so structurally unsound and so contrary to the borrower's ability to repay the loan over time, that *it can only be viewed as designed to fail*, resulting in widespread harm to the borrower and public alike." (emphasis added).

144. Singling out one specific common practice, the AG Report notes that "[w]hen lenders qualify borrowers for ARM loans based only on the "teaser" rate period that reflects an utter lack of diligence in determining whether the borrower could actually pay back the loan. This problem is systemic." According to the AG Report, this practice was permitted by lax underwriting standards that apparently reached its peak in 2006 (although it was continued into 2007), and was directly in violation of the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006, which stated that for "nontraditional" loans, "analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule." 71 Fed. Reg. 58,609, 58,613 (Oct. 4, 2006).

145. The Massachusetts Attorney General specifically identified Countrywide as a lender which employed this practice of qualifying borrowers based only on their ability to pay based on "teaser" rates. *Massachusetts v. Countrywide Fin. Corp. et al.,* No. 10-1169 (Suffolk County Sup. Ct.)

146. Among the "Principal Findings" of the Massachusetts Office of Attorney General was that "[t]oo often lenders made loans where they knew or should have known that the borrower could not repay the loan."

147. The AG Report includes specific examples of such conduct. In one instance, a single mother with three children who worked two jobs was "put into a loan where the lender knew, based on all the information she provided at the inception of the loan, that she could not afford the loan once the low 'teaser' rate [of 5 percent] expired and monthly payments increased . . . when the higher interest rate of almost 13 percent kicked in . . . ." As another example, an unemployed woman just out of a homeless shelter whose partner made less than $30,000 a year was approved for a $300,000 mortgage with a teaser rate of 4.95 percent adjustable with a cap over 15 percent. She defaulted within a year.

148. The AG Report also details multiple examples of how "some lenders and brokers steer borrowers into loans that are more expensive than ones for which they qualify based on their credit scores and financial picture."

149. As FDIC Chairman Sheila C. Bair explained in testimony before the FCIC:

> The well-publicized benefits associated with legitimate rate-reducing mortgage refinancing and rising housing prices conditioned consumers to actively manage their mortgage debt. An unfortunate consequence of this favorable environment for refinancing was fraud. Many consumers have only a limited ability to understand details of standard mortgage contracts let alone the complex mortgages that became common during this period. In this environment, unscrupulous mortgage providers capitalized on the widely advertised benefits associated with mortgage refinance, and took advantage of uniformed consumers by refinancing them into mortgage loans with predatory terms that were not readily transparent to many borrowers.

5. Widespread Delinquencies Reflected the Inevitable Consequence of Loans Issued Without Regard to Meaningful Underwriting.

150. High delinquency rates are reflective of a systematic disregard for underwriting guidelines by mortgage issuers. When effective underwriting occurs, poor credit risks are screened out. This is the purpose of underwriting. In the absence of effective underwriting, loans are made to unqualified borrowers and fraud is not detected. When borrowers are loaned money without regard to their ability to repay it, loan delinquencies (and foreclosures) ensue. Hence, high delinquency rates in loans issued by an originator provides evidence that the originator failed to adhere to prudent underwriting practices.

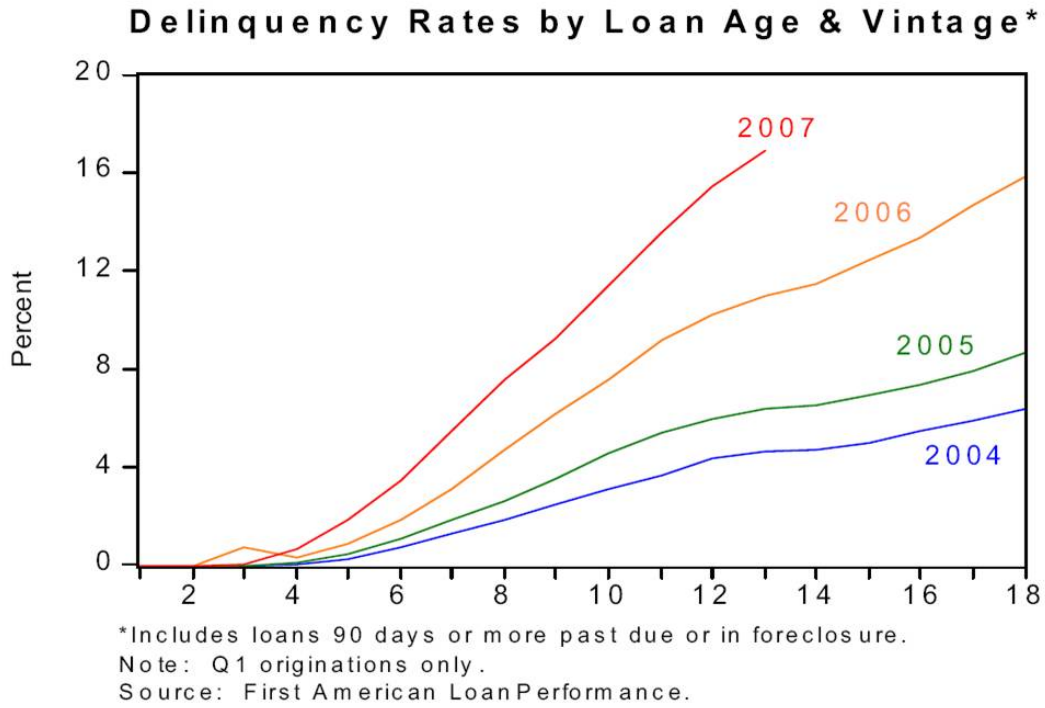
151. Numerous studies and analyses have traced the effect of poor underwriting on delinquency rates. For example, the Federal Bureau of Investigation Mortgage Fraud Reports of 2006 and 2007 reported on the results of a BasePoint Analytics study of three million residential mortgage loans which found that between 30% and 70% of early payment defaults were linked to significant misrepresentations in the original loan applications. The BasePoint Analytics study found that loans containing egregious misrepresentations were five times as likely to default in the first six months as loans that did not.

152. An analysis of the same BasePoint Analytics study by FitchRatings concludes that "[h]igh risk products, which require sound underwriting and which are easy targets for fraud, account for some of the largest variances to expected default rates." Fitch notes that "[i]n addition to the inherent risk in . . . [issuing loans with] the high-risk "affordability" features in subprime mortgages . . . , evidence is mounting that in many instances these risks were not controlled through sound underwriting practices. Moreover, in the absence of effective underwriting, products such as "no money down" and "stated income" mortgages appear to have

become vehicles for misrepresentations or fraud by participants throughout the origination process.

153. Academic studies as well have shown that the departure from sound underwriting practices which accompanied the explosion in securitizations contributed to substantial increases in early payment defaults and delinquencies. *See* Benjamin Keys et al., *Did Securitization Lead to Lax Screening? Evidence from Subprime Loans*, 125 Q. J. Econ. 307 (2010) ("[W]e show that a doubling of securitization volume is on average associated with about a 10%-25% increase in defaults . . . within two years of origination . . .[and] a decline in screening standards . . . .").

154. Data collected on the performance of loans over the past several years and analyzed in these studies show that early payment default and delinquency rates have in fact soared as a result of faulty underwriting:



155. Moreover, economic analysis of recent mortgage default rates has confirmed that increased delinquency rates during this period were not the result of deterioration in the credit

characteristics of the borrowers that were disclosed to MBS investors □for example their FICO scores □but rather from deterioration in credit characteristics of the borrowers that were *not* disclosed to investors. Research by University of Michigan economists indicates that increased use of low documentation underwriting □with its higher potential for borrower fraud and other abuses not discernible by MBS investors □correlates to excessive default rates. In other words, even where disclosed characteristics are the same, the low-doc loans exhibit higher default rates, suggesting flaws in the underwriting process.

156. Review of current performance data of loan pools backing the PLMBS purchased by the Bank similarly show significantly increased incidence of default, delinquency, and foreclosure, indicating pervasive underwriting failures.

C. Federal and State Investigations, Press Reports, Publicly Available Documents Produced in Other Civil Lawsuits, and Analysis of the Loan Pools Underlying the Certificates Identify Systematic Violation of Underwriting Guidelines, Appraisal Guidelines, and Predatory Lending by Mortgage Originators Whose Loans Back the PLMBS in this Case.

157. There have been numerous investigations into the practices of the mortgage originators who issued loans backing the PLMBS purchased by the Bank. A review of these investigations and related litigation, as well as confidential witness testimony obtained during the Bank□s investigation, demonstrate that mortgage originators in general, and those that issued loans that backed the PLMBS purchased by the Bank in particular, systematically violated and ignored their stated underwriting standards, rendering the statements in the Offering Documents with regard to underwriting standards of the mortgage originators misleading. This evidence is reinforced further by the analysis of the performance of the actual loan pools backing the PLMBS purchased by the Bank.

158. Many of the mortgage originators who issued loans backing the PLMBS purchased by the Bank have been specifically identified as problem lenders. In materials presented to the FCIC on April 8, 2010, the OCC presented a list of the "Worst of the Subprime Lenders" based on their mortgage foreclosure rates in the hardest hit metropolitan areas of the country. *See* Activities of the National Banks Related to Subprime Lending, Attachment 2 "Worst Ten of the Worst Ten: Update." Eleven of the originators of mortgage loans that back the PLMBS purchased by the Bank were included on the list, with the following rankings:

1. New Century Mortgage Corp.
3. Argent Mortgage Co.
4. WMC Mortgage Corp.
5. Fremont Investment & Loan
6. Option One Mortgage Corp.
7. First Franklin Corp.
8. Countrywide
9. Ameriquest Mortgage Co.
12. IndyMac Bank, FSB
14. Wells Fargo
15. Ownit Mortgage Solutions, Inc.

159. Abundant additional information now available reveals the extent to which these and other mortgage originators abandoned sound underwriting practices and engaged in predatory lending, as follows.

1. Countrywide Home Loans, Inc. and Countrywide Home Loans Servicing LP

160. Countrywide Home Loans, Inc. and Countrywide Home Loans Servicing LP ("Countrywide"), under the direction of parent Countrywide Financial Corporation ("CFC," collectively "Countrywide") originated underlying mortgage loans securing at least 5 of the PLMBS purchased by the Bank. Countrywide was the nation's largest subprime loan originator between 2005 and 2007. In 2010, Countrywide was identified by the OCC as the eighth worst

subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

a. Government actions against Countrywide and documents produced therein demonstrate Countrywide's failure to adhere to sound underwriting practices.

161. On June 4, 2009, the SEC filed a complaint against certain senior Countrywide executives, including CFC President, David Sambol, Chairman and CEO, Angelo Mozilo, and CFO Eric Sieracki. *See SEC v. Mozilo, et al.,* No. 09-3994 (C.D. Cal.). In the Complaint, the SEC alleged that these three senior officers committed securities fraud by hiding from investors "the high percentage of loans originated that were outside its already widened underwriting guidelines due to loans made as exceptions to guidelines." That SEC complaint detailed how Countrywide was aware internally that its own underwriting guidelines were being ignored and that borrowers were lying about their income in the reduced-documentation application process.

162. According to the SEC:

> [T]he actual underwriting of exceptions was severely compromised. According to Countrywide's official underwriting guidelines, exceptions were only proper where "compensating factors" were identified which offset the risks caused by the loan being outside the guidelines. In practice, however, Countrywide used as "compensating factors" variables such as FICO and loan to value which had already been assessed [in determining the loan to be outside the guidelines].

163. Countrywide's top-down involvement in the securitization process and complete abandonment of underwriting standards are confirmed by the documents produced in the SEC action, including internal emails, memos, minutes, presentations, and deposition testimony, which only became publicly available as part of the briefing on the Countrywide Defendants' unsuccessful motion for summary judgment.

164. For example, Countrywide's Chief Risk Officer John McMurray testified as to Countrywide's adoption of a "matching" strategy, pursuant to which Countrywide matched

whatever product was being offered by other originators in the marketplace. [Exh. 267] However, Countrywide's adoption of its competitors' guidelines (without adoption of corresponding credit risk mitigants) rendered Countrywide's origination practices "the most aggressive in the country." June 24, 2005 e-mail from McMurray to Sambol (stating that "because the matching process includes comparisons to a variety of lenders, our [guidelines] will be a composite of the outer boundaries across multiple lenders[,]" and that because comparisons are only made to lender guidelines where they are more aggressive and not used where they are less aggressive, CFC's "composite guides are likely among the most aggressive in the industry.") [Exh. 106].

165. As part of that matching strategy, Countrywide adopted a policy of underwriting even more loans based on exceptions to their underwriting guidelines. As Sambol explained in a February 13, 2005 email to Countrywide management, Countrywide "should be willing to price virtually any loan that we reasonably believe we can sell/securitize without losing money, even if other lenders can't or won't do the deal." [Exh. 220] Similarly, an internal Countrywide email to McMurray and Countrywide's Credit Risk Officer, Clifford Rossi, dated June 2, 2006 states that "[w]e should originate whatever we can sell to investors." [Exh. 118]

166. Ever in pursuit of the next deal, Countrywide routinely went beyond and around its publicly touted automated underwriting system, the Countrywide Loan Underwriting Expert System ("CLUES"). If CLUES rejected an applicant, Countrywide subjected the loan application to a process of manual underwriting whereby the loan would be sent up the chain for approval, first to a loan officer, then to the Structured Loan Desk (also referred to as the "exception desk"), and if still not approved, the loan would be referred to Secondary Marketing where applications were routinely granted exceptions to stated underwriting guidelines, all in

furtherance of Countrywide's matching strategy. As former Countrywide Managing Director for Secondary Marketing Nathan "Josh" Adler testified in the SEC action:

> Q. Do you know whether Countrywide sometimes originated loans that were considered to be exceptions to its underwriting guidelines?
>
> A. We did.
>
> Q. To your knowledge, was there a process by which such loans were approved?
>
> * * *
>
> THE WITNESS: There generally was, yes.
>
> Q. And what is your understanding of that process?
>
> A. Well, I was -- I was at the tail end of that process. There was -- we had guidelines, we had kind of core guidelines, and then we had these shadow guidelines, which were the kind of the second tier guideline, if you will. And then there was this third tier which would come to me. But essentially there were -- the tiering of guidelines related to the kind of the exception process. And there was an underwriting, they called it, Structured Loan Desk process in the divisions where loans would get referred to the Structured Loan Desk if they were outside, I believe, of kind of the core guidelines. And then if those loans were outside of even the shadow guidelines, then they would be referred to Secondary Marketing to determine if the loan could be sold given the exception that was being asked for.
>
> [Exh. 234]

167. As the SEC alleged: "The elevated number of exceptions resulted largely from Countrywide's use of exceptions as part of its matching strategy to introduce new guidelines and product changes." SEC Complaint (citing July 8, 2008 testimony of John P. McMurray at 373:25-375:6) [SOF 285/Exh. 267]. In order to boost revenue from securitizations, Countrywide was willing to approve virtually any loan, regardless of deviation from stated underwriting standards, so long as it could package and re-sell the loan in a securitization. While not publicly disclosed, these facts were well-known within Countrywide, including by Countrywide's highest levels of management.

168. For example, in a May 22, 2005 email to Sambol, McMurray, after noting that "exceptions are generally done at terms even more aggressive than [Countrywide] guidelines," identified a number of concerns regarding credit risk associated with Countrywide's exception loans, including the following:

(a) "Use of 2nds Liens as Credit Enhancement." Because many exceptions loans are structured as piggy-back transactions, Countrywide was taking on much of the loan's credit risk through the second lien, which is not sold into the secondary market;

(b) "R&W [representation and warranty] Exposure." Although Countrywide sold "much of the credit risk associated with high risk transactions away to third-parties," Countrywide "will see higher rates of default on the riskier transactions and third parties coming back to us seeking a repurchase or indemnification" for losses due to the defaults;

(c) "Security Performance. To the extent our securities contain a greater concentration of higher risk transactions than those issued by our competitors, our security performance may be adversely impacted. The issue here is the extent our concern over security performance drives what we will or won't do on an exception."

169. McMurray also noted in his email that Countrywide's pricing models were inherently limited because they "are often used to price transactions (e.g., exceptions) beyond the scope of the data used to estimate the models." [SOF 288/Exh. 84]

170. At a June 28, 2005 Credit Risk Committee meeting, Countrywide senior executives received a presentation informing the attendees that nonconforming exceptions loans accounted for a staggering 40% of Countrywide's loan originations. [SOF 289]

171. On April 13, 2006, CEO Mozilo issued an email noting that he had "personally observed a serious lack of compliance with our origination system as it relates to documentation and generally a deterioration in the quality of loans originated versus the pricing of those loan[s]." Specifically, in his email, Mozilo explained that Countrywide was originating home mortgage loans "through our channels with disregard for process [and] compliance with guidelines."

172. During June 2006, a Credit Risk Leadership package reported that Countrywide underwrote, on an exceptions basis, 44.3% of its Pay-Option ARMs, 37.3% of its subprime first liens, 25.3% of its subprime second liens, and 55.3% of its standalone home equity loans. [SOF 293/Exhs. 4, 117]

173. During December 2006, the Credit Risk Leadership package reported similar percentages of loans underwritten on an exceptions basis: 45.4% of Pay-Option ARMs, 35.3% of subprime first liens, 24.1% of subprime second liens, and 52.6% of standalone home equity loans [SOF 294/Exh. 5].

174. Countrywide's Quality Control group performed a "4506 Audit" for the 10-month period ended on April 30, 2006, comparing the stated income from loan applications to the income reported by that borrower to the Internal Revenue Service [SOF 427/Exhs. 115, 117, 119], and concluded that 50.3% of the stated income loans audited by the bank showed a variance in income from the borrowers' IRS filings of greater than 10%. Of those, 69% had an income variance of greater than 50%. [SOF 428/Exh. 117] Now-available documents confirm

that the audit results were widely known within Countrywide, having been distributed to Countrywide management, including its highest ranking officers, and were discussed at the April 24, 2006 Credit Risk Management Committee meeting [SOF 431/Exhs. 115, 117], where McMurray stated that the income discrepancies revealed in the audit were also being seen at Countrywide Home Loans. [SOF 432, Exhs. 115, 117] Rossi testified that the "vast majority" of the income discrepancies revealed in the 4506 Audit were the result of fraud and misrepresentation. [SOF 434/Exh. 275]

175. By February 2007, internal risk management at Countrywide "noted that the production divisions continued to advocate for, and operated pursuant to, an approach based upon the matching strategy alone. . . . . Additionally, [a senior risk manager] warned [Sambol] that 'I doubt this approach would play well with regulators, investors, rating agencies etc. To some, this approach might seem like we've simply ceded our risk standards and balance sheet to whoever has the most liberal guidelines.'" McMurray email to Sambol dated Feb. 11, 2007. [Exh. 109]

176. The deterioration of Countrywide's internal quality control process was noted by Countrywide's management and Corporate Credit Risk Committee. At the March 12, 2007 meeting, it was reported that of the loans reviewed through Countrywide's internal quality control process, 30.3% had deficiencies or were rated high risk, and 11.9% were rated severely unsatisfactory, and that one of the principal causes for such ratings included inadequate debt-to-income or LTV ratios, missing income or appraisal documentation, or failure to meet minimum FICO scores. Similarly, at the May 29, 2007 meeting, attendees were informed that loans were being made "outside of any guidelines." A presentation made at the May 29, 2007 meeting notes that "loans continue to be originated outside guidelines primarily via the Secondary SLD desk,

and that there is no formal guidance or governance surrounding SLD approvals. [Exhs. 133, 55, 176]

177. A December 2007 internal Countrywide memorandum quoted by the SEC states that "a Countrywide review of loans issued in late 2006 and early 2007 resulted in . . . the finding that borrower repayment capacity was not adequately assessed by the bank during the underwriting process. . . . More specifically, debt-to-income ratios did not consider the impact of principal [negative] amortization or any increase in interest." SEC Complaint ¶56 (quoting Mozillo memo dated Dec. 13, 2007).

178. In employing its "matching" strategy and thereby making as many loans as possible, regardless of exceptions, Countrywide was able to enjoy tremendous profits from securitization of the loans, which also shifted the risk of the loans from Countrywide to investors:

> As indicated in a previous note, when we first started the SLD, the intent was to be able to offer at least one option for borrowers who wanted exceptions to our underwriting guides. The thought was that we would offer borrower exceptions in our two major loan programs: 30-year fixed rate and 5/1 ARMs. In addition, both of these programs were set up for Alt A and as such we could price and sell under these programs. *While this process seemed to have worked well in the past, we have been recently seeing increased demand from Production for exceptions on all products in general and Pay Option loans in particular.* In addition, Production has been expressing frustration that we were only offering major exceptions for 5/1 ARMs and 30-year fixed rates. As such, *to the widest extent possible, we are going to start allowing exceptions on all requests, regardless of loan program, for loans less than $3 million effective immediately.*
>
> The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. *We will assume securitization in all cases.*
>
> * * *
>
> The methodology from a saleability point of view will also be similar to that used for 30-year fixed rates and 5-1 Hybrids. *We will view the exception assuming securitization and will no longer take into account whole loan buyers. In the past, this has caused some exceptions to be declined for Ratios, Balances and*

> *LTV/CLTV combinations. Provided we can sell all of the credit risk (i.e. not be forced to retain a first loss place due to a 80% LTV, 60 Back-end ratios $3 million loan) we will approve the loan as a salable loan. Finally, we will not be reviewing loans from an underwriting point of* view but will rather be relying on Production to make certain that the loan[s] meet all other underwriting Guideline and w[i]ll have been reviewed for compliance acceptability and fraud.

July 28, 2005 email from David Spector, Managing Director, to Countrywide Managing Directors and Ssecondary Marketing management (emphasis added).

179. As Nathan Adler, Managing Director of Secondary Markets, testified in the SEC action,

> Q. Was one of the criteria for granting exceptions at the Secondary Loan Desk in Secondary Marketing whether or not the loan could be sold into the secondary market?
>
> A. That was the only criteria that we followed.

180. Countrywide's widespread use of exceptions to its underwriting guidelines were well-known within the Company, but permitted because, as recognized by John McMurray in his May 22, 2005 email discussed above, "CW's approach to exceptions has been lucrative over the past several years."

181. Yet Countrywide did not publicly disclose the amount of loans it was underwriting on an exception basis for any loan product or division. [SOF 296] Paul Liu, a Countrywide attorney who participated in the preparation of the Offering Documents, testified in the SEC Action that while the Prospectus Supplements stated that "some of those mortgage loans may have . . . been originated with exemptions that have compensating factors," the Offering Documents did not disclose the number or percentage of loans included in each securitization that were underwritten pursuant to exceptions, or even in many cases whether any loans within that securitization were underwritten pursuant to exceptions at all. [Exh. 262]

182. Countrywide assured investors that the level of exceptions was low. Christopher Brendler, a Stifel Nicholas analyst who initiated coverage of Countrywide in early 2006, testified that Countrywide repeatedly advised conference call and investor presentation participants that it kept its "exceptions low." Brendler also testified that a low exception rate in the mortgage industry would have been 5% to 10% of total loans "not the extreme number of exceptions that Countrywide made. Brendler confirmed that such a disclosure would have been material:

> That's -- that would have been a very disturbing disclosure, I believe, to know that you're basically seeking out the most aggressive policies and underwriting guidelines of your competitors without consideration for other factors. You're essentially creating a worst of the worst.
>
> [Exh. 242]

183. On November 3, 2009, the District Court for the Central District of California denied a motion to dismiss the SEC complaint. Judge Walter specifically noted that "neither Countrywide's disclosures nor a careful review of the context of the statements convince this Court that the alleged omissions or misstatements were immaterial or not misleading as a matter of law." *SEC v. Mozilo, et al.*, No. 09-3994, slip op. at 10 (C.D. Cal. Nov. 3, 2009).

184. Subsequently, on September 16, 2010, Judge Walter denied Countrywide's motion for summary judgment. Among other key determinations, the court found:

> [The] SEC has also presented evidence that Countrywide routinely ignored its official underwriting guidelines to such an extent that Countrywide would underwrite *any* loan it could sell into the secondary mortgage market. According to the evidence presented by the SEC, Countrywide typically made four attempts to approve a loan. Countrywide first used an automated underwriting system known as "CLUES", which applied Countrywide's underwriting guidelines as set forth in Countrywide's technical manuals and loan program guides. SF 279. . . . CLUES would either approve the loan or "refer" it to a loan officer for manual underwriting. SF 280. If that loan officer lacked the authority to make an exception to Countrywide's underwriting guidelines, the loan was referred to the Structured Lending Desk, where yet another underwriter, with even more authority to waive guideline requirements, attempted to make the loan. Adler Dep. 31:23-33:4, July 15, 2010. If that attempt failed, the loan was referred to

> Countrywide's Secondary Markets Structured Lending Desk. SF 282, Adler Dep. 32:9-33:4. According to the testimony of the Managing Director of Countrywide Home Loans' Secondary Marketing Division, once the loan was referred to Countrywide's Secondary Markets Structured Lending Desk, the sole criterion used for approving the loan was whether or not the loan could be sold into the secondary market. SF 282. As a result of this process, a significant percentage (typically in excess of 20%) of Countrywide's loans were issued as exceptions to its official underwriting guidelines. SF 293-294. As reported in one Corporate Credit Risk Committee meeting, one third of the loans referred from CLUES missed "major guidelines" and another one third missed "minor" guidelines. SF 289. In light of this evidence, a reasonable jury could conclude that Countrywide all but abandoned managing credit risk through its underwriting guidelines, that Countrywide would originate any loan it could sell, and therefore that the statements regarding the quality of Countrywide's underwriting and loan production were misleading.

SEC v. Mozilo, et al., No. 09-3994, slip op., at 11–12 (C.D. Cal. Sept. 16, 2010).

185. In short, evidence presented to the court supported the claim that "*Countrywide routinely ignored its official underwriting guidelines, and in practice, Countrywide's only criterion for approving a loan was whether the loan could be sold into the secondary market.*" *Id.* at 12 (emphasis added).

186. The Attorneys General from many states also filed complaints against Countrywide based on its abusive and predatory lending practices. Among them, the Attorney General of California alleged based on its extensive investigation of Countrywide that the company "viewed borrowers as nothing more than the means for producing more loans, originating loans with little or no regard to borrowers' long-term ability to afford them." Complaint at 5, *People v. Countrywide Fin. Corp.*, No. LC083076 (Cal. Super. Ct.) ("Cal. AG Countrywide Complaint"). Countrywide, the California Attorney General found, "did whatever it took to sell more loans, faster "including by . . . disregarding the minimal underwriting criteria it claimed to require." Cal. AG Countrywide Complaint at 20.

187. For example, the Cal. AG Countrywide complaint quotes one former California loan officer explaining how stated income loans were sold, with a loan officer telling the borrower "with your credit score of X, for this house, and to make X payment, X is the income that you need to make"; after which the borrower would state that his or her income was X. *Id.* at 21.

188. A similar lawsuit instituted by the Illinois Attorney General, *People v. Countrywide Financial Corporation,* No. 08-22994 (Cook County Ch. Ct.), detailed how (a) one Countrywide employee estimated that approximately 90% of all reduced documentation loans sold out of the Chicago office had inflated incomes; and (b) one of Countrywide's mortgage brokers, One Source Mortgage, Inc., routinely doubled the amount of the potential borrower's income on stated income mortgage applications.

189. The Illinois complaint also detailed how Countrywide created incentives for its employees to increase the number of loans without concern for ability of the borrower to repay the loan. The *New York Times* described the allegations in the complaint as "paint[ing] a picture of a lending machine that was more concerned with volume of loans than quality."

190. Among the many other abuses described in the Illinois complaint, the Attorney General found that:

> [t]hrough the securitization process, Countrywide extracted hefty over-head charges, then shifted the risk of the failure of these non-traditional loans to investors. Moreover, securitization allowed Countrywide to tap those investors for much needed capital to fuel its origination process and reach its goal of capturing more and more market share. To facilitate the increase in loan origination volume, Countrywide relaxed its underwriting standards even more and sold risky, unaffordable and unnecessarily more expensive mortgage loans to millions of American homeowners.

Testimony of Illinois Attorney General Lisa Madigan before the FCIC, Jan. 14, 2010.

191. Similar allegations appear in a complaint filed by the Connecticut Attorney General, *Connecticut v. Countrywide Fin. Corp.*, No. 08-40390945 (Hartford Sup. Ct.).

192. On October 6, 2008, Countrywide entities settled lawsuits brought by *eleven* State Attorneys General and potential claims by 28 other states, including all of the States in which loans backing the PLMBS purchased by the Bank were issued. The settlement valued at $8.4 billion resolved charges of violations of predatory lending, unfair competition, false advertising, and violations of banking laws, and required Countrywide to implement a program to modify certain existing loans, particularly high risk loans and pay-option mortgages that were the subject of the Attorneys Generals' investigations.

b. Private actions against Countrywide demonstrate Countrywide's failure to adhere to sound underwriting practices.

193. A multitude of private class action and individual cases raise further challenges to Countrywide's underwriting practices—and substantiate the challenges with witness testimony and documentary evidence. For example, Mark Zachary, a former Regional Vice President of Countrywide's joint venture with KB Home, Countrywide Mortgage Ventures, LLC, detailed in the complaint filed in *Zachary v. Countrywide Financial Corporation*, No. 08-0214 (S.D. Tex.), how Countrywide blatantly ignored its underwriting policies and procedures. Mr. Zachary states that in September of 2006 he informed Countrywide executives that there was a problem with appraisals performed on KB Homes being purchased with Countrywide loans. Mr. Zachary raised concerns again in November of 2006 to Countrywide executives and described how loan officers would help loan applicants to submit applications with false income amounts.

194. Zachary's observations about problems with appraisals at KB Homes are confirmed by documents reflecting internal correspondence within and between KB Homes and Countrywide filed in *Johnson v. KB Homes, et al.*, No. 09-972 (D. Ariz.).

195. For example, on June 8, 2005, Christina Nickerson, a KB Home salesperson wrote: "We have an appraisal issue at IMR Mesa . . . the [lender's] appraiser can not obtain value. . . . I have asked the [lender] for a copy of the appraisal, and I requested that she try a more aggressive appraiser. . . . My suggestion is that we have KBHMC order an appraisal from a KB friendly appraiser and see what happens." KB Home Director of Sales McLaury responds: "I agree, we need to order an appraisal from our KB friendly appraiser[.]" On June 16, the salesperson heard back: "Here's our appraisal at purchase price[,]" but McLaury complains: "It's $1,966 short isn't it? Can Ernie Carver bump it up?" Soon after, McLaury confirms that the maneuvering has worked: "Christina and the Mesa Team, the appraisal will come in at the total sales price . . . ."

196. In another instance, in July 2006, KB Home Phoenix Vice President Stacie McDonald asked a KB Home salesman about a home for which an appraisal was low. The salesman responded: "It was approved at $290,000 with a VC of 38%, however, we were able to push appraisal to $300,000 and the addendum for $300,000 was done yesterday."

197. Similarly, in October 2007, KB Home Director of Sales McLaury instructs "friendly" appraiser Scott Dugan: "Please base your appraisal on today's base sales price, the options/upgrades the buyer purchased ($40,777), and comps in the neighborhood/area, particularly the one lot 44 (66 Lions Den Avenue) that closed at $248,643." On 10/11/07, Dugan responds: "ok."

198. When KB Home salesperson, Peter Manesiotis, reported to his manger, Gregory Victors: "Appraisal came in low. This is a CW deal. How should we proceed?", Victors responded: "Have Countrywide order a second appraisal. KB will pay for it. Speak to [loan officer] or processor to get someone who knows area. This process just worked at Mesquite.

Buyer did not know about first appraisal. Manesiotis then instructed that a new appraisal be ordered and do not notify the buyer about the first appraisal.

199. Countrywide senior executives were apparently not just aware but actively involved in this conduct. In an August 9, 2006 email sent after an appraisal was below contract price and below the level that KB Home's hand-picked appraiser, Harry, could reach, Countrywide/CWKB Vice President, Tim Ryan writes: Eric Sanford the western regional VP of landsafe is reviewing the appraisal he is as high as it gets at landsafe. . . . As soon as I hear I will let you know. We are fighting all the way to the top for you . . . . Ryan later reports: We were just informed the original appraisal will be amended to Harry's appraisal. . . . So CW will be able to use the $687,000.00 value. On another occasion Ryan explained one scheme for generating self-perpetuating excessive appraisals: Going forward I have asked ops to request Harry on homes that are decked out this way we know max value has been given. Under the new rules we cannot do it often, however once a few closing occur we have comps!

200. More information is provided by the Consolidated Complaint filed in *In re Countrywide Financial Corporation Derivative Litigation*, 07-6923 (C.D. Cal.) on February 15, 2008. The suit against certain Countrywide officers, Board members, and others alleged claims based upon, *inter alia*, a failure of oversight of Countrywide's lending practices, financial reporting, and internal controls. That complaint details how, as to the specific mortgage backed securities at issue all originated by Countrywide or affiliated entities over 50% of the total mortgage loan balance in the underlying loans was severely delinquent, in default, repossessed, in bankruptcy, or in foreclosure. Consistent with the findings of the BasePoint Analytics study previously discussed and this 50% failure rate, the complaint quoted multiple former employees

of Countrywide who detailed how Countrywide routinely ignored its own underwriting standards when the company needed to book loans to maintain earnings.

201. Countrywide's representations regarding its loan origination practices have also been challenged by the leading insurance companies that insured MBS sold by Countrywide. On September 30, 2008, MBIA Insurance, one of the largest providers of bond insurance, filed its complaint in *MBIA Insurance Corp. v. Countrywide Home Loans, et al.* (N.Y. Sup. Ct.). This complaint explains how MBIA "provide[d] credit enhancement on the [MBS]—in the form of guarantee of repayment of principal and interest for the [MBS] notes in each securitization," and claims MBIA issued such insurance on the basis of fraudulent representations by Countrywide.

202. MBIA explains that:

> MBIA's re-underwriting review has revealed that 91% of defaulted or delinquent loans in these fifteen Countrywide securitizations show material discrepancies from underwriting guidelines. . . . For example the loan documentation may (i) lack key documentation such as verification of borrower income or assets; (ii) include an invalid or incomplete appraisal; (iii) demonstrate fraud by the borrower on the face of the application; or (iv) reflect that any of the borrower income, FICO score, debt, DTI ["debt-to-income"] or CLTV ratios, fails to meet stated Countrywide guidelines (without any permissible exception).

MBIA specifically notes that "the Defective Loans run across Countrywide's securitizations from 2004-2007, demonstrating the consistency of Countrywide's disregard for its underwriting guidelines during this period." On April 27, 2010, the Court denied Countrywide's motion to dismiss MBIA's fraud claims.

203. The September 28, 2010 Complaint filed by monoline insurer Ambac in *Ambac Assurance Corporation v. Countrywide Home Loans, et al.* (N.Y. Sup. Ct.) alleges:

> Because Countrywide [Financial Corporation, Countrywide Home Loans, Inc. and Countrywide Securities Corporation] was the nation's leading mortgage originator, its many public pronouncements that its underwriting practices were the industry's gold standard carried significant weight. Countrywide repeatedly asserted that the loans in its portfolio, from which the loans in the transactions at

> issue were drawn, were originated pursuant to Countrywide's strict underwriting standards that allowed "exceptions" only if compensating factors were present. But what Countrywide concealed is that, contrary to its representations, approval of "exceptions" became the rule. Countrywide failed to disclose that its business model was premised on the perpetual origination and refinancing of loans to borrowers who did not have the ability to make the required payments.

204. Ambac alleges that Countrywide made numerous false and misleading statements and omitted material facts about the quality of Countrywide's loan origination procedures and the collateral underlying the transactions. Specifically, "[t]he Prospectus Supplements contained false and misleading statements concerning the quality of Countrywide's loan origination procedures and, in particular, failed to disclose that Countrywide had adopted a practice of making loans to borrowers who had little or no ability to repay their loans."

205. The falsity of Countrywide's representations is evidenced by the performance of the underlying loans, which have defaulted at extraordinary rates (as of September 2010, more than 35,000 loans insured by Syncora with an aggregate principal balance of more than $1.95 billion hade defaulted or have been charged-off. Further, by September 2010, Ambac had reviewed the origination files for 6,533 loans for conformance with Countrywide's loan-level representations and warranties and discovered that 6,362 of the loans—more than 97%—materially breached Countrywide's loan-level representations and warranties.

206. In *Financial Guaranty Insurance Company v. Countrywide Home Loans, Inc., et al.* (N.Y. Sup. Ct.), Countrywide MBS insurer FGIC alleges that, with respect to securitizations it insured in 2006 and 2007, Countrywide and its corporate affiliates made multiple false misrepresentations and omissions, including that Countrywide: (a) failed to disclose an increase in its exceptions to and expansion of its mortgage-underwriting guidelines, including exceptions for which there were no compensating factors; (b) failed to disclose and deliberately concealed changes to its underwriting standards and procedures from those used for mortgage loans

included in prior securitizations; (c) engaged in "adverse selection" whereby poor quality loans would be securitized while loans that were expected to perform better were retained on Countrywide's books; (d) failed to disclose mortgage-loan-origination fraud in which Countrywide and its corporate affiliates were participants or complicit; (e) misrepresented to FGIC the nature of key delinquency information; and (f) made numerous false and misleading public statements concerning the quality of Countrywide's mortgage origination process and securitized mortgage loans.

207. According to FGIC, beginning in early 2006, at the latest, Countrywide made continuing undisclosed changes in its mortgage loan origination practices and started originating and securitizing lower-quality, poorly underwritten loans. These changes resulted in an undisclosed expansion of Countrywide's underwriting guidelines by making increased exceptions in originating mortgage loans, and making these exceptions without adequate, and in many cases any, compensating factors. Moreover, FGIC alleges that Countrywide admitted to it that Countrywide not only expanded the exception process, but also Countrywide also engaged in "adverse selection" by retaining fewer exception mortgage loans for its portfolio while securitizing (for sale to investors) those loans with exceptions.

208. FGIC's allegations and Countrywide's purported admissions are supported by the analysis of professional residential mortgage loan review experts that were retained by FGIC to review statistically significant samples of mortgage loans from FGIC insured securitizations. These reviews determined that approximately *70%* of the mortgage loans in these securitizations significantly violated one or more of Countrywide's underwriting guidelines or standard mortgage underwriting practices. Unsurprisingly, the loss rate for mortgage loans found to be in

breach of underwriting standards was two-and-a-half to three times the loss rate on non-breaching loans.

209. Similarly, in *Syncora Guarantee Inc. v. Countrywide Home Loans, Inc., et al.* (N.Y. Sup. Ct.), Countrywide MBS insurer Syncora alleges that, with respect to Countrywide securitizations it insured between 2004 and 2006,

> in originating the loans in these portfolios, Countrywide, *consistent with its business practices at the time, systematically ignored its own underwriting guidelines* and made imprudent loans that no reasonable underwriter would have made in a single-minded pursuit of generating ever-greater volumes of new loans. As a result, thousands of non-performing loans in the securitized portfolios violated Countrywide's own published guidelines should never have been made. (Emphasis added.)

210. Syncora alleges that the Countrywide offering documents, including the Prospectuses and Prospectus Supplements, were replete with misrepresentations regarding Countrywide's underwriting process and failed to disclose its routine, material deviations from sound underwriting practices. Countrywide is also alleged to have materially misrepresented the accuracy of data, including debt-to-income ratios and combined loan to value ratios, provided to Syncora for each securitized loan (commonly referred to as the "loan tape").

211. Syncora's review of underlying files for 3,700 defaulted loans in two of the securitizations it insured revealed that 2709 of the loans—almost 75%—have severe underwriting defects. The majority of these loans exceeded or ignored one or more Countrywide underwriting guidelines regarding excessive debt-to-income ratio; excessive combined loan to value ratios; excessive loan amounts; improper calculation of first-lien debt; improper calculation of property values; patently unreasonable stated incomes; borrower fraud;

indiscriminate availability of stated income loans; inflated appraisals;[3] insufficient borrower credit; insufficient cash reserves; and/or missing documents. In fact, Countrywide frequently breached a combination of underwriting guidelines for a given loan, which created a "layered risk," greatly increasing the likelihood of default.

c. Confidential witnesses provide further evidence of Countrywide's failure to adhere to sound underwriting practices.

212. Confidential witnesses provide additional evidence of Countrywide's failure to adhere to sound underwriting practices and guidelines. For example, Confidential Witness ("CW")-A, a loan officer who worked at Countrywide from 1997 through 2007, CW-B, a former branch manager and regional vice president for Countrywide Home Loans from September 2005 through November 2008, CW-C, a loan specialist at Countrywide Home Loans' subprime lender, Full Spectrum Lending, from 2004 to 2005, and CW-EE, a former Countrywide branch operations manager from 2005 to 2010 (after Countrywide was taken over by Bank of America), all confirm that: (a) Countrywide employees faced intense pressure to close loans at any cost; (b) Countrywide increasingly approved risky, low- or no-documentation loans without adequate review; (c) Countrywide failed to adhere to underwriting guidelines; (d) Countrywide routinely approved loans that contained exceptions for which there were no reasonable

[3] With respect to inflated appraisals, Syncora alleges in part:

> In a review of non-performing loans in the 2005-K and 2006-D Securitizations, Syncora has found that Countrywide's appraisals of properties secured by non-performing loans show a clear pattern of inflation compared to sales prices achieved for comparable properties in the locale at the time of Countryside obtained its appraisals. Moreover, despite Countrywide's promise in the contractual documents and the Prospectuses to obtain "independent third party" appraisals, the properties underlying the vast majority of the loans in the Securitizations were appraised by Countrywide's own affiliated appraisal company, Landsafe, Inc. ("Landsafe"). Landsafe, like Countrywide Home Loans, is a subsidiary of Countrywide Financial [Corp.].

compensating factors; (e) Countrywide employees pressured appraisers to inflate home values; and (f) Countrywide employees manipulated loan data in order to close loans.

213. Specifically, CW-A stated that employees at Countrywide always faced pressure to produce and close more loans. Because CW-A's performance was judged only on how many loans he closed each month, and not on long-term performance, he used to joke to friends, "I'm fired every month, and then every month they re-hire me."

214. CW-A stated that from 2004 to 2006, Countrywide's underwriting guidelines became "looser and looser and looser." During this period, the minimum credit scores required for prime or Alt-A mortgages fell repeatedly, such that a borrower with a FICO score of 680 could get a mortgage with a 100% LTV ratio based upon stated income/stated assets documentation. CW-A also stated that Countrywide offered no income/no asset ("NINA") loans, whereby a borrower could obtain a loan without providing any employment, income, or asset documentation, and did so without any effort, or for that matter any way, to determine whether the borrower had an ability to repay the loan. CW-A further stated that Countrywide frequently offered loans to borrowers who had been rejected by other mortgage providers. In fact, Countrywide loan officers often emphasized to prospective borrowers that Countrywide could do loans that other lenders could not.

215. According to CW-A, Countrywide had an "Exception Desk," whose purpose was to review loans which did not strictly meet the underwriting guidelines. During the 2004-2006 time period, CW-A stated that, "[i]t got to where loan approvals with exceptions were the norm."

216. According to both CW-A and CW-B, Countrywide loan officers pressured appraisers to return values which would allow the loans to be approved. For example,

Countrywide loan officers would tell the appraisers that if they did not provide the value the loan officers needed, Countrywide would not send any more work to the appraiser.

217. Both CW-A and CW-B described that, even in circumstances where the appraisers were not directly threatened, Countrywide influenced their appraisal values by telling appraisers exactly what value they needed in order to approve the loan. CW-B also explained that in other instances, Countrywide provided appraisers with the purchase price of the home and the loan amount so that the appraisers could extrapolate the minimum value needed for the appraisal. CW-B noted that Countrywide also sent appraisers additional comparables that were higher than those the appraiser initially relied upon.

218. CW-B stated as well that Countrywide's underwriting guidelines became "way too easy" to meet. As a consequence, many of Countrywide's loans ended up in default. Numerous times, he recalled thinking to himself, "people making this kind of money shouldn't qualify for a $400,000 loan." For example, he recalled seeing loan applications for $350,000 homes, with $1,900/month loan payments, when the borrowers were making only $3,000/month. The DTI ("debt-to-income") ratio on such a loan was approximately 63%. He said such situations were "absurd, but I saw it all the time."

219. Additionally, CW-B said that most approved mortgages at Countrywide had 95-100% LTV ratios, and most borrowers only put down zero to five percent of the purchase price. Consequently, borrowers had "no skin in the game," and when home values started to drop and the borrowers' loans were for more than the homes were worth, they had no incentive to continue making their mortgage payments. Moreover, CW-B said that Countrywide granted numerous mortgages to borrowers with 65% DTI ratios, and that Countrywide did not require

borrowers to have any "reserve" (*i.e.*, cash in their bank accounts)—or, at most, they only had to have one month's reserve—in order to be approved.

220. CW-B also stated that Countrywide offered a "Fast and Easy" loan program, which required minimal documentation and thereby allowed mortgages to be approved more quickly. It was Countrywide's version of the stated income/stated asset mortgage. In order to determine borrowers' eligibility for the Fast and Easy loan program, Countrywide employees entered data into Countrywide's internally developed automated underwriting system, called CLUES. CLUES had a flagging mechanism whereby loan officers could not change borrower information and attempt to re-run it through CLUES in order to qualify borrowers for the Fast and Easy loan program. If a loan officer did change such information, CLUES would immediately flag it, decline it for the program, and require full documentation. However, CW-B stated that Countrywide employees bypassed this flagging mechanism by entering inflated borrower information in the first place. For example, they would report a higher monthly income than the borrower actually reported in his or her application. By entering such inflated information, there was no way for the CLUES system to know that the information was falsified. Thus, the loan would not be flagged.

221. CW-B had "no doubt" that there was a lot of upward manipulation of borrower income in order to qualify borrowers for a Fast and Easy loan. In fact, CW-B reported one employee to Countrywide's Fraud Department when he caught the employee repeatedly entering fraudulently high income. However, the Countrywide human resources department said that such reported incidents were not enough to fire the employee, and the employee was simply suspended. While the employee was suspended, CW-B examined the employee's loan files and

found four to five different applications in which the employee had nearly doubled the borrowers reported income in order to get the loans approved.

222. CW-C also saw a practice of inflating incomes on stated-income loans when she worked at Countrywide s Full Spectrum Lending division. On instruction from the branch manager, CW-C said that loan officers recalculated income and removed [any documents] they didn t want the underwriters to see in order to push the loans through. In addition, CW-C knew that loan officers at Countrywide cut and pasted false information into loan documents in order to get loans approved. It was a pretty common practice, she said.

223. Like CW-A, CW-EE was aware that her bosses were under a lot of pressure to produce a high volume of loans, and she noted that there was a big push on volume back then, and bonuses were tied to volume. In fact, CW-EE was admonished that she was being too difficult with respect to the underwriting rules, and was told that she had to find a way to make the loans, and not try to find a way to not make them. CW-EE recalls many times during her tenure when she did not believe a loan should be made, but it nevertheless was pushed through. By way of example, CW-EE recalls a Countrywide loan officer in her branch who was allowed to originate loans for his family members, notwithstanding that this violated Countrywide policy, and despite the fact that the applications only contained names and addresses and no other information. In fact, it was only after several of these loans closed, and CW-EE complained to her regional manager, that her colleague was told he could no longer make loans to family.

224. CW-EE also recalls instances in which she spoke with a customer over the telephone regarding missing or questionable information, and was informed by the customer that they just put down what the loan officer told them to write. When CW-EE expressed her concerns to the loan officer involved, she was told *not* to contact any customers. CW-EE recalls

a lot of tension between the loan officers and loan processors in the branch, with the loan officers insisting that loans be processed quickly and without questions and becoming angry when loan processors attempted to verify and validate the information on the loan.

225. CW-FF, a loan officer and branch manager for Countrywide, stated that verification of income under Countrywide's Fast and Easy loan program was "a joke." Moreover, if the CLUES system—Countrywide's automated underwriting system—did not approve a loan at first, loan officers would often simply inflate the numbers until there was an approval. There was no limit to how many times the numbers could be re-entered. In CW-FF's experience, loan officers were unlikely to seek exceptions to the underwriting guidelines from the branch manager, since they could simply commit fraud on the "front end"—i.e., by inflating the numbers.

226. CW-FF also said that 50% of mortgage loans were made without formal appraisals. When appraisals were done, the appraiser was told that if the property did not "come back at value," Countrywide would simply go to another appraiser from then on. CW-FF said when an appraised property had zoning violations, or other features that would bring down the valuation, the appraiser was told to make sure their photographs of the property didn't include those features.

d. The mortgages originated by Countrywide and securitized in the PLMBS purchased by the Bank provide further evidence of Countrywide's failure to adhere to sound underwriting practices.

227. Countrywide originated mortgages that secured at least Securities HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, SEMT 2006-1 2A1, SEMT 2006-1 3A1, and SARM 2005-21 3A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities,

including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Countrywide's failure to observe its stated underwriting standards. Countrywide's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

e. Press reports, government investigations and related litigation, and confidential witnesses demonstrate that Countrywide engaged in predatory lending.

228. The *New York Times* detailed Countrywide's abusive lending practices in a story entitled "Inside the Countrywide Lending Spree":

> On its way to becoming the nation's largest mortgage lender, the Countrywide Financial Corporation encouraged its sales force to court customers over the telephone with a seductive pitch that seldom varied. "I want to be sure you are getting the best loan possible," the sales representatives would say.
>
> But providing "the best loan possible" to customers wasn't always the bank's main goal, say some former employees. Instead, potential borrowers were often led to high-cost and sometimes unfavorable loans that resulted in richer commissions for Countrywide's smooth-talking sales force, outsize fees to company affiliates providing services on the loans, and a roaring stock price that made Countrywide executives among the highest paid in America.
>
> Countrywide's entire operation, from its computer system to its incentive pay structure and financing arrangements, is intended to wring maximum profits out of the mortgage lending boom no matter what it costs borrowers, according to interviews with former employees and brokers who worked in different units of

> the company and internal documents they provided. One document, for instance, shows that until last September the computer system in the company's subprime unit excluded borrowers' cash reserves, which had the effect of steering them away from lower-cost loans to those that were more expensive to homeowners and more profitable to Countrywide.

229. According to the *New York Times*, "Countrywide was willing to underwrite loans that left little disposable income for borrowers' food, clothing and other living expenses." The Company's incentive compensation system encouraged such loans "regardless of the inevitability that the borrower would default and the Company (and the borrower) would be severely harmed.

230. According to Mark Zachary, a former Regional Vice President of Countrywide's joint venture with KB Home (Countrywide Mortgage Ventures, LLC), the appraiser, as known to Countrywide executives, was strongly encouraged to inflate appraisal values by as much as 6% to allow the homeowner to "roll up" all closing costs. Mr. Zachary explained that this resulted in the homeowner being "duped" as to the value of the home. According to Mr. Zachary, this inflated value put the buyer "upside down" on the home immediately after purchasing it, *i.e.*, the borrower owed more than the home's worth. Thus, the buyer was set up to be more susceptible to defaulting on the loan. *See supra* ¶¶193-194 (citing to complaints filed in *Zachary v. Countrywide Fin. Corp.*, No. 08-0214 (S.D. Tex.), and *Johnson v. KB Homes, et al.*, No. 09-972 (D. Ariz.)).

231. Countrywide's incentive compensation system encouraged brokers and sales representatives to place borrowers into the subprime category even if they in fact qualified for other loans. As reported in *Bloomberg*, Senator Charles Schumer urged that "Countrywide, the biggest U.S. mortgage lender, should stop paying higher commissions to brokers who steer borrowers to high-cost loans that 'are designed to fail.'"

232. The Attorney General for the State of Massachusetts has detailed Countrywide's indifference to its borrowers' inability to repay its loans. For example, while "[o]n its website, Countrywide's successor Bank of America suggests when obtaining a mortgage to purchase a home that a borrower have a maximum back-end [debt-to-income ("DTI")] ratio of 36%[,] Countrywide routinely approved loans for borrowers with back-end DTI ratios exceeding 50%."

233. The Massachusetts Attorney General's complaint in *Commonwealth v. Countrywide Financial Corporation*, No. 10-1169 (Mass. Super. Ct.), details Countrywide loan practices that allegedly violated Massachusetts' Consumer Protection Law by "originat[ing] loans in such a manner that would lead predictably to a borrower's default and foreclosure," such as negative amortization loans, hybrid ARMs where borrowers were not qualified based on the post-teaser rate, stated income loans, and loans with these features plus prepayment penalties.

234. Among the conduct alleged and resolved in Countrywide's above-noted settlement with 39 states Attorney Generals were violations of state predatory lending laws by (a) making loans it could not reasonably have expected borrowers to be able to repay; (b) using high pressure sales and advertising tactics designed to steer borrowers toward high-risk loans; and (c) failing to disclose to borrowers important information about loans, such as refinancing costs, the availability of lower cost products, the existence of prepayment penalties, and that advertised rates would adjust upwards sharply as soon as one month after closing.

f. Confidential witnesses provide further evidence of Countrywide's predatory lending practices.

235. Confidential witnesses also confirmed that Countrywide engaged in predatory lending practices. For example, CW-A said he knew a lot of Countrywide loan officers who misrepresented to borrowers how a negative amortization loan worked. On a negative amortization loan, the monthly payment covered an amount that was less than the total accrued

interest on the loan; any unpaid interest was added on to the end of the loan. The interest rate on the negative amortization loans then adjusted upward periodically. Consequently, if a borrower continued to make monthly payments that were below the amount of the accrued interest, the amount of the unpaid interest would skyrocket. In approximately three years, the amount due would hit a "ceiling" of 110% to 115% of the original principal balance. Then Countrywide would "recast" the loan balance and adjust the required monthly payment so that it would cover all of the previously deferred interest. As a result, the borrower's monthly payment could rise to as much as two-and-a-half times the original monthly payment. Many borrowers fell into problems with such loans.

236. CW-A said he knew that Countrywide loan officers misrepresented how these types of loans worked because he used to make calls to Countrywide workers posing as a prospective borrower. When the Countrywide officers explained the loans to him, their explanations were not accurate.

237. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at Countrywide, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any of the Offering Documents inform the Bank that Countrywide effectively abandoned its underwriting guidelines and engaged in predatory lending in order to issue and securitize as many loans as possible.

2. New Century Mortgage Corp.

238. New Century Mortgage Corp. originated underlying mortgage loans securing at least seven of the PLMBS purchased by the Bank. New Century, which filed for bankruptcy on

April 2, 2007, was at one time one of the country's largest mortgage origination companies, reporting over $56 billion of total mortgage originations and purchases in 2005 alone. New Century was identified by the OCC in 2010 as *the* worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency. Like Countrywide and the other mortgage originators that issued loans that backed the PLMBS purchased by the Bank, New Century effectively abandoned underwriting guidelines in favor of loan volume.

a. Government actions and related lawsuits and investigations demonstrate New Century's failure to adhere to sound underwriting practices.

239. On February 29, 2008, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a detailed report on the various deficiencies at New Century, including lax mortgage standards and a failure to follow its own underwriting guidelines. During the course of his investigation, the Examiner conducted 110 interviews of 85 witnesses and reviewed millions of pages of documents from New Century, its outside auditors, and others.

240. Among the findings in his 550 page Final Report, the Examiner noted:

> New Century had a brazen obsession with increasing loan originations without due regard for the risks associated with that business strategy. . . . The Loan Production Department was the dominant force within the Company and trained mortgage brokers to originate New Century loans in the aptly named "CloseMore University." Although the primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately fatal levels.
>
> New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the "number one issue is exceptions to the guidelines." Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies.
>
> New Century . . . layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers.

> Senior Management turned a blind eye to the increasing risks of New Century's loan originations . . . [and] was aware of an alarming and steady increase in early payment defaults on loans originated by New Century beginning no later than mid-2004.

241. On May 7, 2007, a *Washington Post* front page story entitled "Pressure at Mortgage Firm Led to Mass Approval of Bad Loans," quoted former New Century appraiser Maggie Hardiman recounting how "[y]ou didn't want to turn away a loan because all hell would break loose" and that when she did reject a loan because of a low or otherwise inadequate appraisal, "her bosses often overruled her and found another appraiser to sign off on it."

242. On December 7, 2009, the SEC charged three of New Century's top officers with violations of federal securities laws. The complaint detailed the falsity of New Century's assurances to the market about its commitment to "adhere to high origination standards in order to sell [its] loan products in the secondary market" and its policy to "only approve subprime loan applications that evidence a borrower's ability to repay the loan."

243. Business Chief Underwriter for CitiFinancial Mortgage, Richard Bowen, testifying to the FCIC on April 7, 2010, specifically identified the inadequate underwriting standards employed by New Century. "A large New Century subprime pool was underwritten and purchased against their policy guidelines. The purchase approval rate under their guidelines was 93%. The approval rate under Citi guidelines would have been 83%."

244. In June 2010, Morgan Stanley agreed to pay $102 million to Massachusetts homeowners and the Commonwealth following the State Attorney General's investigation into Morgan Stanley's role in acting as a partner in financing mortgages issued by New Century, noting that "[t]hese loans often were unsustainable because of payment shock or poor underwriting," and that the lenders "should have known [the loans] were destined to fail."

245. The Massachusetts Attorney General identified how a Morgan Stanley review of New Century loans found that a large majority failed to meet New Century's underwriting guidelines. Further review disclosed that for 91% of those loans there was insufficient evidence of compensating factors to justify an exception to the underwriting guidelines and that for fully one third of a random sample of loans there was no compensating factor to justify the extension of credit. *See* Assurance of Discontinuance at 10, *In re Morgan Stanley, Inc*., No. 10-2538 (Mass. Super. Ct. June 24, 2010).

246. Patricia Lindsey, a former risk manager at New Century testified before the FCIC in April of 2010 that starting in 2004, underwriting guidelines were all but abandoned. She explained how New Century was approving loans with 100% financing to borrowers with low credit scores and no supporting proof of income.

b. Confidential witnesses provide further evidence of New Century's failure to adhere to sound underwriting practices.

247. Confidential witnesses provided further evidence that New Century failed to adhere to sound underwriting practices and created a culture in which exceptions to underwriting standards were the norm. Statements by confidential witnesses confirm that: (a) New Century underwriters faced intense pressure to close loans at any cost; (b) New Century increasingly approved risky, low- or no-documentation loans without adequate review; (c) New Century routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (d) New Century employees approved loans with inflated appraisal values; and (e) New Century employees manipulated data in order to close loans.

248. Confidential witnesses include CW-D, a senior underwriter at New Century in Scottsdale, Arizona from March 2004 to 2006, who underwrote wholesale loans that independent brokers and brokerage firms brought to New Century account executives; CW-E, a risk manager

at New Century from 2004 to 2005; CW-F, an operations manager who worked in New Century's Irvine, California branch for 11 years until the company closed its doors in May 2007; CW-G, a former loan officer and senior branch manager at New Century from December 2000 through December 2005; and CW-H, a loan officer at New Century from 2001 through 2004.

249. CW-D reported that in order to close the loans, managers would "rerun loans all kinds of ways . . . to get any form of an approval." CW-D recalled one particular instance in which a manager pressured her to approve a stated income loan for a C-rated borrower, when they "were not supposed to do anything below a B." Although she refused to sign off on the loan because the borrower was a retired person on a fixed income, the manager signed off on it and "rearrange[d] a bunch of stuff to get the loan to work."

250. Due to the pressures that New Century employees faced to generate loan volume, they increasingly approved risky, low- to no-documentation loans; approved "exception" loans for which there were no reasonable compensating factors; encouraged appraisers to inflate property values; and manipulated loan data in order to close loans. According to CW-F, New Century account executives (who brought in loans from independent brokers and brokerage firms) received commissions based on the number of loans they closed. CW-G, a branch manager at New Century, also confirmed that he was compensated based only on loan volume. CW-D said she was "always pressured to close loans" at New Century. She mentioned that account executives would yell at her for declining loans and would often go to upper management to overturn her decisions to decline loans. CW-H, a loan officer for New Century from 2001 through 2004, said that if loan officers did not make at least five loan closings in a month, they were "put on a three-month program that put them on track for termination."

Additionally, loan officers who did not meet their numbers were subject to verbal abuse, including screaming.

251. CW-G ultimately resigned from the company because he "did not believe in the products being offered." Specifically, he disagreed with New Century's decision to offer a new mortgage product, called a "stated income W-2 loan." This loan allowed salaried employees to state their income and back it up with only a W-2 and no pay stubs or tax returns. While this flexibility may have been designed to address situations such as the Las Vegas employment market, where many employees make a lot of their income in tips—which are usually in cash and so often are not reported as income on a W-2—it became impossible to reconcile the amount of money that the individuals stated that they were making, and the amount of income the W-2s reflected and, as explained by CW-G, the loan files consequently lacked "integrity."

252. According to CW-G, "low doc" loans were more likely to be approved at New Century than full-documentation loans. Moreover, CW-G said that New Century approved loans with 100% LTV ratios all the time, and 100% LTV mortgages continued to increase as a percentage of the total loans approved in his branch during his time as branch manager. When CW-G complained to senior management that increasingly risky loans were being offered at New Century, senior management instructed him just to sell the products.

253. Confidential witnesses also described New Century's standard practice of deviating from prudent underwriting guidelines. As stated by CW-F, exceptions were made "all the time. It was the nature of subprime. They were granted frequently."

254. CW-D calculated that 50% of the loans that her branch underwrote each day contained exceptions. "Exceptions happened more often than not . . . . It was all about getting the loans approved." CW-D stated that New Century underwrote exception loans which had no

reasonable compensating factors, and that exceptions were made to clear loans that might otherwise have been rejected.

255. Similarly, CW-E said that New Century did "goofy loans that were hugely non-compliant." As an example of a "goofy loan" that New Century approved, he described providing a stated loan to a landscaper who allegedly made $25,000 per month, but had a $500 Visa credit card limit.

256. Confidential witnesses further described the pressure employees placed on appraisers to inflate property values so that loans could be approved. CW-H said that New Century loan officers advised appraisers what specific dollar amount they needed in order for a loan to be approved by New Century underwriters; the appraiser then came up with that exact figure in his or her appraisal.

257. Similarly, CW-D explained that New Century managers frequently reworked appraisals that came in short of New Century's guidelines. The managers would try to find something wrong with the comparable properties provided by the appraiser so that they could request new comparables. However, the new comparables generally were not true comparables because they inflated the value of the purchase property. Additionally, CW-D stated that New Century managers added "general inflation for the area" if the appraiser's comparables fell short on value and hindered the loans from closing.

258. According to confidential witnesses, New Century employees frequently manipulated loan data in order to close loans and generate volume. For example, CW-D stated that managers at New Century told underwriters to remove documents from the loan files or rerun credit reports in the hopes of improving credit scores. Similarly, CW-D described how underwriters were instructed to remove a wife's records from a loan file if she had bad credit and

only rely on the husband's credit score, even though the individuals were married and were borrowing based on dual incomes.

259. CW-E also mentioned that, while at New Century, he reviewed a lot of loans with fake documents, including fake verifications of employment, fake green cards, and fake social security cards.

c. The mortgages originated by New Century and securitized in the PLMBS purchased by the Bank provide further evidence of New Century's failure to adhere to sound underwriting practices.

260. New Century originated mortgages that secured at least Securities CMLTI 2006-NC1 A2C, CMLTI 2006-NC2 A2B, GSAMP 2006-NC2 A2C, MABS 2006-NC1 A3, MSAC 2006-HE5 A2C, MSAC 2006-HE6 A2C, and SABR 2006-NC3 A2B. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of New Century's failure to observe its stated underwriting standards. New Century's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

d. Confidential witnesses also provide evidence of predatory lending.

261. Confidential witnesses detailed predatory practices at New Century in which the originators failed to disclose the true terms of the loans to the buyers.

262. For example, CW-D estimated that half of her loans at New Century were stated income loans. She said, "It was really sad because a lot of the borrowers were uneducated" and did not understand the terms of the loan; she blamed the mortgage brokers for not explaining the terms of the loans to the borrowers.

263. Similarly, CW-H said that in the case of adjustable-rate mortgages, New Century employees only looked at the borrower's ability to make the initial monthly payment, and did not consider the fully indexed rate over the life of the loan. Additionally, he said that loan officers were coached not to call them "adjustable rate loans" when speaking with borrowers. Instead, New Century's sales model was to put the borrower first into a "two-year fixed loan," and when the two years expired, New Century would target the borrower for conversion to another mortgage product.

264. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at New Century, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any of the Offering Documents apprise the Bank of the extent to which New Century deviated from its guidelines, and engaged in predatory lending.

3. IndyMac Bank, FSB

265. IndyMac Bank originated underlying mortgage loans securing at least four of the PLMBS purchased by the Bank. IndyMac as well abandoned sound underwriting practices.

a. Government actions and related lawsuits and investigations demonstrate IndyMac's failure to adhere to sound underwriting practices, applicable appraisal standards, and predatory lending.

266. As reported in the Audit Report of the Office of Inspector General, Department of Treasury ("OIG"):

> IndyMac often made loans without verification of the borrower's income or assets, and to borrowers with poor credit histories. Appraisals obtained by IndyMac on underlying collateral were often questionable as well. As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, 80/20 loans, and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments.

SAFETY AND SOUNDNESS: MATERIAL LOSS REVIEW OF INDYMAC BANK, FSB, OIG-09-032, (Feb. 26, 2009).

267. In describing what it referred to as IndyMac's "Unsound Underwriting Practices," the OIG Audit explained:

> IndyMac encouraged the use of nontraditional loans. IndyMac's underwriting guidelines provided flexibility in determining whether, or how, loan applicants' employment, income, and assets were documented or verified. The following procedures were used by the thrift:
>
> - No doc: income, employment, and assets are not verified
> - No income/no assets (NINA): income and assets are not verified; employment is verbally verified
> - No ratio: no information about income is obtained; employment is verbally verified; assets are verified
> - Stated income: income documentation is waived, employment is verbally verified, and assets are verified
> - Fast forward: income documentation is sometimes waived, employment is verbally verified, and assets may or may not be verified.

268. The OIG also explained that:

> among other things, we noted instances where IndyMac officials accepted appraisals that were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP). We also found instances where IndyMac obtained

> multiple appraisals on a property that had vastly different values. There was no evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser. As illustrative of these problems, the file for one 80/20, $1.5 million loan we reviewed contained several appraisals with values ranging between $639,000 and $1.5 million. There was no support to show why the higher value appraisal was the appropriate one to use for approving the loan.

269. The OIG Audit contained 6 examples of examined loans with serious underwriting failings and questionable appraisals. These included the following examples of IndyMac's conduct and the losses resulting from IndyMac's violation of underwriting standards and reliance on faulty appraisals:

> Loan 1
>
> On May 2, 2007, IndyMac approved a $926,000 stated income loan for the borrower, . . . an adjustable rate mortgage with a 5-year term and a beginning interest rate of 5.875 percent, which was subject to change monthly. . . .
>
> As a stated income loan, IndyMac performed no verification of the borrower's self-employment income of $50,000 a month ($600,000 annually). IndyMac also did not verify the borrower's assets. . . .
>
> The loan file contained an appraisal which indicated that the property value was $1.43 million. This value was based on comparable properties that had been improved with single family residences. However, the comparable properties were located closer to the ocean and bay, and their values were based on listing price instead of the actual selling price. The appraised value also did not take in consideration a slowdown in the real estate market. We saw no evidence in the loan file that IndyMac resolved these and other anomalies with the appraisal.
>
> The borrower made payments totaling $5,389 before defaulting on the loan. The unpaid principal and interest at the time of foreclosure totaled approximately $1.01 million. At the time of our review, the property was listed for sale for an asking price of $599,000.
>
> Loan 2
>
> In November 2007, IndyMac approved a $3 million stated income loan, secured by the borrower's primary residence in Scottsdale, Arizona. The loan proceeds were used to refinance the primary residence which the borrower had owned for 11 years and reported its value as $4.9 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported self-employment income of $57,000 a month ($684,000 annually). Contrary to IndyMac policy, the borrower selected the appraiser who appraised the property at $4.9 million.

Notes in the loan file indicated that the borrower had listed the property for sale in November 2006, first at a price of $4.9 million that was later reduced to $4.5 million before the borrower pulled the property off the market. Despite this, the appraiser concluded that the value of $4.9 million appeared to be reasonable. IndyMac accepted the appraiser's value based on a review of online sale and public records. It did not physically inspect the property.

The borrower made no payments on the loan before default. The total delinquent loan amount as of November 2008 was $3,015,625. According to the IndyMac official, the property sold in October 2008 for $2.0 million.

Loan 3

In February 2007, IndyMac provided the borrower a stated income, 80/20 loan, for a combined total of $1.475 million, to purchase a property in Marco Island, Florida. The combined loan equaled the appraised value of the property.

As a stated income loan, IndyMac performed no verification of the borrower's reported income of $28,500 a month ($342,000 annually). For 80/20 loans, IndyMac allowed an $800,000/$200,000 maximum loan amount and a maximum combined loan amount of $1 million. This loan was an exception to IndyMac policy as the combined loan amount of $1,475,000 exceeded the maximum combined loan amount. The loan exception was approved anyway.

Various appraisals in the loan file contained significant differences with no indication of how they were resolved by IndyMac. A January 2007 appraisal valued the property at $1.48 million. A valuation analysis prepared by an IndyMac employee on January 25, 2007, stated that the skill level of the appraiser was unacceptable—the appraiser had not provided accurate comparable properties to the subject property and did not accurately consider the location of the property. The IndyMac employee estimated the property value at $1 million and recommended that another appraisal be obtained. Another note in the loan indicated that the IndyMac official overruled the employee's recommendation and the appraisal was accepted. The IndyMac official, however, adjusted the appraised value approximately 10 percent lower, to $1.33 million, citing as a justification that a property on the same street had sold for $1.97 million.

The borrower made no payments before defaulting on the combined $1.48 million loans. According to the IndyMac official, the borrower deeded the property to the thrift in lieu of foreclosure. The IndyMac official estimated in November 2008 that the property was worth about $700,000.

Loan 4

In April 2002, IndyMac approved the borrower for a stated income home equity line of credit of $550,000. This line of credit was in addition to a 80/20 loan for $3 million that the borrower already had with IndyMac. The borrower reported that the property was worth $5.2 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported gross income of $95,000 a month ($1.14 million annually) as the owner/manager of a limited liability corporation. The loan notes history did not indicate how IndyMac resolved negative information revealed in credit reports on the borrower. Two credit reports obtained in March 2002 listed serious and frequent delinquencies. An earlier credit report had noted a discrepancy with the borrower's social security number.

Various appraisals in the loan file also contained significant discrepancies with no indication of how they were resolved by IndyMac. Specifically, the appraisal for the original 80/20 loan, dated in October 2001, valued the property which the appraisal described as new construction at $5.2 million. This same value was reported by a second appraisal dated in March 2002. A third appraisal, dated in April 2002, placed the market value of the home at $508,500. The appraisal stated that the home was less than mile from a hazardous waste facility. A fourth appraisal, also prepared in April 2002, valued the property at $730,000, with the lowest reasonable value at $590,000 and the highest reasonable at $900,000. This appraiser also reported that the home was built in 1959.

The borrower made payments totaling about $11,000 before defaulting on the $550,000 home equity line of credit loan. According to the IndyMac official, the thrift was able to recover approximately $600,000 on both loans. . . .

270. A June 30, 2008 report issued by the Center for Responsible Lending entitled INDYMAC: WHAT WENT WRONG? HOW AN "ALT-A" LEADER FUELED ITS GROWTH WITH UNSOUND AND ABUSIVE MORTGAGE LENDING (the "CRL Report") concluded that IndyMac often ignored its stated underwriting and appraisal standards and encouraged its employees to approve loans regardless of the borrower's ability to repay.

271. The CRL Report quotes an IndyMac underwriting team leader, Audrey Streater, as stating of her time at IndyMac: "I would reject a loan and the insanity would begin. It would go to upper management and the next thing you know it's going to closing."

272. The CRL Report describes the recollection of another former underwriter for IndyMac, Wesley Miller, interviewed by CRL:

> [W]hen he rejected a loan, sales managers screamed at him and then went up the line to a senior vice president and got it okayed. "There's a lot of pressure when you're doing a deal and you know it's wrong from the get-go — that the guy can't afford it," Miller told CRL. "And then they pressure you to approve it." The refrain from managers, Miller recalls, was simple: "Find a way to make this work."

273. As to the recollection of another former underwriter interviewed by the CRL,

> Scott Montilla, who worked as an underwriter for IndyMac in Arizona. . . . says that when salespeople went over his head to complain about loan denials, higher-ups overruled his decisions roughly half the time. "I would tell them: 'If you want to approve this, let another underwriter do it, I won't touch it — I'm not putting my name on it,'" Montilla says. "There were some loans that were just blatantly overstated. . . . Some of these loans are very questionable. They're not going to perform."

b. Private actions against IndyMac demonstrate IndyMac's failure to adhere to sound underwriting practices.

274. Multiple insurers of IndyMac originated loans — MBIA Insurance Corporation, Financial Guarantee Insurance Company, and Syncora Guarantee Inc. — all of whom have experienced unprecedented losses in connection with the financial guarantee insurance they provided on IndyMac loans, have filed suit against IndyMac alleging the abandonment of underwriting standards based, in part, on their analysis of the loan files for IndyMac loans. Some of the allegations made by the insurers are virtually identical to the allegations made by the Bank here — namely that IndyMac completely abandoned its underwriting standards in its rush to originate (and securitize) as many loans as possible.

275. By way of example, according to MBIA:

> IndyMac had abandoned any reasonable and prudent underwriting standards. In an effort to expand its market share during the mortgage lending boom, IndyMac systematically abandoned its own underwriting guidelines in pursuit of increased loan originations: it knowingly loaned millions of dollars to borrowers who could not afford to repay the loans, or who IndyMac personnel knew or should have

> known were including misstatements in their loan applications, often with the assistance and encouragement of IndyMac's employees and brokers, or who otherwise did not satisfy did not satisfy the basic risk criteria for prudent and responsible lending that IndyMac claimed to use.

See MIBA Ins. Corp. v. IndyMac ABS, Inc., et al., No. BC422358 (Cal. Super. Ct.). This systematic abandonment of underwriting standards stands in sharp contrast to the representations made about IndyMac's underwriting standards in numerous documents, including investor prospectuses and prospectus supplements.

276. MBIA's allegations are supported by a review of a sample of the loan files to which they, as an insurer, eventually gained access. Of the 6,970 loans included in the mortgage pool for one of the PLMBS that MBIA provided insurance for, 418 loans – roughly 6% -- were in default less than a year after the security was issued. A review of the loan files for the defaulting loans indicated that only 401 loans — *more than 95%* — were not originated or acquired in material compliance with IndyMac's representations and warranties with respect to its underwriting guidelines and policies. Similarly, of the 3956 loans included in the mortgage pool for another PLMBS insured by MBIA, 297 loans — roughly 7.5% — were in default less than a year after the security was issued. A review of the of the 297 loans indicated that 294 loans — *more than 99%* — failed to comply with IndyMac's stated underwriting guidelines and policies.

277. The results of MBIA's analysis of two loan pools were duplicated by Syncora's analysis of various loans for pools for which it provided insurance. Out of the 107 loans analyzed by Syncora, 105 of the loans breached representations and warranties made by MBIA to Syncora. These include: (a) 83 loans in breach of the representation that "each Mortgage Loan was originated in all material respects in accordance with the applicable Originator's underwriting criteria in effect at the time of origination;" (b) 57 loans in breach of the

representation that "each Mortgage Note be a legal, valid and binding obligation, all parties had full legal capacity to execute the documents and convey real estate to the best of the Seller's knowledge, and there was no fraud involved in the origination of any Mortgage loan;" and (c) six loans in breach of the representation that "each Mortgage Loan contain an appraisal conforming to the standards of the applicable Originator."

278. It is also important to note that while the monoline insurers' loan reviews have been limited with respect to number of loans examined, this is because IndyMac is refusing to provide complete access to its loan files, notwithstanding its contractual obligation to do so. For this reason, all three insurers are seeking judicial relief to gain access to these various loan files. Investors, such as the Bank, also do not have access to these loan files, and the Bank does not expect to be able to gain access until Defendants are required to produce the files in discovery in this lawsuit.

279. In addition, in May of 2009, Deutsche Bank National Trust Company, pursuant to its contractual obligations and in its capacity as a trustee, filed suit against IndyMac Bank and the FDIC (in its corporate capacity as well as in its capacity as receiver and conservator for IndyMac Bank and IndyMac Federal Bank) over the more than 150,000 mortgage loans that IndyMac Bank had originated or acquired and sold to the trust. *See Deutsche Bank Nat'l Trust Co. v. FDIC, et al.*, No. cv09-3852-GAF (C.D. Cal.). Deutsche Bank's complaint asserts claims for breach of contract, breach of the duty of good faith and fair dealing, and breach of fiduciary duty, and alleges that IndyMac breached numerous representation and warranties that it made to the trusts, including: (a) mortgage loans IndyMac sold into the trusts failed to comply with IndyMac's credit underwriting standards and origination process; (b) mortgage loan origination files failed to contain required documentation; (c) the origination of mortgage loans did not

comply with applicable law; and (d) mortgage loans did not possess the characteristics set forth in the schedules to the relevant governing agreements. Simply put, the Deutsche Bank trustee, similar to the Bank here, is alleging that IndyMac sold "materially defective mortgage loans into the Trusts that did not comply with IndyMac's express Representations and Warranties," including representations and warranties regarding underwriting standards and loan quality.

c. Confidential witnesses provide further evidence of IndyMac's failure to adhere to sound underwriting practices.

280. Confidential witnesses provide additional evidence of IndyMac's failure to adhere to sound underwriting practices and guidelines as well as appraisal guidelines. For example, CW-GG, a former underwriter for IndyMac in Missouri from June 2005 to June 2007; CW-HH, a former underwriter for IndyMac in California from 2006 to 2008; CW-II, a former underwriter for IndyMac in New Jersey from 2004 to 2007; and CW-JJ, who began working for IndyMac in California as a licensed real estate appraiser trainee and who did appraisals for IndyMac, all confirm that IndyMac's failures.

281. According to CW-GG, on a daily basis she was required to approve loans that she believed should not be approved. IndyMac required underwriters who wanted to deny stated income loans to obtain management approval for the denial. As a result, CW-GG was frequently overruled, even when the income provided in the application was obviously overstated, such as when a cab driver from Chicago claimed to have $12,000 a month in income. Upset at being forced to approve clearly inaccurate loan applications, CW-GG many times noted in the file that "the loan was approved under duress."

282. CW-GG noted that IndyMac underwriters were under a lot of pressure to close loans. IndyMac underwriters received bonuses based on the number of loans that they permitted to be funded, not the number of loans that they reviewed. According to CW-GG, this structure

incentivized the approval of unscrupulous loans and opened the doors to committing fraud on the inside. CW-GG stated that a broker could not commit fraud unless an underwriter approved it, and there were certain underwriters that would approve anything, not matter how blatant, because they wanted a larger paycheck. In fact, in 2007, CW-GG recalls being required, along with the other underwriters in her department, to come in on a Saturday and review the loan files for stated income loans that had been previously funded. CW-GG believes that during this time period a lot of questions were coming up about the loans being reviewed, and CW-GG and her colleagues went through every loan her department had approved to see whether or not the stated salary was within the correct range—as indicated by salary.com—for the job description of the loan applicant. CW-GG found a lot of overstated incomes in the files that had been reviewed by other underwriters some of the underwriters would rather see a bigger paycheck than do the right thing.

283. The testimony of CW-HH and CW-II further confirms IndyMac s abandonment of underwriting standards. CW-HH stated that on several occasions she suspected that stated-income loan applications contained inflated income information. In particular, she recalls a gardener in California that purportedly made $20,000 a month. Notwithstanding her concerns, because the loan applicant had a sufficiently high FICO score, IndyMac s automated system eMITS approved him for the loan. When CW-HH questioned this approval, she was informed that because the system approved it, she needed to process the loans. CW-HH also recalled that the bonus system which was based on the number of loans funded incentivized underwriters to quickly approve loans. Those underwriters who failed to meet their quotas were written up. Similarly, CW-II reported that no-documentation and stated income loans were the norm during CW-II s tenure as an underwriter. CW-II stated that his managers approved loans that

CW-II would not have approved, and were known to overrule CW-II on loans that he denied. CW-II believed that IndyMac did too many no-doc and stated income loans, and approved deals that should not have been approved. CW-II was sufficiently concerned about the number of no-doc and stated income loans being approved that he brought it to the attention of upper management during an online chat in 2004. Upper management responded that because the loans were backed by Fannie Mae and Freddie Mac, the deals were secure.

284. CW-GG also testified as to the loosening of appraisal standards. When CW-GG first started at IndyMac, the bank had an automated system for scoring appraisals that took into account different factors such as the location of the property and the date of the comparable sales. Based on the scoring of this data, certain appraisals were sent to IndyMac's appraisal review department, which denied a lot of loans. According to CW-GG, at a certain point management concluded that too many loans were being reviewed and denied, so management relaxed the standards, thereby reducing the number of appraisals automatically sent to the review department. CW-GG worked on the same floor as the appraisal review department, and recalls talking with appraisal reviewers who complained "a lot" that they had strong belief that "they weren't seeing appraisals (they should be seeing)," *i.e.*, that suspect appraisals were not being reviewed. CW GG's testimony was confirmed by CW-JJ, an appraiser in California that performed work for IndyMac. CW-JJ recalls being blacklisted over her appraisal of a California home with a separate guest house. Consistent with standard appraisal practices, CW-JJ did not include the guest house's square footage in the main house, and refused to do so even under pressure from IndyMac. CW-JJ's refusal prompted IndyMac to stop sending her work, and an IndyMac representative verbally confirmed that she had been placed on a blacklist.

d. The mortgages originated by IndyMac and securitized in the PLMBS purchased by the Bank provide further evidence of IndyMac's failure to adhere to sound underwriting practices.

285. IndyMac originated mortgages that secured at least Securities HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, INABS 2005-D AII3, and INDX 2006-AR15 A2. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of IndyMac's failure to observe its stated underwriting standards. IndyMac's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

286. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at IndyMac, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which IndyMac deviated from its guidelines and engaged in predatory lending.

4. Fremont Investment & Loan

287. Fremont Investment & Loan originated underlying mortgage loans securing at least two of the PLMBS purchased by the Bank. Fremont as well abandoned sound underwriting practices. Fremont was identified by the OCC in 2010 as the sixth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

a. Government actions and related lawsuits and investigations demonstrate Fremont's failure to adhere to sound underwriting practices and its predatory lending.

288. Fremont was one of the country's largest subprime lenders until it was forced out of the business by the FDIC in March of 2007.

289. In March 2007, the FDIC announced it had issued a cease and desist order against Fremont Investment & Loan, and its parent corporations, to resolve claims set forth in *In re Fremont Investment & Loan*, No. FDIC-07-035b (F.D.I.C. Mar. 7, 2007). According to the FDIC's press release:

> The FDIC determined, among other things, that [Fremont] had been operating without adequate subprime mortgage loan underwriting criteria, and that it was marketing and extending subprime mortgages in a way that substantially increased the likelihood of borrower default. . . .

290. The FDIC Cease and Desist Order noted Fremont's "inadequate underwriting criteria and excessive risk in relation to the kind and quality of assets held," and that Fremont "had been operating without adequate subprime mortgage loan underwriting criteria."

291. The FDIC, in its Cease and Desist order and accompanying press release, also sets forth how Fremont "operated inconsistently with the FDIC's Interagency Advisory on Mortgage Banking and Interagency Expanded Guidance for Subprime Lending Programs" and "that it was

marketing and extending subprime mortgage loans in a way that substantially increased the likelihood of borrower default, including by:

- qualifying borrowers for loans with low initial payments based on an introductory or "start" rate that will expire after an initial period, without an adequate analysis of the borrower's ability to repay the debt at the fully-indexed rate";
- making mortgage loans without adequately considering the borrower's ability to repay the mortgage according to its terms";
- approving borrowers without considering appropriate documentation and/or verification of income";
- approving borrowers for loans with inadequate debt-to-income analyses that do not properly consider the borrowers' ability to meet their overall level of indebtedness and common household expenses";
- issuing mortgages containing product features likely to require frequent refinancing to maintain an affordable monthly payment and/or to avoid foreclosure";
- providing borrowers with inadequate and/or confusing information relative to product choices, material loan terms and product risks, prepayment penalties, and the borrower's obligations for property taxes and insurance";
- approving borrowers for loans with inadequate debt-to-income analyses that d[id] not properly consider the borrowers' ability to meet their overall level of indebtedness and common housing expenses";
- issuing loans including substantial prepayment penalties and/or prepayment penalties that extend beyond the initial interest rate adjustment period"; and
- approving loans or "piggyback" loan arrangements with loan-to-value ratios approaching or exceeding 100 percent of the value of the collateral."

292. Similarly, in its complaint against Fremont, the Massachusetts Attorney General provided specific examples of Fremont's allegedly predatory practices, including the approval of loans worth over $800,000 to Frances Darden, a single mother of three with a monthly income of $1,800 from social security disability. Ms. Darden subsequently discovered that her application

falsely stated that she worked for Philip Medical earning $10,760 per month. Fremont paid her broker a yield spread premium of $7,024 for originating these loans, a premium that specifically rewards brokers for placing borrowers in higher interest rate loans. *See Commonwealth v. Fremont Inv. & Loan, et al.,* No. 07-4373 (Mass. Super. Ct.).

293. Fremont also approved a mortgage for 100% of the property purchase price for Macdala Louis, who had provided proof of income of $2,000 a month. When, at closing, Ms. Louis discovered her monthly payments (even at the low "teaser" rate that would reset after two years) was over $3,600 she tried to back out but was told by Fremont's lawyer and her broker that it was too late to change her mind. She later discovered her loan papers falsely represented her income as $7,300 a month. She lost all her life savings trying to make payments until eventually the property was foreclosed.

294. On December 9, 2008, the Supreme Judicial Court of Massachusetts affirmed a preliminary injunction preventing Fremont from foreclosing on thousands of loans, finding evidence that "Fremont made no effort to determine whether borrowers could "make the scheduled payments under the term of the loan" "[and] ma[de] loans based on information Fremont knew or should have known was inaccurate or false, including, but not limited to, borrowers' income, property appraisals, and credit scores." *See Fremont Inv. & Loan*, 897 N.E.2d 548 (Mass. 2008)

295. In reaching its decision, the Supreme Judicial Court relied on affidavits from two outside account executives who marketed Fremont loans. Each testified that Fremont purposefully relaxed its underwriting standards and made loans on documents known to contain false information.

296. In its ruling, the Supreme Judicial Court held that certain Fremont loans were presumptively unfair because their very terms low teaser rates followed by payment shock along with high loan-to-value and debt-to-income ratios resulted in a package that Fremont should have known was doomed to foreclosure. *See Fremont Inv. & Loan*,,897 N.E.2d at 558-59.

297. Subsequently, Fremont agreed to pay the Commonwealth of Massachusetts $10 million in consumer relief, civil penalties and costs arising from its conduct related to the issuance of mortgage loans in Massachusetts.

298. In October 2007, Morgan Stanley Mortgage Capital Holdings, LLC sued Fremont, alleging that it had found hundreds of improperly underwritten loans that fail[ed] to meet Fremont s underwriting guidelines because Fremont had fail[ed] to verify assets prior to closing, performed defective verification of rent, fail[ed] to obtain the minimum credit history information, and [made] loans to borrowers that did not have the requisite credit score.

299. Fremont also was among 14 lenders named by the NAACP in a complaint alleging systematic, institutionalized racism in sub-prime home mortgage lending. According to the lawsuit, African American homeowners who received sub-prime mortgage loans from these lenders were more than 30 percent more likely to be issued a higher rate loan than Caucasian borrowers with the same qualifications. In January 2009, the court denied a motion to dismiss, finding that the plaintiff had sufficiently pled a disparate impact claim, and also denied an individual motion to dismiss brought by Fremont, finding the claims were not moot as to Fremont.

b. The mortgages originated by Fremont and securitized in the PLMBS purchased by the Bank provide further evidence of Fremont's failure to adhere to sound underwriting practices.

300. Fremont originated mortgages that secured at least Securities FHLT 2005-E 2A3 and SABR 2006-FR3 A2. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Fremont's failure to observe its stated underwriting standards. Fremont's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

301. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at Fremont, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which Fremont deviated from its guidelines and engaged in predatory lending.

5. GMAC and Residential Funding Corp.

302. GMAC Mortgage Corporation, which is now known as GMAC Mortgage, LLC (together, "GMAC") was the originator of loans for at least three of the PLMBS purchased by the Bank, and Residential Funding Corp. ("RFC"), a GMAC affiliate, was the sponsor and master servicer of at least one of the Bank's PLMBS investments. Both GMAC's representations regarding its loan origination practices and the representations of RFC, have been challenged by MBIA Insurance, one of the largest providers of bond insurance, which insured MBS securities sold by GMAC and RFC.

303. In *MBIA Insurance Corporation v. GMAC Mortgage LLC* (N.Y. Sup. Ct.), GMAC MBS insurer MBIA alleges that, with respect to GMAC securitizations it insured in 2004, 2006, and 2007, GMAC represented and warranted that (a) all of the information it provided to MBIA about the mortgage loans was accurate and not misleading; (b) all of the mortgage loans in the pools were underwritten in accordance with GMAC Mortgage's underwriting standards; and (c) in the case of each loan, after receiving all applicable employment, credit, and property information, a determination had been made that the borrower was able to meet his or her monthly payments.

304. According to MBIA, GMAC "blatantly violated its contractual representations and warranties." MBIA supports this allegation by explaining that in 2009, in the face of mounting payments caused by delinquent and "charged-off" loans, MBIA began to examine the loan files and documentation associated with thousands of loans. The result of this review clearly demonstrates that GMAC "had wholly abandoned its own underwriting policies and instead routinely approved loans to borrowers who failed to meet basic risk criteria." At least 89% of the 4,104 delinquent or charged off loans reviewed by MBIA were not originated in

material compliance with GMAC's underwriting guidelines or the contractual representations and warranties made by GMAC.

305. More specifically, MBIA alleges that many of the loans it has found to be non-compliant contained multiple breaches of representations and warranties, including:

- GMAC Mortgage routinely breached its representation and warranty that the mortgage loans were underwritten generally in compliance with GMAC Mortgage's underwriting standards.

- A significant number of mortgage loans were made on the basis of "stated incomes" that were grossly unreasonable or were approved despite DTI [debt-to-income] or CLTV [combined loan-to-value] ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines or the Purchase Agreements or Prospectus Supplements.

- Contrary to its Underwriting Guidelines, GMAC Mortgage failed in many cases to verify the borrower's employment when required to do so or to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with ineligible credit scores, and approved loans without verifying that the borrower had sufficient funds or reserves.

- GMAC Mortgage used its proprietary automated electronic loan underwriting program, known as "Assetwise," to approve loans that did not comply with its Underwriting Guidelines. Assetwise assisted in the underwriting of mortgage loans by automating the process of determining whether a loan met prespecified underwriting criteria set up in the program. GMAC Mortgage used the program itself and also made the program available to its affiliates. Assetwise, however, failed to analyze proposed mortgage loans using the criteria set forth in GMAC Mortgage's Underwriting Guidelines. As a result, GMAC Mortgage routinely contributed loans to the Transactions that failed to comply with its own underwriting standards.

- GMAC Mortgage routinely breached its representation and warranty that the mortgage loan files were complete and contained all required documents and instruments. Many of the of mortgage loan files are missing necessary mortgage loan documents, such as disclosures relating to loan transfers and notes establishing the first lien. The absence of these and other necessary documents from the loan files impedes the ability of the trustees for the Transactions to enforce their rights and remedies with respect to delinquent mortgages. The failure to maintain the required loan documentation also impairs proper servicing.

- GMAC Mortgage breached its representation and warranty that all mortgage loans would comply with all local, state and federal laws, by furnishing, among other things, mortgage loans to the pools that violated state predatory lending laws. These laws are designed to protect borrowers from abusive lending practices by, for example, prohibiting the approval of a loan to a borrower who lacks the ability to repay.

306. Similarly, MBIA explains, in its complaint in *MBIA Insurance Company v. Residential Funding Corporation*, No 603552-2008, (N.Y. Sup. Ct.): "Of the 1,847 mortgage loans [examined by MBIA] . . . only 129 mortgage loans—less than 7% of the mortgage loans reviewed—were originated or acquired in material compliance with RFC's representations and warranties . . . with respect to the underwriting of the mortgage loans contributed to the RFC transactions." The complaint notes that "The Underwriting Guidelines . . . only allowed RFC to make exceptions to the Underwriting Guidelines in very specifically defined and limited circumstances. . . . RFC's Underwriting Guidelines required that a form—Form 1600—be completed and approve for any exceptions made to the Underwriting Guidelines in connection with the underwriting of purchase of a mortgage loan. [Yet, in fact f]or a significant number of non-compliant mortgage loans, RFC did not identify any specifically defined exception that was permitted under the Underwriting Guidelines. Further for a significant number of mortgage loans, RFC failed to document the alleged exceptions on a form 1600 as required by the Underwriting Guidelines."

307. GMAC and Residential Funding originated mortgages that secured at least Securities GMACM 2006-AR2 2A1, GMACM 2006-AR2 4A1, RFMSI 2006-SA2 2A1 and RASC 2005-KS12 A2. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the weighted average LTV ratios, the

percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, these Securities have exhibited excessive delinquency and foreclosure rates. Securities GMACM 2006-AR2 2A1 and GMACM 2006-AR2 4A1 have experienced a delinquency rate as of January, 2010, that was over 50% higher than that of loans of comparable vintage with comparable FICO scores and LTV ratios. The cumulative loss rate on mortgages securing Security GMACM 2006-AR2 4A1 is more than double that of such comparable mortgages. Further information on the excessive delinquency and foreclosure rates of these securities is set forth below, *see infra* ¶¶591-592. These circumstances are strong evidence of GMAC's and Residential Funding's failure to observe its stated underwriting standards. GMAC's and Residential Funding's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused GMAC and Residential Funding to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

308. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at GMAC and RFC, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any of the Offering Documents apprise the Bank of the extent to which GMAC and RFC deviated from their guidelines and engaged in predatory lending.

6. Wells Fargo

a. Other investigations and lawsuits and confidential witness testimony demonstrate that Wells Fargo abandoned underwriting guidelines and applicable appraisal standards.

309. Wells Fargo originated underlying mortgage loans securing at least 7 of the PLMBS purchased by the Bank. In 2010, Wells Fargo was identified by the OCC as the thirteenth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency. Wells Fargo as well abandoned sound underwriting practices. In denying in part a motion to dismiss in *In re Wells Fargo Mortgage-Backed Securities Litigation,* No. 3:09-1376 (N.D. Cal.) (the "*Wells Fargo* Complaint"), the court found that plaintiffs had adequately pled that "variance from the stated [underwriting] standards was essentially [Wells Fargo's] norm" and that this conduct "infected the entire underwriting process."

310. The *Wells Fargo* Complaint is supported by numerous confidential witness statements substantiating the allegations that Wells Fargo abandoned underwriting guidelines, increasingly made exceptions without compensating factors, sacrificed underwriting standards to loan volume, and manipulated loan information in order to close loans without regard to borrowers' ability to repay the loans.

311. Confidential witnesses provide additional evidence of Wells Fargo's repeated failure to adhere to sound underwriting practices and guidelines. Statements by confidential witnesses confirm that: (a) Wells Fargo underwriters faced intense pressure to close loans at any cost; (b) Wells Fargo increasingly approved risky, low- or no-documentation loans without adequate review; (c) Wells Fargo routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (d) Wells Fargo employees approved loans with

inflated appraisal values; and (e) Wells Fargo employees manipulated data in order to close loans.

312. Confidential witnesses include CW-J and CW-K. CW-J worked as an underwriter at Wells Fargo for five years and left the company in approximately 2006. She helped start one of Wells Fargo's wholesale lending offices. The wholesale lending office received mortgage applications from various brokers in the area and then underwrote, approved, and funded such mortgages. CW-K was an underwriting manager at a Wells Fargo branch in California from 2004 until late 2007, when Wells Fargo closed the branch. The branch was a "MAP" center, which was a location where Wells Fargo loans were registered, underwritten, processed, closed, and shipped out for sale in pools.

313. Wells Fargo employees increasingly disregarded the credit risk of loans and quality controls in favor of generating loan volume. According to CW-K, this was because loan officers and underwriters at Wells Fargo received commissions and/or bonuses based on the number of loans closed.

314. Among Wells Fargo's abuses of underwriting standards, confidential witnesses detailed a practice of approving risky loans based upon little or no documentation. CW-J explained that underwriters at Wells Fargo's branches used two automated underwriting systems ("AUS"), which were pre-programmed with the minimum credit scores, LTV and DTI ("debt-to-income") ratios, cash reserve levels, and documentation levels needed for the borrower to qualify for the various mortgage products that Wells Fargo offered. If these AUS returned an "approve" or "accept" result, then Wells Fargo typically approved the application and funded the mortgage. CW-J commented that she was skeptical of the "approvals" that came from the AUS, and often

thought to herself, "How did it approve *this*?" The systems approved borrowers who "never should have been approved."

315. For example, the AUS would approve a borrower with recent late payments, a 50-55% DTI ratio, a 650 credit score, and no cash reserves. CW-J would have questioned such an application. However, so long as the AUS approved the loan, the underwriters in Wells Fargo's branches were not required to look any deeper. In CW-J's view, the integrity of mortgage origination "all fell apart when the AUS became the standard." She explained that by the mid-2000s, when the AUS were being relied upon almost exclusively, she no longer agreed with the loans that were being approved because the underwriting guidelines had become so loose.

316. According to CW-J, upper level management at Wells Fargo did not want to hear her concerns about mortgages being approved for borrowers with questionable credit, high debt levels, high LTV ratios, or minimal cash reserves. They were not concerned with such issues because, throughout her time with Wells Fargo, the origination and underwriting emphasis was completely sales-oriented. According to CW-J, the motto at the company was "sales rules," and underwriters had no say in the kinds of borrowers that the AUS approved.

317. The only time human underwriters were involved in the underwriting process was when the AUS recommended a loan for "refer" instead of "accept." A result of "refer" meant that the application did not meet the underwriting guidelines programmed into the AUS. These loans required manual underwriting, and most of the time they were still approved.

318. CW-J stated that underwriters at Wells Fargo were pressured to approve applications on which the AUS returned a "refer" result because "sales rules." Underwriters were pressured to approve the loans because if they did not, they were at risk of suddenly being fired. As stated by CW-J, "[t]he loan officer or broker would go to the Operations Manager and

complain, and suddenly people [underwriters] were no longer there. Additionally, underwriters received emails directly from the outside mortgage brokers or loan officers indicating that they were unhappy with the underwriter s decision not to approve an application. Many mortgage brokers expected the underwriter to approve all of his or her loans. In general, CW-J stated that the mortgage brokers and loan officers learned how to get away with what they needed in order to get the loans approved.

319. CW-J explained that, in deciding whether to approve loans, underwriters disregarded whether the borrower had the ability to repay the loan: We were just supposed to ignore all the warning signs. Even for government loan programs, LTV ratios were in the range of 95-100%, FICO scores were as low as 550 to 560, and DTI (debt-to-income) ratios were as high as 55%. Cash reserves were only required sometimes. Many of the conventional loans that CW-J underwrote between 2004 and 2006 were stated income/stated asset or no-income/no-asset loans.

320. Confidential witnesses also described Wells Fargo s standard practice of approving exceptions which deviated from prudent underwriting guidelines. According to CW-K, 30-40% of the time, Wells Fargo loan officers issued exceptions to underwriting guidelines on loans that otherwise would have been rejected.

321. CW-K noticed that the exceptions that Wells Fargo granted increased in late 2006 or early 2007, in conjunction with Wells Fargo s purported decision to tighten its underwriting guidelines. Wells Fargo s sales staff could not understand why a loan that would have been approved the prior year could not be approved in the current year, and did not accept the tightened guidelines. According to CW-K, the sales staff wouldn t take no for an answer, and therefore placed tremendous pressure on the Wells Fargo underwriters to approve their

loans. Even where the Wells Fargo underwriters would deny requests for exceptions, Wells Fargo's sales staff would take their loans to lead underwriters and risk managers to have the decisions overridden. According to CW-K, the increase in exceptions countered Wells Fargo's efforts to tighten the underwriting guidelines.

322. According to confidential witnesses, Wells Fargo employees also manipulated loan data in order to close loans and generate volume. CW-K was aware of circumstances in which loan files were doctored in order for the loans to be approved.

323. Confidential witnesses also detailed how mortgages approved by Wells Fargo were based upon inflated appraisal values. According to CW-J, the outside mortgage brokers who brought the loans to her branch for approval chose the appraisers that they wanted to use. The outside brokers, loan officers, and appraisers all had a vested interest in the appraised value being accepted and the mortgage application being approved by Wells Fargo, since they all made money off of the transaction. Consequently, they all had a "let's make a deal mentality" about reaching an appraisal value that supported the amount of the mortgage and the home's value.

324. CW-LL has been a licensed appraiser in Washington state since 1992. In the spring of 2007, CW-LL was given an assignment by Rels Valuation—the appraisal management firm used by Wells Fargo—to appraise a home on the outskirts of Seattle. CW-LL's appraisal noted that the house was being remodeled, that the remodel was incomplete, and that the house was consequently not habitable. After submitting his appraisal, CW-LL was contacted by both Wells Fargo underwriters and Rels customer service representatives, ordering him to change his appraisal to state that the house remodel was complete. This pressure culminated with CW-LL receiving a phone call from a Rels Valuation Area Manager informing him that "you appraisers take USPAP [the uniform appraisal standards] too seriously," and that if CW-LL failed to alter

his appraisal, he would be blacklisted. When CW-LL refused on the grounds that changing the appraisal would violate appraisal standards, he was blacklisted and ceased receiving work from Wells Fargo.

325. CW-MM, who formerly worked as a review resolution coordinator for Rels Valuation from February 2007 to July 2010, confirms the problematic nature of the appraisal process. According to CW-MM, Wells Fargo had an unwritten "Five Percent Rule," whereby if a Rels review appraiser came up with a new value that was within 5% of the original value, the higher value was automatically accepted.

326. CW-MM also testified that from the beginning of his tenure at Rels in 2007, until the implementation of the new federal Home Valuations Code of Conduct in 2009, pressure from Wells Fargo officers occurred "quite frequently," with CW-MM receiving at least one call a day from a review appraiser complaining that a Wells Fargo loan officer contacted him or her directly. CW-MM also sat near 18 review resolution analysts that were tasked with resolving appraisals in which the original appraiser and the review appraiser could not agree on the value. On multiple occasions, CW-MM recalls a Rels national review manager arguing with the review analysts and telling them what he believed was the correct value. CW-MM believes that this constituted undue pressure on review analysts. According to CW-MM, "[o]n the one hand the review manager was trying to run a delicate balancing act with the client, Wells Fargo. But on the other hand, you have to draw the line. Most of the stuff that I saw I felt like it was a little over the line."

327. CW-MM also emphasized that not every appraisal ordered by Rels Valuation for Wells Fargo was reviewed by human eyes. Rels relied on a computer program, called ACE, to identify problematic appraisals. While the system caught clerical errors or omissions, appraisals

containing egregious violations of USPAP were sometimes not identified until after the loan had closed.

b. The mortgages originated by Wells Fargo and securitized in the PLMBS purchased by the Bank provide further evidence of Wells Fargo's failure to adhere to sound underwriting practices.

328. Wells Fargo originated mortgages that secured at least Securities BAFC 2006-F 2A1, BAFC 2006-F 3A1, CMLTI 2006-WFH2 A2B, CMLTI 2006-WFH4 A3, NHELI 2006-WF1 A3, WFHET 2006-3 A2, and WFMBS 2006-AR3 A4. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Wells Fargo's failure to observe its stated underwriting standards. Wells Fargo's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

329. Thus, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at Wells Fargo, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay.

Nowhere did any Offering Document apprise the Bank of the extent to which Wells Fargo deviated from its underwriting guidelines.

c. Other investigations and lawsuits and confidential witness testimony demonstrate that Wells Fargo engaged in predatory lending.

330. In July 2009, the Attorney General for the State of Illinois brought a lawsuit in Cook County Circuit Court, captioned *People v. Wells Fargo & Corporation,* No. 09-26434 (Ill. Cir. Ct.), alleging that Wells Fargo "steer[ed minority applicants] into high cost subprime or riskier mortgage loans while White borrowers with similar incomes received lower cost or less risky mortgages" and that Wells Fargo "engaged in deceptive practices by misleading Illinois borrowers about their mortgage terms, misrepresenting the benefits of refinancing, and repeatedly refinancing borrowers' mortgages, also known as loan flipping, without any real benefit to consumers."

331. The Illinois Attorney General Complaint detailed how borrowers were "plac[ed] into subprime mortgages, even though they qualified for prime mortgages with better terms," with the result that "[i]nstead of the affordable mortgages that these borrowers should have received, they were sold mortgages that were unaffordable and unsuitable." The complaint also detailed how Wells Fargo rewarded its employees for steering borrowers away from prime mortgages and into subprime loans, creating an incentive to sell borrowers higher cost subprime loans even if they qualified for prime loans, and "failed to maintain proper controls to ensure that borrowers were not placed into mortgages that were riskier or more expensive than the mortgage loans for which they were qualified."

332. On April 7, 2010 the City of Memphis filed its First Amended Complaint in *City of Memphis v. Wells Fargo Bank,* No. 09-2857 (W.D. Tenn.), alleging violations of the Fair Housing Act and of the Tennessee Consumer Protection Act arising from Wells Fargo's

discriminatory lending practices. The Complaint attaches sworn declarations from six former Wells Fargo employees providing evidence of discriminatory and predatory lending practices.

333. Doris Dancy, a former Wells Fargo credit manager explained how she was provided with lists of leads who were predominantly minorities despite her branch being "in an area where a lot of white people lived" and how she was required to present a misleading sales pitch that did not disclose that "we were actually just giving them a new more expensive loan that put their house at risk." She detailed how her "district manager pressured the credit managers . . . to convince our leads to apply for a loan, even if we knew they could not afford the loan or did not qualify for the loan." She stated that "I knew that Wells Fargo violated its own underwriting guidelines in order to make these loans to these customers." She was instructed by her district manager "to conceal the details of the loan." Eventually she resigned because she "decided that the practices were too unethical for me to participate any longer. I hated to go to work, and found myself crying at the end of the day."

334. Another Wells Fargo credit manager, Mario Taylor, testified how:

> branch managers told us how to mislead borrowers. For example we were told to make "teaser rate" loans without informing the borrower that the rate was adjustable. . . . We were told not to tell the customer what was in the fine print. In many cases income documents were falsified in order to qualify a borrower for a loan. I know that some managers, including one of my branch managers, changed pay stubs and used white-out on documents to alter the borrower's income so it would look like the customer qualified for the loan. Borrowers were not told about prepayment penalties. [O]ne of my branch managers told me not to disclose . . . fees to borrowers.

335. Camille Thomas, a Wells Fargo loan processor, explained that "[i]t was the practice at the Wells Fargo offices where I worked to target African Americans for subprime loans . . . . Elderly African Americans were thought to be highly vulnerable and were frequently targeted for subprime loans with high interest rates." She confirmed Mr. Taylor's testimony that

credit managers and branch managers made teaser rate loans without informing the borrower that the loan had an adjustable rate . . . . In many cases documents were actually falsified to inflate a borrower s income so that the borrower would appear to meet the debt-to-income requirements. I know that at least one branch manager engaged in this practice.

336. Tony Pashal, a Wells Fargo loan officer, described the case of one borrower who had a two-year-old subprime loan and was seeking to refinance in 2006 before his teaser rate expired. He explained that:

> I determined that the borrower qualified for a prime loan. The borrower had an excellent credit score and for this reason I suspected that he had previously qualified for a prime loan in 2004 but had been inappropriately placed by Wells Fargo into a subprime ARM at that time. In working with the borrower in 2006, I informed my branch manager, Dave Zolnak, that the borrower qualified to refinance into a prime fixed-rate loan. Mr. Zolnak told me I should instead refinance the borrower into another subprime ARM. I refused [and was written up with] a negative performance evaluation in my personnel folder.

337. Elizabeth Jacobson, who was the top subprime loans officer at Wells Fargo for many years testified about how:

> the commission and referral system at Wells Fargo was set up to make it more profitable for a loan officer to refer a prime customer for a subprime loan than to make the prime loan directly to the customer. . . . When I got referrals it was my job to figure out how to get the customer into a subprime loan. I knew that many of the referrals I received could qualify for a prime loan. . . . [Loan officers] used their discretion to steer loan customers to subprime loans by telling the customer, for example, that this was the only way for the loan to be processed quickly; that there would be less paperwork or documentation requirements; or that they would not have to put any money down. Customers were not told about the added costs, or advised about what was in their best interest. . . . According to company policy, we were not supposed to solicit 2/28 customers for re-finance loans for two years after we made a 2/28 subprime loan. . . . [M]y area manager told his subprime loan officers to ignore this rule and go ahead and solicit 2/28 customers within the two year period, even though this violated our agreement with secondary market investors. The result was that Wells Fargo was able to cash in on the pre-payment penalty by convincing the subprime customer to refinance his or her 2/28 loan within the initial two-year period. . . . Wells Fargo qualified borrowers for subprime loans by underwriting all adjustable rate mortgage loans, including 2/28 loans, with the assumption that the borrower would pay the teaser rate for the full

> life of the loan even though this lower rate only applied during the first two or three years of the loan. . . . I learned of [loan officers] cutting and pasting credit reports from one applicant to another [and] subprime loan officers who would cut and paste W2 forms [to] increase the credit worthiness of the applicant so that Wells Fargo's underwriters would approve the loan. I reported this conduct to management. . . . Underwriters, like loan officers, had a financial incentive to approve subprime loans than [sic], even if the customer could qualify for a prime loan, because they got paid more . . . if a subprime loan went through.

338. Confidential witnesses confirmed that Wells Fargo engaged in predatory lending practices. For example, CW-K mentioned that Wells Fargo's underwriters did not fully inform borrowers of the risks of the loans. In addition, as the above discussion shows, Wells Fargo routinely issued loans to borrowers who lacked the ability to repay the loans in violation of predatory lending restrictions.

7. Decision One Mortgage Company, LLC

339. Decision One Mortgage Company, LLC ("Decision One") originated underlying mortgage loans securing at least two of the PLMBS purchased by the Bank. Decision One also abandoned sound underwriting practices.

340. CW-L was a senior underwriter at Decision One Mortgage from 2004 through 2007. During this period, CW-L's duties included underwriting broker and correspondent subprime, home equity, and Alt-A loans. CW-L also trained new underwriters and account managers, conducted second signature reviews, and interacted with Decision One's corporate underwriting team on loans beyond his branch's authority.

341. In approximately 2006, CW-L recalls that Decision One released internal deficiency reports that showed quality issues in tens of millions of dollars worth of defaulted loans. During this internal audit, CW-L stated, "We tore these loans apart and found a lot of fraud." CW-L believes that the bulk of the loans that were the subject of this internal audit had been approved between 2001 and 2004. However, CW-L stated that many of the practices that

led to the quality issues discovered in the loan audit continued at Decision One until late 2005 or 2006.

342. According to CW-L, the main quality issues discovered by the internal audit at Decision One in 2006 included failure to properly confirm borrower income, fraudulent verification of rental payment history, and inadequate employment verification. Regarding borrower income, CW-L explained, underwriters in some of Decision One's branches would justify a borrower's stated income by assuming they were at the highest, management-level tier of any stated field, rather than verifying the actual applicable tier. Regarding rental payment verification, CW-L explained, inexperienced Decision One underwriters and support staff failed to cross-reference landlord contact information to ensure they were contacting the borrower's actual landlord to confirm rental payment history and payment amounts. CW-L explained that similar problems occurred when supposedly verifying a borrower's employment history, but failing to verify that the underwriter was actually speaking to the borrower's employer. Instead, CW-L revealed, Decision One underwriting staff would sometimes call the borrower him or herself to "verify" the borrower's current employment.

343. CW-L further stated that as a result of end-of-month pressure at Decision One to close loans, "loans just closed without verification."

344. In approximately 2006, the corporate office of Decision One issued a company-wide directive to increase loan data due diligence, "but there were probably still branches that were closing loans that should not have been closed," according to CW-L. As part of this directive, Decision One eliminated its "stated W2" or "stated income" program on which it relied through that time as a means of borrower income "verification."

345. CW-L reports that Decision One managers overturned underwriter's decisions to deny loans "more frequently than it should [have happened]." At Decision One, a manager's decision to overturn a loan denial was usually a "business decision," which meant that the loan was for a large broker client and the manager did not want to damage the company's relationship with the broker. For example, CW-L processed about six loans per day, and estimates that one out of six of those loans was a denial that management would subsequently overturn.

346. CW-L saw "a lot" of inflated appraisal values through 2005 or 2006. "They were values that just weren't there . . . . We had some management overrides on [inflated] appraisal values that were unwarranted." According to CW-L, Decision One managers also removed "derogatory" photos of properties from comparables supplied by appraisers. The company discovered this practice when investment banks occasionally requested copies of the original appraisals and noticed that Decision One had removed the photos. This practice of removing photos of comparables at Decision One occurred until some point in 2006.

347. By 2006 or 2007, CW-L saw fewer inflated appraisal values cross his desk because of third-party reviews.

348. Decision One originated mortgages that secured at least Securities MSAC 2006-HE5 A2C and MSAC 2006-HE6 A2C. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Decision One's failure to observe its stated underwriting

standards. Decision One's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

349. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at Decision One, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which Decision One deviated from its underwriting guidelines.

8. Ameriquest and Argent

350. Ameriquest Mortgage Company originated underlying mortgage loans securing at least two of the PLMBS purchased by the Bank. Ameriquest was the wholly owned retail lending subsidiary of ACC Capital Holdings ("ACC"), one of the nation's largest subprime lenders. ACC also owned mortgage subsidiary, Argent. Argent originated underlying mortgage loans for at least one of the PLMBS purchased by the Bank.

351. Both Ameriquest and Argent abandoned sound underwriting practices and engaged in predatory lending during the relevant period. In 2010, Argent was identified by the OCC as the eighth worst subprime lender in the country, and Ameriquest was identified as the fourteenth worst, based on the delinquency rates of the mortgages they originated in the ten metropolitan areas with the highest rates of delinquency.

352. Ameriquest's management pressured employees to generate loan volumes at all costs: "Up and down the line, from loan officers to regional managers and vice presidents, Ameriquest's employees scrambled at the end of each month to push through as many loans as possible to pad their monthly production numbers, boost their commissions, and meet [founder] Roland Arnall's expectations. Arnall was a man "obsessed with loan volume," former aides recalled, a mortgage entrepreneur who believed "volume solved all problems." Michael Hudson, *The Monster: How a Gang of Predatory Lenders and Wall Street Bankers Fleeced America – and Spawned a Global Crisis* (forthcoming from Times Books 2010), *excerpt available at* http://us.macmillan.com/BookCustomPage.aspx?isbn=9780805090468#Excerpt (last visited Oct. 12, 2010). As a result of such pressures at Ameriquest, employees falsified documents, forged borrowers' signatures on government-required disclosure forms, and misrepresented the terms of loans in order to induce borrowers to take out loans they could not afford. *Id.* In fact, "Ameriquest's deals were so overpriced and loaded with nasty surprises that getting customers to sign often required an elaborate web of psychological ploys, outright lies, and falsified papers. Every closing that we had really was a bait and switch," a loan officer who worked for Ameriquest in Tampa, Florida, recalled. "[c]ause you could never get them to the table if you were honest." *Id.*

353. According to a December 8, 2007 *Miami Herald* article, various Argent employees, including former vice president Orson Bean who is currently in prison for his activities at Argent, actively assisted brokers in falsifying borrower information, inflating income, inventing jobs, and inflating net worth. Mr. Bean explained that "the accuracy of loan applications was not a priority." Unsurprisingly, then, when the *Miami Herald* examined loan applications it "found at least 103 [out of 129 examined] that contained false and misleading

information and red flags [such as] non-existent employers, grossly inflated salaries and sudden drastic increases in a borrower's net worth. In one instance a borrower [who] claimed to work a job that didn't exist . . . got enough money to buy four houses.

354. The *Cleveland Plain Dealer*, in a May 2008 article entitled *The Subprime House of Cards*, quoted Jacquelyn Fishwick, who worked for Argent for two years in the Chicago area as an underwriter and account manager, as stating that some Argent employees played fast and loose with the rules. For instance she saw account managers remove documents from files and create documents by cutting and pasting them.

355. Citibank's Business Chief Underwriter, Richard Bowen, testified before the FCIC in April 2010 that he advised against Citibank's 2007 acquisition of Argent because of the number of fraudulent loan applications he saw in an Argent loan sampling prior to the acquisition.

356. Mr. Bowen testified before the FCIC that we sampled loans that were originated by Argent and we found large numbers that did not that were not underwritten according to the representations that were there.

357. An August 2007 *Business Week* article discusses the case of Mary Overton of Brooklyn, New York. Without her knowledge or understanding, Ameriquest created false tax returns, employment records, and a 401(k) to make her appear qualified for a loan as part of a scheme to coerce her to sign a loan which she could not afford.

358. A former Ameriquest loan officer interviewed on *National Public Radio* recalled that at her office in Tampa Florida, in order to close a loan at any cost, managers encouraged loan officers to conceal the actual cost and interest rate on loans and would white out income numbers on W2s and bank statements and fill in bigger amounts basically to qualify people for

loans that they couldn't afford." This practice was known as "taking the loan to the Art Department." The *National Public Radio* broadcast stated that other former Ameriquest employees confirmed this same conduct occurred around the country.

359. Senior management at Ameriquest was well aware of the fraud plaguing the origination process, but willfully ignored it. Ed Parker, the former head Ameriquest's Mortgage Fraud Investigations Department, told the FCIC that fraudulent loans were very common at the company. "No one was watching. The volume was up and now you see the fallout behind the loan origination process." FCIC Majority Report at 161. According to Parker, he detected fraud at the company within one month of starting his job there in January 2003, but senior management did nothing with the reports he sent. He later heard that other departments were complaining he "looked too much" into the loans. In November 2005, he was downgraded from "manager" to "supervisor," and was laid off in May 2006. *Id.* at 12.

360. Ameriquest was also among 14 lenders named by the NAACP in a complaint alleging "systematic, institutionalized racism in sub-prime home mortgage lending." According to the lawsuit, African American homeowners who received sub-prime mortgage loans from these lenders were more than 30 percent more likely to be issued a higher rate loan than Caucasian borrowers with the same qualifications. In January of 2009 the court denied a motion to dismiss, finding that the plaintiff had sufficiently pled a disparate impact claim. Moreover, Marc S. Savitt, a past president of the National Association of Mortgage Brokers, testified to the FCIC that while most mortgage brokers looked out for borrowers' best interests and steered them away from risky loans, about 50,000 of the newcomers to the field nationwide were willing to do whatever it took to maximize the number of loans they made. Savitt singled out Ameriquest as an example of a loan originator that was "absolutely" corrupt. FCIC Majority Report at 14.

361. Ameriquest and Argent originated mortgages that secured at least Securities AMSI 2005-R10 A2B, ARSI 2005-W5 A2C, and CBASS 2006-CB4 AV3. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Ameriquest's and Argent's failures to observe their stated underwriting standards. Ameriquest's and Argent's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

362. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at Ameriquest, and Ameriquest approved numerous loans with essentially little to no underwriting screens applied to the loans or effort to evaluate the borrowers' ability to repay. Similarly, Argent was widely engaged in actively falsifying borrower information, inflating income, inventing jobs, and inflating net worth on the mortgage loan applications it approved.

363. Nowhere did any Offering Document appraise the Bank of the extent to which Argent or Ameriquest deviated from their underwriting guidelines and the extent to which they engaged in predatory lending.

9. Downey Savings & Loan

364. Downey Savings & Loan originated underlying mortgage loans securing at least 2 of the PLMBS purchased by the Bank. Downey also abandoned sound underwriting practices.

365. In its SAFETY AND SOUNDNESS: MATERIAL LOSS REVIEW OF DOWNEY SAVINGS AND LOAN, FA, OIG-09-039 (June 15, 2009), the OIG noted that:

> Downey's loan underwriting standards, in terms of income and asset documentation, became more lenient. Downey required no documentation for some borrowers. . . . [T]he trend toward reduced documentation loans rose from an already high level of 60 percent of Downey's option ARM portfolio in 2000 to 91 percent of that portfolio in March 2008.

366. The OIG further explained how:

> [i]n October 2003, Downey expanded use of . . . Downey Express . . . stated income and stated assets loan[s]. Underwriting was limited to Downey's review of the property appraisal . . . and the borrower's FICO score. At that same October 2003 meeting, the board agreed to . . . expand[] the program to include subprime borrowers. . . . Through Downey it was [therefore] possible for a subprime borrower to get an option ARM loan (with negative amortization potential) with reduced documentation.

367. Downey originated mortgages that secured at least Securities HVMLT 2006-2 2A1A and HVMLT 2006-2 3A1A. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and

foreclosure rates. These circumstances are strong evidence of Downey's failure to observe its stated underwriting standards. Downey's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

368. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact at Downey variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which Downey deviated from its underwriting guidelines.

10. Option One Mortgage

369. Option One Mortgage Corporation ("Option One") originated underlying mortgage loans securing at least two of the PLMBS purchased by the Bank. Option One as well abandoned sound underwriting practices. Option One was identified by the OCC as the seventh worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

370. In denying a Motion to Dismiss and approving a preliminary injunction against Option One and its parent H&R Block, the Superior Court for the Commonwealth of Massachusetts found that the defendants had issued loans for which there was "a substantial likelihood that the Commonwealth will prevail in proving that Option One and H&R Mortgage

acted unfairly in violation of G.L. c. 93A, § 2 by issuing a significant number of home mortgage loans with reckless disregard of the risk of foreclosure and further explained that there was substantial authority suggesting that the issuance of [such a] loan is predatory lending. *Massachusetts v. H&R Block, Inc*., No. 08-2474, slip op. at 8, 48 (Suffolk County Super. Ct. Nov. 10, 2008) (order granting preliminary injunction).

371. According to the complaint filed by the Attorney General for the Commonwealth of Massachusetts, filed after a significant investigation, Option One increasingly disregarded underwriting standards, created incentives for loan officers and brokers to disregard the interests of borrowers and steer them into high cost loans, and originated thousands of loans that [Option One] knew or should have known the borrowers would be unable to pay, all in an effort to increase loan origination volume so as to profit from the practice of packaging and selling the vast majority of its residential subprime loans to the secondary market.

372. The Massachusetts Attorney General's complaint alleges that Option One agents and brokers frequently overstated an applicant's income and/or ability to pay, and inflated the appraised value of the applicant's home, and that these practices were allowed to continue because Option One avoided implementing reasonable measures that would have prevented or limited these fraudulent practices.

373. In addition, Option One was among 14 lenders named by the NAACP in a complaint alleging systematic, institutionalized racism in sub-prime home mortgage lending. In 2008, Option One settled all claims, agreeing to allow the NAACP to participate in the design of a training and testing program for its employees, to assist with various public education projects, and to contribute money to help pay for various NAACP programs.

374. Statements by confidential witnesses CW-M, a senior review appraiser at Option One in a California branch from April 2001 to December 2006, and CW-N, senior account manager at Option One in a Georgia branch from August 2005 until April 2006, confirm that: (a) Option One underwriters faced intense pressure to close loans; (b) Option One approved risky loans without adequate review; and (c) Option One employees approved loans with inflated appraisal values.

375. CW-M explained that, due to high demand for securitized loans, Option One wanted its employees "to be more aggressive." When Option One employees told top level managers at the company that "investors will never buy this," the managers would reply, "Somebody will buy it." Consequently, Option One's focus was simply on generating loans for sale – "[a]s long as they could sell it, that's what mattered."

376. CW-N recalled one particular broker who insisted that Option One approve his loans, even though his loan files frequently did not contain the requisite documentation. Nevertheless, "[h]e was given preferential treatment and his loans were always pushed through" because he supplied the company with "lots and lots of loans."

377. CW-M also recalled situations in which Option One allowed loans with inflated appraisal values to be approved. She mentioned that underwriters often failed to spot "red flags" in the appraisal values on the loans, and therefore did not escalate the appraisals to CW-M's appraisal department for further review and due diligence. Moreover, during her tenure at Option One, CW-M recalled that Option One "watered down" its appraisal system so that fewer loans were "kicked over to the appraisal department."

378. According to CW-M, when Option One's staff appraisers did receive loans for review, they would "cut the value" of appraisals on loans that were "really bad." Nevertheless, Option One sometimes disregarded the appraisers' reports and made the loans anyway.

379. Option One originated mortgages that secured at least Securities OOMLT 2005-5 A3 and OOMLT 2006-2 2A3. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Option One's failure to observe its stated underwriting standards. Option One's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

380. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at Option One, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Documents apprise the Bank of the extent to which Option One deviated from its underwriting guidelines.

11. First Franklin

381. First Franklin originated underlying mortgage loans for at least six of the PLMBS purchased by the Bank. Merrill Lynch acquired First Franklin Financial Corp. and affiliated lending units NationPoint and National City Home Loan Services Inc. on December 30, 2006. Like the other originators identified above, First Franklin also abandoned sound underwriting practices and engaged in predatory lending. First Franklin was identified by the OCC as the fifth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

382. Statements by confidential witnesses confirm that: (a) First Franklin underwriters faced intense pressure to close loans at any cost; (b) First Franklin increasingly approved risky, low- or no-documentation loans without adequate review; (c) First Franklin routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (d) First Franklin employees approved loans with inflated appraisal values; and (e) First Franklin employees manipulated data in order to close loans.

383. Confidential witnesses include CW-O, an underwriter at a First Franklin branch in Georgia from March 2004 to November 2007. He underwrote wholesale, subprime loans. The Georgia branch where he worked employed approximately 70 individuals, seven of which were underwriters. CW-P was an underwriter at a First Franklin from August 2004 to June 2005, and worked out of a First Franklin branch in Texas. Similarly, CW-Q was an underwriter at a First Franklin branch in Florida from 1999 until 2007.

384. CW-R worked at a First Franklin branch in Utah from 1996 until March 2008. She began working in the shipping department, became a loan account manager (account

executive), and then transitioned to underwriting. CW-R served as an underwriter between July 2006 and March 2008.

385. CW-S was an underwriter at a First Franklin branch in Washington from 2005 until November 2007. Her Washington branch received loan applications from across the country.

386. CW-T worked at First Franklin from 1998 until April 2007. Between 1998 and 1999, she worked in a Nevada branch of First Franklin as an underwriter. From 2000 until 2007, she worked in First Franklin s branch in Ohio, first as an underwriter and then as an account executive. During her last four years as an account executive at the company, she also assisted with the underwriting of loans when the volume of loans was too much for the underwriters to handle.

387. According to CW-O, account executives received a monthly commission based on the dollar value of approved loans; the more loans that were approved, the higher the account executive s commission. Consequently, said CW-O, Account executives were making $100,000 a month in commissions. They lived in Sugarloaf Country Club with baseball players and other celebrities. I couldn t get into Sugarloaf if I tried. I d have to sneak in the back door.

388. Due to the commissions they stood to make, CW-O explained that account executives at First Franklin frequently pressured underwriters who declined loans. If the underwriter refused to change his or her mind, the account executives went to upper management to get the loan approved. As CW-O stated, Nine out of ten times the loan went through. Upper management frequently overrode the underwriters recommendations to decline loans because people were making so much money on the loans.

389. CW-T echoed the same comments, and said that the more loans First Franklin closed, the more money account executives received in commissions. She explained, "Account executives paid processors cash under the table to help them get loans closed." CW-T recalled that one loan processor at her branch office, who worked for one of the top-producing account executives, was caught altering loan documents to get loans closed.

390. Similarly, as detailed by CW-S, after First Franklin hired a number of former employees from a company called "OwnIt Mortgage" (in the 2005/2006 time frame), non-compliant loans at her branch in Washington were frequently approved. The OwnIt underwriting manager became the manager at First Franklin's branch, and the OwnIt employees "were used to approving anything. They'd say, 'If we don't approve it, somebody else will. So why lose the money?'" The new underwriting manager from OwnIt "overrode [loans] that we [the underwriters] declined." The manager told CW-S that she was overriding the underwriters' recommendations in order to grow business for the branch and make their numbers.

391. Among First Franklin's abuses of underwriting standards, confidential witnesses detailed a pervasive practice of approving risky loans based upon little to no documentation. According to CW-O, First Franklin underwrote tons of "stated loans," which he and colleagues referred to as "liar loans" because they understood that "the borrower could basically state whatever they wanted" on the loan application. He said that the problem became particularly bad between 2005 and 2007.

392. Additionally, CW-O said he underwrote many no-documentation loans for borrowers, even when such borrowers had W-2s. He knew that the borrowers had W-2s because the borrowers would mention them on their applications, which made him question their eligibility for the loans: "Why would you need a no-doc loan if you had the documents?"

393. CW-T said that, as stated loans grew in popularity at First Franklin in the early 2000s and particularly in 2005, all underwriting became credit score-oriented. As she said, "If the [credit] score was above 700, you used a no-doc loan and you could just give a loan away. It was basically a blank 1003 [the uniform residential loan application]."

394. According to CW-P, fraudulent loans were underwritten at First Franklin "all the time." CW-P did not approve fraudulent loans, but "somebody would come behind me and sign off on the loan," or a more senior manager would tell CW-P to approve the loan and the manager would "counter-sign," so that CW-P would not be entirely responsible for the loan. If CW-P still refused to approve the loan, he would risk losing his job.

395. Confidential witnesses also described First Franklin's standard practice of approving exception loans which deviated from prudent underwriting guidelines. According to CW-T, the pressure to grant exceptions increased significantly at the end of the month because borrowers wanted to reduce closing costs by closing at the end of the month. In the 2005 to 2007 timeframe, "people were working until 8 p.m. on Saturdays and Sundays" in order to close the loans. Consequently, "a lot of loans slipped through. People were tired of being beat up. With the rush of loans, stuff could have been overlooked. Maybe the conditions didn't exactly meet the guidelines." Significantly, during the last crucial days of each month, employees were "begging for exceptions to close their loans." At times, employees formed a line outside the door of the branch manager's office in order to ask for exceptions to the guidelines. CW-T recalled one month when the branch manager, exhausted from having reviewed so many loans, came out of his office and yelled: "Oh f*** it! Just close the f***ing loans." The employees returned to their desks and closed their loans. According to CW-T, "It got out of hand."

396. CW-R detailed similar problems, and said that, at First Franklin, "some loans were approved that were not compliant with guidelines." CW-R also testified that account executives would approach branch managers to ask for exceptions and to have the underwriters' decisions to decline overturned. The managers would approve the loans in order to maintain relationships with the mortgage brokers. Because the mortgage brokers were providing the supply of loans, they did not want to risk angering them and losing the business.

397. On March 5, 2008, Merrill Lynch announced that it was discontinuing mortgage origination at its first Franklin subsidiary and was planning to explore the sale of Home Loan Services, a mortgage loan servicing unit for First Franklin. According to a March 5, 2008, press release issued by Merrill Lynch:

> The company said it made the decision to discontinue lending by First Franklin because of the deterioration of the subprime lending market.
>
> "Since July, we have reduced staffing at First Franklin by nearly 70 percent, but after evaluating a number of strategies, we believe it is appropriate to discontinue mortgage origination," said David Sobotka, head of Fixed Income, Currencies & Commodities at Merrill Lynch.

398. According to CW-R, as part of the discontinuation of its mortgage origination operations, in November 2007, First Franklin shut down all but six of the company's branches and decided that all underwriters in the remaining branches would assist with loss mitigation. The purpose of the loss mitigation group was to review loans that the investment banks requested First Franklin to repurchase because the loans allegedly were not compliant with First Franklin's guidelines. The loss mitigation staff compared the loans to the guidelines that existed on the day the loan was approved in order to conduct their compliance review. CW-R found that fifty percent of the loans that she reviewed were not complaint with First Franklin's guidelines. Moreover, during her review, CW-R found examples of fraud and areas of non-compliance that

the investment banks had missed: "We were finding more [non-compliance issues] than the banks were finding." Examples of non-compliance included inflated appraisal values, insufficient employment verification or no employment verification, and credit scores that fell short of First Franklin's guidelines. All of the non-compliant loans were stated loans. CW-R was not shocked that 50% of the loans she reviewed were not compliant: "We were doing so much volume. There were lots of chances for things to slip through."

399. CW-Q explained that First Franklin compromised loan quality for business growth: "If a loan was borderline compliant [with guidelines], we would approve the loan."

400. Confidential witnesses further explained that First Franklin approved loans based upon inflated appraisal values. CW-O said that First Franklin often hired contract appraisers to provide values on properties, and the appraisers inflated the values. CW-O recalls that "[t]hese were homes with busted out windows and the meter boxes were missing," but they were still appraised at $300,000. According to CW-O, the combination of stated income loans and inflated property values which "led to the mortgage crisis."

401. According to confidential witnesses, First Franklin employees frequently manipulated loan data in order to close loans and generate volume. CW-Q explained that, at First Franklin, "a lot of fraudulent loans were going through. There was tons of fraud going on." Even when the underwriters said loans weren't reasonable, the branch manager would override their opinions. According to CW-Q, "In 2005 . . . growth was the top priority for the company."

402. Similarly, while underwriting loans for First Franklin, CW-O "saw a lot of fake W-2s come through." He knew that the documents were fabricated because the tax withholdings did not match the stated income amounts. He knew that brokers were "whiting out or faxing

over the actual numbers, and writing in new numbers so that the loans would work. According to CW-O, "a lot of loans were getting through that had false incomes."

403. CW-O said that when loans defaulted before the first payment, the underwriters were tasked with finding out why the loan had defaulted. In some instances, CW-O went out to the property to try and speak with the borrowers. When he went, it was not uncommon for him to find an empty house that had been sold as an owner-occupied home. As he said, "There'd be a couch and a TV and no blinds on the windows." The problems were not isolated in his area: "There was so much negligence and fraud in the Atlanta area, but it wasn't just Atlanta. It was all over."

404. CW-R confirmed that, at First Franklin, she came across fraudulent loan applications on a regular basis, typically with regard to the borrower's employment or income information. "I saw blatant fraud," she said, and recalled a borrower who was buying a $500,000 property as owner-occupied when the same borrower had just purchased a $1 million home in the same neighborhood a month earlier as owner-occupied. As CW-R stated, "You can't have two owner-occupied properties." Although that particular loan "ended up dying," First Franklin managers "were mad at [her] for catching it." And other similar loans "did get approved" because other underwriters were looser with their practices and guidelines than she was.

405. CW-T said that the mortgage brokers sent her a lot of fraudulent loans: "A lot of brokers sent me sh**. I could smell fraud a mile away." Although she said she declined fraudulent loan applications when she found them, she admitted that she didn't always examine the entire loan file because "there might be something in the file that would kill the loan."

406. CW-S also explained that managers could manipulate loans so that they would be approved by First Franklin's systems. Thus, loans that had previously been declined were being approved, even though, according to CW-S, they "were not good loans to begin with."

407. Confidential witnesses also described predatory lending practices at First Franklin, where originators enticed borrowers into loans they could not afford and misrepresented the terms of adjustable-rate mortgages. CW-O said First Franklin employees frequently approved stated loans even when they were uncomfortable with the loans. After work on several occasions, CW-O met with his colleagues and they all discussed their level of discomfort with the loans that were being approved. "We had to go out collectively," he said. "We thought, 'This was ridiculous.'" They knew that First Franklin was approving loans for borrowers that the borrowers couldn't really afford. For example, "[Borrowers] had foreclosures and bankruptcies," yet underwriters approved their stated loan applications. CW-O also saw applications where a borrower had a 780 credit score, but only a $5,000 credit line, and was trying to buy a million dollar house.

408. Similarly, CW-R said that she saw loans which fit First Franklin's guidelines, but which nevertheless seemed beyond the borrower's ability to pay. Despite this problem, First Franklin's underwriters were expected to approve *any* loan which fit the guidelines. As CW-R said, "If it fit the guidelines, you can't not approve it."

409. CW-T said that mortgage brokers who sent loans to First Franklin to close did not explain to borrowers how adjustable-rate mortgages worked: "Brokers didn't give a sh**. They just wanted to do a loan. They didn't explain ARMs to borrowers."

410. In addition, First Franklin was among 14 lenders named by the NAACP in a complaint alleging "systematic, institutionalized racism in sub-prime home mortgage lending."

411. CW-P also described rampant appraisal fraud. "Appraisals were inflated all the time." First Franklin, as a wholesale lender, did not order appraisals directly from appraisers, but the brokers that were responsible for obtaining the appraisals for First Franklin routinely called up appraisers and told them that they needed a certain value to make the deal work. If the appraiser refused to come in at value, the broker would simply move on to another appraiser that would come in at value. While an underwriter could reject a loan if he believed an appraisal was inflated, high productivity loan officers would sometimes complain to a branch manager about the rejection, and often the loan officers would win. CW-P rejected loans that contained "pushed" loan-to-value ratios, inflated incomes, or inflated appraisal values, only to be overruled by his managers. CW-P estimates that for 10-15% of the loans he underwrote, management would override his denials and issue the loan.

412. First Franklin originated mortgages that secured at least Securities FFML 2006-FF13 A2C, FFML 2006-FF8 IIA3, FFML 2006-FF12 A3, FFML 2006-FF12 A4, FFML 2006-FF14 A5, and FFML 2006-FF10 A7. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of First Franklin's failure to observe its stated underwriting standards. First Franklin's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and

primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

413. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at First Franklin, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which First Franklin deviated from its guidelines and engaged in predatory lending.

12. WMC Mortgage Corp.

414. WMC Mortgage Corp, owned by General Electric as of 2004, originated underlying mortgage loans for at least three of the PLMBS purchased by the Bank. WMC was identified by the OCC as the second worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency. Like the other originators identified above, WMC Mortgage Corp. abandoned sound underwriting practices and engaged in predatory lending.

415. In June 2008, the Washington State Department of Financial Institutions filed a Statement of Charges and Notice of Intent to Enter Order to Revoke License, Prohibit from Industry, Order Restitution and Collect Investigation Fees against WMC Mortgage, alleging multiple violations of Washington State deceptive and unfair practices laws, including multiple failures to make required disclosures to borrowers of the essential terms of their loans.

416. The State of Washington Department of Financial Institutions also closed down a broker who worked to market WMC Loans for multiple instances of fraud, including "caus[ing]

the preparation of false and fraudulent payment instruments such as cashier's checks, personal checks and business checks, which were submitted to mortgage lenders in support of loan applications for buyers of residential properties to obtain financing and caus[ing] the preparation of false and fraudulent loan documentation such as HUD-1 settlement statements, loan application forms, and gift letters in order to misrepresent that buyers/borrowers of residential properties had paid down payments as required by mortgage lenders, when in truth and in fact, buyers/borrowers had not provided the down payments required by the mortgage lenders.

417. A *New York Times* story reported on a WMC mortgage issued based on fraudulent income and asset disclosures unknown to the borrower, Ms. Philemond. The borrower, a receptionist whose husband owned a sign business, was issued two mortgages with monthly payments of $3,800 prior to resetting to a higher level when the interest rate became adjustable early in 2008. The couple's income had been overstated on the mortgage application by brokers who had helped them buy the house and get a loan from WMC Mortgage, which said that it had granted Ms. Philemond the loan because the information on her application indicated that she and her husband had income of more than $100,000 a year, savings exceeding $60,000 and had a tenant. None of this was true. Vikas Bajaj, *For Some Subprime Borrowers, Few Good Choices*, N.Y. TIMES, Mar. 22, 2007.

418. A *Reuters* Report states that:

> General Electric Co.'s subprime mortgage unit is responsible for some of the worst-performing loans in the benchmark index for the $575 billion market for home equity asset-backed securities, showing few lenders are immune to recent U.S. housing sector problems.
>
> Losses on more than $2.6 billion in loans issued by WMC Mortgage, a Burbank, California-based unit of GE Money Bank, are expected to top 15 percent, the

> highest projected rate of any bond in the widely watched ABX derivative index of bonds issued in early 2006, a UBS Securities model showed.
>
> Thirty-day delinquencies rose to 9.62 percent in February, from less than 2.0 percent six months ago, on WMC's loans backing one of the 20 bonds in the ABX 06-2 index, according to Morgan Stanley, whose Morgan Stanley ABS Capital I Trust packaged the loans into home equity ABS.
>
> WMC loans in Morgan Stanley's MSAC 2006-WMC2 bond carry characteristics of subprime issues that analysts have blamed for surging delinquencies.
>
> More than half the loans have "stated" income documentation that don't require borrowers to prove their ability to repay the loan, data on Morgan Stanley's Web site showed.
>
> First and second lien loans together cover more than 90 percent of the homes' values, making them riskier to investors since the homeowners have little equity at stake. Most lenders have been paring back on such loans, especially those with "piggyback" second mortgages that help finance 100 percent of the home.

419. In *PMI Mortgage Insurance Company v. WMC Mortgage Corporation,* No. BC 381972 (L.A. Sup. Ct.), WMC MBS insurer PMI alleges that, with respect to WMC securitizations it insured, WMC "breached various representations and warranties" including that (a) the loan to value ratios for mortgages at the time of origination was greater than 100%; (b) fraud, errors and misrepresentations, or gross negligence took place on the part of WMC, the associated borrower, and/or another party involved in the origination of the Mortgage loans; and (c) the loans did not comply with WMC's own underwriting standards at the time of origination.

420. PMI's allegations are supported by a review of a sampling of loan documents performed by Clayton Fixed Income Services Inc. Clayton's sampling review identified 120 loans that breached WMC's representations and warranties. For 46 out of the 120 defective loans, Clayton discovered an unreasonable stated income and/or misrepresentations of income and/or employment, the large majority of which could have been discovered by WMC through simple due diligence procedures. For 27 out of the 120 defective loans, Clayton discovered

misrepresentations of occupancy status by the borrower that could also have been discovered through simple due diligence procedures.

421. PMI's complaint emphasizes that while Clayton only analyzed a sample of loans, the deficiencies it uncovered demonstrate a "systematic failure" by WMC to apply sound underwriting standards and practices, and that these deficiencies cut across all of the loans in the securitization. In fact, 30% of the loans in the securitization were delinquent as of October 2007, a mere eight months after the close of the securitization. According to PMI, the sheer volume of delinquencies compels the conclusion that widespread underwriting deficiencies are present throughout the entire loan pool.

422. WMC was also among 14 lenders named by the NAACP in a complaint alleging "systematic, institutionalized racism in sub-prime home mortgage lending." According to the lawsuit, African American homeowners who received subprime mortgage loans from these lenders were more than 30 percent more likely to be issued a higher rate loan than Caucasian borrowers with the same qualifications. In January of 2009 the court denied a motion to dismiss, finding that the plaintiff had sufficiently pled a disparate impact claim.

423. WMC originated mortgages that secured at least Securities MSAC 2006-WMC2 A2C, MSAC 2006-HE5 A2C, and MSAC 2006-HE6 A2C. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these certificates have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of WMC's failure to observe its

stated underwriting standards. WMC's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

424. Accordingly, far from following their underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at WMC Mortgage Corp., variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which these mortgage originators deviated from its guidelines and engaged in predatory lending.

13. OwnIt Mortgage Solutions, Inc.

425. OwnIt Mortgage Solutions, Inc. ("OwnIt") originated underlying mortgage loans for bond CBASS 2006-CB4 AV3 purchased by the Bank.

426. OwnIt Mortgage Solutions, Inc. was located in Agoura Hills, California. It was the nation's sixteenth biggest issuer of subprime home loans, and in 2010, OwnIt was identified by the OCC as the fifteenth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

427. In 2005, OwnIt's 700 employees originated $8.3 billion in home mortgage loans. As described by CW-S, *see supra* ¶390, a former First Franklin underwriter who worked with former OwnIt employees —including managers —at First Franklin in 2005, OwnIt employees

were "used to approving anything. They'd say, 'If we don't approve it, somebody else will. So why lose the money?'" CW-S's underwriting manager and underwriting supervisor, both former OwnIt employees, overrode loans that CW-S declined and knew how to "re-work" loans so that system accepted them.

428. OwnIt originated mortgages that secured at least Certificate CBASS 2006-CB4 AV3. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing this Security, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described in Paragraphs 470-71 below, this certificate has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of OwnIt's failure to observe its stated underwriting standards. OwnIt's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

429. Further allegations relating to OwnIt are *supra* at ¶390 and *infra* at ¶¶473-474.

14. First Horizon Home Loan Corporation

430. First Horizon Home Loan Corporation ("First Horizon") originated underlying mortgage loans securing at least one of the PLMBS purchased by the Bank.

431. Confidential witnesses provided evidence of First Horizon's failure to adhere to sound underwriting practices and guidelines. Statements by CW-U, an underwriter at First

Horizon from August 2004 until May 2006, confirm that First Horizon pressured employees to meet high production volumes, to the detriment of quality control.

432. As an underwriter, CW-U said he found problems in the loans that he reviewed "almost daily." Most frequently, he saw loan files that were "missing pay stubs" or other documents. CW-U was required to bring serious errors to the attention of his supervisor, which he did approximately once per week.

433. In 2006, CW-U stated that his work-production quota doubled from reviewing 5 loans per day to reviewing 10 per day. Although First Horizon demanded that he review more loans, they did not provide any software or "anything that would make the job go faster." CW-U felt that he could perform a decent quality-control review of the loans when his quota was 5 per day, but when he was told to review 10 per day his "real fear was degradation of quality." Nevertheless, First Horizon's emphasis was solely on quantity: according to CW-U, "It was put to me that I had to meet the quota or I'd be let go." After CW-U regularly fell short of the 10-per-day quota in an attempt to perform a sufficient review, he was counseled for low production volume "two to three times" and ultimately terminated for failing to meet the quota.

434. First Horizon originated mortgages that secured at least Certificate FHASI 2006-AR1 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing this security, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, this security has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of First Horizon's failure to observe its stated underwriting

standards. First Horizon's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

435. As detailed above, rather than follow its underwriting guidelines and perform a prudent review of the loans it was approving, First Horizon sacrificed quality for quantity. Consequently, many loans were made with essentially little to no underwriting. Nowhere did any of the Offering Documents apprise the Bank of the extent to which First Horizon deviated from its underwriting guidelines.

15. Bank of America, N.A.

436. Bank of America, N.A. ("Bank of America") originated underlying mortgage loans securing at least three of the PLMBS purchased by the Bank.

437. Confidential witnesses provided evidence of Bank of America's failure to adhere to sound underwriting practices and guidelines. Statements by CW-V, who worked for Bank of America from August 2004 through April 2008 as a bank teller, sales and service specialist, and personal banker, confirm that Bank of America: (a) adopted practices encouraging employees to disregard a borrower's ability to qualify for a loan; (b) pressured employees to generate large quantities of loans at any cost; (c) created an environment where employees manipulated loan data in order to get loans approved; and (d) failed to adhere to its own underwriting guidelines.

438. During his time at Bank of America, CW-V was involved in the bank's retail and consumer banking operations, including generating residential mortgages by taking mortgage

applications from prospective borrowers who applied through his branch office. CW-V ultimately left Bank of America because of "unethical stuff" he observed in the mortgage lending side of Bank of America's business.

439. Specifically, CW-V said there was "horrible" pressure to generate quantities of loan applications and approved loans. According to CW-V, Bank of America imposed a *quarterly* requirement to book one million dollars in mortgage loans per banker. CW-V received a notice when mortgage applications that he prepared were approved for funding and were thus "booked" for purposes of meeting his one-million-dollar requirement. To meet these requirements, CW-V said he and his colleagues were told to enter mortgage applications regardless of whether it appeared the borrower would qualify for the loan. These practices led CW-V to view Bank of America's way of doing business as "fast food banking."

440. CW-V explained that there were times at quarter-end when Bank of America employees would believe that they weren't going to meet the million-dollar-per-quarter quota. Suddenly, the employee's loan would be booked because the Branch Manager had gone to the Regional Manager, who "pulled some strings" to get the loan approved.

441. Additionally, CW-V believed that Bank of America was lax on enforcing its own credit guidelines. He recalled that borrowers with a lower FICO score than was required still obtained mortgages from his branch.

442. CW-V described other practices with which he was uncomfortable, including manipulating loan data to get loans approved. For example, CW-V said that he and other bankers in his branch regularly rounded up applicants' salaries on the loan applications. Specifically, if someone's income was $34,000 annually, Bank of America employees would round it up to $40,000 to make the figure look better for loan approval purposes. CW-V said that

Bank of America employees also inflated how long an applicant had worked for his or her current employer. If the applicant had only worked for an employer for one year and the qualifications required two years with that employer, the Bank of America employee would input on the application that the person had worked for his or her company for three years.

443. CW-V said that he understood these practices were necessary in order to have greater success meeting the quarterly quota of one million dollars in booked mortgage volumes.

444. Bank of America originated mortgages that secured at least Certificates BAFC 2006-C 2A1, BAFC 2006-E 2A2, and BAFC 2006-E 3A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶591-592, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Bank of America's failure to observe its stated underwriting standards. Bank of America's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

445. As detailed, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at Bank of America, N.A., variance from the stated

standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which Bank of America, N.A. deviated from its underwriting guidelines.

16. HomeComings Financial Network, Inc.

446. HomeComings Financial Network, Inc. ("HomeComings") originated underlying mortgage loans securing at least one of the PLMBS purchased by the Bank.

447. Confidential witnesses provided evidence of HomeComings' failure to adhere to sound underwriting practices and guidelines. Statements by CW-W, an underwriter at HomeComings from January 2006 until December 2006, and CW-X, an underwriter for HomeComings from May 2005 until his office closed in October 2007, confirm that HomeComings: (a) engaged in predatory lending by making loans to borrowers when it was clear that they could not afford to make the monthly payments; (b) approved risky, low- or no-documentation loans; (c) approved exception loans for which there were no reasonable compensating factors; and (d) abandoned sound underwriting practices.

448. CW-X said a lot of the problem with HomeComings' mortgages during his employment was due to "what became the norm" in the lending industry: underwriting guidelines became really loose, and "the gray areas became even grayer." According to CW-X, he and other underwriters thought the extent to which the guidelines relaxed was "ridiculous."

449. During his tenure at HomeComings, CW-X underwrote full-documentation, stated income, stated income/stated asset ("SISA"), and no income/no asset ("NINA") documentation loans. Of these, the majority "75% "were stated income loans. According to CW-X, it was the stated income and the option-ARM (negative amortization) loans that "killed the industry."

450. Both CW-W and CW-X explained that HomeComings employed automated underwriting systems ("AUS") to underwrite loans. According to CW-X, HomeComings employees had the choice of two different options: (1) Desktop Underwriter ("DU"), and (2) Assetwise. As CW-X explained, HomeComings employees used DU for subprime applications from low-income applicants because it approved loans with higher debt-to-income ratios than Assetwise.

451. CW-W said that, with respect to Assetwise, HomeComings employees entered borrowers' information into the system and the computer provided its findings. As CW-W explained, "One of my problems was that [a loan application] would fit inside the guidelines, but if you read between the lines, you could see that the borrower was not going to be able to make the payments." Nevertheless, when CW-W raised such concerns to her supervisor, she was told: "It fits, you do the loan. We're going to do this deal."

452. Irrespective of which AUS HomeComings employees chose, CW-X said that virtually all of the loan applications ended up being approved. Moreover, said CW-X, once the AUS approved the application, the underwriters could not change the decision.

453. Besides approving loans that CW-W believed borrowers could not afford, CW-W also noted that mortgage brokers often appealed loans to CW-W's supervisor that had been denied by HomeComings' underwriters. CW-W's supervisor then instructed CW-W and other underwriters that they had to sign off on the loans.

454. CW-X also explained that underwriters searched for compensating factors which would enable them to approve loans, even in the presence of "red flags." For example, if a stated income application reflected a monthly income of $10,000 or more, that would be a "red flag,"

and the underwriter would review the loan application to find "contributing factors" which would nevertheless allow the loan to be approved.

455. HomeComings originated mortgages that secured at least Security RFMSI 2006-SA2 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing this security, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, the percentage of loans secured by property not the primary residence of the borrower, and the percentage of the loans originated using full documentation. Moreover, as described below, *see infra* ¶¶591-592, this security has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of HomeComings's failure to observe its stated underwriting standards. HomeComings' actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

456. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at HomeComings variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which HomeComings deviated from its underwriting guidelines.

17. Other Mortgage Originators Also Abandoned Sound Underwriting Practices and Engaged in Predatory Lending in Order to Issue Loans for Securitization.

457. On information and belief, based on government reports and assessment of mortgage origination practices during the time period that the loans at issue were issued, as discussed above, *see supra* Section IV.C.1-16, and the Bank's investigation, each of the other mortgage originators who issued loans that backed the PLMBS purchased by the Bank similarly abandoned their underwriting guidelines and engaged in predatory lending in order to increase loan volume. These abuses were pervasive in the mortgage origination industry and were the standard operating practice of mortgage originators who issued loans so that they could be sold and securitized either by their affiliates or other financial institutions who acted as Depositors/Issuers, and Underwriters of PLMBS.

458. Accordingly, instead of following their underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at these mortgage originators, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which these mortgage originators deviated from their underwriting guidelines.

D. The Securitization Process Was Plagued by Conflicts of Interest and Misplaced Incentives.

459. A few large financial institutions dominated every aspect of the mortgage securitization process. They owned many of the mortgage originators themselves, and funded the lending activities of many of the originators they did not own outright. As a result, these financial institutions—and the sponsors, depositors, and underwriters that were divisions of these financial institutions—were in a position to scrutinize the practices of the originators and

examine closely the mortgages placed in the pools. Indeed, they had the legal responsibility to do so and to provide investors with complete and accurate information.

1. The Vertical Integration of Many of the Firms Involved in the Issuance of the PLMBS Purchased by the Bank Provided the Defendants with Access to Information Regarding the Abandonment of Underwriting Guidelines, the Manipulation of the Appraisal Process, and Predatory Lending Practices.

460. Many of the PLMBS purchased by the Bank were issued by vertically integrated firms which were involved in several if not all of the stages of the securitization of the PLMBS loan origination, sponsoring, obtaining credit ratings, issuing, underwriting, and/or selling the securities. The following table summarizes the vertical integration of the entities involved in various of the PLMBS purchased by the Bank:

Sponsor	Security	Roles of Affiliated Entities
Bank of America, National Association	BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1	Originator: Bank of America, National Association Underwriter: Banc of America Securities LLC Depositor: Banc of America Funding Corporation Servicer: Bank of America, National Association
Citigroup Global Markets Realty Corporation	CMLTI 2006-NC1 A2C CMLTI 2006-WFH2 A2B CMLTI 2006-WFH4 A3 CMLTI 2006-NC2 A2B	Underwriter: Citigroup Global Markets, Inc. Depositor: Citigroup Mortgage Loan Trust Inc. Trust Administrator: Citibank, N.A.

Sponsor	Security	Roles of Affiliated Entities
Wells Fargo Bank, National Association	WFHET 2006-3 A2 WFMBS 2006-AR3 A4	Originator: Wells Fargo Bank, National Association Depositor: Wells Fargo Asset Securities Corp. Servicer: Wells Fargo Bank, National Association Securities Administrator: Wells Fargo Bank, National Association Custodian: Wells Fargo Bank, National Association
Morgan Stanley Mortgage Capital Inc.	MSAC 2006-WMC2 A2C MSAC 2006-HE5 A2C MSAC 2006-HE6 A2C	Underwriter: Morgan Stanley & Co. Incorporated Depositor: Morgan Stanley ABS Capital I Inc.
Goldman Sachs Mortgage Company	FFML 2006-FF13 A2C GSAMP 2006-NC2 A2C	Underwriter: Goldman Sachs & Co. Depositor: GS Mortgage Securities Corp.
Option One Mortgage Corporation	OOMLT 2005-5 A3 OOMLT 2006-2 2A3	Originator: Option One Mortgage Corp. Depositor: Option One Acceptance Corp. Underwriter: H&R Block Financial Advisors, Inc. (affiliated entity) Master Servicer: Option One Mortgage Corp.
IndyMac Bank	INDX 2006-AR15 A2 INABS 2005-D AII3	Originator: IndyMac Bank Depositor: IndyMac MBS, Inc. (INDX 2006-AR15 A2) Depositor: IndyMac ABS, Inc. (INABS 2005-D AII3) Master Servicer: IndyMac Bank

Sponsor	Security	Roles of Affiliated Entities
Residential Funding Corporation	RFMSI 2006-SA2 2A1 RASC 2005-KS12 A2	Originators: Homecomings Financial Network, Inc. GMAC Mortgage Corp. (affiliates of Residential Funding Corporation) Depositors: Residential Funding Mortgage Securities I, Inc. Residential Asset Securities Corporation Master Servicer: Residential Funding
First Horizon Home Loan Corporation	FHASI 2006-AR1 2A1	Originator: First Horizon Home Loan Corporation Underwriter: FTN Financial Capital Markets (affiliate of First Horizon) Depositor: First Horizon Asset Securities Inc. Master Servicer: First Horizon Home Loan Corporation
Greenwich Capital Financial Products, Inc.	HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A	Depositor: Greenwich Capital Acceptance, Inc. Underwriter: Greenwich Capital Markets, Inc.
GMAC Mortgage Corporation	GMACM 2006-AR2 2A1	Originator: GMAC Mortgage Corporation Depositor: Residential Asset Mortgage Products, Inc. Underwriter: Residential Funding Securities Corporation (a/k/a GMAC RFC Securities) Master Servicer: GMAC Mortgage Corporation
Nomura Credit & Capital, Inc.	NHELI 2006-WF1 A3	Underwriter: Nomura Securities International, Inc. Depositor: Nomura Home Equity Loan, Inc.

461. Between 2005 and 2007, the number of vertically integrated firms grew significantly because investment banks and other issuers of mortgage backed securities sought to ensure a steady supply of mortgage loans for securitization and sale to investors. Yet, as a result of the direct involvement in the origination of the loans they securitized, the vertically integrated

firms, and specifically, the Depositor/Issuer and Underwriter affiliates of the firms, had access to and often first-hand knowledge of the underwriting abuses of the mortgage originators.

462. For example, in GMACM 2006-AR2, GMAC RFC Securities as underwriter for the securities issuance, knew precisely what its affiliate, GMAC Mortgage Corporation as mortgage originator, was doing when it issued loans to people without regard to their ability to pay, and without any meaningful mortgage underwriting. The same is true for the other vertically integrated entities listed above, many of whom, like the GMAC entities, had corporate affiliates that originated the substandard loans underlying the Bank s certificates, or had corporate affiliates that served as sponsors that purchased and assembled the substandard loans into securities that were sold to the Bank. Unfortunately, the vertical integration of these firms created enormous incentives to push their affiliated originators and sponsors to loosen standards so that more loans could be issued and more securitizations sold. In this regard, the Depositor/Issuer Defendants and Underwriter Defendants themselves dictated and were well aware of the quality of the loans.

463. Rather than use their superior access to information about the underlying mortgage pools and unique ability to exert influence over the underwriting standards responsibly, the Depositor/Issuer and/or Underwriter Defendants at the vertically integrated firms accepted defective loans that their affiliates purchased or originated for securitization. The reason was straightforward. They made more money that way on the front end, when issuing the loans, and on the back end, when securitizing them. Adequate, actual, due diligence and exclusion of defective loans would have cut into their profits and slowed down the securitization machine.

464. Moreover, even those Defendants that did not have corporate affiliates involved in concocting the risky securities sold to the Bank still had corporate affiliates intimately involved

in the creation and marketing of MBS. Given these corporate affiliations, all of the Defendants should have known, and failed to disclose, the substantial risks associated with mortgage-backed securities.

2. Financial Ties Between the Investment Banks and Non-Bank Lenders Provided the Defendants with Access to Information Regarding the Mortgage Originators' Failure to Adhere to Underwriting Guidelines and Engagement in Predatory Lending Practices.

465. Even where the parties involved in the securitization were not all affiliated under a single parent (for example, where a sponsor purchased the loans from an unaffiliated mortgage originator) the Depositor/Issuer and Underwriter Defendants had access to abundant information about the mortgage originators' abandonment of underwriting guidelines and predatory lending practices. This was the result of the close financial ties between the unaffiliated mortgage lenders and the financial institutions that funded them.

466. An example of this relationship is the credit facilities that mortgage originators maintained with the financial institutions involved in the securitization and underwriting of the PLMBS that were backed by those originators' loans. For example, Countrywide Financial Corp., collectively with its origination subsidiary, Countrywide Home Loans, Inc., had credit agreements with Bank of America, J.P. Morgan Chase, Citicorp USA (part of Citigroup), and Barclays, each of which funded Countrywide's origination business. Likewise, originator New Century Mortgage Corp., collectively with other subsidiaries of New Century Financial Corp., had credit agreements with Bank of America, Morgan Stanley, Citigroup, and Barclays, each of which funded New Century's origination business. *See* John Dunbar and David Donald, *The Roots of the Financial Crisis: Who is to Blame?* (May 6, 2009), *available at* http://www.publicintegrity.org/investigations/economic_meltdown/articles/entry1286 (noting that 21 of the 25 largest subprime lenders were financed by Wall Street banks).

467. Mortgage originators, including those that issued loans backing the PLMBS purchased by the Bank, depended on credit facilities of this sort to fund their operations. The originators would borrow from these credit facilities pursuant to "warehouse agreements" so that they could continue to make loans to home buyers. When loans were sold, the originators would repay the warehouse agreements. When loans serving as collateral lost value, the financial institutions would make margin calls requiring the originators to pay cash to the institutions. In connection with this process, the mortgage originators provided the financial institutions with documents about the underlying loans, including performance characteristics and early warning signs of poor credit quality. The files were then passed to other divisions of the financial institutions for review and securitization. *See* Mortgage Bankers Association Warehouse Flowchart: Securitization, *available at* http://www.mbaa.org/files/ResourceCenter/WarehouseLending/FlowchartSecuritization.pdf (last visited Sept. 15, 2010).

468. The financial institutions also entered into purchase agreements with unaffiliated originators. These agreements ensured that the financial institutions were assured access to a batch of mortgages to securitize, and the originators were guaranteed a buyer for the mortgages they made. As part of the agreement, the financial institutions typically set the prices and quantities of the types of loans it wanted to buy and also gained access to loan information prior to purchase.

469. The investment banks that operated credit facilities for non-bank lenders and entered into purchase agreements did not limit their activities to just funding the lenders. To the contrary, they funded the lenders so that the lenders could issue more loans for the investment banks to purchase and securitize. These inter-relationships are illustrated by the warehouse lines

of credit which were extended to New Century Financial Corp. and its subsidiary, New Century Mortgage Corp., the originator of loans that backed the PLMBS in this case:

Certificate	**Warehouse Line of Credit with:	Sponsor of the PLMBS Certificate	Depositor/Issuer of the PLMBS Certificate	Underwriter Defendant for the PLMBS Certificate
GSAMP 2006-NC2 A2C	Goldman Sachs Mortgage Co.	Goldman Sachs Mortgage Co.	GS Mortgage Securities Corp.	Goldman, Sachs & Co.
MSAC 2006-HE5 A2C MSAC 2006-HE6 A2C	Morgan Stanley Mortgage Capital Inc.	Morgan Stanley Mortgage Capital Inc.	Morgan Stanley ABS Capital I Inc.	Morgan Stanley & Co. Incorporated
CMLTI 2006-NC1 A2C CMLTI 2006-NC2 A2B	Citigroup Global Markets Realty Corp.	Citigroup Global Markets Realty Corp.	Citigroup Mortgage Loans Trust, Inc.	Citigroup Global Markets Inc.

***Source: Factbox: New Century Creditors Named in Bankruptcy Filing*, Reuters (April 2, 2007), *available at* http://www.reuters.com/assets/print?aid=USN0243292520070402 (last visited Sept. 14, 2010).

470. As the chart shows, the same investment banks that offered warehouse lines of credit to New Century purchased the loans as sponsor, deposited them into trusts as depositor, securitized and issued them as issuer, and underwrote the securities backed by the loans as underwriter. Because the investment banks were involved in several if not all of the steps of securitization, they had direct information and knowledge about the problems in the loan pools.

471. In addition, the sponsors, the Depositor/Issuer Defendants, and the Underwriter Defendants, were all intimately aware of the mortgage originators practices as a result of their direct role negotiating with the originators regarding the quality and characteristics of the loans

in the mortgage pools they purchased. This is confirmed by confidential witness testimony. For example, CW-G, a branch manager at New Century from December 2000 through December 2005, indicated that not only did the investment banks know about the origination guidelines, they were the ones who designed them. As CW-G explained, the investment banks took advantage of their leverage over the mortgage originators and "abused subprime" for their own purposes – to make profits by selling mortgage-backed securities to unsuspecting investors.

3. Conflicts of Interest Undermined Adequate Due Diligence and Disclosure to Investors.

472. The multiple roles of large financial institutions in the securitization process created conflicts of interest that prevented these institutions from engaging in adequate due diligence on the loan pools. For example, these financial institutions did not use their influence and control over the mortgage origination process to ensure that underwriting guidelines were followed, because to do so would have jeopardized repayment of their warehouse lines of credit. By keeping the mortgage origination wheel turning, these financial institutions (by and through the Certificate's sponsors, the Depositor/Issuer Defendants, and the Underwriter Defendants) not only secured repayment on existing warehouse lines, but also paved the way for ever increasing lines in the future, with additional short-term profits. While these financial institutions eventually shut down their lines of credit, they did so only after the originators' financial condition deteriorated to the point that the financial institutions faced the risk of non-payment. Ironically, this risk was created by ever increasing numbers of repurchase demands by the financial institutions themselves for defective loans sold to the banks by the originators.

473. For example, Merrill Lynch Mortgage Capital, an affiliate of Underwriter Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., provided warehouse lines of credit to subprime originator OwnIt Mortgage Solutions. Pleadings filed in OwnIt's bankruptcy reveal

that Merrill Lynch Mortgage Capital was a secured creditor on its warehouse line of credit to OwnIt for $633 million. Bond CBASS 2006-CB4 AV3, which the Bank purchased from Defendant Underwriter Merrill Lynch, Pierce, Fenner & Smith, Inc. includes a substantial number of loans originated by OwnIt Mortgage Solutions an entity with which investment bank and Defendant Underwriter Merrill Lynch was in a conflicted relationship in general, and with respect to Bond CBASS 2006-CB4 AV3 in particular.

474. Furthermore, papers filed in OwnIt s bankruptcy proceedings also show that Merrill Lynch LP Holdings, Inc., another affiliate of Defendant Underwriter Merrill Lynch, Pierce, Fenner & Smith, Inc., holds an unsecured mortgage repurchase claim against OwnIt, arising from its right to compel repurchases of mortgage loans it purchased from OwnIt. The amount of such claim is estimated at $92.96 million, which is 20% of the principal balance of the mortgage loans subject to repurchase.

475. Similar conflicts prevented the investment banks from insisting on compliance with underwriting guidelines when they purchased loans at loan auctions. At the loan auctions, the mortgage originators would set a date and time for the sponsors to purchase a block of mortgage loans. In advance of the auction, the mortgage originator would provide certain potential bidders with a bid stipulation sheet that described the general characteristics of the loan pool being auctioned and the variance rate of the pool. The investment banks depended on the auctions to feed loans into their securitization machines. But investment banks feared that they would lose access to the bid stipulation sheets and other information from mortgage originators if they conducted rigorous quality reviews of the subject mortgages and rejected loans as being non-compliant with the mortgage originators stated guidelines. Thus, to curry favor with the mortgage originators and assure a continued pipeline of mortgages (however flawed) for

securitization, the parties who should have protected the quality of the mortgages being deposited into the pools instead ignored the flaws with the mortgages.

476. Simply put, as a result of corporate affiliations and conflicted relationships in the industry, the investment banks, by and through the sponsors and affiliated Depositor/Issuer and Underwriter Defendants, failed to appropriately fulfill their due diligence function with respect to the mortgages placed in the pools. Rather than conducting the appropriate due diligence on the loan pools, and either rejecting loans that failed to meet underwriting standards or adequately disclosing the true risks of the certificates, the Defendants utilized the securitization process to pass the risk of default down the line to investors, such as the Bank, through the use of materially false and misleading Offering Documents.

477. Confidential witnesses confirmed the failings of the Defendants due diligence process and their representations about the process. For example, statements by CW-Y, an associate in RBS Greenwich Capital s[4] asset-backed finance modeling group from October 2004 to February 2006, demonstrated that RBS Greenwich employees modeled the flow of funds for the PLMBS based upon superficial summary information even though more detailed information was available to RBS Greenwich. CW-Y also described how employees at RBS Greenwich turned a blind eye to red flags regarding the quality of the loans that were being packaged into mortgage-backed securities. For example, when CW-Y tried to discuss an article with his boss regarding an investigation into Ameriquest s lending practices, his boss told him: You need to

[4] Until April 1, 2009, RBS Greenwich Capital was the marketing name which encompassed The Royal Bank of Scotland s North American broker-dealer entities, including: (1) Underwriter Defendant Greenwich Capital Markets, Inc., n/k/a RBS Securities Inc.; (2) Controlling Person Defendant Greenwich Capital Holdings, Inc., n/k/a RBS Holdings USA Inc.; and (3) sponsor Greenwich Capital Financial Products, Inc., n/k/a RBS Financial Products Inc. *See* The Royal Bank of Scotland, RBS Greenwich Capital Re-Name and Re-Brand FAQ s, March 6, 2009, *available at* http://www.rbsgc.com/images/panels/rbsm/document/faq.pdf (last visited Oct. 3, 2010). As used herein, RBS Greenwich is meant to encompass all of these entities.

sit down and shut the f*** up. CW-Y explained that employees at RBS Greenwich ignored red flags because they stood to gain significant profits from securitization: I knew we were destroying the economy. . . . But if you re making $40 million a year, do you care? No.

478. Similarly, CW-Z, a capital markets analyst at Citigroup from July 2006 until November 2008, said that they did not review the underlying loan files when they were structuring and securitizing the mortgage pools, even though they had access to them. Instead, they simply trust[ed] the mortgage originator s data. CW-Z also explained that Citigroup s models for stress-testing the PLMBS were inadequate because the company could model a bond to see how it performed under the stress of 50% losses, but it never took into account the possibility of house prices falling. As explained above and echoed by CW-Z, the monetary incentives that the originators stood to gain by securitizing mortgage pools stimulated fraud.

4. Defendants Undermined and Misused Loan Pool Due Diligence Results Prepared by Third-Party Firms.

a. The Defendants directed the due diligence process and were provided with detailed reports describing the results of the process.

479. Information obtained from press reports, government investigations and confidential witnesses demonstrates that the financial institutions that retained third-party due diligence firms to conduct loan pool due diligence both manipulated the due diligence process and also disregarded the results of the process. They did so in order to maximize the profits they made from issuing and selling mortgage-backed certificates.

480. The two firms that dominated the third-party due diligence market were Clayton Holdings, Inc. (Clayton) and The Bohan Group (Bohan). Upon information and belief, both Clayton and Bohan were retained by Defendants or their affiliates to conduct third-party reviews of loans pools purchased by the sponsors of the PLMBS at issue. According to Clayton s Form

10-K for the fiscal year ended December 31, 2006, Clayton monitored over $418.0 billion in loans underlying mortgage-backed certificates, which represented 22.8% of the total outstanding U.S. non-GSE mortgage-backed certificates at such date. During 2006, 2005, and 2004, Clayton worked with each of the ten largest non-agency mortgage-backed certificates underwriters, as ranked by *Inside MBS & ABS* magazine, which accounted for 73%, 73%, and 78% of total underwriting volume during those respective periods.

481. Confidential witnesses, who worked at Clayton during the relevant time period and were familiar with the identity of Clayton's clients and the due diligence performed by Clayton during the relevant time period, named several different entities they knew had hired Clayton to perform due diligence on loan pools. These confidential witnesses include: CW-AA, an underwriting consultant at Clayton from 1999 until 2006, who underwrote mortgage-backed securities for a "lot of investment banks" that hired Clayton; CW-BB, an underwriter at Clayton from 2002 until 2008, who reviewed loans for financial institutions that hired Clayton; and CW-CC, who worked as a valuation specialist at Clayton from January 2006 until March 2008 and reviewed appraisals and properties in loan files on behalf of investment banks that hired Clayton. Together, CW-AA, CW-BB, and CW-CC confirmed that Clayton was hired to perform due diligence on underlying loan pools by such sponsors/investment banks as Morgan Stanley, RBS Greenwich, Countrywide, Nomura, Washington Mutual, Webster Financial, and National City. Media reports also indicate that Clayton Holdings did work for Goldman Sachs and Merrill Lynch. Gretchen Morgenson, *Raters Ignored Proof of Unsafe Loans*, N.Y. Times, Sept. 26, 2010.

482. Less information is publicly available about Bohan's due diligence business because it is a privately held company. However, press reports and confidential witnesses

confirm that Bohan provided third-party loan pool due diligence to a large number of financial institutions. For example, CW-DD, who worked as an underwriter at Bohan from 2003 to 2006 and reviewed loans that Bohan's clients were considering for securitization, said that Bohan's clients included Morgan Stanley, Chase, J.P. Morgan, and others.

483. The financial institutions that retained Clayton, Bohan, and other third-party due diligence firms for loan pool review maintained close contact and control over the process. As explained by Vicki Beal, Senior Vice President of Clayton Holdings in her September 23, 2010 written testimony before the FCIC:

> The loan review process is conducted as follows:
>
> - A client reviews a pool of loans and selects a sample of loans for diligence review. . . .
> - Client hires Clayton to perform diligence on the sample. Client gives Clayton's Client Services Manager instructions on the type and scope of review and the time frame for the deal.
> - Client sends or has sent to Clayton a tape containing loan information from the originator, which Clayton programmers "crack" and loads [sic] into our CLAS system.
> - At the end of each day, the lead underwriter generates reports for the client that summarizes Clayton's findings, including exception reports.

484. In addition, during the review process, the client financial institutions often put their own employees on-site to oversee the review process. For example, according to CW-BB, Morgan Stanley and RBS Greenwich always sent their own employees to the mortgage originator's site.

485. Numerous confidential witnesses confirm that due diligence reports are provided to the financial institutions that retained the third-party due diligence firms. According to CW-CC, Clayton's clients "had access to our [Clayton's] databases," and "could see everything."

CW-BB also explained that Clayton's lead underwriters could consult with the sponsor's representatives to determine if the sponsor wanted particular loans "kicked out" of the mortgage pools.

486. As Ms. Beal reported to the FCIC: "The work product produced by Clayton is comprised of reports that include loan-level data reports and loan exception reports. Such reports are "works for hire," the property of our clients and provided exclusively to our clients." Thus, on information and belief, the financial institutions that hired Clayton (including the Defendants) should have known about the red flags that the third-party underwriters identified.

487. Similarly, Bohan employed "lead" underwriters, who communicated directly with the financial institutions that retained them to review loan pools. As was the case with Clayton, CW-DD said that many of the sponsors sent their own employees to the originator's sites to review the loans that were being considered for inclusion in a mortgage pool and subsequent securitization. CW-DD also explained that the sponsors had access to Bohan's computer system and could view which loans were being approved or rejected. Thus, on information and belief, the investment banks (including the Defendants) should have known about the red flags that the third-party underwriters identified.

b. The Defendants manipulated and misused due diligence results.

488. As Ms. Beal testified with regard to Clayton, the client financial institutions determined the type and scope of review performed on the loan pools. Yet, rather than directing the firms to conduct thorough reviews that were most likely to identify defective loans, the financial institutions pressured the loan reviewers to disregard problem loans through exceptions and offsets that did not satisfy the applicable underwriting guidelines.

489. According to confidential witnesses, third-party due diligence underwriters were pressured by the banks that hired them to depart from the standards so that loans were not tagged as defective. For example, CW-BB, a Clayton employee, stated that one out of every four or five loans that he reviewed on behalf of client financial institutions did not meet the originator s guidelines. Although he felt many of the loans were dead assets (the lowest rating Clayton gave), he was required to provide compensating factors, which were reasons why the loan should be considered for inclusion in the mortgage pool.

490. Similarly, CW-DD said that she reviewed many loans requiring no documentation at Bohan. Yet, she was not allowed to challenge the borrower s claims. As CW-DD said, Whatever [the borrower] filled out on an application got through. When she informed a lead underwriter that she suspected the borrower s income was inflated, the lead underwriter pointed to the borrower s signature and fine print at the bottom of the loan application that indicated the borrower swore the information to be true. The lead underwriter told CW-DD, You can t call the borrower a liar. Due to such actions by the lead underwriters, CW-DD received the impression that the financial institutions who were buying the loans for securitization did not care about inflated income.

491. CW-DD also recalled other loans in the mortgage pools which included a credit score of 600, no income documentation, and no asset verification, but where the borrowers were receiving 100% financing. At the time, she recalled thinking: Why would anybody in the world want these loans? Nevertheless, the financial institutions bought and packaged the loans for securitization.

492. Bohan employees were pressured by the financial institutions who hired them to leave information out of their reports that detailed non-compliant or predatory loans that should

have been excluded from the pool. For example, CW-DD explained that many underwriters at Bohan did not include in their reviews the borrower's fee associated with rebates on wholesale loans. A rebate is negative points on a loan, whereby a borrower pays the lender for a higher interest rate in order to have lower up-front costs. The Bohan employees left such information out of their reports because if they mentioned it, the loans would often be considered predatory. CW-DD recalled one rebate situation in which the borrower refinanced a property three times over a one-year period. When she reviewed the loan on the third refinancing, she discovered that the borrower was seeking the loan to pay off $5,000 in bills and to obtain $8,000 cash, but the rebate fees totaled $12,000. CW-DD thought the loan was ultimately included in the mortgage pool because nothing was wrong with the loan, except that the borrower was getting nothing out of it and was "an older person that was being taken advantage of."

493. Further compounding the problems, Clayton employees were instructed to review fewer loans in the loan pools as the securitization market grew. Frank P. Filipps, Clayton's chairman and CEO, stated that "[e]arly in the decade, a securities firm might have asked Clayton to review 25 to 40 percent of the sub-prime loans in a pool, compared with typically 10% in 2006." E. Scott Reckard, *Sub-Prime Mortgage Watchdogs Kept on Leash; Loan Checkers Say Their Warnings of Risk Were Met with Indifference*, L.A. TIMES, Mar. 17, 2008, at C1.

494. According to Ms. Beal's 2010 testimony before the FCIC, as the securitization markets grew even more frenzied "when lenders and securitizers were trying to sell off as much as they could before the market collapsed, that figure reached as low as 5 percent."

495. Notably, according to Bohan President Mark Hughes: "By contrast, loan buyers who kept the mortgages as an investment instead of packaging them into securities would have 50% to 100% of the loans examined." *See* Reckard, *supra,* at C1.

496. As explained in Paul Muolo and Matthew Padilla, *Chain of Blame* 228 (2010):

> There were two reasons the [Wall] Street firms reviewed only a small sample of the loans they were buying . . . . The most important reason was the relationship with the lender. "The lower the sample you requested [of the lender], the more likely it was that you'd win the bid." . . . Lenders like Aegis and First Franklin had so many Street firms interested in buying their subprime and alt-A mortgages they could tell potential suitors that if they wanted to win the bid for the loan pool they should agree to review just a fraction of the mortgages.

497. Even though the third-party due diligence providers were instructed to review smaller samples of the mortgage pools over time, the demand for mortgage-backed certificates was so great that, in the aggregate, the third-party due diligence firms were reviewing staggering quantities of loans. According to *Chain of Blame*, "[i]n 2006, rank-and-file clerks hired by Clayton vetted a million individual mortgages for Wall Street firms. . . ." *Id.* at 228.

c. The Defendants should have known that the sponsors included defective loans in the pools.

498. Notwithstanding pressures on loan reviewers to look the other way, the third-party due diligence process provided the sponsors with extensive information about loan pool defects. As reported by the *Los Angeles Times*, Clayton and Bohan employees (including eight former loan reviewers who were cited in the article) "raised plenty of red flags about flaws so serious that mortgages should have been rejected outright "such as borrowers' incomes that seemed inflated or documents that looked fake "but the problems were glossed over, ignored, or stricken from reports." Reckard, *supra*, at C1.

499. Ironically, while the financial institutions pressured third-party reviewers to make exceptions for defective loans, these financial institutions often utilized information about bad loans to negotiate a lower price for the pool of loans from the seller (*i.e.,* the originator). According to the September 2010 testimony of Clayton's former president, D. Keith Johnson,

before the FCIC, negotiating a lower price was one of the primary purposes of the due diligence review.

500. CW-DD, who worked at Bohan from 2003 to 2006, confirmed that Bohan's review was used in price negotiations between the sponsors and the mortgage originators. The sponsors could request a discount if Bohan's reviewers rejected a large number of the loans. This is not to say that the financial institutions actually eliminated all of the defective loans from the pools. To the contrary, they obtained a lower price for the pools because the defective loans *stayed in the pools*.

501. Recent testimony before the FCIC reveals the extent of this activity with regard to loans reviewed by Clayton. During 2006 and the first half of 2007, Clayton reviewed 911,039 loans issued by originators including New Century Financial, Countrywide Financial, and Fremont Investment & Loan for securitization by its clients (including Bank of America, JPMorgan Chase, Citigroup, Goldman Sachs, Morgan Stanley, Bear Stearns, and Lehman Brothers). Clayton determined that 28% or 255,802 mortgages that they reviewed did not satisfy applicable underwriting guidelines. Of this number, Clayton's Wall Street clients "waived" 100,653 of them, or 39 percent of those loans that did not meet basic standards. *See* Testimony of Beal, Johnson, and supporting waiver reports documents, attached hereto at Appendix II.

502. Clayton provided the FCIC with documents showing the defect and waiver rate of the main financial institutions which had retained Clayton to conduct loan pool due diligence. Clayton's documents reveal the following rejection and waiver rates for entities that were involved in the securitization of the PLMBS purchased by the Bank:

Client:	**Percentage of Mortgages Rejected by Clayton:**	**Percentage of Rejected Mortgages Subsequently Waived by Client:**

Client:	Percentage of Mortgages Rejected by Clayton:	Percentage of Rejected Mortgages Subsequently Waived by Client:
Bank of America	30%	27%
Credit-Based Asset Servicing and Securitization LLC	29%	43%
Countrywide	26%	12%
Credit Suisse	37%	32%
Citigroup	42%	31%
Goldman Sachs	23%	29%
HSBC	27%	62%
JP Morgan Chase	27%	51%
Nomura	38%	58%
UBS	20%	33%

503. The Offering Documents fail to state that (1) that Clayton had informed their clients that a substantial percentage of loans in the loans pools backing PLMBS were defective; (2) that the Defendants, nonetheless, had waived the defects as to a substantial percentage of these loans; and (3) that the Defendants had used the due diligence reports to negotiate a lower price for the loans pools. As Keith Johnson, the former President of Clayton testified to the FCIC, Clayton "looked at a lot of prospectuses" and the firm wasn't aware of any disclosure to investors of Clayton's "alarming findings."

5. Defendants' Own Due Diligence Identified a High Number of Defective Loans in the Mortgage Pools Backing PLMBS.

504. The financial institutions that dominated the securitization markets did not just obtain information about defective loan pools from third-party due diligence firms, but also through their own in-house due diligence efforts. Wall Street banks in particular currently face a slew of investigations into their knowledge of mortgage pool defects that were withheld from investors. As stated in a January 12, 2008 *New York Times* article titled *Inquiry Focuses on Withholding of Data on Loans*:

> An investigation into the mortgage crisis by New York state prosecutors is now focusing on whether Wall Street banks withheld crucial information about the risks posed by investments linked to subprime loans. Reports commissioned by the banks raised red flags about high-risk loans known as exceptions, which failed to meet even the lax credit standards of subprime mortgage companies and the Wall Street firms. *But the [investment] banks did not disclose the details of these reports to credit-rating agencies or investors.* The inquiry, which was opened last summer by New York's attorney general, Andrew M. Cuomo, centers on how the banks bundled billions of dollars of exception loans and other subprime debt into complex mortgage investments.

(emphasis added).

505. Likewise, in its investigation into the "causes . . . of the current financial and economic crisis in the United States," the FCIC examined in particular Citigroup's securitization practices. The FCIC heard testimony from Richard M. Bowen, III, the former Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for CitiFinancial Mortgage (Citigroup's subprime mortgage lending subsidiary from 2002-2005) and starting in 2006, Business Chief Underwriter for Correspondent Lending in Citigroup's Consumer Lending Group. In the latter position, Mr. Bowen supervised 220 professional underwriters and exercised direct oversight over the underwriting or more than $90 billion of mortgages annually.

506. Mr. Bowen testified that each year since 2005, Citigroup's mortgage operation systematically acquired tens of billions of dollars of risky loans that violated Citigroup's own underwriting criteria and were likely to default. He also testified that Citigroup's Wall Street Chief Risk Officer routinely overruled underwriters' rejections of pools of both prime and subprime mortgages that did not satisfy Citigroup's underwriting criteria for purchase, causing Citigroup to purchase billions of dollars of loan pools that fell far short of underwriting standards. Mr. Bowen testified that "[d]uring 2006 and 2007, I witnessed business risk practices which made a mockery of Citi credit policy. . . ."

507. Mr. Bowen reported that he discovered that of the $50 billion of prime mortgages purchased in 2006, "over 60% of these mortgages purchased and sold were defective." He testified further that he "started issuing warnings in June of 2006 and attempted to get management to address these critical risk issues. These warnings continued through 2007 and went to all levels of the Consumer Lending Group." Likewise, he reported systematic abuses in the subprime pools as well.

508. Mr. Bowen also testified that he recommended that Citigroup not purchase Ameriquest, because his due diligence found that Argent's loans did not meet the standards they had represented to Citigroup. Specifically, Mr. Bowen testified that "we sampled the loans that were originated by Argent and we found large numbers that did not "that were not underwritten according to the representations that were there."

509. Mr. Bowen submitted with his testimony email that he sent to Citigroup's then CEO, Robert Rubin, in late 2007 documenting his concerns. One email indicated, among abundant other information of abuses that:

> During 2006-7 there were pools of mortgage loans aggregating $10 billion which were purchased from large mortgage companies with significant numbers of files identified as "exceptions" (higher risk and substantially outside of our credit policy criteria). These exceptions were approved by the Wall Street Channel Chief Risk Officer, many times over underwriting objections and with the files having been turned down by underwriting. These pools involved files aggregated and originated by Merrill Lynch, Residential Funding Corp, New Century, First NLC and others.

Available at http://www.fcic.gov/hearings/pdfs/2010-0407-Bowen.pdf. Citigroup disregarded the warnings and red flags and completed the acquisition.

510. On May 12, 2010, the Wall Street Journal reported that "[f]ederal prosecutors, working with securities regulators, are conducting a preliminary criminal probe into whether

several major Wall Street banks misled investors about their roles in mortgage-bond deals, according to a person familiar with the matter. The article noted that:

> the banks under early-stage criminal scrutiny—J.P. Morgan Chase & Co., Citigroup Inc., Deutsche Bank AG and UBS AG—have also received civil subpoenas from the Securities and Exchange Commission as part of a sweeping investigation of banks selling and trading of mortgage-related deals, the person says. Under similar preliminary criminal scrutiny are Goldman Sachs Group Inc. and Morgan Stanley, as previously reported by The Wall Street Journal.

511. As the pending criminal probe indicates, Citigroup's practices were not unique. For example, on June 24, 2010, the Massachusetts Attorney General announced that Morgan Stanley had agreed to pay $102 million to the Commonwealth and borrowers in the Commonwealth to settle charges related to Morgan Stanley's role in facilitating predatory lending by New Century. The Attorney General reported that "our investigation revealed that Morgan Stanley backed loans for homeowners that they knew, or should have known, were destined to fail and they failed to disclose the riskiness of those loans to investors." She noted as well that:

> Morgan Stanley funded, purchased and securitized New Century loans. Morgan developed an intimate knowledge of New Century's business over time. And they uncovered signals pretty early on that the lending practices of New Century were not sound. Morgan Stanley continued to fund and securitize subprime loans even as New Century's bad loans were causing the lender to collapse . . . .

Available at http://www.mass.gov/Cago/docs/press/2010_06_24_ms_settlement_attachment4.pdf

512. Upon information and belief, the Defendants should have known as a result of the red flags generated by their own due diligence as well by third-party due diligence firms hired by the Defendants indicating that the pools of loans they purchased and sold in securitizations were far riskier than was represented to investors, including the Bank.

E. The Vertical Integration of Many of the Firms Involved in the Issuance of the PLMBS Purchased by the Bank Enabled the Controlling Person Defendants to Control the Management and Policies of the Controlled Entities

513. The Controlling Person Defendants, which had a 100% or substantial majority direct or indirect ownership in the respective Depositor/Issuer Defendants, Underwriter Defendants, Sponsors, and/or Originators, as well as the other entities identified herein, had the power to, and did, conduct and participate, directly and indirectly, in the management and control of all aspects of the management and policies of the Controlled Entities, as evidenced by the fact that, *inter alia*:

A. The Controlling Person Defendants created the respective Depositor/Issuer Defendants as their special purpose entities for the purpose of issuing the Certificates that are the subject of this action;

B. The Controlling Person Defendants played other vital roles regarding the structuring and administration of the issuing trusts and certificates, which allowed them to exercise substantial control over many parties to the securitization, including the respective Depositor/Issuer and/or Underwriter Defendants;

C. Revenue from the securitizations inured to the benefit of the Controlling Person Defendants;

D. Statements in the Controlling Person Defendants' SEC filings show control through comprehensive involvement with the Controlled Entities' operations;

E. The financial result of the Controlled Entities were often combined and reported as part of the Controlling Person's reported financial results;

F. The Controlling Person Defendants directly participated in the issuance of the Certificates, including touting their extensive activity and experience in the securitization

market, particularly in initiating securitization of the residential mortgage loans they originated or acquired in the secondary mortgage market and transferring those loans to Depositor Defendants for sale through the trust to purchasers such as the Bank;

G. The Controlling Person Defendants frequently and prominently identified themselves in the Offering Documents; and

H. Officers and/or directors of the Controlling Person Defendant frequently signed the respective registration statements.

514. In addition, the Controlling Person Defendants were frequently parties to the agreements necessary to the securitizations, such as the Pooling and Servicing Agreement, Mortgage Loan Purchase Agreement, Servicing Agreement, Assignment, Assumption and Recognition Agreement, including amendments, restatements and exhibits thereto, which agreements frequently:

A. Were between vertically integrated entities;

B. Were signed by the same officer or director of the Controlling Person Defendant on behalf of the Controlled Entity;

C. For purposes of providing formal notice under the agreement, identified a single individual and/or address as the notice recipient for two or more parties to the agreement and;

D. Provided for indemnification by the Controlling Person Defendant.

515. Control over the vertically integrated firms in all aspects of the securitization is apparent in prospectus language that shows the relationship among the Controlling Person Defendants and the controlled entities. For example, a prospectus for a Citigroup PLMBS states:

> [Depositor Defendant] Citigroup Mortgage Loan Trust Inc., as depositor, was incorporated in the State of Delaware on July 16, 2003 as an indirect wholly-owned subsidiary of [Controlling Person Defendant] Citigroup Financial Products

> Inc. and is an affiliate of [Underwriter Defendant] Citigroup Global Markets Inc.
>
> * * *
>
> The depositor, the sponsor and the underwriter are direct wholly-owned subsidiaries of [Controlling Person Defendant] Citigroup Financial Products, Inc. The trust administrator is a direct wholly-owned subsidiary of Citicorp Holdings Inc., a Delaware corporation. Citigroup Financial Products Inc. and Citicorp Holdings Inc. are both wholly owned subsidiaries of [Controlling Person Defendant] Citigroup Inc.

Prospectus Supplement for Certificate CMLTI 2006-NC1 A2C, dated June 28, 2006.

516. In sum, the Controlling Person Defendants controlled, influenced, or participated in essentially all material aspects relating to the acquisition, structure, and sale of the Certificates purchased by the Bank identified herein.

517. The Controlling Person Defendants' control, position, and influence over the Controlled Defendants made them privy to, and provided them with actual knowledge of, the material facts and omissions concealed from the Bank with regard to the underlying mortgage pools.

F. The Securitization Process Was Supported by Credit Ratings that Materially Misstated the Credit Risk of the PLMBS.

518. The triple-A credit ratings of the PLMBS played a crucial role in the Bank's purchase of PLMBS. Pursuant to Bank policy, the Bank could only purchase triple-A rated tranches of the certificates. Without that rating, no purchase would have occurred. Thus, the Bank relied to its detriment on the ratings and the Defendants' representations regarding the ratings in the Offering Documents.

519. The Defendants well understood (and banked on) the important role the credit ratings played in the PLMBS markets. They featured the ratings prominently in the Offering Documents and discussed at length the ratings received by the different tranches of the PLMBS,

and the bases for the ratings. Yet, the Rating Agencies knew, and the Defendants should have known, that the ratings were not reliable. Those ratings were bought and paid for and were based on flawed information.

1. The Credit Ratings Were Unreliable, Based As They Were on Underwriting Standards That the Rating Agencies Knew Had Been Abandoned.

520. By virtue of their intimate involvement in the securitization process, the Credit Rating Agencies knew that many mortgage originators, including the ones whose abandonment of underwriting guidelines is discussed above, had abandoned their stated mortgage underwriting guidelines, and thus knew that the ratings were false when made.

521. The Senate Subcommittee on Investigations, for example, uncovered internal Rating Agency emails from the summer and fall of 2006 noting that "there has been rampant appraisal and underwriting fraud in the industry for quite some time"; that "underwriting fraud[,] appraisal fraud and the general appetite for new product among originators [are] resulting in loans being made that shouldn't be made"; and that "this is like another banking crisis potentially looming."

522. Standard & Poor's became so concerned with underwriting standards that, when it was asked to rate certificates backed by subprime loans which Fremont Investment and Loan had originated, one analyst asked his supervisors whether he should treat Fremont collateral differently. "No," one of his supervisors responded, "we don't treat their collateral any differently." The other supervisor said that as long as there were current FICO scores for the borrowers, then the analyst was "good to go," no matter how little documentation the origination process required, and regardless of any other characteristic of the mortgage loans.

523. Based on its investigation, the Senate Subcommittee on Investigations found that from 2004 to 2007, the Credit Rating Agencies knew of the increased risks caused by mortgage fraud and lax underwriting standards, but failed to factor those risks into their rating models.

524. Here, just as in other cases, the Credit Rating Agencies did not factor the abandonment of underwriting standards into their analysis of the PLMBS that are the subject of this lawsuit. Instead, they based their ratings on underwriting standards they knew to have been abandoned in practice.

2. The Credit Ratings Were Compromised by Conflicts of Interest, Manipulation and Misinformation.

525. The Credit Rating Agencies received enormous revenues from the issuers who paid them for rating the products they sold.

526. Because the desired rating of a securitized product was the starting point for any securities offering, the Rating Agencies were actively involved in helping issuers structure the products to achieve the requested rating. As a result, the Rating Agencies essentially worked backwards, starting with the issuer's target rating and thereafter working toward a structure that could conceivably yield the desired rating.

527. A 2008 SEC Report entitled, "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies" ("Summary Report") revealed that the issuers and the Credit Rating Agencies worked together so that securities would receive the highest ratings:

> [t]ypically, if the analyst concludes that the capital structure of the RMBS does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the

> senior tranche—as the highest rated tranche—pays the lowest coupon rate of the RMBS tranches and, therefore, costs the arranger the least to fund.

528. As a result of this collaboration with the Credit Rating Agencies, issuers were able to manipulate the system to achieve inflated ratings. For example, through repeated interactions with the Credit Rating Agencies, issuers (and the underwriters working with them) could effectively reverse engineer aspects of the ratings models and then modify the structure of a financing to improve its ratings without actually improving its credit quality. In this process, the issuers and underwriters could change aspects of a PLMBS very slightly—but without any real effect on the economic reality of the instrument—or simply present the same data in a different way, and thus get better ratings. Gretchen Morgenson & Louise Story, *Rating Agency Data Aided Wall Street in Deals*, N.Y. TIMES , Apr. 23, 2010.

529. This rating process was further compromised by the practice of issuers rating shopping. The issuers did not pay for the Credit Rating Agencies services until after the Credit Rating Agencies gave a preliminary rating to the issuer. This practice created, essentially, bidding wars where the issuers would hire the agency that provided the highest rating for the lowest price. The Credit Rating Agencies were paid only if they provided the desired Investment Grade ratings, and only in the event that the transaction closed with those ratings. Ratings shopping jeopardized the integrity and independence of the rating process.

530. Raymond McDaniel, Moody s CEO, realized that the market-share war had undermined the Ratings Agencies work product. In a presentation to Moody s Board of Directors in 2007, he stated,

> The real problem is not that the market does underweights [sic] ratings quality but rather that . . . it actually penalizes quality by awarding rating mandates based on

> the lowest credit enhancement needed for the highest rating. Unchecked, competition on this basis can place the entire financial system at risk.[5]

531. McDaniel described to the board how *Moody's* has "erected safeguards to keep teams from too easily solving the market share problem by lowering standards" but then stated, **"This does NOT solve the problem."** Turning then to a topic he referred to as "Rating Erosion by Persuasion," McDaniel observed, "Analysts and [managing directors] are continually "pitched" by bankers, issuers, investors" and sometimes "we "drink the kool-aid."

3. The Credit Ratings Were Unreliable Due to the Use of Inaccurate, Outdated Models and Inadequate Resources.

532. The outdated models used by the Credit Rating Agencies turned out PLMBS ratings that were inaccurate.

533. The models relied on pre-2000 data, and this data, for a number of reasons, produced wildly inaccurate results. First, this pre-2000 data ignored the dramatic changes in the mortgage industry following 2000: increased lending to riskier borrowers, increased origination of riskier kinds of mortgage loans, and a dramatic rise in housing prices. Second, the pre-2000 data, as the Congressional Research Service reported in 2009, was based on a "benign period of economic moderation in financial markets and rising house prices." Congressional Research Serv., Credit Rating Agencies and Their Regulation 7 (2009). They were useless in predicting the likelihood of default in a time of macroeconomic crisis and falling housing prices.

534. The models had other flaws, too. They attached the wrong weights to the effect of falling housing prices on loan default rates, and they miscalculated the interdependence among loan defaults—the likelihood, in other words, that an economic storm would sink more than one financial ship.

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[5] Exhibit to October 22, 2008, hearing before the House Oversight Committee.

535. The Credit Rating Agencies knew of these flaws, but did nothing to fix them.

536. In 2007, for example, Vickie Tillman, an S&P Executive Vice President, stated before the Senate Banking Committee: "We are fully aware that, for all our reliance on our historically rooted data that sometimes went as far back as the Great Depression, some of that data has proved no longer to be as useful or reliable as it has historically been."

537. In an April 27, 2008 article in the *New York Times* Magazine, Mark Adelson, a former Managing Director in Moody's structured finance division, criticized Moody's use of historical data about 30-year fixed mortgages to predict defaults and delinquencies in the new mortgage market—describing it as "observing 100 years of weather in Antarctica to forecast the weather in Hawaii."

538. In fact, the Credit Rating Agencies themselves did not believe the results their models turned out.

539. In a December 2006 email, an S&P analyst expressed concern by describing the "CDO market" as a "monster" and concluding: "Let's hope we are all wealthy and retired by the time this house of cards falters." In an April 2007 electronic communication uncovered by the Senate Subcommittee on Investigations, two S&P analysts agreed that a particular mortgage-backed deal was "ridiculous," and that the model "definitely does not capture half the ris[k]." A month later, one of those analysts complained that "no body [sic] gives a straight answer about anything around here," and that there were no "clear cut parameters on what the hell we are supposed to do."

540. Eric Kolchinsky, a former managing director at Moody's who oversaw the rating of subprime-mortgage-backed CDOs during 2007, testified before the House Oversight and Government Reform Committee on September 30, 2009 that "[m]ethodologies produced by

Moody's for rating structured finance securities are inadequate and do not realistically reflect the underlying credits. Rating models are put together in a haphazard fashion and are not validated if doing so would jeopardize revenues."

541. Compounding the inherent problems with the rating models was the fact that the Rating Agencies simply did not commit the resources necessary to adequately rate residential-mortgage-backed financial products.

542. Frank L. Raiter, who from 1995 until 2005 was a Managing Director at S&P's and head of its Residential Mortgage Rating Group, stated in prepared testimony before the Senate Subcommittee on Investigations that "in the residential ratings group[,] . . . between 1995 and 2005[,] rating volumes grew five or six fold without similar increases in staffing. Rating production was achieved at the expense of maintaining criteria quality."

543. This inadequate staffing had practical consequences: it meant that the Rating Agencies were not able to improve the models they knew were producing inaccurate and misleading ratings. As Raiter testified, by early 2004 S&P had developed a model that took into account much more historical data than had been analyzed previously—a new model suggesting that the model then in use "was underestimating the risk of some Alt-A and subprime products." Due to inadequate staffing, Raiter testified, this model "was never implemented." If S&P had implemented the new model, stated Raiter, it would have required much greater credit enhancement from PLMBS issuers in 2005, 2006, 2007—at the price of being assigned much less favorable ratings.

544. Similarly, Jerome Fons, a former Managing Director of Credit Policy at Moody's, testified before the House Oversight Committee on October 22, 2008 that when evidence arose

that previously assigned ratings of PLMBS were inaccurate, the Rating Agencies did not update their models or their thinking.

4. The Rating Agencies Knew, and the Defendants Should Have Known, That the PLMBS Ratings in This Case Fundamentally Differed from the Ratings of Corporate Bonds.

545. Neither the Credit Rating Agencies nor Defendants disclosed to investors that the ratings of PLMBS were materially different from, and less reliable than, standard corporate bond ratings.

546. Instead, the Credit Rating Agencies represented that the credit ratings were comparable to corporate bonds. Moody s stated in a 2004 presentation that, [t]he comparability of these opinions holds regardless of the country of the issuer, its industry, asset class, or type of fixed-income debt. A May 2007 S&P document on rating methodology stated: Our ratings represent a uniform measure of credit quality globally and across all types of debt instruments. In other words, an AAA rated corporate bond should exhibit the same degree of credit quality as an AAA rated securitized debt issue.

547. In fact, however, the Credit Rating Agencies did not simply estimate expected loss and/or probability of default in determining the ratings of the PMLBS purchased by the Bank, as they do with corporate bonds. Rather, the agencies employ mathematical credit risk models based on random event simulations to determine the estimated loss distributions associated with the great many separate assets that backed those PLMBS. These models require the Credit Rating Agencies to make many estimates and assumptions regarding each of the various assets, including the degree to which losses or defaults on these assets would be correlated with each other.

548. The Credit Rating Agencies in this case knowingly made unreasonable

assumptions about how frequently defaults on the assets would be correlated with each other. *See supra* ¶¶533-537. And, unlike the assumptions the Credit Rating Agencies use for rating other instruments, such as corporate bonds, the correlation assumptions used to rate the PLMBS in this case were based on dramatically incomplete historical data or on pure speculation.

549. Defendants, by virtue of their close working relationship with the Rating Agencies, and their abundant and well-documented efforts to game the ratings to ensure the AAA or AA rating that was necessary for the sale of their PMLBS, should have known that the rating of the PLMBS differed fundamentally from the rating of corporate bonds in the way just described.

5. Subsequent Downgrades Confirm that the Investment Grade Ratings Reported in the Offering Documents Were Unjustifiably High and Misstated the True Credit Risk of the PLMBS Purchased by the Bank.

550. "Investment grade" products are understood in the marketplace to be stable, secure, and safe. Using S&P's scale, "investment grade" ratings are AAA, AA, A and BBB, and represent, respectively, highest credit quality, high credit quality, upper-medium credit quality and medium credit quality. Any instrument rated below BBB is considered below investment grade or, colloquially, a "junk bond."

551. Each prospectus supplement states that the issuance of the PLMBS was conditioned on the assignment of particular, investment grade ratings, and listed the ratings in a chart.

552. As noted, the Bank purchased only triple-A rated tranches of PLMBS. However, the triple-A ratings of the PLMBS misstated the credit quality of the underlying loans. The triple-A rating denotes "high credit-quality," and is the same rating as those typically assigned to

bonds backed by the full faith and credit of the United States Government, such as Treasury Bills.

553. On or about July 10, 2007, S&P publicly announced it was revising the methodologies used to rate numerous MBS because the performance of the underlying collateral "called into question" the accuracy of the loan data. S&P announced it was revising its methodology assumption to require increased "credit protection" for rated transactions. S&P reiterated that it would seek in the future to review and minimize the incidence of potential underwriting abuse given "the level of loosened underwriting at the time of loan origination, misrepresentation and speculative borrow behavior reported for the 2006 ratings."

554. One day later, on July 11, 2007, Moody's announced it was also revising its methodology used to rate the MBS and anticipated MBS downgrades in the future. Moody's did in fact significantly downgrade most of the MBS, noting "aggressive underwriting" used in the origination of the collateral.

555. Yet, at the time these statements were made in July 2007, all of the PLMBS at issue in this case retained their investment-grade ratings.

556. Historically, investments with triple-A ratings had an expected loss rate of less than .05%. The default rate on investment grade corporate bonds from 1981 to 2008, for example, averaged about 0.106% with no year higher than 0.41%.

557. Beginning in the spring of 2008, the PLMBS purchased by the Bank also became subject to these rating agency downgrades. Forty of the forty-three triple-A rated certificates at issue in this case (originally valued at over $3.3 billion) now have been downgraded to non-investment grade ratings, *i.e.*, junk status.

558. The en masse downgrade of triple-A rated PLMBS indicates that the ratings set forth in the Offering Documents were false, unreliable, and inflated. As the SEC has noted, "[a]s the performance of these securities continued to deteriorate, the three rating agencies most active in rating these instruments downgraded a significant number of their ratings. The rating agencies['] performance in rating these structured finance products raised questions about the accuracy of their credit ratings generally as well as the integrity of the ratings process as a whole." SUMMARY REPORT OF ISSUES IDENTIFIED IN THE COMMISSION STAFF'S EXAMINATIONS OF SELECT CREDIT RATING AGENCIES BY THE STAFF OF THE SECURITIES AND EXCHANGE COMMISSION at 2 (July 2008). The Defendants should have known the Offering Documents' statements with respect to these ratings were misleading because of their direct involvement in and manipulation of the rating process and awareness of the poor credit quality of the underlying loan collateral.

6. The Bank Reasonably Relied on the Credit Ratings Reported in the Prospectuses.

559. The Bank did not know, and reasonably could not have known, that the credit ratings set forth in the Offering Documents were flawed, and that the rating agencies knew they were flawed. The Bank did not know that when they secured the credit ratings reported in the Offering Documents, the Depositor/Issuer Defendants and the Underwriter Defendants had done so by gaming the system. Moreover, the Bank did not know that the specific statements regarding the ratings contained in the Offering Documents were false – specifically, that the ratings did not in fact address the risk of the certificates and the likelihood of payment by borrowers on the underlying mortgage loans. No disclosure in any Offering Document informed the Bank that the rating was the unreliable result of inaccurate information and deficient modeling, as opposed to a legitimate evaluation of credit risk.

560. The Credit Rating Agencies continued to assure the market of the integrity of their MBS ratings long after the PLMBS at issue here were purchased by the Bank. In a letter to the editor of *The Wall Street Journal* dated September 17, 2007, Vickie Tillman, then Executive Vice President of Credit Market Services at S&P, stated: "We have numerous safeguards in place that have helped us effectively manage potential conflicts of interest. "Our credit ratings provide objective, impartial opinions on the credit quality of bonds." Tillman likewise testified before the Senate Committee on Banking, Housing and Urban Affairs on September 26, 2007:

> S&P maintains rigorous policies and procedures designed to ensure the integrity of our analytical processes. For example, analysts are not compensated based upon the amount of revenue they generate. Nor are analysts involved in negotiating fees. Similarly, individuals responsible for our commercial relationships with issuers are not allowed to vote at rating committees. These policies, and others, have helped ensure our long-standing track record of excellence.

561. The Rating Agencies also assured the market that the ratings assigned to PLMBS were just as reliable as ratings assigned to corporate bonds. *See supra* ¶546.

562. At the time these statements were made in September 2007, all of the PLMBS at issue in this case retained their investment-grade ratings.

G. The Proper Steps Were Not Taken To Ensure That The Mortgages Underlying The Trusts Were Enforceable.

1. The PLMBS Have Value Only If the Mortgage Loans and Mortgages Have Been Validly Assigned and Transferred to the Issuing Trust Such That They Are Enforceable

563. For PLMBS certificates to have any value, the issuing trust must be able to enforce the mortgage notes that back the certificates. If the trust cannot enforce the loans, they are effectively worthless—and so are the certificates.

564. The mortgage originator is the entity responsible for generating the loans that are ultimately transferred to the trusts. But if the trustee is to enforce the loans—and if PLMBS

certificates are to have any value—both the promissory note executed by the borrower and the mortgage itself must be validly transferred to the trust in the securitization process.

565. The promissory notes and mortgages are not transferred directly from the loan originator to the trust. Instead, they are typically transferred to a depositor, or to a sponsor and thence to a depositor. *See supra* ¶¶87-88.

566. The Offering Documents for all of the PLMBS in this action represented that the mortgage notes would be validly transferred to the issuing trust in accordance with specified procedures.

567. A trust that issues PLMBS certificates must be able to enforce not only the mortgage notes that back the certificates, but also the mortgages that secure the mortgage notes. If the mortgages cannot be enforced, then the properties that secure the mortgage notes cannot be foreclosed on if the borrower defaults. If the mortgages that secure the mortgage notes are not enforceable, PLMBS are to that extent worthless.

568. Before mortgages can be enforced by the trustee, however, they must be validly assigned to the issuing trust.

569. Before a purported mortgage holder can foreclose on a mortgaged property, state law generally requires that the purported holder—if it is not the original mortgagee—prove that it is a valid assignee of the mortgage. The assignment, or chain of assignment, must trace back without gaps to the original mortgagee, it must be in writing, and it must identify the mortgage that is assigned.

570. The Offering Documents for all of the PLMBS in this action represented that the mortgages would be validly assigned to the issuing trust in accordance with specified procedures.

2. Failure to Validly Assign and Transfer the Mortgages or Mortgage Loans to the Issuing Trust Has Been Systemic, Thus Materially Affecting the Value of the PLMBS Certificates

571. A material number of the mortgage notes underlying the issuing trusts have not been validly transferred in accordance with the procedures outlined in the Offering Documents.

572. The best known example of this failure is *Kemp v. Countrywide Home Loans, Inc. (In re Kemp)*, No. 08-18700 (Bankr. D.N.J.), in which Linda DeMartini, whom Countrywide had employed for a decade and who testified that in her employment, she had been "involved in every aspect of the servicing," and "had to know about everything,"[6] testified—on direct examination—that failure to deliver the promissory note to the trust was normal operating procedure for Countrywide when acting as originator and servicer.[7] Among the PLMBS at issue in this action, Countrywide was an originator and servicer for SARM 2005-21 3A1.

573. In *Kemp*, the U.S. Bankruptcy Court for the District of New Jersey, applying New Jersey law, held that because the debtor's mortgage note had not been physically transferred to the issuing trust's trustee, or properly indorsed, it was not enforceable by either the issuing

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[6] *Kemp*, Hr'g Tr. 45:7, :9-10 (Aug. 11, 2009).

[7] As DeMartini testified:

> Q. [I]s it generally the custom . . . for [the trust] to hold the documents?
> A. No. They would stay with us as the servicer.
> . . .
> Q. So I believe you testified Countrywide was the originator of this loan?
> A. Yes.
> . . .
> Q. So the physical documents were retained within the corporate entity Countrywide or Bank of America?
> A. Correct.
> Q. . . . [W]ould you say that this is standard operating procedure in the mortgage banking business?
> A. Yes. It would be . . . the normal course of business . . . , as we're the ones that are doing all the servicing, and that would include retaining the documents.

Id. at 14:5-15:6.

trust s trustee or the trustee s agent. *Kemp v. Countrywide Home Loans, Inc. (In re Kemp)*, 440 B.R. 624, 630-34 (Bankr. D.N.J. 2010).

574. Similarly, recent months have revealed that a material number of the mortgages backing the PLMBS were not validly assigned to the issuing trusts in accordance with the procedures outlined in the Offering Documents. *U.S. Bank N.A. v. Ibanez*, 941 N.E.2d 40 (Mass. 2011), for example, consisted of two consolidated cases arising out of two different mortgages purportedly assigned to two different mortgage-backed trusts. In both, there was no evidence that, prior to the foreclosure sales, the mortgage had ever been assigned to the relevant depositors. *See Ibanez*, 941 N.E.2d at 649-50.

575. In both of the cases consolidated in *Ibanez*, the servicer was Option One. In both cases, Option One failed to validly assign the mortgage to the issuing trust such that the issuing trust could enforce it. Among the PLMBS at issue here, Option One is the servicer for OOLMT 2005-5 A3 and OOLMT 2006-2 2A3.

576. These failures appear to be systemic in the industry. Even if they do not affect every mortgage underlying every issuing trust, the failures affect a sufficient number of the mortgages and materially impair the value of the PLMBS.

577. Multiple cases have been filed in courts across the country by homeowners challenging the right of financial institutions to foreclose. *See, e.g.*, *In re Mims*, 438 B.R. 52 (Bankr. S.D.N.Y. 2010); *Deutsche Bank Nat'l Trust Co. v. Tarantola (In re Tarantola)*, No. 09-09703, 2010 WL 3022038 (Bankr. D. Ariz. July 29, 2010); *In re Weisband*, 427 B.R. 13 (Bankr. D. Ariz. 2010); *Wells Fargo Bank, N.A. v. Marchione*, 887 N.Y.S.2d 615 (App. Div. 2009); *IndyMac Bank F.S.B. v. Garcia*, 28 Misc. 3d 1202(A) (N.Y. Sup. Ct. 2010); *Deutsche Bank Nat'l Trust Co. v. McRae*, 894 N.Y.S.2d 720 (Sup. Ct. 2010); *Citigroup Global Markets Realty Corp.*

v. Bowling, 25 Misc. 3d 1244(A) (N.Y. Sup. Ct. 2009); *HSBC Bank USA, N.A. v. Miller*, 889 N.Y.S.2d 430 (Sup. Ct. 2009); *Deutsche Bank Nat'l Trust Co. v. Abbate*, 25 Misc. 3d 1216(A) (N.Y. Sup. Ct. 2009); *In re Adams*, 693 S.E.2d 705 (N.C. Ct. App. 2010); *HSBC Bank USA v. Thompson*, No. 23761, 2010 WL 3451130 (Ohio Ct. App. Sept. 3, 2010); *Bank of N.Y. v. Gindele*, No. C-090251, 2010 WL 571981 (Ohio Ct. App. Feb. 19, 2010).

578. According to the *New York Times*, the United States Trustee Program has taken the unusual step of intervening in bankruptcy proceedings to force the mortgage companies to prove that they own, or otherwise have the standing required to enforce, the mortgages on which they are seeking to foreclose. See Gretchen Morgenson, *Don't Just Tell Us. Show Us That You Can Foreclose*, N.Y. TIMES , Nov. 27, 2010. The *Time's* article noted the Trustee s intervention in two Atlanta bankruptcy cases, one involving Wells Fargo and the other involving J.P. Morgan Chase.

579. The failure is also shown by the recent drop in foreclosures system-wide, which is attributable to lack of necessary documentation. *See, e.g.*, Dan Levy & John Gittelsohn, *Foreclosure Filings Hit Three-Year Low As U.S. Servicers in "Dysfunction"*, Bloomberg News, Mar. 9, 2011, *available at* http://www.bloomberg.com/news/2011-03-10/foreclosure-filings-drop-to-3-year-low-as-u-s-servicers-in-dysfunction-.html. In addition, in the Fall of 2010, major financial institutions such as Bank of America (which acquired Countrywide) and J.P. Morgan Chase, both originators of mortgages underlying the certificates purchased by the Bank, announced they were suspending mortgage foreclosures because they had discovered significant problems in their ability to locate and document the ownership of mortgage notes.

580. The evidence of misconduct in this regard has been so severe and pervasive that the Attorneys General of all 50 states have announced an investigation into the Defendants

practices. In addition, major financial institutions have reserved hundreds of millions, if not billions, of dollars to address litigation and losses stemming from the financial crisis and foreclosure problems.

581. Perhaps most telling is a recent proposal by a group friendly to the mortgage industry to enact federal legislation to loosen the standards for foreclosure. Jason Gold & Anne Kim, Third Way, *Fixing "Foreclosure-gate"* (2011), *available at* http://content.thirdway.org/publications/362/Third_Way_Memo_-_Fixing_Foreclosure-gate.pdf. The proposal would hardly be necessary if the industry's house were in order.

V. DEFENDANTS' MATERIAL UNTRUE STATEMENTS AND OMISSIONS IN CONNECTION WITH THE SALE OF PLMBS TO FHLBC

582. As detailed above, the Sponsor purchased mortgage loans and deposited them into issuing trusts, from which the Depositor/Issuer issued certificates, and the Underwriter Defendants—Wall Street banks and other large financial institutions—offered and sold those certificates to the Bank through the Offering Documents for each securitization. The Depositor/Issuer and Underwriter Defendants drafted the Offering Documents. In addition, each Depositor/Issuer Defendant and Underwriter Defendant was identified in these documents as the depositor/issuer or underwriter, respectively, of the certificates, and approved the versions of these documents that were delivered by the Underwriter Defendants to Plaintiff.

583. The Offering Documents contained extensive material misstatements and omissions of material facts with regard to the underwriting guidelines and practices purportedly applied by the mortgage originators whose loans backed the PLMBS purchased by the Bank, the appraisal process underlying the LTV ratios, predatory lending abuses by the mortgage originators, the transfer and enforceability of the mortgage loans underlying the certificates, and a number of key characteristics of the mortgage pools that pertain to the risk of the certificates.

These misstatements are not predictions of future events or subjective opinions; rather these misstatements constitute misrepresentations of current or historical material facts that were false when made. Moreover, all of the misstatements concern information that the Bank did not have access to and could not independently verify this information was only available to the Defendants, and thus the Bank relied upon the Defendants to accurately present the information. The Bank notes, in particular, that unlike Defendants, it did not have access to the mortgage loan files that contain (or at one time contained) complete information regarding the mortgage loans backing the PMLBS purchased by the Bank. Specifically, the misstatements and omissions of material fact are as follows:

A. Defendants Misrepresented Underwriting Guidelines Utilized by Mortgage Lenders

1. The Materiality of Underwriting Guidelines

584. As alleged above, the originator s underwriting standards, and the extent to which the originator departs from its standards, are key indicators of the risk of the mortgage loans made by the originator. And because the mortgage loans back the certificates that are issued to investors such as the Bank, the loan underwriting standards are also material to assessing the risk of the PLMBS certificates. For these reasons, the originator s underwriting standards as described in the Offering Documents were material to the Bank s decision to purchase the PLMBS certificates at issue here.

2. Misstatements Regarding Underwriting Guidelines

585. The Offering Documents contained material untrue or misleading statements and omissions regarding the underwriting guidelines allegedly employed in the origination of the mortgage loans that secure the PLMBS. Appendix III attached hereto and incorporated herein sets forth those statements and omissions and the reasons each is misleading. The following are

examples of these materially misleading statements and omissions regarding mortgages originated or acquired by Wells Fargo Bank, taken from the Banc of America Funding 2006-F Trust Prospectus Supplement (incorporated herein by this reference):

- That Wells Fargo's underwriting standards were used "*to evaluate the applicant's credit standing and ability to repay the loan, as well as the value and adequacy of the mortgaged property as collateral.*" BAFC 2006-F Pros. Sup. S-30 (emphasis added).
- That Wells Fargo balanced the following factors in determining a mortgagor's eligibility for a mortgage: "the amount of the loan, the ratio of the loan amount to the property value (i.e., the lower of the appraised value of the mortgaged property and the purchase price), the borrower's means of support and the borrower's credit history." BAFC 2006-F Pros. Sup. S-30.
- That Wells Fargo "supplements the mortgage loan underwriting process with either its own proprietary scoring system or scoring systems developed by third parties," which scoring systems provided "*consistent, objective measures of borrower credit and certain loan attributes*" that were then "used to evaluate loan applications and assign each application a 'mortgage score.'" BAFC 2006-F Pros. Sup. S-31 (emphasis added).
- That Wells Fargo required that "borrowers applying for loans must demonstrate that the ratio of their total monthly debt to their monthly gross income does not exceed a certain maximum level," which varied depending on the following factors:

[L]oan-to-value ratio, a borrower's credit history, a borrower's liquid net worth, the potential of a borrower for continued employment advancement or income growth, the ability of the borrower to accumulate assets or to devote a greater portion of income to basic needs such as housing expense, a borrower's Mortgage Score and the type of loan for which the borrower is applying.

BAFC 2006-F Pros. Sup. S-32.

- That "[t]he Mortgage Score is used to determine the type of underwriting process and which level of underwriter will review the loan file." These levels were described as follows:

  For transactions which are determined to be low-risk transactions, based upon the Mortgage Score and other parameters (including the mortgage loan production source), the lowest underwriting authority is generally required. For moderate and higher risk transactions, higher level underwriters and a full review of the mortgage file are generally required. Borrowers who have a satisfactory Mortgage Score (based upon the mortgage loan production source) are generally subject to streamlined credit review (which relies on the scoring process for various elements of the underwriting assessments). Such borrowers may also be eligible for a reduced documentation program and are generally permitted a greater latitude in the application of borrower debt-to-income ratios.

  BAFC 2006-F Pros. Sup. S-31.

- That "Wells Fargo Bank permits debt-to-income ratios to exceed guidelines when the applicant has documented compensating factors for exceeding ratio guidelines such as documented excess funds in reserves after closing, a history of making a similar sized monthly debt payment on a timely basis, substantial residual income after monthly obligations are met, evidence that ratios will be reduced shortly after closing when a financed property under contract for sale is sold, or additional income has been verified for one or more applicants that is ineligible for consideration as qualifying income." BAFC 2006-F Pros. Sup. S-32 (emphasis added).

- The Supplement further asserts the following with regard to mortgages purchased from originators other than Wells Fargo:

  > In order to qualify for participation in Wells Fargo Bank's mortgage loan purchase programs, lending institutions must (i) meet and maintain certain net worth and other financial standards, (ii) demonstrate experience in originating residential mortgage loans, (iii) meet and maintain certain operational standards, (iv) evaluate each loan offered to Wells Fargo Bank for consistency with Wells Fargo Bank's underwriting guidelines or the standards of a pool insurer and represent that each loan was underwritten in accordance with Wells Fargo Bank standards or the standards of a pool insurer and (v) utilize the services of qualified appraisers.
  >
  > BAFC 2006-F Pros. Sup. S-30.

586. These statements were materially misleading for multiple reasons that Appendix III describes in detail. Fundamentally, they grossly distort the underwriting process that was actually employed by indicating that it was a principled process that followed stated standards and employed enumerated safeguards. However, as described above in Sections IV.B and IV.C, both Wells Fargo and the other originators of mortgage loans that backed the PLMBS purchased by the Bank effectively abandoned their stated underwriting standards in an effort to maximize their mortgage origination volume. Thus Wells Fargo and other originators did not follow the underwriting standards set forth or otherwise referred to in the Offering Documents. "Exceptions" to standards became the rule. Reduced documentation was employed not to streamline the process where warranted, but instead to mask the borrower's disqualification.

587. In addition, the statements were materially misleading because they failed to disclose that Wells Fargo had no reliable basis on which to conclude that the scoring systems allegedly employed provided the asserted "consistent, objective measures of borrower credit," or that the resulting "mortgage score" was a reliable indicator of the probability of default. Wells Fargo, like others in the industry, constructed "models" to justify their underwriting programs,

but the models were based on scant historical data and were therefore utterly unreliable. Indeed, the explosion in Alt-A, subprime and other untraditional lending, described *supra* § IV.B.1, rendered irrelevant the industry s historical models, which were based on traditional underwriting practices. But Wells Fargo and others continued to use this data to construct models to justify their ever-less rigorous underwriting programs, and continued to present these models and programs to investors as prudent, thoroughly tested, and well-grounded in reliable and objective data.

588. The statements were further materially misleading because they failed to disclose that Wells Fargo, like the other originators of mortgages that backed the PLMBS purchased by the Bank, lacked adequate procedures and practices to monitor or evaluate their mortgage loan underwriters exercise of judgment, or to provide appropriate training and education to their mortgage loan underwriters.

3. Evidence Demonstrating Misstatements in the Offering Documents Regarding the Originators' Underwriting Practices.

a. Government investigations, actions and settlements, confidential witnesses and evidence developed in other private lawsuits demonstrate systematic and pervasive abandonment of stated underwriting practices by the originators.

589. As alleged in detail above, government investigations and lawsuits, press reports, and statements of confidential witnesses who are former employees of mortgage originators all document how the mortgage originators who issued the loans backing the PLMBS purchased by the Bank failed to apply their stated underwriting guidelines, ensure that compensating factors justified exceptions, and obtain accurate appraisals. Additional evidence has been generated by the many other private lawsuits against many of the same Defendants in connection with the sale of MBS and related certificates. This evidence and the allegations herein based on this

evidence demonstrates that the statements in the Offering Documents regarding the mortgage originators underwriting and appraisal practices are false and misleading. Contrary to the representations in the Offering Documents, the mortgage originators did not genuinely attempt to determine the borrowers ability to pay, or the adequacy of the collateral provided for the loans they issued, but abandoned these standards in order to issue and sell for securitization as many loans as possible.

b. Analysis of loans that backed the PLMBS purchased by the Bank demonstrates the abandonment of stated underwriting practices by the originators.

590. Analysis of the specific loans that backed the PLMBS purchased by the Bank show high rates of delinquency and foreclosure, evidencing a pervasive disregard of sound underwriting practices.

591. For example, for the following PLMBS, the rate of delinquent loans as of December 2010 was 10% or greater:

- Certificate AMSI 2005-R10 A2B, 29.44%
- Certificate ARSI 2005-W5 A2C, 44.04%
- Certificate BAFC 2006-C 2A1, 33.54%
- Certificate BAFC 2006-E 2A2, 30.51%
- Certificate BAFC 2006-E 3A1, 23.09%
- Certificate BAFC 2006-F 2A1, 23.75%
- Certificate BAFC 2006-F 3A1, 18.84%
- Certificate CBASS 2006-CB4 AV3, 44.90%
- Certificate CMLTI 2006-NC1 A2C, 52.57%
- Certificate CMLTI 2006-WFH2 A2B, 37.48%

- Certificate CMLTI 2006-WFH4 A3, 37.85%
- Certificate CMLTI 2006-NC2 A2B, 50.74%
- Certificate FFML 2006-FF13 A2C, 47.70%
- Certificate FFML 2006-FF8 IIA3, 51.55%
- Certificate FFML 2006-FF12 A3, 34.13%
- Certificate FFML 2006-FF12 A4, 34.13%
- Certificate FFML 2006-FF14 A5, 34.81%
- Certificate FFML 2006-FF10 A7, 34.17%
- Certificate FHASI 2006-AR1 2A1, 19.49%
- Certificate FHLT 2005-E 2A3, 58.65%
- Certificate GMACM 2006-AR2 2A1, 16.41%
- Certificate GMACM 2006-AR2 4A1, 20.82%
- Certificate GSAMP 2006-NC2 A2C, 42.33%
- Certificate HVMLT 2006-2 2A1A, 17.61%
- Certificate INABS 2005-D AII3, 37.25%
- Certificate INDX 2006-AR15 A2, 35.70%
- Certificate MABS 2006-NC1 A3, 41.69%
- Certificate MSAC 2006-WMC2 A2C, 49.20%
- Certificate MSAC 2006-HE5 A2C, 58.44%
- Certificate MSAC 2006-HE6 A2C, 70.67%
- Certificate NHELI 2006-WF1 A3, 36.36%
- Certificate OOMLT 2005-5 A3, 35.66%

- Certificate OOMLT 2006-2 2A3, 44.92%
- Certificate RFMSI 2006-SA2 2A1, 18.10%
- Certificate RASC 2005-KS12 A2, 35.34%
- Certificate SABR 2006-FR3 A2, 50.25%
- Certificate SABR 2006-NC3 A2B, 40.86%
- Certificate SEMT 2006-1 2A1, 26.11%
- Certificate SEMT 2006-1 3A1, 29.84%
- Certificate SARM 2005-21 3A1, 24.58%
- Certificate WFHET 2006-3 A2, 46.04%
- Certificate WFMBS 2006-AR3 A4, 13.42%

592. Similarly, for the following PLMBS purchased by the Bank, the rate of foreclosure as of December 2010 was 5 percent or greater:

- Certificate AMSI 2005-R10 A2B, 14.23%
- Certificate ARSI 2005-W5 A2C, 27.34%
- Certificate BAFC 2006-C 2A1, 15.30%
- Certificate BAFC 2006-E 2A2, 14.30%
- Certificate BAFC 2006-E 3A1, 8.61%
- Certificate BAFC 2006-F 2A1, 7.09%
- Certificate BAFC 2006-F 3A1, 10.23%
- Certificate CBASS 2006-CB4 AV3, 18.42%
- Certificate CMLTI 2006-NC1 A2C, 25.39%
- Certificate CMLTI 2006-WFH2 A2B, 16.19%

- Certificate CMLTI 2006-WFH4 A3, 14.23%
- Certificate CMLTI 2006-NC2 A2B, 24.15%
- Certificate FFML 2006-FF13 A2C, 18.74%
- Certificate FFML 2006-FF8 IIA3, 19.62%
- Certificate FFML 2006-FF12 A3, 12.41%
- Certificate FFML 2006-FF12 A4, 12.41%
- Certificate FFML 2006-FF14 A5, 12.95%
- Certificate FFML 2006-FF10 A7, 12.02%
- Certificate FHASI 2006-AR1 2A1, 10.48%
- Certificate FHLT 2005-E 2A3, 25.61%
- Certificate GMACM 2006-AR2 2A1, 6.72%
- Certificate GMACM 2006-AR2 4A1, 12.16%
- Certificate GSAMP 2006-NC2 A2C, 19.84%
- Certificate INABS 2005-D AII3, 24.08%
- Certificate INDX 2006-AR15 A2, 19.63%
- Certificate MABS 2006-NC1 A3, 19.03%
- Certificate MSAC 2006-WMC2 A2C, 23.42%
- Certificate MSAC 2006-HE5 A2C, 21.90%
- Certificate MSAC 2006-HE6 A2C, 27.12%
- Certificate NHELI 2006-WF1 A3, 13.22%
- Certificate OOMLT 2005-5 A3, 17.16%
- Certificate OOMLT 2006-2 2A3, 22.62%

- Certificate RFMSI 2006-SA2 2A1, 9.45%
- Certificate RASC 2005-KS12 A2, 16.25%
- Certificate SABR 2006-FR3 A2, 25.41%
- Certificate SABR 2006-NC3 A2B, 19.37%
- Certificate SEMT 2006-1 2A1, 13.74%
- Certificate SEMT 2006-1 3A1, 12.13%
- Certificate SARM 2005-21 3A1, 10.73%
- Certificate WFHET 2006-3 A2, 16.86%
- Certificate WFMBS 2006-AR3 A4, 6.37%

B. Defendants Misrepresented the Appraisal Process and Loan-to-Value Ratios ("LTV") That Were Based Upon Those "Appraisals"

1. The Materiality of Representations Regarding Appraisals and LTVs

593. The loan-to-value ratio of a mortgage loan is the ratio of the amount of the mortgage loan to the value of the mortgaged property when the loan is made. For example, a loan of $200,000 secured by property valued at $500,000 has an LTV of 40%; a loan of $450,000 on the same property has an LTV of 90%. The LTV is one of the most important measures of the risk of a mortgage loan because it is a primary determinant of the likelihood of default. The lower the LTV, the greater the borrower's equity relative to the value of the house. Thus, when an LTV is low, it is less likely that a decline in the property's value will wipe out the owner's equity and give the owner an incentive to stop making mortgage payments and abandon the property (a "strategic default"). Additionally, lower LTV ratios indicate that the losses on loans that do default will be less severe – *i.e.*, loans with lower LTVs provide a greater equity

□cushion□ because the proceeds of foreclosure are more likely to cover the unpaid balance on the mortgage loan.

594. Because the numerator (the amount of the loan) is predetermined, the key to an accurate LTV is an accurate denominator (the value of the property). The key to an accurate denominator, in turn, is an accurate appraisal of the property. In a purchase of a property, the denominator in the LTV is usually determined by choosing the lower of the purchase price or the appraised value. In a refinancing or home equity loan, the denominator is always an appraised value because there is no purchase price. Accordingly, an inflated appraisal will inflate the denominator of the LTV.

595. A denominator that is too high will understate, sometimes greatly, the risk of a loan. In the example above, if the property□s actual value is $500,000, but is valued incorrectly at $550,000, then the LTV of the $200,000 loan falls from 40% to 36.4%, and the LTV of the $450,000 loan falls from 90% to 81.8%. In either case, an LTV that is based upon an improperly inflated appraisal value understates the risk of the loan.

596. Additionally, at higher LTV ratios or higher loan amounts, even minor inflations in a property□s value can translate to significantly riskier loans. In the example above, although the risk of a loan with an LTV of 40% is greater than the risk of one with an LTV of 36.4%, both imply a relatively safe loan because of the large equity cushions. By contrast, a loan with an LTV of 90% is much riskier than one with an LTV of 81.8%. In the case of a loan with an LTV of 81.8%, there is an equity cushion of 18.2% of the value of the property, while in the case of the 90% LTV loan, the equity cushion is only 10%—just over half as much. Thus, in the example in the preceding paragraph, the $50,000 overstatement in the appraisal has a far more dramatic effect on the risk profile of the $450,000 loan than on the $200,000 loan.

597. Because the riskiness of the underlying loans in the asset pool (including the risk of default and the severity of the losses on default) impacts the risk of the associated PLMBS certificates, aggregate LTV metrics are material to an investor's decision to purchase PLMBS, and, specifically, were material to the Bank. The sole source of payment on the certificates is the cash flow from the mortgage loans that back them. If borrowers fail to make their payments, there is less cash to pay the investors in the certificates. The safety of their certificates consequently depends upon the quality of the loans, and a key indicator of loan quality is an LTV ratio resulting from an appraisal conducted in accordance with governing standards. In fact, credit rating agencies use LTVs to determine the proper structuring and credit enhancement necessary to assign a particular rating to a security. If the LTVs of the mortgage loans in the asset pool of the securitization are not based on appraisals conducted in accordance with governing standards, as the Bank alleges here, *see infra* ¶¶603-612, the ratings of the certificates sold in that securitization will also be incorrect. Investors will therefore be misled about the risk of investing in a particular PLMBS certificate.

598. LTVs also serve as indicators of prepayment patterns – that is, the number of borrowers who pay off their mortgage loans before maturity. LTVs thus predict the expected lives of the loans and the associated PLMBS certificates that are backed by the loans. Prepayment patterns affect many aspects of the PLMBS certificates that are material to the investors purchasing them, such as the life of the certificate and the timing and amount of cash that the investor will receive during that life.

599. Even seemingly minor differences in the aggregate LTV metrics have a significant effect on both the risk and rating of each certificate sold in the securitization. For example, assume the Offering Documents assert that the loan pool had a weighted average LTV

(*i.e.*, the average of the LTVs for the mortgages in the pool, weighted by the principal amount thereof) of 80%. If the true weighted average LTV (after correcting flawed procedures in appraisals that overstated the value of the properties securing the mortgages) was 82%, the Offering Documents assertion would constitute a material misstatement of the risk profile of the mortgage pool—and the PLMBS the pool secured—because the equity cushion (and the borrowers equity interest in the properties) would be eroded by 10%.

600. Finally, because an LTV is only as reliable as the appraisal used to determine the value of the collateral, LTVs and aggregate LTV metrics are meaningless to PLMBS investors unless the appraisals underlying the LTVs are done in accordance with governing standards. Thus statements regarding the valuation of collateral—including statements that appraisals were conducted in calculating the LTVs and that such appraisals conformed to uniform standards—are material to an investor s decision to purchase PLMBS, and, specifically, were material to the Bank:

> Mortgage bankers and investors consider the property appraisal one of the most important documents contained in the loan file since it establishes the value of the property securing the mortgage loan. In fact, investors put review of the appraisal on the same level as the review of credit. The appraisal assists the mortgage banker in assessing the collateral risk . . . . Obviously, the ultimate investor wants to mitigate such risk and relies on the appraisal to ensure that the property falls within the investor's valuation parameters.

Handbook of Mortgage Lending 165 (Mortgage Bankers Ass'n of Am. 2003).

601. Furthermore, assertions that appraisals conformed to the applicable standards are material to PLMBS investors like the Bank because such investors like the Bank have no reasonable means of verifying the LTVs represented metrics asserted in the offering documents at the time of sale. When conducted in accordance with governing standards, appraisals and their resulting LTVs are based on knowledge of particular facts that are not available to investors

in mortgage backed securities - an investor simply does not have access to the relevant data, let alone the time and resources needed to conduct an independent valuation of each piece of collateral underlying each certificate.

602. Statements regarding the independence and impartiality of appraisers are important as they provide assurance that manipulation by mortgage originators did not artificially inflate the LTVs. Likewise, statements in the Offering Documents that the appraisals conformed to USPAP or Fannie Mae and Freddie Mac standards, including requirements that appraisals be independently and impartially conducted, indicate that the appraisals and the aggregate data included in the Offering Documents based on the appraisals properly assess the value of the collateral and provide a reliable measure of the risk of the loan pools.

2. Misstatements Regarding Appraisals and LTVs

a. The Offering Documents falsely state that the LTVs were based upon appraisals

603. The Offering Documents contained numerous material untrue or misleading statements regarding the valuation of collateral and the "appraisal" process conducted upon the origination of the mortgages underlying the PLMBS. The Prospectus or Prospectus Supplement for each certificate states that the loan-to-value ratio represent a "ratio" or "fraction," the numerator of which is the "principal balance" or "principal amount" of the mortgage loan, and the denominator of which is the "lesser" or "least" of (1) the "sales price" or "purchase price" or "selling price" of the mortgaged property and (2) the "appraised value" or "appraisal" or "the appraised value determined in an appraisal" or "the appraised value . . . as established by an appraisal." *See* Appendix VII.

604. These are false statements of material fact because, contrary to Defendant's representations that the LTV ratios were based on "appraisals" or "appraised values," in reality

the biased and coerced valuations of collateral that Defendants labeled as "appraisals" failed to meet the federally required definition of "appraisal" applicable to entities that are regulated by the Office of Thrift Supervision ("OTS"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), or the Board of Governors of the Federal Reserve System ("FRB") (collectively the "Bank Regulators"). Thus, the LTVs were not based on "appraisals" at all as that term was defined in the offering documents and is used and understood in the industry.

605. The Originators of the mortgages underlying the PLMBS were regulated by the Bank Regulators:

- Bank of America, N.A., and Wells Fargo Bank, N.A., are "national banking associations" chartered with the OCC pursuant to 12 U.S.C. § 21. Therefore, under 12 U.S.C. § 1813(q)(1), the OCC is the "appropriate Federal banking agency" with jurisdiction to regulate both banks.
- Downey Savings and Loan Association, F.A., IndyMac Bank, F.S.B., and Washington Mutual Bank are "federal savings association" within the meaning of 12 U.S.C. §§ 1813(b) and 1462(5). Pursuant to 12 U.S.C. § 1813(q)(4), the Director of the OTS is the "appropriate Federal banking agency" with jurisdiction to regulate these originators.
- Fremont Investment & Loan was a "state nonmember bank" within the meaning of 12 U.S.C. § 1813(e). Pursuant to 12 U.S.C. § 1813(q), the FDIC is the "appropriate Federal banking agency" with jurisdiction to regulate this originator.
- GreenPoint Mortgage Funding, Inc., was a subsidiary of North Fork Bank, which was a "state nonmember bank" within the meaning of 12 U.S.C. § 1813(e). Any

subsidiary of such a "state nonmember bank" is regulated by the FDIC. *See* 12 U.S.C. § 1831a(d)(1); 12 CFR § 362.4(a).

- Countrywide Home Loans, Inc. and Decision One Mortgage Company LLC were nonbank subsidiaries of the following "bank holding companies" within the meaning of 12 U.S.C. §§ 1841 and 1843:

Originator:	**Controlling "Bank Holding Company"**
Countrywide Home Loans, Inc.	Countrywide Financial Corporation[8]
Decision One Mortgage Company, LLC	HSBC North America

Subsidiaries of "bank holding companies" are regulated by the Board of Governors for the Federal Reserve System pursuant to 12 U.S.C. §§ 1813(q), 1841(n). *See also* 12 C.F.R. §§ 225.21-225.28.

- Chase Home Finance LLC, First Franklin Financial Corporation, and First Horizon Home Loan Corporation were subsidiaries of the following "national banking associations":

Originator:	**Controlling "National Banking Association":**
Chase Home Finance LLC	JPMorgan Chase Bank, National Association
First Franklin Financial Corporation	National City Bank
First Horizon Home Loan Corporation	First Tennessee Bank National Association

Subsidiaries of "national banking associations" are regulated by the OCC pursuant to 12 U.S.C. § 24a and 12 C.F.R. §§ 5.34 and 5.39.

[8]Countrywide Financial Corporation was a "bank holding company" until March 12, 2007.

606. Each of the Bank Regulators has issued regulations pursuant to Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 1339, that govern the appraisal practices of the institutions they regulate. These regulations define an "appraisal" as a "written statement *independently and impartially prepared* by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s) . . . ." 12 C.F.R. § 564.2 (OTS); 12 C.F.R. § 34.42 (OCC); 12 C.F.R. § 323.2 (FDIC); 12 C.F.R. § 225.62 (FRB) (emphasis added). Therefore, by representing that the LTV ratios were based on "appraisals" of the collateral, Defendants represented that the LTV ratios were based on independent and impartial valuations of the collateral.

607. The Bank Regulators define appraiser independence as follows:

> (a) Staff appraisers. If an appraisal is prepared by a staff appraiser, that *appraiser must be independent of the lending, investment, and collection functions* and not involved, except as an appraiser, in the federally related transaction, and *have no direct or indirect interest, financial or otherwise, in the property* . . . .
>
> (b) Fee appraisers. (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and *have no direct or indirect interest, financial or otherwise, in the property or the transaction* . . . .

12 C.F.R. § 564.5 (OTS); 12 C.F.R. § 34.45 (OCC); 12 C.F.R. § 323.5 (FDIC); 12 C.F.R. § 225.65 (FRB) (emphasis added). In 2005 the Bank Regulators further elaborated on the standards for appraiser independence, stating that "[l]oan production staff should not select appraisers." Office of the Controller of the Currency et al., *Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions* 2 (2005), *available at* http://www.federalreserve.gov/boarddocs/srletters/2005/SR0505a1.pdf. Additionally, the Bank Regulators specified that although loan production staff may use a "revolving, board approved list to select a residential appraiser," the "[s]taff

responsible for the development and maintenance of the list should be independent of the loan production process . . . . *Id.*

608. Defendants' statements in the Offering Documents are materially misleading because the LTV ratios were not based on impartial and independent "appraisals," but rather were the result of manipulation and coercion by loan production staff. As described above in sections IV.B and IV.C, the originators' loan production staff pressured and coerced appraisers to inflate values, demanded and obtained the ability to have "business managers" overrule staff and third-party appraisers, and routinely fed improper information to appraisers in an effort to manipulate their valuations, all of which served to undermine the independence of the appraisal process. Contrary to the interagency guidance, the originators' lending departments constantly pressured appraisers to increase their valuations, made clear that their continued access to work from these originators depended upon the appraisers coming in "at value," and in some cases simply overruled appraisers that refused to cooperate and refused to provide them with additional work. All of this resulted in appraisers having an indirect financial interest in each property they appraised, since their ability to obtain future work depended on their willingness to come in "at value" for each property they appraised. Simply put, as a result of this coercion, appraisers provided appraisals that they did not believe accurately reflected the value of the appraised property, but nevertheless were sufficiently high—*i.e.,* "at value"—to enable the deal to close. Because these valuations were not "independently and impartially prepared" as required by the federal definition of "appraisal," Defendants made false statements of material fact in the Offering Documents by stating that the LTV ratios were based on "appraisals" or "appraised values."

b. Misstatements regarding the standards to which the purported "appraisals" conformed

609. In addition, the Offering Documents contained materially untrue or misleading statements and omissions regarding the standards to which the purported "appraisals" conformed. The Offering Documents represented that, under the underwriting guidelines for each of the following originators, the appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation: Argent Mortgage Company, LLC; Decision One Mortgage Company, LLC; Downey Savings and Loan Association, F.A.; First Horizon Home Loan Corp.; IndyMac Bank, F.S.B.;[9] New Century Mortgage; Option One Mortgage Corporation; and WMC Mortgage Corp. *See* Appendix III.

610. Additionally, the Offering Documents represent that, under the underwriting guidelines of each of the following originators, the appraisals conformed to Fannie Mae and Freddie Mac appraisal standards: Countrywide Home Loans, Inc.; First Franklin Financial Corporation; First Horizon Home Loan Corp.; and Wells Fargo Bank, National Association.[10] *See* Appendix III. The Fannie Mae and Freddie Mac appraisal standards require that appraisals be conducted in accordance with the USPAP. *See* 2006 Single Family Selling Guide, Part XI, 102.02.

611. These statements in the Offering Documents were materially misleading because the mortgage originators routinely accepted and in fact overtly sought valuations of collateral that were conducted in violation of USPAP and Fannie Mae and Freddie Mac Standards. As

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[9] This statement is not included in the offering documents for INABS 2005-D AII3.

[10] This statement is not included in the offering documents for BAFC 2006-F 2A1, BAFC 2006-F 3A1, or WFMBS 2006-AR3 A4.

detailed above, the USPAP requires that an appraiser perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. Similarly, the Fannie Mae standards provide that it is essential that a lender obtain an independent, disinterested examination. As alleged in paragraph 608 and further described in sections IV.B and IV.C, which contain, among other details, abundant testimony from Confidential Witnesses, the appraisals used by the mortgage originators were the product of manipulation and coercion and thus were not impartial, objective, and independent as required by USPAP.

612. Additionally, USPAP precludes acceptance of an appraisal assignment where compensation is contingent upon reporting a predetermined result or a direction in assignment results that favors the cause of a client. Similarly, it is an unacceptable appraisal practice under Fannie Mae standards to develop and report an appraisal that favors either the cause of the client . . . [or] the attainment of a specific result . . . in order to receive compensation . . . and/or in anticipation of receiving future assignments. However, these are precisely the conditions that loan production staff for the mortgage originators forced upon appraisers when they repeatedly pressured appraisers to increase their valuations, implicitly or explicitly linked the receipt of continued work to at value appraisals, and even threatened to place appraisers on a blacklist if their appraisals did not come back at value.

c. Misstatements regarding aggregate LTVs

613. Because the LTV ratios were not based on appraisals conducted in conformance with applicable appraisal standards, the statements in the Offering Documents regarding the LTV ratios of the mortgage pools were materially untrue and misleading. These statements include: representations about the extent to which loans in the pools underlying each certificate had LTVs in excess of 100%, 90%, or 80%, and representations about the weighted average LTV of each

pool. Section V.B.3, *infra*, sets forth those statements for each certificate as well as the reasons each is misleading.

3. Evidence Demonstrating Misstatements about Appraisals and LTV Ratios in the Offering Documents

a. Government investigations, press reports, and confidential witnesses demonstrate systemic and pervasive appraisal manipulation by the mortgage originators

614. As alleged in detail above, *see supra* §§ IV.B and C, failure on the part of the mortgage originators to obtain accurate appraisals for the loans backing the PLMBS purchased by the Bank has been well-documented in government investigations and lawsuits, press reports, and statements of confidential witnesses. Furthermore, as alleged above, this evidence demonstrates that the mortgage originators manipulated the appraisal process and undermined the independence and impartiality of appraisers that is crucial to the determination of credible collateral valuations. This evidence – and the allegations herein based on this evidence – demonstrates that the statements in the Offering Documents regarding the appraisals and appraisal process are false and misleading.

615. The Bank's claim with respect to appraisals and LTVs is that the Defendants are liable for false statements of fact in the Offering Documents by representing that the LTVs were based upon appraisals conducted pursuant to governing standards. In fact, the "appraisals" underlying the LTVs were not appraisals at all since they were not independent assessments of a property's value, but rather were simply coerced or otherwise misleading statements from appraisers to enable loans to close.

616. The following Depositor and Underwriter Defendants, by virtue of being vertically integrated with the mortgage originators, that originated the loans underlying the certificates purchased by the Bank, *see supra* § IV.D.1, should have known that the appraisals

were inflated and were the product of manipulation and coercion in violation of the requirements of the USPAP:

Defendants:	**Vertically Integrated Originators:**
Banc of America Securities LLC Banc of America Funding Corporation	Bank of America, National Association
Wells Fargo Asset Securities Corp.	Wells Fargo Bank, National Association
Option One Mortgage Acceptance Corp. H&R Block Financial Advisors, Inc.	Option One Mortgage
Residential Funding Mortgage Securities I, Inc. Residential Asset Securities Corporation	Homecomings Financial Network, Inc. GMAC Mortgage Corp.
FTN Financial Capital Markets First Horizon Asset Securities Inc.	First Horizon Home Loan Corporation
Residential Asset Mortgage Products, Inc. Residential Funding Securities Corporation	GMAC Mortgage Corporation
IndyMac MBS, Inc. IndyMac ABS, Inc.	IndyMac Bank

617. Similarly, the remaining Depositor and Underwriter Defendants should have known that the appraisals were the product of manipulation and coercion because their corporate affiliates served as depositors/issuers for multiple other deals, including deals backed by loans originated by the originators that originated the loans underlying the certificates purchased by the Bank. *See supra* § IV.D.2. The Defendants should have known of the manipulation of the appraisal process because their corporate affiliates sought to use the knowledge of the inaccurate appraisals and other violations of underwriting standards to their advantage in purchasing loan pools at reduced prices. *See supra* § IV.D.2.

618. Moreover, as Underwriters for the certificates purchased by the Bank, the Underwriter Defendants performed reviews on the mortgage pools underlying the certificates. By virtue of these reviews, the Underwriter Defendants should have known that the originators had manipulated the appraisal process to inflate the appraisals and the LTV ratios based on the appraisals, but failed to take the necessary action of replacing substandard loans or adequately disclosing the risks to investors.

b. Analysis of loans that backed the PMLBS purchased by the Bank demonstrate that appraisals were materially inflated and the LTV ratios were materially understated.

619. As part of its investigation of the claims asserted herein, the Bank has analyzed the LTV ratios of mortgage loans that secure each of the PLMBS that it purchased. The Bank has tested the LTV ratios as represented in the Offering Documents against the LTV ratios that would have been calculated had the properties been valued at the time of loan origination in accordance with accepted and reliable appraisal practices (as was represented in the Offering Documents). To perform this analysis, the Bank has employed an industry-standard automated valuation model ("AVM") that reliably calculates the values of the subject properties as of the date of mortgage loan origination. The AVM draws upon a database of 500 million sales covering ZIP codes that represent 98.7% of the homes, occupied by 99.8% of the population, in the United States. Based on that database, the AVM calculates a valuation based on criteria including the type, condition, and location of the property, as well as the actual sale prices of comparable properties in the same locale shortly before the specified date. The extensive independent testing of the AVM confirms that the AVM is highly reliable and accurate means of determining the value that would have been determined for a property as of a historical date had that property been valued in accordance with accepted and reliable appraisal practices.

620. This analysis demonstrates stark misstatements in the LTV ratios information as represented in the Offering Documents. Because the LTV calculation is simply a ratio of loan amount to value, and because the loan amounts are unquestioned, the reason for the discrepancies is inescapable: the LTV ratios represented in the Offering Documents were the result of inflated and unreliable collateral valuations that were misleadingly labeled as "appraisals." Had the collateral valuation practices comported with the OTS definition of

appraisal and with the USPAP and Fannie Mae/ Freddie Mac standards as represented in the Offering Documents, the resulting aggregate LTV ratios would have been materially different from those represented in the Offering Documents.

621. The aggregate LTV ratio representations in the Offering Documents were key metrics in the Bank s decision to purchase the PLMBS, and the Bank was materially misled by the inaccurate information reported in the Offering Documents. Moreover, as a result of their knowledge of the manipulation of the appraisal process in the origination of mortgage loans, *see supra* §§ IV.B and IV.C, the Defendants should have known that the collateral valuations were unreliable and that statements made in the Offering Documents based in whole or in part on the collateral values, including statements regarding LTV ratios and credit ratings, were false and misleading.

622. The following tables summarize four types of material LTV ratio understatements contained in the Offering Documents: the percentage of loans with over 100% LTV; the percentage of loans with over 90% LTV; the percentage of loans with over 80% LTV; and the weighted average LTV ratio for the mortgage pool. Each is a distinct and significant misrepresentation in the Offering Documents.

623. The 100% LTV representation is obviously significant because loans with over 100% LTV afford the lender no equity cushion and leave the lender with inadequate collateral from the outset of the lender. The Offering Documents consistently assured the Bank that there were no such loans in the mortgage pools. Unfortunately, as the following table indicates, the recalculated LTV ratios (which, based on the AVM, indicate what the reported LTV would have been had proper appraisal methods been employed) indicate that there were a material number of mortgage loans with LTV ratios in excess of 100%:

Security (Certificate)	% of Loans with Greater than 100% LTV Per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Prospectus Understatement
AMSI 2005-R10 (AMSI 2005-R10 A2B)	0.00%	27.18%	27.18%
Argent 2005-W05-2 (ARSI 2005-W5 A2C)	0.00%	16.96%	16.96%
BOA Funding2006C-2 (BAFC 2006-C 2A1)	0.00%	16.39%	16.39%
BOA Funding2006E-2 (BAFC 2006-E 2A2)	0.00%	16.67%	16.67%
BOA Funding2006E-3 (BAFC 2006-E 3A1)	0.00%	13.58%	13.58%
BOA Funding2006F-2 (BAFC 2006-F 2A1)	0.00%	14.71%	14.71%
BOA Funding2006F-3 (BAFC 2006-F 3A1)	0.00%	7.69%	7.69%
C-BASS 2006-CB4 (CBASS 2006-CB4 AV3)	.04%	15.81%	15.77%
Citigroup 06-NC1-2 (CMLTI 2006-NC1 A2C)	0.00%	14.29%	14.29%
Citigroup 06-WFHE2 (CMLTI 2006-WFH2 A2B)	0.00%	20.91%	20.91%
Citigroup 06-WFHE4 (CMLTI 2006-WFH4 A3)	0.00%	25.00%	25.00%
Citigroup 06-NC2-2 (CMLTI 2006-NC2 A2B)	0.00%	22.69%	22.69%
1st Frkln06-FF13-2 (FFML 2006-FF13 A2C)	0.00%	26.87%	26.87%
1st Frkln06-FF08-2 (FFML 2006-FF8 IIA3)	0.27%	20.73%	20.46%
1st Frkln06-FF12-2 (FFML 2006-FF12 A3)	0.00%	23.20%	23.20%
1st Frkln06-FF14-2 (FFML 2006-FF14 A5)	0.00%	24.00%	24.00%
1st Frkln06-FF10-2 (FFML 2006-FF10 A7)	0.00%	28.00%	28.00%
FirstHorizon06AR1-2 (FHASI 2006-AR1 2A1)	0.00%	9.09%	9.09%
Fremont 2005-E-2 (FELT 2005-E 2A3)	0.00%	15.38%	15.38%
GSAMP 2006-NC2-2 (GSAMP 2006-NC2 A2C)	0.00%	18.33%	18.33%

Security (Certificate)	% of Loans with Greater than 100% LTV Per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Prospectus Understatement
Harborview2006-02-2 (HVMLT 2006-2 2A1A)	0.00%	3.49%	3.49%
Harborview2006-02-3 (HVMLT 2006-2 3A1A)	0.00%	3.57%	3.57%
INABS 2005-D-2 (INABS 2005-D (AII3)	0.00%	18.29%	18.29%
IndyMac 2006-AR15 (INDX 2006-AR15 A2)	0.00%	4.07%	4.07%
Master Asst06NC1 (MABS 2006-NC1 A3)	0.00%	21.68%	21.68%
Morgan Stan06WMC2-2 (MSAC 2006-WMC2 A2C)	0.00%	8.54%	8.54%
Morgan Stan06-HE5-2 (MSAC 2006-HE5 A2C)	0.00%	13.46%	13.46%
Morgan Stan06-HE6-2 (MSAC 2006-HE6 A2C)	0.00%	12.10%	12.10%
Nomura 2006-WF1 (NHELI 2006-WF1 A3)	0.00%	26.67%	26.67%
Option One 05-5-2 (OOMLT 2005-5 A3)	0.00%	25.61%	25.61%
Option One 06-2-2 (OOMLT 2006-2 2A3)	0.00%	18.24%	18.24%
RFC 2006-SA02-2 (RFMSI 2006-SA2 2A1)	0.00%	10.17%	10.17%
RFC 2005-KS12 (RASC 2005-KS12 A2)	0.00%	14.22%	14.22%
SABR 2006-FR3 (SABR 2006-FR3 A2)	0.04%	18.31%	18.27%
SABR 2006-NC3-2 (SABR 2006-NC3 A2B)	0.00%	6.15%	6.15%
Sequoia 2006-01-2 (SEMT 2006-1 2A1)	0.00%	16.07%	16.07%
Sequoia 2006-01-3 (SEMT 2006-1 3A1)	0.00%	11.00%	11.00%
WA Mutl 2006-AR12-1 (SARM 2005-21 3A1)	0.00%	10.00%	10.00%
WFHET 2006-3 (WFHET 2006-3 A2)	0.00%	35.29%	35.29%
WFMBS 2006-AR3 (WFMBS 2006-AR3 A4)	0.00%	5.65%	5.65%

624. The following table lists the certificates purchased by the Bank in which the LTV calculated using the AVM exceeds 90%, and lists the representation in the associated Offering Documents with respect to the percentage of the mortgages in the subject pool with LTVs greater than 90%. An LTV in excess of 90% represents an extremely risky mortgage for the investor, as the borrower has little equity in the property and there is a significant risk that upon foreclosure the collateral will be inadequate to pay the debt. Accordingly, for each of the certificates listed in the following table, the statement regarding the mortgages in the subject pool with LTVs in excess of 90% was materially misleading.

Security (Certificate)	% of Loans with Greater than 90% LTV Per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
AMSI 2005-R10 (AMSI 2005-R10 A2B)	12.07%	42.72%	30.65%
Argent 2005-W05-2 (ARSI 2005-W5 A2C)	22.54%	37.66%	15.12%
BOA Funding2006C-2 (BAFC 2006-C 2A1)	0.00%	32.79%	32.79%
BOA Funding2006E-2 (BAFC 2006-E 2A2)	0.17%	25.00%	24.83%
BOA Funding2006E-3 (BAFC 2006-E 3A1)	0.00%	23.46%	23.46%
BOA Funding2006F-2 (BAFC 2006-F 2A1)	1.75%	26.47%	24.72%
BOA Funding2006F-3 (BAFC 2006-F 3A1)	2.04%	20.88%	18.84%
C-BASS 2006-CB4 (CBASS 2006-CB4 AV3)	15.83%	38.06%	22.23%
Citigroup 06-NC1-2 (CMLTI 2006-NC1 A2C)	24.14%	33.33%	9.19%
Citigroup 06-WFHE2 (CMLTI 2006-WFH2 A2B)	21.57%	35.45%	13.88%
Citigroup 06-WFHE4 (CMLTI 2006-WFH4 A3)	31.91%	48.33%	16.42%
Citigroup 06-NC2-2 (CMLTI 2006-NC2 A2B)	21.47%	40.34%	18.87%
1st Frkln06-FF13-2 (FFML 2006-FF13 A2C)	21.62%	41.79%	20.17%
1st Frkln06-FF08-2	17.30%	45.12%	27.82%

Security (Certificate)	% of Loans with Greater than 90% LTV Per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
(FFML 2006-FF8 IIA3)			
1st Frkln06-FF12-2 (FFML 2006-FF12 A3)	18.81%	40.33%	21.52%
1st Frkln06-FF14-2 (FFML 2006-FF14 A5)	21.22%	50.00%	28.78%
1st Frkln06-FF10-2 (FFML 2006-FF10 A7)	19.11%	42.00%	22.89%
FirstHorizon06AR1-2 (FHASI 2006-AR1 2A1)	0.00%	22.73%	22.73%
Fremont 2005-E-2 (FHLT 2005-E 2A3)	25.98%	37.69%	11.71%
GSAMP 2006-NC2-2 (GSAMP 2006-NC2 A2C)	6.23%	35.00%	28.77%
Harborview2006-02-2 (HVMLT 2006-2 2A1A)	0.43%	11.05%	10.62%
Harborview2006-02-3 (HVMLT 2006-2 3A1A)	0.00%	5.36%	5.36%
INABS 2005-D-2 (INABS 2005-D AII3)	8.85%	36.59%	27.74%
IndyMac 2006-AR15 (INDX 2006-AR15 A2)	0.70%	21.14%	20.44%
Master Asst06NC1 (MABS 2006-NC1 A3)	15.95%	34.97%	19.02%
Morgan Stan06-HE5-2 (MSAC 2006-HE5 A2C)	23.24%	42.31%	19.07%
Morgan Stan06-HE6-2 (MSAC 2006-HE6 A2C)	22.82%	33.06%	10.24%
Nomura 2006-WF1 (NHELI 2006-WF1 A3)	31.00%	33.33%	2.33%
Option One 05-5-2 (OOMLT 2005-5 A3)	33.43%	40.24%	6.81%
RFC 2006-SA02-2 (RFMSI 2006-SA2 2A1)	0.54%	23.73%	23.19%
RFC 2005-KS12 (RASC 2005-KS12 A2)	20.26%	26.67%	6.41%
SABR 2006-FR3 (SABR 2006-FR3 A2)	24.11%	35.21%	11.10%
SABR 2006-NC3-2 (SABR 2006-NC3 A2B)	22.46%	30.77%	8.31%
Sequoia 2006-01-2 (SEMT 2006-1 2A1)	0.44%	30.36%	29.92%
Sequoia 2006-01-3 (SEMT 2006-1 3A1)	0.14%	25.00%	24.86%

Security (Certificate)	% of Loans with Greater than 90% LTV Per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
WA Mutl 2006-AR12-1 (SARM 2005-21 3A1)	4.08%	28.00%	23.92%
WFHET 2006-3 (WFHET 2006-3 A2)	24.90%	48.04%	23.14%
WFMBS 2006-AR3 (WFMBS 2006-AR3 A4)	0.68%	14.69%	14.01%

625. The following table lists the certificates purchased by the Bank in which the LTV calculated using the AVM exceeds 80%, and lists the representation in the associated Offering Documents with respect to the percentage of the mortgages in the subject pool with LTVs greater than 80%. The 80% LTV metric is very significant to an PLMBS investor such as the Bank, because in traditional mortgage underwriting an LTV in excess of 80% was generally considered as affording the lender little value cushion to protect against borrower default and loss upon foreclosure. Accordingly, for each of the certificates listed in the following table, the statement regarding the percentage of mortgages in the subject pool with LTVs in excess of 80% was materially misleading.

Security (Certificate)	% of Loans with Greater than 80% LTV Per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
AMSI 2005-R10 (AMSI 2005-R10 A2B)	54.65%	60.19%	5.54%
Argent 2005-W05-2 (ARSI 2005-W5 A2C)	43.32%	66.08%	22.96%
BOA Funding2006C-2 (BAFC 2006-C 2A1)	3.18%	81.25%	61.34%
BOA Funding2006E-2 (BAFC 2006-E 2A2)	1.53%	56.25%	54.72%
BOA Funding2006E-3 (BAFC 2006-E 3A1)	0.00%	54.32%	54.32%
BOA Funding2006F-2 (BAFC 2006-F 2A1)	3.51%	58.82%	56.19%
BOA Funding2006F-3 (BAFC 2006-F 3A1)	3.57%	61.54%	26.11%

Security (Certificate)	% of Loans with Greater than 80% LTV Per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
C-BASS 2006-CB4 (CBASS 2006-CB4 AV3)	40.56%	59.68%	17.43%
Citigroup 06-NC1-2 (CMLTI 2006-NC1 A2C)	46.26%	55.95%	9.99%
Citigroup 06-WFHE2 (CMLTI 2006-WFH2 A2B)	48.32%	58.18%	9.86%
Citigroup 06-NC2-2 (CMLTI 2006-NC2 A2B)	44.38%	68.07%	23.69%
1st Frkln06-FF13-2 (FFML 2006-FF13 A2C)	36.37%	62.69%	27.81%
1st Frkln06-FF08-2 (FFML 2006-FF8 IIA3)	27.00%	80.49%	53.49%
1st Frkln06-FF12-2 (FFML 2006-FF12 A3)	32.64%	73.48%	39.74%
1st Frkln06-FF14-2 (FFML 2006-FF14 A5)	35.56%	84.00%	48.76%
1st Frkln06-FF10-2 (FFML 2006-FF10 A7)	34.06%	68.00%	35.94%
FirstHorizon06AR1-2 (FHASI 2006-AR1 2A1)	1.29%	53.03%	50.22%
Fremont 2005-E-2 (FHLT 2005-E 2A3)	43.65%	56.92%	13.60%
GSAMP 2006-NC2-2 (GSAMP 2006-NC2 A2C)	32.32%	63.33%	31.01%
Harborview2006-02-2 (HVMLT 2006-2 2A1A)	27.80%	30.81%	4.38%
Harborview2006-02-3 (HVMLT 2006-2 3A1A)	0.00%	25.00%	25.00%
INABS 2005-D-2 (INABS 2005-D AII3)	33.51%	59.76%	26.25%
IndyMac 2006-AR15 (INDX 2006-AR15 A2)	2.49%	58.54%	57.01%
Master Asst06NC1 (MABS 2006-NC1 A3)	45.90%	58.04%	15.72%
Morgan Stan06WMC2-2 (MSAC 2006-WMC2 A2C)	45.46%	50.00%	4.54%
Morgan Stan06-HE5-2 (MSAC 2006-HE5 A2C)	47.84%	65.38%	19.46%
Morgan Stan06-HE6-2 (MSAC 2006-HE6 A2C)	44.27%	60.48%	16.21%
Option One 05-5-2 (OOMLT 2005-5 A3)	56.07%	62.20%	6.13%

Security (Certificate)	% of Loans with Greater than 80% LTV Per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
RFC 2006-SA02-2 (RFMSI 2006-SA2 2A1)	2.24%	48.24%	46.00%
RFC 2005-KS12 (RASC 2005-KS12 A2)	43.66%	54.24%	10.57%
SABR 2006-FR3 (SABR 2006-FR3 A2)	43.49%	52.89%	9.40%
SABR 2006-NC3-2 (SABR 2006-NC3 A2B)	47.62%	57.75%	10.13%
Sequoia 2006-01-2 (SEMT 2006-1 2A1)	3.07%	58.46%	55.39%
Sequoia 2006-01-3 (SEMT 2006-1 3A1)	0.95%	51.79%	50.84%
WA Mutl 2006-AR12-1 (SARM 2005-21 3A1)	10.58%	56.00%	45.42%
WFHET 2006-3 (WFHET 2006-3 A2)	47.12%	63.00%	15.88%
WFMBS 2006-AR3 (WFMBS 2006-AR3 A4)	1.70%	65.69%	63.99%

626. The following table lists mortgage pools securing the PLMBS purchased by the Bank in which the representation contained in the related Offering Documents with respect to the weighted average LTV of the mortgage pool securing those PLMBS was materially understated. The weighted average LTV representation is significant because it provides the investor with an important gauge as to the overall riskiness of the mortgage pool.

Security (Certificate)	Weighted Average LTV As Stated in Prospectus	Recalculated Weighted Average LTV	Prospectus Understatement
AMSI 2005-R10 (AMSI 2005-R10 A2B)	80.49%	83.39%	2.90%
BOA Funding2006C-2 (BAFC 2006-C 2A1)	72.79%	83.97%	11.18%
BOA Funding2006E-2 (BAFC 2006-E 2A2)	72.59%	85.24%	12.65%
BOA Funding2006E-3 (BAFC 2006-E 3A1)	69.84%	78.09%	8.25%
BOA Funding2006F-2 (BAFC 2006-F 2A1)	73.56%	80.70%	7.14%
BOA Funding2006F-3	73.15%	78.96%	5.81%

Security (Certificate)	Weighted Average LTV As Stated in Prospectus	Recalculated Weighted Average LTV	Prospectus Understatement
(BAFC 2006-F 3A1)			
1st Frkln06-FF13-2 (FFML 2006-FF13 A2C)	82.64%	87.73%	5.09%
1st Frkln06-FF08-2 (FFML 2006-FF8 IIA3)	82.02%	87.84%	5.82%
1st Frkln06-FF12-2 (FFML 2006-FF12 A3)	82.40%	87.35%	4.95%
1st Frkln06-FF14-2 (FFML 2006-FF14 A5)	82.89%	90.47%	7.58%
1st Frkln06-FF10-2 (FFML 2006-FF10 A7)	81.56%	87.93%	6.37%
FHASI2006AR1-2 (FHASI 2006-AR1 2A1)	74.07%	77.16%	3.09%
Harborview2006-02-2 (HVMLT 2006-2 2A1A)	66.85%	72.35%	5.50%
Harborview2006-02-3 (HVMLT 2006-2 3A1A)	60.41%	66.62%	6.21%
INABS 2005-D-2 (INABS 2005-D AII3)	78.84%	81.63%	2.79%
IndyMac 2006-AR15 (INDX 2006-AR15 A2)	75.97%	78.32%	2.35%
RFC 2006-SA02-2 (RFMSI 2006-SA2 2A1)	72.68%	75.40%	2.72%
Sequoia 2006-01-2 (SEMT 2006-1 2A1)	73.08%	82.59%	9.51%
Sequoia 2006-01-3 (SEMT 2006-1 3A1)	72.39%	80.17%	7.78%
WFMBS 2006-AR13 (WFMBS 2006-AR13 A2)	68.79%	78.43%	9.64%

C. Defendants Misrepresented the Occupancy Status Rates.

1. The Materiality of Occupancy Status Rates

627. Residential real estate can be divided into the following occupancy status categories: primary residences, second homes, and investment properties. Mortgages on primary residences are less risky because they are less likely to default than mortgages on non-owner-occupied residences. Thus, the percentage of loans in the asset pool of a securitization that are secured by mortgages on other than primary residences is a key indicator of the risk of

certificates sold in the securitization. Occupancy status rates also influence prepayment patterns (which in turn affects the timing and payments on the PLMBS certificates).

628. For these reasons, the occupancy status of the collateral backing the mortgages in loan pools was material to the Bank's decision to invest in the PLMBS certificates. The Offering Documents for each of the PLMBS contained specific assertions as to the occupancy status rates of the mortgages backing the PMLBS.

2. Evidence Demonstrating Misstatements about the Occupancy Status Rates

629. The following table lists mortgage pools securing the PLMBS purchased by the Bank, sets forth the assertion contained in the related Offering Documents with respect to the percentage of the mortgages that were on properties that were not the borrower's primary residence, and sets forth the non-primary residence occupancy status rates generated by a review of information contained in various public and private databases. The databases reviewed contain information regarding, *inter alia*, the address to which borrower's tax bills were sent, the addresses used by borrower's other creditors to send billings, whether borrowers claimed the property as a homestead under applicable law, and whether borrowers owned other properties of record and how the amount of the subject loan compared to the amounts of mortgage loans on other properties owned. Defendants should have known, as set forth in the following table, that the occupancy status rates set forth in the Offering Documents for the PLMBS listed below were materially misstated, and materially misled the Bank regarding the true risk of the certificates it purchased:

Security (Certificate)	% of Mortgage on Non-Primary Residence Per Prospectus	% of Mortgages on Non-Primary Residence Per Database Review	Prospectus Understatement
AMSI 2005-R10 (AMSI 2005-R10 A2B)	1.77%	7.50%	5.73%
Argent 2005-W05-2 (ARSI 2005-W5 A2C)	3.37%	14.31%	10.94%
BOA Funding2006E-2 (BAFC 2006-E 2A2)	12.93%	16.55%	3.62%
BOA Funding2006F-2 (BAFC 2006-F 2A1)	10.82%	12.99%	2.17%
C-BASS 2006-CB4 (CBASS 2006-CB4 AV3)	7.18%	10.11%	2.93%
Citigroup 06-NC1-2 (CMLTI 2006-NC1 A2C)	10.38%	16.09%	5.71%
Citigroup 06-WFHE2 (CMLTI 2006-WFH2 A2B)	8.48%	9.15%	0.67%
Citigroup 06-WFHE4 (CMLTI 2006-WFH4 A3)	10.08%	13.60%	3.52%
Citigroup 06-NC2-2 (CMLTI 2006-NC2 A2B)	10.49%	14.85%	4.36%
1st Frkln06-FF13-2 (FFML 2006-FF13 A2C)	5.57%	14.85%	9.28%
1st Frkln06-FF08-2 (FFML 2006-FF8 IIA3)	8.15%	13.79%	5.64%
1st Frkln06-FF12-2 (FFML 2006-FF12 A3)	5.41%	10.90%	5.49%
1st Frkln06-FF14-2 (FFML 2006-FF14 A5)	5.66%	10.96%	5.30%
1st Frkln06-FF10-2 (FFML 2006-FF10 A7)	5.94%	12.88%	6.94%
FirstHorizon06AR1-2 (FHASI 2006-AR1 2A1)	5.17%	11.37%	6.20%
Fremont 2005-E-2 (FHLT 2005-E 2A3)	2.09%	19.21%	17.12%
Harborview2006-02-3 (HVMLT 2006-2 3A1A)	1.10%	9.87%	8.77%
INABS 2005-D-2 (INABS 2005-D AII3)	5.20%	9.25%	4.05%
Morgan Stan06WMC2-2 (MSAC 2006-WMC2 A2C)	4.16%	22.76%	18.60%
Morgan Stan06-HE5-2 (MSAC 2006-HE5 A2C)	7.53%	9.60%	2.07%

Security (Certificate)	% of Mortgage on Non-Primary Residence Per Prospectus	% of Mortgages on Non-Primary Residence Per Database Review	Prospectus Understatement
Nomura 2006-WF1 (NHELI 2006-WF1 A3)	2.69%	11.24%	8.55%
Option One 05-5-2 (OOMLT 2005-5 A3)	8.45%	10.94%	2.49%
RFC 2006-SA02-2 (RFMSI 2006-SA2 2A1)	5.20%	9.42%	4.22%
SABR 2006-FR3 (SABR 2006-FR3 A2)	6.00%	12.24%	6.24%
SABR 2006-NC3-2 (SABR 2006-NC3 A2B)	9.58%	12.15%	2.57%
Sequoia 2006-01-2 (SEMT 2006-1 2A1)	6.14%	13.23%	7.09%
Sequoia 2006-01-3 (SEMT 2006-1 3A1)	6.40%	10.08%	3.68%
WFHET 2006-3 (WFHET 2006-3 A2)	10.39%	13.05%	2.66%
WFMBS 2006-AR3 (WFMBS 2006-AR3 A4)	5.78%	11.94%	6.16%

630. Furthermore, unbeknownst to the Bank, as described *supra* §§ IV.B. and IV.C., borrower deception with respect to occupancy status, often encouraged by unscrupulous loan originators, was commonplace during the relevant period among the originators of the mortgages that secured the PLMBS.

D. Defendants' Statements Regarding the AAA Rating of the PLMBS Were False and Misleading.

1. The Materiality of the Credit Rating Process and Ratings

631. The Bank only was authorized to purchase investment grade, AAA-rated tranches of the certificates. Hence, the ratings issued by the Credit Rating Agencies were manifestly material to the Bank s decision to purchase the PLMBS at issue in this case. The ratings were not mere subjective opinions, rather they were factual representations that purported to assess the risk of the certificates based on factual information pertaining to the loans in the mortgage pools

and modeling based on this factual information and the likelihood that the bank would receive the payments contemplated by the certificates. Thus, the ratings provided material information for investors, including the Bank.

2. False Representations That the Certificates the Bank Purchased Would Not Be Issued Unless They Earned AAA Ratings

632. As alleged above, the Rating Agencies knew, and the Defendants should have known, that the ratings were unreliable and substantially understated the riskiness of the mortgage loans which underlie the PLMBS. Consequently, the Rating Agencies knew, and the Defendants should have known, that the PLMBS certificates did not in fact possess the characteristics necessary to qualify for accurate, bona fide AAA ratings.

633. All the Offering Documents for the PLMBS in this action stated that it was "a condition to the issuance of the offered certificates" purchased by the Bank that those certificates received AAA ratings.[11] The representation that the certificates the Bank purchased would not have been issued unless they had received AAA ratings was misleading because the certificates had not received accurate, bona fide AAA ratings. The AAA ratings the certificates received were fundamentally flawed because they were based on information about the underlying assets that was factually inaccurate.

3. Misstatements about the Credit Rating Process and Ratings

634. The Offering Documents misstated and omitted information about the ratings issued by the Credit Rating Agencies and the rating process. Each Prospectus contained disclosures regarding the ratings process and the purpose and bases of the ratings. Appendix IV

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[11] *See e.g.,* AMSI 2005-R10 Pros. Sup. S-92; BAFC 2006-C Pros. Sup. S-68; FFML 2006-FF13 Pros. 127; HVMLT 2006-2 Pros. Sup. S-142; OOMLT 2005-5 Pros. Sup. S-105; SEMT 2006-1 Pros. Sup. S-105; WFMBS 2006-AR3 Pros. Sup. S-51.

attached hereto and incorporated herein sets forth those statements and omissions. For example, Ticker # JPMMT 2006-A5, Supplement to Prospectus, dated April 24, 2006, states:

> The ratings assigned to mortgage pass through certificates address the likelihood of the receipt of all payments on the mortgage loans by the related Certificate holders under the agreements pursuant to which such certificates are issued. Such ratings take into consideration the credit quality of the related mortgage pool, including any credit support providers, structural and legal aspects associated with such certificates, and the extent to which the payment stream on the mortgage pool is adequate to make the payments required by such certificates. Ratings on such certificates do not, however, constitute a statement regarding frequency of prepayments of the Mortgage Loans.

635. These disclosures, however, were incomplete, inaccurate, and misleading. Specifically, the Offering Documents misrepresented and omitted the following material information:

- The ratings did not "take into consideration the credit quality of the mortgage pool," because the credit ratings were based on false factual information about the underwriting standards, the "appraisals" and their resulting loan-to-value ratios, and similar characteristics of the loan.

- The ratings did not "address the likelihood of the receipt of all payments on the mortgage loans by the related Certificate holders," because—for the reasons just given—the ratings did not take into consideration the true characteristics of the mortgage loans, and thus could not address the true likelihood of the receipt of distribution on those loans.

- The Offering Documents did not disclose the Credit Rating Agencies' conflicts of interest, which compromised the rating process;

- The Offering Documents did not disclose the manipulation of the credit rating process and "ratings shopping" by issuers and underwriters;

- The Offering Documents did not disclose that the credit ratings were based on false and misleading information with respect to underwriting standards, loan-to-value ratios and other matters pertaining to the mortgages that secured the PLMBS purchased by the Bank;

- The Offering Documents did not disclose the scope and limitations of the Credit Rating Agencies' rating models, including that they relied on outdated data and failed to adequately protect against misinformation provided by issuers and borrowers;

- The Offering Documents did not disclose that the investment grade ratings given to the PMLBS were not, in fact, comparable to investment-grade ratings given to corporate bonds or other instruments;

- The Offering Documents did not disclose that the investment grade ratings stated and discussed in Offering Documents failed to reflect the true credit risk of the PLMBS purchased by the Bank.

636. In sum, the ratings provided by the Credit Rating Agencies did not in fact assess the likelihood of the receipt of all payments on the mortgage loans by the related certificate holders under the agreements pursuant to which such certificates are issued, the credit quality of the related mortgage pool, or the extent to which the payment stream on the mortgage pool was adequate to make the payments required by such certificates. As a result, the statements in the Offering Documents regarding the ratings assigned by the Credit Rating Agencies and the rating process materially misled the Bank regarding the true risk of the certificates it purchased.

4. Evidence Demonstrating Misstatements about the Ratings and Ratings Process

637. As alleged in detail above, *see supra* § IV.F, the credit rating process was subject to false information about underwriting standards, conflicts of interest, issuer and underwriter manipulation, inflated appraisals, and faulty and outdated models. Furthermore, as alleged above, the Depositors/Issuers manipulated the rating process through ratings shopping, their direct involvement in the rating process, and their knowledge that the loan pools were of far worse quality than they represented to the Rating Agencies. As set forth above, these allegations are all well-documented in government investigations, other litigation, and press reports. This evidence—and the allegations herein based on this evidence—demonstrates that the statements in the Offering Documents regarding the ratings and the rating process are false and misleading.

638. In addition, the en masse downgrade of the PLMBS purchased by the Bank from AAA to junk status indicates that the initial ratings were incorrect and without any legitimate

basis. Likewise, delinquency and foreclosure rates indicate that the PLMBS were far riskier and more prone to loss than the initial ratings indicated. As explained above, Defendants, by virtue of their access to information held by their corporate affiliates, their intimate involvement in the securitization process, and their own due diligence, *see supra* § IV.D.4, had access to ample information about the quality of the loan pools and should have known that the bundled certificates, even though tranched and credit-enhanced, did not possess the characteristics of a AAA-rated investment; that the AAA rating that was obtained as a result of the Depositor/Issuers' and the Underwriters' influence over the ratings process; and that the rating was the direct product of inaccurate information about the underwriting standards actually used in originating the mortgages backing the PLMBS. Defendants failed to state that the ratings were unreliable as a result of the Rating Agencies' failure to take into account the actual underwriting standards being used by mortgage originators, that the Defendants had access to important information about the characteristics and quality of the loans in the loan pools that was not shared with the Rating Agencies, that the models used to produce the credit ratings were inaccurate and outdated, that the ratings were the product of manipulation and conflicts of interest, and that the ratings were not anywhere near as reliable as the ratings given to other financial instruments such as corporate bonds. As a result, the rating misrepresented the risk of the PLMBS purchased by the Bank.

639. The following table sets forth the original face amounts and ratings of the PLMBS the subject of this action, and the first date on which such securities' ratings were downgraded to below investment grade:

Ticker	Original Face Value	Moody's Original Rating	S&P Original Rating	Fitch Original Rating	Date First Downgrade to Junk Status
AMSI 2005-R10 A2B	$10,000,000	Aaa	AAA	AAA	
ARSI 2005-W5 A2C	$25,000,000	Aaa	AAA	AAA	3/24/09
BAFC 2006-C 2A1	$159,073,000	n/a	AAA	AAA	7/21/09
BAFC 2006-E 2A2	$201,149,000	n/a	AAA	AAA	7/1/09
BAFC 2006-E 3A1	$72,054,000	n/a	AAA	AAA	7/1/09
BAFC 2006-F 2A1	$192,425,000	n/a	AAA	AAA	4/6/09
BAFC 2006-F 3A1	$97,840,000	n/a	AAA	AAA	7/8/09
CBASS 2006-CB4 AV3	$20,000,000	Aaa	AAA	AAA	3/16/09
CMLTI 2006-NC1 A2C	$20,000,000	Aaa	AAA	n/a	3/19/09
CMLTI 2006-WFH2 A2B	$141,817,000	Aaa	AAA	n/a	3/19/09
CMLTI 2006-WFH4 A3	$8,600,000	Aaa	AAA	n/a	3/19/09
CMLTI 2006-NC2 A2B	$60,000,000	Aaa	AAA	n/a	4/4/08
FFML 2006-FF13 A2C	$70,000,000	Aaa	AAA	n/a	12/16/08
FFML 2006-FF8 IIA3	$20,000,000	Aaa	AAA	n/a	3/19/09
FFML 2006-FF12 A3	$16,000,000	Aaa	AAA	AAA	
FFML 2006-FF12 A4	$96,096,000	Aaa	AAA	AAA	6/12/09
FFML 2006-FF14 A5	$70,000,000	Aaa	AAA	AAA	9/22/08
FFML 2006-FF10 A7	$73,031,000	Aaa	AAA	AAA	3/19/09
FHASI 2006-AR1 2A1	$85,111,000	n/a	AAA	AAA	7/8/09
FHLT 2005-E 2A3	$25,000,000	Aaa	AAA	AAA	6/12/09
GMACM 2006-AR2 2A1	$151,856,000	n/a	AAA	AAA	4/6/09
GMACM 2006-AR2 4A1	$42,060,700	n/a	AAA	AAA	9/10/09
GSAMP 2006-NC2 A2C	$36,900,000	Aaa	AAA	n/a	10/23/08
HVMLT 2006-2 2A1A	$235,610,000	n/a	AAA	AAA	7/8/09
HVMLT 2006-2 3A1A	$49,102,000	n/a	AAA	AAA	8/6/09
INABS 2005-D AII3	$12,500,000	Aaa	AAA	AAA	6/12/09
INDX 2006-AR15 A2	$60,000,000	Aaa	AAA	n/a	1/29/09
MABS 2006-NC1 A3	$19,650,000	Aaa	AAA	AAA	3/20/09
MSAC 2006-WMC2 A2C	$25,000,000	Aaa	AAA	AAA	4/16/08
MSAC 2006-HE5 A2C	$20,000,000	Aaa	AAA	AAA	11/24/08
MSAC 2006-HE6 A2C	$20,000,000	Aaa	AAA	AAA	10/30/08
NHELI 2006-WF1 A3	$31,357,000	Aaa	AAA	AAA	6/12/09
OOMLT 2005-5 A3	$15,000,000	Aaa	AAA	AAA	
OOMLT 2006-2 2A3	$36,552,000	Aaa	AAA	n/a	3/17/09
RFMSI 2006-SA2 2A1	$310,023,000	n/a	AAA	AAA	4/6/09
RASC 2005-KS12 A2	$50,000,000	Aaa	AAA	n/a	4/6/10
SABR 2006-FR3 A2	$30,000,000	Aaa	AAA	AAA	6/12/09
SABR 2006-NC3 A2B	$8,000,000	Aaa	AAA	AAA	11/21/08
SEMT 2006-1 2A1	$105,230,000	n/a	AAA	AAA	7/1/09
SEMT 2006-1 3A1	$378,716,000	n/a	AAA	AAA	7/1/09
SARM 2005-21 3A1	$67,709,000	Aaa	AAA	n/a	2/20/09

Ticker	Original Face Value	Moody's Original Rating	S&P Original Rating	Fitch Original Rating	Date First Downgrade to Junk Status
WFHET 2006-3 A2	$12,500,000	Aaa	AAA	AAA	3/23/09
WFMBS 2006-AR3 A4	$125,000,000	n/a	AAA	AAA	9/10/09

E. Defendants Misrepresented the Mortgage Originators' Compliance with Predatory Lending Restrictions.

1. The Materiality of Predatory Lending Practices and the Issuance of Loans that Violate Other State and Federal Lending Statutes.

640. As a matter of policy, the Bank was not permitted to purchase PLMBS backed by mortgage pools that contained predatory loans.

641. Accordingly, the Bank insisted as an absolute requirement that as to any security it purchased the issuer warrant that none of the underlying mortgages violated any state or federal law concerning predatory lending. Representations and warranties regarding compliance with predatory lending laws are generally contained in either a Mortgage Loan Purchase Agreement (MLPA) or a Pooling and Service Agreement (PSA) executed prior to the securitization of the mortgages.

642. Prior to purchasing any of the subprime PLMBS, the Bank reviewed the "reps and warranties" contained in either the actual agreements for each bond or the agreements from prior closed transactions that were presented to the Bank as containing "reps and warranties" that would be substantially similar to those included in the final agreements executed for each PLMBS it purchased. Additionally, each subprime PLMBS Prospectus contained either the required "rep and warranty" regarding predatory lending or a representation that such a "rep and warrant" would be contained in the relevant MLPA or PSA for each bond.

643. Thus, statements in the Offering Documents representing and warranting that the subprime mortgage pools did not contain loans that violated state or federal predatory lending laws were material to the Bank s decision to purchase the PLMBS from Defendants.

2. Misstatements about Predatory Lending Compliance

644. The Offering Documents contained material untrue or misleading statements and omissions regarding compliance with applicable predatory lending laws. As an example of the type of representations and warranties reviewed by the Bank prior to the purchased of each PLMBS, Amendment No. 2 to the Flow Mortgage Loan Purchase and Warranties Agreement backing bond FFML 2006-FF13 A2C, dated January 20, 2006, between Goldman Sachs Mortgage Co., the Purchaser (the Sponsor), and First Franklin Financial Corp., the Seller (the Originator), includes a provision stating:

> Any and all requirements of any applicable federal, state or local law, including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity and disclosure laws, all applicable predatory and abusive lending laws, or unfair and deceptive practice laws applicable to the Mortgage Loans, including with limitation, any applicable provision relating to prepayment penalties, have been complied with . . . .

645. Substantively identical provisions were included in the MLPAs and PSAs reviewed by the Bank and relied upon prior to the purchase of each PLMBS. Additionally, representations that substantively similar reps and warranties would be included in the MLPAs and PSAs executed for each PLMBS purchased by the Bank were included in each Prospectus. Appendix V attached hereto and incorporated herein sets forth those statements.

3. Evidence Demonstrating Misstatements about Predatory Lending Practices of the Mortgage Originators

a. Government investigations, actions and settlements, confidential witnesses and evidence developed in other private lawsuits demonstrate predatory lending by the mortgage originators.

646. As alleged in detail above, predatory lending practices by mortgage originators, including those who issued the loans backing the PLMBS purchased by the Bank, is well-documented in government investigations and lawsuits, press reports, and statements of confidential witnesses who are former employees of the mortgage originators. Additional evidence has been generated by the many other private lawsuits against many of the same Defendants in connection with the sale of MBS and related certificates. This evidence and the allegations herein based on this evidence demonstrates that the statements in the Offering Documents regarding compliance with state and federal predatory lending rules are false and misleading. Contrary to the representations in the Offering Documents, the mortgage originators underlying these PLMBS engaged in predatory lending, and often issued loans to borrowers who lacked the ability to make the required payments, and without regard to such ability. Eleven of the sixteen lenders classified by the OCC as the worst of the worst based on foreclosure rates in the ten hardest hit metropolitan areas issued loans that backed PLMBS purchased by the Bank.

b. Analysis of loans that backed the PLMBS purchased by the Bank demonstrate that loans in the mortgage pools were the result of predatory lending.

647. An examination of the underlying mortgage loans that back the PLMBS purchased by the Bank provides strong evidence of the violation of predatory lending restrictions by the mortgage originators. This evidence takes several forms. First, given that the issuance of a loan to a borrower who is not qualified for the loan is itself a form of predatory lending, high rates of delinquency in the mortgage pools suggest predatory lending. Hence the data presented

in paragraphs 591 and 592 provides strong evidence of predatory lending practices of the mortgage originators who issued loans that back the PLMBS purchased by the Bank.

648. For many of the securities purchased by the Bank, the data is telling. For example, with respect to the two securities that included loans originated by Fremont Savings & Loan, total delinquency for the Fremont loans averaged over 54%, and foreclosures averaged over 25%. Likewise, for New Century, total delinquency averaged over 55% and foreclosures over 23%. Overall, for the loans (both prime and subprime) backing the PLMBS purchased by the Bank, delinquency averages were over 42%, and foreclosures were over 18%.

649. This analysis demonstrates that the representation and warranty of no predatory lending or high-cost loans made with respect to that pool are materially inaccurate and misleading.

F. Defendants Misrepresented the Due Diligence Performed on the Mortgage Pools that Backed the PLMBS Purchased by the Bank.

1. The Materiality of Due Diligence on the Mortgage Pools

650. As alleged in detail above, the Bank did not have access to the loan file information generated at the time the loans were issued; only the Defendants had access to this information. Consequently, the Bank was dependent on representations made by the Defendants regarding the quality of the mortgage loans backing the PLMBS it purchased.

651. Defendants made two types of representations regarding the acquisition of mortgages that were originated by third-party originators. First, the Defendants represented that certain of the originators that are identified in the Offering Documents conducted post-purchase due diligence reviews of a sampling of mortgages they acquired from third-party originators. Second, with respect to certain PLMBS backed by mortgages acquired by sponsors from unaffiliated originators, the Defendants represented that the sponsors conducted due diligence

reviews of the mortgages prior to their acquisition and securitization. In both cases, these due diligence reviews allegedly were undertaken to ensure that the mortgages were of adequate credit quality and that they were underwritten in compliance with applicable underwriting standards.

652. The representations regarding the underwriting standards employed by the originators and those regarding the sponsor s due diligence reviews of the mortgage loans provided the Bank with critical reassurances that the overall credit quality of the mortgage pools securing the PLMBS it purchased were as represented in the Offering Documents. The Bank relied on these representations in making its decisions to purchase these certificates.

2. Misstatements about Due Diligence

653. The Prospectuses provided to the Bank contained material untrue or misleading statements and omitted material information regarding the due diligence purportedly conducted by the Sponsors and Originators when they acquired mortgages from third-party originators. For example, Banc of America Funding 2006-F Trust Prospectus Supplement, provides the following with respect to mortgages acquired by Wells Fargo from third-parties:

> The contractual arrangements with Correspondents may . . . involve the delegation of all underwriting functions to . . . Correspondents, which will result in Wells Fargo Bank not performing any underwriting functions prior to acquisition of the loan but instead relying on . . . , in the case of bulk purchase acquisitions from such Correspondents, Wells Fargo Bank's post-purchase reviews of samplings of mortgage loans acquired from such Correspondents regarding the Correspondents' compliance with Wells Fargo Bank's underwriting standards. In all instances, however, acceptance by Wells Fargo Bank is contingent upon the loans being found to satisfy Wells Fargo Bank's program standards or the standards of a pool insurer.

BAFC 2006-F Pros. Sup. S-30. Substantively similar provisions regarding a mortgage Originator s due diligence reviews of acquired mortgages were included in the Prospectuses for many of the PLMBS purchased by the Bank. Appendix VI attached hereto and incorporated herein sets forth those statements.

654. Additionally, as an example of the representations made regarding a Sponsor's due diligence reviews of acquired mortgages, Ticker # CBASS 2006-CB4 AV3, Supplement to Prospectus, dated April 24, 2006, provides:

> The Sponsor or a loan reviewer reviewed a substantial majority of the files related to the Mortgage Loans in connection with the acquisition of the Mortgage Loans by the Sponsor for credit, compliance and property value considerations. These files may include the documentation pursuant to which the mortgage loan was originally underwritten, as well as the mortgagor's payment history on the mortgage loan. In its review, the Sponsor evaluates the mortgagor's credit standing, repayment ability and willingness to repay debt, as well as the value and adequacy of the mortgaged property as collateral.

655. Substantively similar provisions were included in the Prospectuses for many of the PLMBS purchased by the Bank. Appendix VI attached hereto and incorporated herein sets forth those statements. These statements were materially misleading because they omit to state the following information:

- The sponsors and originators routinely manipulated the due diligence process by determining the type and scope of review performed and pressuring the third-party due diligence firms to ignore deviations from the applicable underwriting criteria without regard to whether "compensating factors" were present;
- The level of due diligence performed by sponsors and originators of mortgages backing PLMBS deviated substantially from the level of due diligence performed by purchasers of mortgages who retained those mortgages as investments;
- The sponsors did not undertake any legitimate effort to determine whether the originators had satisfied their stated underwriting guidelines or the sponsor's purported standards; and instead allowed defective loans to be included in the loan pools for securitization;
- Due diligence review conducted by third-party underwriters often overlooked questionable claims by borrowers in stated income and other reduced documentation loans;
- The third-party underwriters informed the sponsors and originators that a substantial percentage of loans in the loans pools backing PLMBS were defective;
- The sponsors and originators nonetheless waived the defects as to a substantial percentage of these loans;

- In many cases, these reportedly defective loans were not removed from PLMBS deals, but rather were used by the sponsors to negotiate lower prices for the pools of mortgages they acquired and subsequently securitized; and

- Where defective loans in the sample were removed from the pool, no further review was conducted to ensure that none of the remaining 90% of the mortgages was plagued by similar defects as those in the sample.

3. Evidence of Misstatements about Due Diligence

656. As alleged in detail above, *see supra* §§ IV.D.4 and IV.D.5, the manipulation and disregard of the third-party due diligence process by sponsors and originators of mortgages backing PLMBS, including those PLMBS purchased by the Bank, is documented in public testimony and press reports, as well as confidential witness testimony discussed above. This evidence —and the allegations herein based on this evidence —demonstrate that the statements in and omissions from the Offering Documents regarding the due diligence review process were materially false and misleading.

G. Defendants Misrepresented That Mortgages and Mortgage Loans Were Validly Assigned and Transferred to the Issuing Trusts

1. The Materiality of Valid Assignment and Transfer

657. PLMBS have value because they are backed by income streams from loans and by the collateral that secure the loans. If mortgage notes and mortgages are not enforceable by the trust that issues the PLMBS, then the PLMBS have no value. For that reason, the valid assignment and transfer of mortgage notes and mortgages in accordance with the procedures laid out in the Offering Documents was material to the Bank s decision to purchase the PLMBS certificates at issue here.

2. Misstatements Regarding Procedures for Valid Assignment and Transfer

658. The Offering Documents misrepresented that all promissory notes had been or would be validly transferred to the trusts that issued the PLMBS certificates.

659. By way of example, the Offering Documents for SARM 2005-21 state:

> The Mortgage Loans will be assigned to the Trustee, together with all principal and interest received with respect to the Mortgage Loans on and after the Cut-off Date . . . . As to each Mortgage Loan, the following documents are generally required to be delivered to the Trustee (or its custodian) in accordance with the Trust Agreement: (1) the related original Mortgage Note endorsed without recourse to the Trustee or in blank . . . .
>
> [T]he depositor will, as to each Mortgage Loan, deliver or cause to be delivered to the trustee, or a custodian on behalf of the trustee . . . the mortgage note endorsed without recourse to the order of the trustee or in blank . . . . The trustee, or the custodian, will hold the documents in trust for the benefit of the securityholders . . . . The trustee, its agent or a custodian will review the documents related to each Mortgage Loan within the time period specified in the related Agreement after receipt thereof, and the trustee will hold the documents in trust for the benefit of the securityholders. Unless otherwise specified in the prospectus supplement, if any document is found to be missing or defective in any material respect, the trustee (or the custodian) will [demand repurchase or substitution of the defective loan, if the defect cannot be timely cured].

SARM 2005-21 Pros. Sup. S-72; SARM 2005-21 Pros. 81-82.

660. As *Kemp* and other cases show, the procedure specified in the Offering Documents was not followed. Mortgage notes were not properly endorsed by the originators, such that the depositor could in turn properly endorse the note. Possession of the notes was not transferred to the trustee, custodian, or agent of the trustee.

661. Further, where the procedure was not followed, the defective loans have not been repurchased or substituted, as represented in the Offering Documents.

662. The Offering Documents also misrepresented that all mortgages had been or would be validly assigned to the trusts that issued the PLMBS certificates.

663. By way of example, the Offering Documents for both OOLMT 2005-5 and OOLMT 2006-2 state:

> The Pooling Agreement will require that, within the time period specified therein, the Depositor will deliver or cause to be delivered to the Trustee (or a custodian, as the Trustee's agent for such purpose) . . . the Related Documents.[12] In lieu of delivery of original Mortgages . . . , if such original is not available or lost, the Depositor may deliver or cause to be delivered true and correct copies thereof . . . . Within 45 days of the Closing Date, the Trustee will review . . . the Related Documents . . . and if any . . . Related Document is found to be defective in any material respect[, repurchase or substitution of the defective loan will be demanded, if the defect cannot be timely cured].
>
> [T]he Depositor will . . . deliver, or cause to be delivered, to the related Trustee (or to the custodian described below) . . . an assignment of the Mortgage in blank or to the Trustee (or its nominee) in recordable form, together with any intervening assignments of the Mortgage with evidence of record thereon . . . .

OOLMT 2005-5 Pros. Sup. S-48; OOLMT 2005-5 Pros. 28; OOLMT 2006-2 Pros. Sup., Assignment of the Mortgage Loans; OOLMT 2006-2 Pros., Assignment of Trust Fund Assets.

664. As *Ibanez* shows, the procedure specified here was not followed. The mortgages were not properly assigned and physical transfer of the mortgages was not effected.

665. Further, where the procedure was not followed, the defective loan was not repurchased or substituted, as represented in the Offering Documents.

3. A Material Number of Mortgages and Mortgage Notes Were Not Validly Transferred or Assigned to the Issuing Trusts in Accordance with the Offering Documents

666. As alleged above, *see supra* § IV.G, a material number of the promissory notes backing the PLMBS were not validly transferred to the trust in accordance with the procedures outlined in the Offering Documents, as is necessary before those notes can be enforced under applicable state law. Where those procedures were not followed, the defective loan was not repurchased or substituted, as represented in the Offering Documents.

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[12] "Related Documents" are defined by the Offering Documents as including the "Mortgage, [and] assignment of Mortgage in recordable form in blank or to the Trustee." OOLMT 2005-5 Pros. Sup. S-47; OOLMT 2006-2 Pros. Sup., Assignment of the Mortgage Loans.

667. As alleged above, *see supra* § IV.G, a material number of the mortgages backing the PLMBS were not validly assigned to the trust in accordance with the procedures outlined in the Offering Documents, as is necessary before those mortgages may be enforced under applicable state law. Where those procedures were not followed, the defective loan was not repurchased or substituted, as represented in the Offering Documents.

668. Thus, statements in relevant Offering Documents that mortgages and mortgage notes were validly assigned and transferred to the issuing trust in accordance with specified procedures—and that loans that were defective in this respect would be repurchased or substituted—were false and misleading.

VI. COUNTS

FIRST CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS IN THE SALE OF SECURITIES

(Illinois Securities Law, 815 ILCS § 5/12(F) & (G))

669. This cause of action is alleged jointly and severally against the following Defendants in connection with the sale of the following securities:

Security	Against Defendant	As
AMSI 2005-R10 A2B	Barclays Capital Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	J.P. Morgan Securities Inc.	Underwriter
ARSI 2005-W5 A2C	Banc of America Securities LLC	Underwriter
	Barclays Capital Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
	Bank of America Corporation	Successor
BAFC 2006-C 2A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor

Security	Against Defendant	As
BAFC 2006-E 2A2	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-E 3A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-F 2A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-F 3A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
CBASS 2006-CB4 AV3	Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer
	J.P. Morgan Securities Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter
	Bank of America Corporation	Successor
CMLTI 2006-NC1 A2C	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
CMLTI 2006-NC2 A2B	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
CMLTI 2006-WFH2 A2B	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
CMLTI 2006-WFH4 A3	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person

Security	Against Defendant	As
FFML 2006-FF8 IIA3	Financial Asset Securities Corp.	Depositor/Issuer
	Greenwich Capital Markets, Inc.	Underwriter
	National City Corporation	Underwriter
	The PNC Financial Services Group, Inc.	Successor
FFML 2006-FF10 A7	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Sucessor
FFML 2006-FF12 A3	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Sucessor
FFML 2006-FF12 A4	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Sucessor
FFML 2006-FF13 A2C	GS Mortgage Securities Corp.	Depositor/Issuer
	Goldman, Sachs & Co.	Underwriter
	NatCity Investments, Inc.	Underwriter
	Goldman Sachs Mortgage Company	Controlling Person
	The Goldman Sachs Group Inc.	Controlling Person
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Sucessor
FFML 2006-FF14 A5	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Sucessor
FHASI 2006-AR1 2A1	First Horizon Asset Securities, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	First Tennessee Bank, National Association	Underwriter/Controlling Person
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
FHLT 2005-E 2A3	Barclays Capital Inc.	Underwriter
	Credit Suisse First Boston LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	UBS Securities LLC	Underwriter
GMACM 2006-AR2 2A1	Residential Asset Mortgage Products, Inc.	Depositor/Issuer
	Residential Funding Securities Corporation	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
GMACM 2006-AR2 4A1	Residential Asset Mortgage Products, Inc.	Depositor/Issuer
	Residential Funding Securities Corporation	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person

Security	Against Defendant	As
GSAMP 2006-NC2 A2C	GS Mortgage Securities Corp.	Depositor/Issuer
	Goldman, Sachs & Co.	Underwriter
	Goldman Sachs Mortgage Company	Controlling Person
	The Goldman Sachs Group Inc.	Controlling Person
HVMLT 2006-2 2A1A	Greenwich Capital Acceptance, Inc.	Depositor/Issuer
	Countrywide Securities Corporation	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Greenwich Capital Holdings, Inc.	Controlling Person
	Bank of America Corporation	Successor
HVMLT 2006-2 3A1A	Greenwich Capital Acceptance, Inc.	Depositor/Issuer
	Countrywide Securities Corporation	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Greenwich Capital Holdings, Inc.	Controlling Person
	Bank of America Corporation	Successor
INABS 2005-D AII3	Credit Suisse First Boston LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Morgan Stanley & Co. Incorporated	Underwriter
	UBS Securities LLC	Underwriter
INDX 2006-AR15 A2	IndyMac MBS, Inc.	Depositor/Issuer
MABS 2006-NC1 A3	Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer
	UBS Securities LLC	Underwriter
	UBS Americas Inc.	Controlling Person
MSAC 2006-HE5 A2C	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
	Morgan Stanley & Co. Incorporated	Underwriter
	Morgan Stanley	Controlling Person
MSAC 2006-HE6 A2C	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
	Countrywide Securities Corporation	Underwriter
	Morgan Stanley & Co. Incorporated	Underwriter
	Morgan Stanley	Controlling Person
	Bank of America Corporation	Successor
MSAC 2006-WMC2 A2C	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
	Morgan Stanley & Co. Incorporated	Underwriter
	Morgan Stanley	Controlling Person
NHELI 2006-WF1 A3	Nomura Home Equity Loan, Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Nomura Securities International, Inc.	Underwriter
	Nomura Holding America Inc.	Controlling Person

Security	Against Defendant	As
OOMLT 2005-5 A3	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Citigroup Global Markets Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	H&R Block Financial Advisors, Inc.	Underwriter
	HSBC Securities (USA) Inc.	Underwriter
	J.P. Morgan Securities Inc.	Underwriter
	H&R Block, Inc.	Controlling Person
	Option One Mortgage Corporation	Controlling Person
	American Enterprise Investment Services, Inc.	Successor
	Ameriprise Financial Services, Inc.	Successor
	Bank of America Corporation	Sucessor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
OOMLT 2006-2 2A3	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	H&R Block Financial Advisors, Inc.	Underwriter
	HSBC Securities (USA) Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter/Successor
	H&R Block, Inc.	Controlling Person
	Option One Mortgage Corporation	Controlling Person
	American Enterprise Investment Services, Inc.	Successor
	Ameriprise Financial Services, Inc.	Successor
	Bank of America Corporation	Successor
RASC 2005-KS12 A2	Residential Asset Securities Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Residential Funding Securities Corporation	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor

Security	Against Defendant	As
RFMSI 2006-SA2 2A1	Residential Funding Mortgage Securities I, Inc.	Depositor/Issuer
	Goldman, Sachs & Co.	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
SABR 2006-FR3 A2	Securitized Asset Backed Receivables, LLC	Depositor/Issuer
	Barclays Capital Inc.	Underwriter
SABR 2006-NC3 A2B	Securitized Asset Backed Receivables, LLC	Depositor/Issuer
	Barclays Capital Inc.	Underwriter
SARM 2005-21 3A1	UBS Securities LLC	Underwriter
SEMT 2006-1 2A1	Sequoia Residential Funding, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Countrywide Securities Corporation	Underwriter
	Redwood Trust, Inc.	Controlling Person
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
SEMT 2006-1 3A1	Sequoia Residential Funding, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Countrywide Securities Corporation	Underwriter
	Redwood Trust, Inc.	Controlling Person
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
	Bank of America Corporation	Successor
WFHET 2006-3 A2	Wells Fargo Asset Securities Corporation	Depositor/Issuer
	Barclays Capital Inc.	Underwriter
	Wells Fargo & Company	Controlling Person
	Wells Fargo Bank, National Association	Controlling Person
WFMBS 2006-AR3 A4	Wells Fargo Asset Securities Corporation	Depositor/Issuer
	Morgan Stanley & Co. Incorporated	Underwriter
	Wells Fargo & Company	Controlling Person
	Wells Fargo Bank, National Association	Controlling Person

670. The Bank hereby incorporates by reference all of the allegations herein.

671. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct.

672. In doing the acts alleged in connection with the offer and sale to the Bank of the Certificates in the securitizations referred to above, the Underwriter and Depositor/Issuer

Defendants violated 815 ILCS § 5/12(F) & (G) by: (i) engaging in transactions, practices, or courses of business which worked or tended to work a fraud or deceit upon the Bank as the purchaser of these securities; and (ii) obtaining money or property through the sale of securities by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

673. Defendants solicited the sale of these securities in Illinois, the Bank accepted the offers of sale for these securities in Illinois, and the purchase and sale of these securities was made in Illinois.

674. In connection with their offer and sale of these securities to the Bank, Defendants made numerous Offering Documents available to the Bank at its office in Cook County. These documents included the prospectus and prospectus supplement filed with the SEC for each securitization, registration statements, summary term sheets, and other documents. In these Offering Documents, Defendants made untrue or false statements of material fact about the Certificates they offered and sold to the Bank.

675. In purchasing the Certificates that are the subject of this cause of action, the Bank reasonably relied on Defendants business courses of action and the material misstatements and material omissions incorporated in the documents provided by Defendants to the Bank.

676. Defendants deceptive business practices, misstatements, and omissions alleged herein were material and were the cause of the Bank s decision to purchase these Certificates. If Defendants had not engaged in these materially deceptive practices, material misstatements, or omission of material information, and had instead provided full and accurate disclosures, the

Bank would not have purchased and in fact its own internal policies would have prevented it from purchasing the Certificates at issue.

677. The Controlling Person Defendants named in this Count are controlling persons as defined by ILCS § 2.4, because these Defendants offered or sold the securities that are the subject of this action, or are members of a group of persons acting in concert in the offer or sale of these securities, and these Defendants own (and did own at the time of sale) beneficially either (a) 25% or more of the outstanding voting securities of the respective Depositor/Issuer Defendants as identified above where no other person owns or controls a greater percentage of such securities; and/or (b) such number of outstanding securities of the respective Depositor/Issuer Defendants as would enable such person, or group of persons, to elect a majority of the board of directors or other managing body of such issuer. In the case of unincorporated Depositor/Issuer Defendants, the Controlling Person Defendants offered or sold the securities that are the subject of this action, or are members of a group of persons acting in concert in the offer or sale of these securities, directly or indirectly control the activities of the respective Depositor/Issuer Defendants as identified above.

678. As controlling persons under ILCS § 2.4, pursuant to ILCS § 13(A), the Controlling Person Defendants are jointly and severally liable to the Bank for the violations of 815 ILCS § 5/12(F) & (G) by the Depositor/Issuer Defendants alleged herein.

679. With respect to the Successor Liability Defendants, this Count is alleged against: (1) Successor Liability Defendant American Enterprise Investment Services, Inc. and/or Ameriprise Financial Services, Inc. as the successor or successors in liability to underwriter H&R Block Financial Advisors, Inc. with respect to Securities OOMLT 2005-5 A3 and OOMLT 2006-2 2A3; (2) The PNC Financial Services Group, Inc., as the successor in liability to

underwriter National City Corporation, d/b/a National City Capital Markets with respect to Security FFML 2006-FF8 IIA3; (3) PNC Investments LLC, as the successor in liability to underwriter NatCity Investments, Inc. with respect to Securities FFML 2006-FF14 A5, FFML 2006-FF13 A2C, FFML 2006-FF12 A3, FFML 2006-FF12 A4, and FFML 2006-FF10 A7; (4) Merrill Lynch, Pierce, Fenner & Smith Inc., as the successor in liability to underwriter Banc of America Securities LLC with respect to Securities ARSI 2005-W5 A2C, BACF 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, BAFC 2006-F 3A1, FHASI 2006-AR1 2A1, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, RASC 2005-KS12 A2, SEMT 2006-1 2A1 and SEMT 2006-1 3A1; (5) Bank of America Corporation as the successor in liability to underwriters Countrywide Securities Corp. or Merrill Lynch, Pierce, Fenner & Smith Inc., with respect to Securities CBASS 2006-CB4 AV3, HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, MSAC 2006-HE6 A2C, OOMLT 2006-2 2A3, SEMT 2006-1 2A1, SEMT 2006-1 3A1. Underwriters H&R Block Financial Advisors, Inc., National City Corporation, d/b/a National City Capital Markets, NatCity Investments, Inc., Countrywide Securities Corp., Merrill Lynch, Pierce, Fenner & Smith Inc., and Banc of America Securities LLC are collectively referred to herein as the "Succeeded Underwriters." The Successor Liability Defendants are named herein by virtue of their assumption of the liabilities of the Succeeded Underwriters, and their status as successors-in-interest to the Succeeded Underwriters.

680. The Successor Liability Defendants are jointly and severally or otherwise vicariously liable for the wrongful conduct of their respective Succeeded Underwriters, as alleged herein, because they are the successors in liability to those entities by virtue of those entities' merger with and into the respective Successor Liability Defendants and the Successor

Liability Defendants' integration of and assumption of responsibility for the business of the merged entities, including responsibility for pre-merger liabilities.

681. This action is brought within two years after the discovery of the untrue and misleading statements or omissions in the prospectus, prospectus supplements, and other Offering Documents that the Defendants sent to the Bank, or within two years after notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation, and within five years of the Bank's purchase of those Certificates, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements or omissions in the prospectus, prospectus supplements, and other Offering Documents and the other violations of the Illinois Securities Law alleged in this Count.

682. The Bank has timely given notice in accordance with 815 ILCS § 5/13B to Defendants of its election to void its purchases of the Certificates listed in this Count, and has offered to tender the securities to the seller or into court.

683. Under 815 ILCS § 5/13A(1), the Bank is entitled to void the transaction and have Defendants pay the Bank, jointly and severally, the amount paid for each Certificate, plus interest, as set forth in 815 ILCS § 5/13A(1), less any amounts received by the Bank with respect to that Certificate.

SECOND CAUSE OF ACTION

SIGNING OR CIRCULATING SECURITIES DOCUMENTS THAT CONTAINED MATERIAL MISREPRESENTATIONS

(Illinois Securities Law, 815 ILCS § 5/12(H)

684. This cause of action is alleged jointly and severally against the following Defendants in connection with the sale of the following securities:

Security	Against Defendant	As
AMSI 2005-R10 A2B	Barclays Capital Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	J.P. Morgan Securities Inc.	Underwriter
ARSI 2005-W5 A2C	Banc of America Securities LLC	Underwriter
	Barclays Capital Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
	Bank of America Corporation	Successor
BAFC 2006-C 2A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-E 2A2	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-E 3A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-F 2A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-F 3A1	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
CBASS 2006-CB4 AV3	Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer
	J.P. Morgan Securities Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter
	Bank of America Corporation	Successor

Security	Against Defendant	As
CMLTI 2006-NC1 A2C	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
CMLTI 2006-NC2 A2B	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
CMLTI 2006-WFH2 A2B	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
CMLTI 2006-WFH4 A3	Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
FFML 2006-FF8 IIA3	Financial Asset Securities Corp.	Depositor/Issuer
	Greenwich Capital Markets, Inc.	Underwriter
	National City Corporation	Underwriter
	The PNC Financial Services Group, Inc.	Successor
FFML 2006-FF10 A7	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Successor
FFML 2006-FF12 A3	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Successor
FFML 2006-FF12 A4	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Successor
FFML 2006-FF13 A2C	GS Mortgage Securities Corp.	Depositor/Issuer
	Goldman, Sachs & Co.	Underwriter
	NatCity Investments, Inc.	Underwriter
	Goldman Sachs Mortgage Company	Controlling Person
	The Goldman Sachs Group Inc.	Controlling Person
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Successor
FFML 2006-FF14 A5	NatCity Investments, Inc.	Underwriter
	PNC Investments LLC	Successor
	The PNC Financial Services Group, Inc.	Successor
FHASI 2006-AR1 2A1	First Horizon Asset Securities, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	First Tennessee Bank, National Association	Underwriter/Controlling Person
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor

Security	Against Defendant	As
FHLT 2005-E 2A3	Barclays Capital Inc.	Underwriter
	Credit Suisse First Boston LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	UBS Securities LLC	Underwriter
GMACM 2006-AR2 2A1	Residential Asset Mortgage Products, Inc.	Depositor/Issuer
	Residential Funding Securities Corporation	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
GMACM 2006-AR2 4A1	Residential Asset Mortgage Products, Inc.	Depositor/Issuer
	Residential Funding Securities Corporation	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
GSAMP 2006-NC2 A2C	GS Mortgage Securities Corp.	Depositor/Issuer
	Goldman, Sachs & Co.	Underwriter
	Goldman Sachs Mortgage Company	Controlling Person
	The Goldman Sachs Group Inc.	Controlling Person
HVMLT 2006-2 2A1A	Greenwich Capital Acceptance, Inc.	Depositor/Issuer
	Countrywide Securities Corporation	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Greenwich Capital Holdings, Inc.	Controlling Person
	Bank of America Corporation	Successor
HVMLT 2006-2 3A1A	Greenwich Capital Acceptance, Inc.	Depositor/Issuer
	Countrywide Securities Corporation	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Greenwich Capital Holdings, Inc.	Controlling Person
	Bank of America Corporation	Successor
INABS 2005-D AII3	Credit Suisse First Boston LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Morgan Stanley & Co. Incorporated	Underwriter
	UBS Securities LLC	Underwriter
INDX 2006-AR15 A2	IndyMac MBS, Inc.	Depositor/Issuer
MABS 2006-NC1 A3	Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer
	UBS Securities LLC	Underwriter
	UBS Americas Inc.	Controlling Person
MSAC 2006-HE5 A2C	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
	Morgan Stanley & Co. Incorporated	Underwriter
	Morgan Stanley	Controlling Person
MSAC 2006-HE6 A2C	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
	Countrywide Securities Corporation	Underwriter
	Morgan Stanley & Co. Incorporated	Underwriter
	Morgan Stanley	Controlling Person
	Bank of America Corporation	Successor

Security	Against Defendant	As
MSAC 2006-WMC2 A2C	Morgan Stanley ABS Capital I Inc.	Depositor/Issuer
	Morgan Stanley & Co. Incorporated	Underwriter
	Morgan Stanley	Controlling Person
NHELI 2006-WF1 A3	Nomura Home Equity Loan, Inc.	Depositor/Issuer
	Citigroup Global Markets Inc.	Underwriter
	Nomura Securities International, Inc.	Underwriter
	Nomura Holding America Inc.	Controlling Person
OOMLT 2005-5 A3	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Citigroup Global Markets Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	H&R Block Financial Advisors, Inc.	Underwriter
	HSBC Securities (USA) Inc.	Underwriter
	J.P. Morgan Securities Inc.	Underwriter
	H&R Block, Inc.	Controlling Person
	Option One Mortgage Corporation	Controlling Person
	American Enterprise Investment Services, Inc.	Successor
	Ameriprise Financial Services, Inc.	Successor
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
OOMLT 2006-2 2A3	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	H&R Block Financial Advisors, Inc.	Underwriter
	HSBC Securities (USA) Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter/Successor
	H&R Block, Inc.	Controlling Person
	Option One Mortgage Corporation	Controlling Person
	American Enterprise Investment Services, Inc.	Successor
	Ameriprise Financial Services, Inc.	Successor
	Bank of America Corporation	Successor

Security	Against Defendant	As
RASC 2005-KS12 A2	Residential Asset Securities Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Residential Funding Securities Corporation	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
RFMSI 2006-SA2 2A1	Residential Funding Mortgage Securities I, Inc.	Depositor/Issuer
	Goldman, Sachs & Co.	Underwriter
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
SABR 2006-FR3 A2	Securitized Asset Backed Receivables, LLC	Depositor/Issuer
	Barclays Capital Inc.	Underwriter
SABR 2006-NC3 A2B	Securitized Asset Backed Receivables, LLC	Depositor/Issuer
	Barclays Capital Inc.	Underwriter
SARM 2005-21 3A1	UBS Securities LLC	Underwriter
SEMT 2006-1 2A1	Sequoia Residential Funding, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Countrywide Securities Corporation	Underwriter
	Redwood Trust, Inc.	Controlling Person
	Bank of America Corporation	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
SEMT 2006-1 3A1	Sequoia Residential Funding, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Countrywide Securities Corporation	Underwriter
	Redwood Trust, Inc.	Controlling Person
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
	Bank of America Corporation	Successor
WFHET 2006-3 A2	Wells Fargo Asset Securities Corporation	Depositor/Issuer
	Barclays Capital Inc.	Underwriter
	Wells Fargo & Company	Controlling Person
	Wells Fargo Bank, National Association	Controlling Person
WFMBS 2006-AR3 A4	Wells Fargo Asset Securities Corporation	Depositor/Issuer
	Morgan Stanley & Co. Incorporated	Underwriter
	Wells Fargo & Company	Controlling Person
	Wells Fargo Bank, National Association	Controlling Person

685. The Bank hereby incorporates by reference all of the allegations herein.

686. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct.

687. In doing the acts alleged in selling to the Bank the Certificates in the securitizations referred to above, the Underwriter and Depositor/Issuer Defendants violated 815 ILCS § 5/12(H) by signing or circulating papers or documents pertaining to these securities which it knew, or as to which it reasonably should have known, contained material misrepresentations.

688. Defendants solicited the sale of these securities in Illinois, the Bank accepted the offers of sale for these securities in Illinois, and the purchase and sale of these securities was made in Illinois.

689. In connection with their offer and sale of these securities to the Bank, Defendants made numerous Offering Documents available to the Bank at its office in Cook County. These documents, which were signed by Defendants, included the prospectus, prospectus supplement filed with the SEC for each securitization, registration statements, summary term sheets, and other documents. In these Offering Documents, Defendants made untrue or false statements of material fact about the Certificates they offered and sold to the Bank.

690. In purchasing the Certificates that are the subject of this cause of action, the Bank reasonably relied on Defendants untrue or false statements of material fact about the Certificates they offered and sold to the Bank, and which were incorporated in the documents provided by Defendants to the Bank.

691. Defendants false or untrue statements alleged herein were material and were the cause of the Bank s decision to purchase these Certificates. If Defendants had made these false

or untrue statements, and had instead provided full and accurate disclosures, the Bank would not have purchased and in fact its own internal policies would have prevented it from purchasing the Certificates at issue.

692. The Controlling Person Defendants named in this Count are controlling persons as defined by ILCS § 2.4, because these Defendants offered or sold the securities that are the subject of this action, or are members of a group of persons acting in concert in the offer or sale of these securities, and these Defendants own (and did own at the time of sale) beneficially either (a) 25% or more of the outstanding voting securities of the respective Depositor/Issuer Defendants as identified above where no other person owns or controls a greater percentage of such securities; and/or (b) such number of outstanding securities of the respective Depositor/Issuer Defendants as would enable such person, or group of persons, to elect a majority of the board of directors or other managing body of such issuer. In the case of unincorporated Depositor/Issuer Defendants, the Controlling Person Defendants offered or sold the securities that are the subject of this action, or are members of a group of persons acting in concert in the offer or sale of these securities, directly or indirectly control the activities of the respective Depositor/Issuer Defendants as identified above.

693. As controlling persons under ILCS § 2.4, pursuant to ILCS § 13(A), the Controlling Person Defendants are jointly and severally liable to the Bank for the violations of 815 ILCS § 5/12(F) & (G) by the Depositor/Issuer Defendants alleged herein.

694. With respect to the Successor Liability Defendants, this Count is alleged against: (1) Successor Liability Defendant American Enterprise Investment Services, Inc. and/or Ameriprise Financial Services, Inc. as the successor or successors in liability to underwriter H&R Block Financial Advisors, Inc. with respect to Securities OOMLT 2005-5 A3 and OOMLT

2006-2 2A3; (2) The PNC Financial Services Group, Inc., as the successor in liability to underwriter National City Corporation, d/b/a National City Capital Markets with respect to Security FFML 2006-FF8 IIA3; (3) PNC Investments LLC, as the successor in liability to underwriter NatCity Investments, Inc. with respect to Securities FFML 2006-FF14 A5, FFML 2006-FF13 A2C, FFML 2006-FF12 A3, FFML 2006-FF12 A4, and FFML 2006-FF10 A7; (4) Merrill Lynch, Pierce, Fenner & Smith Inc., as the successor in liability to underwriter Banc of America Securities LLC with respect to Securities ARSI 2005-W5 A2C, BACF 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, BAFC 2006-F 3A1, FHASI 2006-AR1 2A1, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, RASC 2005-KS12 A2, SEMT 2006-1 2A1 and SEMT 2006-1 3A1; (5) Bank of America Corporation as the successor in liability to underwriters Countrywide Securities Corp. or Merrill Lynch, Pierce, Fenner & Smith Inc., with respect to Securities CBASS 2006-CB4 AV3, HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, MSAC 2006-HE6 A2C, OOMLT 2006-2 2A3, SEMT 2006-1 2A1, and SEMT 2006-1 3A1. Underwriters H&R Block Financial Advisors, Inc., National City Corporation, d/b/a National City Capital Markets, NatCity Investments, Inc., Countrywide Securities Corp., Merrill Lynch, Pierce, Fenner & Smith Inc., and Banc of America Securities LLC are collectively referred to herein as the "Succeeded Underwriters." The Successor Liability Defendants are named herein by virtue of their assumption of the liabilities of the Succeeded Underwriters, and their status as successors-in-interest to the Succeeded Underwriters.

695. The Successor Liability Defendants are jointly and severally or otherwise vicariously liable for the wrongful conduct of their respective Succeeded Underwriters, as alleged herein, because they are the successors in liability to those entities by virtue of those entities' merger with and into the respective Successor Liability Defendants and the Successor

Liability Defendants integration of and assumption of responsibility for the business of the merged entities, including responsibility for pre-merger liabilities.

696. This action is brought within two years after the discovery of the untrue and misleading statements or omissions in the prospectus supplements and other documents that the Defendants sent to the Bank, or within two years after notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation, and within five years of the Bank s purchase of those Certificates, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements or omissions in the prospectus, prospectus supplements, and other documents and the other violations of the Illinois Securities Law alleged in this Count.

697. The Bank has timely given notice in accordance with 815 ILCS § 5/13(B) to Defendants of its election to void its purchases of the Certificates listed in this Count, and has offered to tender the securities to the seller or into the court.

698. Under 815 ILCS § 5/12(H), the Bank is entitled to void the transaction and have Defendants pay the Bank, jointly and severally, the amount paid for each Certificate, plus interest at 10% per annum, less any amounts received by the Bank with respect to that Certificate.

THIRD CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS IN THE SALE OF SECURITIES

(North Carolina Securities Law, N.C.G.S.A. § 78A-8(2) & § 78A-56(a))

699. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Security	Against Defendant	As
BAFC 2006-C 2A1	Bank of America, N.A.	Sponsor
	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-E 2A2	Bank of America, N.A.	Sponsor
	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-E 3A1	Bank of America, N.A.	Sponsor
	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-F 2A1	Bank of America, N.A.	Sponsor
	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
BAFC 2006-F 3A1	Bank of America, N.A.	Sponsor
	Banc of America Funding Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor

Security	Against Defendant	As
OOMLT 2005-5 A3	Option One Mortgage Corporation	Sponsor
	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Citigroup Global Markets Inc.	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	H&R Block Financial Advisors, Inc.	Underwriter
	HSBC Securities (USA) Inc.	Underwriter
	J.P. Morgan Securities Inc.	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Citigroup Financial Products, Inc.	Controlling Person
	Citigroup Inc.	Controlling Person
	Greenwich Capital Holdings, Inc.	Controlling Person
	H&R Block, Inc.	Controlling Person
	Option One Mortgage Corporation	Controlling Person
	American Enterprise Investment Services, Inc.	Successor
	Ameriprise Financial Services, Inc.	Successor
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
OOMLT 2006-2 2A3	Option One Mortgage Corporation	Sponsor
	Option One Mortgage Acceptance Corp.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	H&R Block Financial Advisors, Inc.	Underwriter
	HSBC Securities (USA) Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter/Successor
	Bank of America Corporation	Controlling Person/Successor
	Greenwich Capital Holdings, Inc.	Controlling Person
	H&R Block, Inc.	Controlling Person
	Option One Mortgage Corporation	Controlling Person
	American Enterprise Investment Services, Inc.	Successor
	Ameriprise Financial Services, Inc.	Successor

Security	Against Defendant	As
RASC 2005-KS12 A2	Residential Funding Corporation	Sponsor/Controlling Person
	Residential Asset Securities Corporation	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Greenwich Capital Markets, Inc.	Underwriter
	Residential Funding Securities Corporation	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	GMAC Inc.	Controlling Person
	GMAC Mortgage Group Inc.	Controlling Person
	Greenwich Capital Holdings, Inc.	Controlling Person
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
SEMT 2006-1 2A1	RWT Holdings, Inc.	Sponsor
	Sequoia Residential Funding, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Countrywide Securities Corporation	Underwriter
	Bank of America Corporation	Controlling Person/ Successor
	Countrywide Financial Corporation	Controlling Person
	Redwood Trust, Inc.	Controlling Person
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor
SEMT 2006-1 3A1	RWT Holdings, Inc.	Sponsor
	Sequoia Residential Funding, Inc.	Depositor/Issuer
	Banc of America Securities LLC	Underwriter
	Countrywide Securities Corporation	Underwriter
	Bank of America Corporation	Controlling Person/Successor
	Countrywide Financial Corporation	Controlling Person
	Redwood Trust, Inc.	Controlling Person
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor

700. The Bank hereby incorporates by reference all allegations herein.

701. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct.

702. In doing the acts alleged in connection with the offer and sale to the Bank of the Certificates in the securitizations referred to above, the Underwriter and Depositor/Issuer Defendants violated N.C.G.S.A. § 78A-8(2) and § 78A-56(a)(2) by engaging in the offer and

sale of securities by making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

703. Defendants offered these certificates for sale in North Carolina in that the offer originated from a dealer in North Carolina.

704. In connection with their offer and sale of these securities to the Bank, Defendants originated numerous Offering Documents from North Carolina. These documents included the prospectus and prospectus supplement filed with the SEC for each securitization, registration statements, summary term sheets, and other documents. In these Offering Documents, Defendants made untrue or false statements of material fact about the Certificates they offered and sold to the Bank.

705. In purchasing the Certificates that are the subject of this cause of action, the Bank reasonably relied on Defendants business courses of action and the material misstatements and material omissions incorporated in the documents provided by Defendants to the Bank.

706. Defendants deceptive business practices, misstatements, and omissions alleged herein were material and were the cause of the Bank s decision to purchase these Certificates. If Defendants had not engaged in these materially deceptive practices, material misstatements, or omission of material information, and had instead provided full and accurate disclosures, the Bank would not have purchased and in fact its own internal policies would have prevented it from purchasing the Certificates at issue.

707. The Controlling Person Defendants named in this Count are liable in that they directly or indirectly controlled persons that violated N.C.G.S.A. § 78A-8(2) and § 78A-56(a)(2), and knew or should have known of the facts regarding the abandonment of underwriting

standards, the manipulation of the appraisal process and the LTV ratios, the unreliability of the credit ratings, the misrepresentations regarding occupancy status, and the predatory lending practices that give rise to liability of the controlled persons.

708. As controlling persons pursuant to N.C.G.S.A. § 78A-56(c), the Controlling Person Defendants are jointly and severally liable with the controlled person to the Bank for the violations of § 78A-8(2) and § 78A-56(a)(2) by the Depositor/Issuer and Underwriter Defendants alleged herein.

709. With respect to the Successor Liability Defendants, this Count is alleged against: (1) Successor Liability Defendant American Enterprise Investment Services, Inc. and/or Ameriprise Financial Services, Inc. as the successor or successors in liability to underwriter H&R Block Financial Advisors, Inc. with respect to Securities OOMLT 2005-5 A3 and OOMLT 2006-2 2A3; (2) Merrill Lynch, Pierce, Fenner & Smith Inc., as the successor in liability to underwriter Banc of America Securities LLC with respect to Securities BACF 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, BAFC 2006-F 3A1, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, RASC 2005-KS12 A2, SEMT 2006-1 2A1, and SEMT 2006-1 3A1; (3) Bank of America Corporation as the successor in liability to underwriters Countrywide Securities Corp. or Merrill Lynch, Pierce, Fenner & Smith Inc., with respect to Securities OOMLT 2006-2 2A3, SEMT 2006-1 2A1, and SEMT 2006-1 3A1. Underwriters H&R Block Financial Advisors, Inc., Countrywide Securities Corp., Merrill Lynch, Pierce, Fenner & Smith Inc., and Banc of America Securities LLC are collectively referred to herein as the Succeeded Underwriters. The Successor Liability Defendants are named herein by virtue of their assumption of the liabilities of the Succeeded Underwriters, and their status as successors-in-interest to the Succeeded Underwriters.

710. The Successor Liability Defendants are jointly and severally or otherwise vicariously liable for the wrongful conduct of their respective Succeeded Underwriters, as alleged herein, because they are the successors in liability to those entities by virtue of those entities merger with and into the respective Successor Liability Defendants and the Successor Liability Defendants integration of and assumption of responsibility for the business of the merged entities, including responsibility for pre-merger liabilities.

711. This action is brought within three years after the discovery of the untrue and misleading statements or omissions in the prospectus, prospectus supplements and other Offering Documents that the Defendants sent to the Bank and within five years of the Bank s purchase of those Certificates, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements or omissions in the prospectus, prospectus supplements, and other Offering Documents and the other violations of the North Carolina Securities law alleged in this Count.

712. The Bank has offered, or will offer, to tender the securities to the seller or into court.

713. Under N.C.G.S.A. § 78A-56(a)(2), the Bank is entitled to void the transaction and have Defendants pay the Bank the amount paid for each Certificate, plus interest, costs and reasonable attorneys fees, less any amount of any income received by the Bank with respect to that Certificate.

FOURTH CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS IN THE SALE OF SECURITIES

(New Jersey Securities Law N.J.S.A. 49:3-52(b) & (c))

714. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Security	Against Defendant	As
CBASS 2006-CB4 AV3	Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer
	J.P. Morgan Securities Inc.	Underwriter
	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter
	Bank of America Corporation	Successor

715. The Bank hereby incorporates by reference all allegations herein.

716. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct.

717. In doing the acts alleged in connection with the offer and sale to the Bank of the Certificates in the securitization referred to above, the Underwriter and Depositor/Issuer Defendants violated N.J.S.A. 49:3-52(b) & (c) by: (i) engaging in acts, practices, or courses of business which operated as a fraud or deceit upon the Bank as the purchaser of this security; and (ii) engaging in the sale of the security by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. The above referenced Defendants knew the statements were untrue or omitted material facts necessary to make the statements true, and intended to deceive the Bank with these statements, and the Bank has suffered a financial detriment as a result of these statements and/or omissions.

718. Defendants offered the above security for sale in New Jersey, and the Bank accepted the offer of sale in New Jersey in that the offer originated in New Jersey and the Bank communicated its acceptance of the offer to a dealer in New Jersey, reasonably believing the dealer to be in New Jersey, with the dealer in fact receiving the acceptance in New Jersey.

719. In connection with their offer and sale of this security to the Bank, Defendants originated numerous Offering Documents to the bank from New Jersey. These documents included the prospectus and prospectus supplement filed with the SEC for the securitization, registration statements, summary term sheets, and other documents. In these Offering Documents, Defendants made untrue or false statements of material fact about the Certificate they offered and sold to the Bank.

720. In purchasing the Certificates that are the subject of this cause of action, the Bank reasonably relied on Defendants business courses of action and the material misstatements and material omissions incorporated in the documents provided by Defendants to the Bank.

721. Defendants deceptive business practices, misstatements, and omissions alleged herein were material and were the cause of the Bank s decision to purchase this Certificate. If Defendants had not engaged in these materially deceptive practices, material misstatements, or omission of material information, and had instead provided full and accurate disclosures, the Bank would not have purchased and in fact its own internal policies would have prevented it from purchasing the Certificate at issue.

722. The Controlling Person Defendants named in this Count are liable in that they directly or indirectly controlled persons that violated N.J.S.A. § 49:3-52(b) & (c), and knew or should have known of the facts regarding the abandonment of underwriting standards, the manipulation of the appraisal process and the LTV ratios, the unreliability of the credit ratings,

the misrepresentations regarding occupancy status, and the predatory lending practices that give rise to liability of the controlled persons.

723. As controlling persons pursuant to N.J.S.A. § 49:3-71(d), the Controlling Person Defendants are jointly and severally liable with the controlled person to the Bank for the violations of N.J.S.A. § 49:3-52(b) & (c) by the Depositor/Issuer and Underwriter Defendants alleged herein.

724. With respect to the Successor Liability Defendant, this Count is alleged against: (1) Bank of America Corporation as successor in liability to underwriter Merrill Lynch, Pierce Fenner & Smith Inc. with respect to Security CBASS 2006-CB4 AV3. Underwriter Merrill Lynch, Pierce, Fenner & Smith Inc. is referred to herein as the "Succeeded Underwriter." The Successor Liability Defendant is named herein by virtue of its assumption of the liabilities of the Succeeded Underwriter, and its status as successors-in-interest to the Succeeded Underwriter.

725. The Successor Liability Defendant is jointly and severally or otherwise vicariously liable for the wrongful conduct of its respective Succeeded Underwriter, as alleged herein, because it is the successor in liability to that entity by virtue of that entity's merger with and into the respective Successor Liability Defendant and the Successor Liability Defendant's integration of and assumption of responsibility for the business of the merged entities, including responsibility for pre-merger liabilities.

726. This action is brought within two years after the discovery of the untrue and misleading statements or omissions in the prospectus, prospectus supplements and other Offering Documents that the Defendants sent to the Bank. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading

statements or omissions in the prospectus, prospectus supplements and other Offering Documents and the other violations of the New Jersey Securities Law alleged in this Count.

727. The Bank has offered, or will offer, to tender the security to the seller or into court.

728. Under N.J.S.A § 49:3-71(a)(2) & (3), the Bank is entitled to void the transaction and have Defendants pay the Bank the amount paid for the Certificate, plus costs and interest, as set forth in N.J.S.A. § 49:3-71(c), less any amount of income received by the Bank with respect to the Certificate.

FIFTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

(Under Common Law)

729. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Against Defendant:	As	In connection with Security No.:
Banc of America Funding Corporation	Depositor/Issuer	BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1
Citigroup Mortgage Loan Trust Inc.	Depositor/Issuer	CMLTI 2006-NC1 A2C CMLTI 2006-WFH2 A2B CMLTI 2006-WFH4 A3 CMLTI 2006-NC2 A2B
Financial Asset Securities Corp.	Depositor/Issuer	FFML 2006-FF8 IIA3
First Horizon Asset Securities, Inc.	Depositor/Issuer	FHASI 2006-AR1 2A1
Greenwich Capital Acceptance, Inc.	Depositor/Issuer	HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A
GS Mortgage Securities Corp.	Depositor/Issuer	FFML 2006-FF13 A2C GSAMP 2006-NC2 A2C
IndyMac MBS, Inc.	Depositor/Issuer	INDX 2006-AR15 A2

Against Defendant:	As	In connection with Security No.:
Merrill Lynch Mortgage Investors, Inc.	Depositor/Issuer	CBASS 2006-CB4 AV3
Morgan Stanley ABS Capital I Inc.	Depositor/Issuer	MSAC 2006-WMC2 A2C MSAC 2006-HE5 A2C MSAC 2006-HE6 A2C
Mortgage Asset Securitization Transactions, Inc.	Depositor/Issuer	MABS 2006-NC1 A3
Nomura Home Equity Loan, Inc.	Depositor/Issuer	NHELI 2006-WF1 A3
Option One Mortgage Acceptance Corp.	Depositor/Issuer	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
Residential Asset Mortgage Products, Inc.	Depositor/Issuer	GMACM 2006-AR2 2A1 GMACM 2006-AR2 4A1
Residential Asset Securities Corporation	Depositor/Issuer	RASC 2005-KS12 A2
Residential Funding Mortgage Securities I, Inc.	Depositor/Issuer	RFMSI 2006-SA2 2A1
Securitized Asset Backed Receivables, LLC	Depositor/Issuer	SABR 2006-FR3 A2 SABR 2006-NC3 A2B
Sequoia Residential Funding, Inc.	Depositor/Issuer	SEMT 2006-1 2A1 SEMT 2006-1 3A1
Wells Fargo Asset Securities Corporation	Depositor/Issuer	WFHET 2006-3 A2 WFMBS 2006-AR3 A4
Banc of America Securities LLC	Underwriter	ARSI 2005-W5 A2C BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1 FHASI 2006-AR1 2A1 OOMLT 2005-5 A3 OOMLT 2006-2 2A3 RASC 2005-KS12 A2 SEMT 2006-1 2A1 SEMT 2006-1 3A1
Barclays Capital Inc.	Underwriter	AMSI 2005-R10 A2B ARSI 2005-W5 A2C FHLT 2005-E 2A3 SABR 2006-FR3 A2 SABR 2006-NC3 A2B WFHET 2006-3 A2

Against Defendant:	As	In connection with Security No.:
Citigroup Global Markets Inc.	Underwriter	CMLTI 2006-NC1 A2C CMLTI 2006-WFH2 A2B CMLTI 2006-WFH4 A3 CMLTI 2006-NC2 A2B NHELI 2006-WF1 A3 OOMLT 2005-5 A3
Countrywide Securities Corporation	Underwriter	HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A MSAC 2006-HE6 A2C SEMT 2006-1 2A1 SEMT 2006-1 3A1
Credit Suisse First Boston LLC	Underwriter	FHLT 2005-E 2A3 INABS 2005-D AII3
First Tennessee Bank, National Association d/b/a FTN Financial Capital Markets	Underwriter	FHASI 2006-AR1 2A1
Goldman, Sachs & Co.	Underwriter	FFML 2006-FF13 A2C GSAMP 2006-NC2 A2C RFMSI 2006-SA2 2A1
Greenwich Capital Markets, Inc.	Underwriter	AMSI 2005-R10 A2B ARSI 2005-W5 A2C FFML 2006-FF8 IIA3 FHLT 2005-E 2A3 HVMLT 2006-2 2A1A HVMLT 2006-2 3A1A INABS 2005-D AII3 OOMLT 2005-5 A3 OOMLT 2006-2 2A3 RASC 2005-KS12 A2
H&R Block Financial Advisors, Inc.	Underwriter	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
HSBC Securities (USA) Inc.	Underwriter	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
J.P. Morgan Securities Inc.	Underwriter	AMSI 2005-R10 A2B CBASS 2006-CB4 AV3 OOMLT 2005-5 A3
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Underwriter	CBASS 2006-CB4 AV3 OOMLT 2006-2 2A3
Morgan Stanley & Co. Incorporated	Underwriter	INABS 2005-D AII3 MSAC 2006-WMC2 A2C MSAC 2006-HE5 A2C MSAC 2006-HE6 A2C WFMBS 2006-AR3 A4

Against Defendant:	As	In connection with Security No.:
NatCity Investments, Inc.	Underwriter	FFML 2006-FF13 A2C FFML 2006-FF12 A3 FFML 2006-FF12 A4 FFML 2006-FF14 A5 FFML 2006-FF10 A7
National City Corporation	Underwriter	FFML 2006-FF8 IIA3
Nomura Securities International, Inc.	Underwriter	NHELI 2006-WF1 A3
Residential Funding Securities Corporation	Underwriter	GMACM 2006-AR2 2A1 GMACM 2006-AR2 4A1 RASC 2005-KS12 A2
UBS Securities LLC	Underwriter	FHLT 2005-E 2A3 INABS 2005-D AII3 MABS 2006-NC1 A3 SARM 2005-21 3A1
American Enterprise Investment Services, Inc.	Successor to H&R Block Financial Advisors, Inc.	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
Ameriprise Financial Services, Inc.	Successor to H&R Block Financial Advisors, Inc.	OOMLT 2005-5 A3 OOMLT 2006-2 2A3
Bank of America Corporation	Successor to Countrywide Securities Corporation	SEMT 2006-1 2A1 SEMT 2006-1 3A1
	Successor to Merrill Lynch, Pierce, Fenner & Smith Incorporated	ARSI 2005-W5 A2C BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1 CBASS 2006-CB4 AV3 FHASI 2006-AR1 2A1 OOMLT 2005-5 A3OOMLT 2006-2 2A3 RASC 2005-KS12 A2 SEMT 2006-1 2A1 SEMT 2006-1 3A1
	Successor to Merrill Lynch Mortgage Investors, Inc.	CBASS 2006-CB4 AV3

Against Defendant:	As	In connection with Security No.:
Merrill Lynch, Pierce, Fenner & Smith Incorporated	Successor to Banc of America Securities LLC	ARSI 2005-W5 A2C BAFC 2006-C 2A1 BAFC 2006-E 2A2 BAFC 2006-E 3A1 BAFC 2006-F 2A1 BAFC 2006-F 3A1 FHASI 2006-AR1 2A1 OOMLT 2005-5 A3 OOMLT 2006-2 2A3 RASC 2005-KS12 A2 SEMT 2006-1 2A1 SEMT 2006-1 3A1
PNC Investments LLC	Successor to NatCity Investments, Inc.	FFML 2006-FF10 A7 FFML 2006-FF12 A3 FFML 2006-FF12 A4 FFML 2006-FF13 A2C FFML 2006-FF14 A5
The PNC Financial Services Group, Inc.	Successor to NatCity Investments, Inc.	FFML 2006-FF10 A7 FFML 2006-FF12 A3 FFML 2006-FF12 A4 FFML 2006-FF13 A2C FFML 2006-FF14 A5
	Successor to National City Corporation, d/b/a National City Capital Markets	FFML 2006-FF8 IIA3

730. The Bank hereby incorporates by reference all allegations herein.

731. The Defendants are and were in the business of providing information for the guidance of others in their business transactions: namely they provided Offering Documents that were central to the business transaction of purchasing the Certificates. The information in the Offering Documents was provided with full knowledge that it would be used in guiding the Bank in its business transaction of whether to purchase the offered Certificates.

732. In connection with their offer and sale of these securities to the Bank, Defendants made numerous documents available to the Bank, which documents Defendants drafted and/or

signed. The documents that Defendants sent to the Bank included the prospectus and prospectus supplement filed with the SEC for each securitization, registration statements, summary term sheets, and other documents. In these Offering Documents, Defendants negligently misrepresented material facts about the Certificates they offered and sold to the Bank.

733. The Defendants had a duty to make accurate and truthful statements in the information they provided to the Bank.

734. As alleged above and incorporated herein, the Defendants breached this duty by making untrue or misleading statements of material facts in the Offering Documents. These material misrepresentations pertain to the following non-exclusive list: (a) adherence to the originators stated underwriting guidelines and related matters; (b) the LTVs of the mortgage loans in the collateral pools of these securitizations; (c) the occupancy status rates of properties that secured the mortgage loans in these securitizations; (d) the rating process by which AAA-ratings were assigned; (e) compliance with predatory lending restrictions; and (f) purported due diligence on the loan pools that backed the PLMBS.

735. When the Defendants made these representations, they had no reasonable ground for believing them to be true. The Bank is informed and believes, and based thereon alleges, that Defendants had access to the loan files on the mortgage loans in the collateral pools for these securitizations, and, had the Defendants inspected those files, they would have learned that the information they gave the Bank contained untrue or misleading statements. In addition, Defendants were aware or should have been aware but for their negligence that the due diligence review of the loans that were being securitized and sold to the Bank identified serious concerns and that a significant percentage of these loans were identified as defective but were nonetheless bundled and sold to the Bank as part of the securitization. Thus, the Bank is

informed and believes, and based thereon alleges, that Defendants had access to information that either did or should have made the Defendants aware, had they heeded that information, that the representations they made to the Bank contained material untrue or misleading statements about the mortgage loans in the collateral pools. The Defendants were careless or negligent in ascertaining the truth of their statements.

736. In making the representations referred to above, the Defendants intended to induce the Bank to rely on those representations in making its decision to purchase the Certificates.

737. The Bank did reasonably and justifiably rely on the truth of the representations described above and alleged herein in analyzing and decided to purchase these Certificates. The Bank did not have access to the underlying loan files, and therefore was justified in relying on the Defendants statements regarding the credit quality of the mortgage pools. But for the Defendants making the false and misleading representations alleged herein, the Bank would not have purchased these Certificates.

738. As a direct and proximate result of the negligent misrepresentations by the Defendants, the Bank was damaged in an amount to be proven at trial.

739. With respect to the Successor Liability Defendants, this Count is alleged against: (1) Successor Liability Defendant American Enterprise Investment Services, Inc. and/or Ameriprise Financial Services, Inc. as the successor or successors in liability to underwriter H&R Block Financial Advisors, Inc. with respect to Securities OOMLT 2005-5 A3 and OOMLT 2006-2 2A3; (2) The PNC Financial Services Group, Inc., as the successor in liability to underwriter National City Corporation, d/b/a National City Capital Markets with respect to Security FFML 2006-FF8 IIA3; and (3) PNC Investments LLC, as the successor in liability to

underwriter NatCity Investments, Inc. with respect to Securities FFML 2006-FF13 A2C, FFML 2006-FF12 A3, FFML 2006-FF12 A4, FFML 2006-FF14 A5, and FFML 2006-FF10 A7; (4) Bank of America Corporation as successor in liability to underwriters Countrywide Securities Corp., Merrill Lynch Mortgage Investors, Inc., and Merrill Lynch, Pierce Fenner & Smith Inc. with respect to Securities HVMLT 2006-2 2A1A, HVMLT 2006-2 3A1A, MSAC 2006-HE6 A2C, SEMT 2006-1 2A1, SEMT 2006-1 3A1, CBASS 2006-CB4 AV3, and OOMLT 2006-2 2A3, (5) Merrill Lynch, Pierce, Fenner & Smith Inc. as successor in liability to underwriter Banc of America Securities LLC with respect to Securities ARSI 2005-W5 A2C, BAFC 2006-C 2A1, BAFC 2006-E 2A2, BAFC 2006-E 3A1, BAFC 2006-F 2A1, BAFC 2006-F 3A1, FHASI 2006-AR1 2A1, OOMLT 2005-5 A3, OOMLT 2006-2 2A3, RASC 2005-KS12 A2, SEMT 2006-1 2A1, and SEMT 2006-1 3A1. Underwriters H&R Block Financial Advisors, Inc., National City Corporation, d/b/a National City Capital Markets, NatCity Investments, Inc., Countrywide Securities Corp., Merrill Lynch Mortgage Investors, Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., and Banc of America Securities LLC are collectively referred to herein as the "Succeeded Underwriters." The Successor Liability Defendants are named herein by virtue of their assumption of the liabilities of the Succeeded Underwriters, and their status as successors-in-interest to the Succeeded Underwriters.

740. The Successor Liability Defendants are jointly and severally or otherwise vicariously liable for the wrongful conduct of their respective Succeeded Underwriters, as alleged herein, because they are the successors in liability to those entities by virtue of those entities' merger with and into the respective Successor Liability Defendants and the Successor Liability Defendants' integration of and assumption of responsibility for the business of the merged entities, including responsibility for pre-merger liabilities.

741. To the extent that 815 ILCS § 5/13(D) may apply, this action is brought within two years after the discovery of Defendants' negligent misrepresentations, or within two years after notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged negligent misrepresentations, and within five years of the Bank's purchase of those Certificates, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier Defendants' negligent misrepresentations alleged in this Count.

742. To the extent it was required to do so under Illinois law, the Bank has timely given notice in accordance with 815 ILCS § 5/13B to Defendants of its election to void its purchases of the Certificates listed in this Count, and has offered to tender the securities to the seller or into court.

VII. PRAYER FOR RELIEF

WHEREFORE, the Bank respectfully demands judgment as follows:

A. On the first, second, third, and fourth causes of action, an order voiding the transactions at issue and ordering Defendants to pay the Bank, jointly and severally, the amount paid for each Certificate, plus interest at 10% per annum or at the highest allowable rate, less any amounts received by the Bank with respect to that Certificate;

B. On the fifth cause of action, damages in an amount to be determined at trial, or, in the alternative;

C. On the fifth cause of action, an order of rescission;

D. Reasonable attorneys' fees and expenses or costs of suit, including expert witness fees; and

E. Such other and further relief as permitted by law or equity or as the Court may deem just.

VIII. JURY DEMAND

The Bank demands a jury on all issues triable to a jury either as of right or in the discretion of the Court pursuant to 735 ILCS § 5/2-1111.

RESPECTFULLY SUBMITTED this 8th day of April, 2011.

KELLER ROHRBACK L.L.P.

By _____

Lynn Lincoln Sarko
lsarko@kellerrohrback.com
Derek W. Loeser
dloeser@kellerrohrback.com
Amy Williams-Derry
awilliams-derry@kellerrohrback.com
Elizabeth A. Leland
bleland@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900, Fax (206) 623-3384

MINER, BARNHILL & GALLAND, PC
George Galland
ggalland@lawmbg.com
Robert S. Libman
rlibman@lawmbg.com
14 West Erie
Chicago, IL 60654
(312) 751-1170 (Fax) (312) 715-0438

KELLER ROHRBACK P.L.C.
Gary A. Gotto
ggotto@kellerrohrback.com
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
(602) 248-0088, Fax (602) 248-2822

Attorneys for Plaintiff Federal Home Loan Bank of Chicago

Exhibit 7

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT

CAUSE NO. 49D05 10 10 PL 045071

FEDERAL HOME LOAN BANK OF INDIANAPOLIS,

Plaintiff,

vs.

BANC OF AMERICA MORTGAGE SECURITIES, INC.; BANC OF AMERICA SECURITIES LLC n/k/a MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED; BANK OF AMERICA CORPORATION; THE BEAR STEARNS COMPANIES LLC f/k/a THE BEAR STEARNS COMPANIES, INC.; BEAR, STEARNS & CO. INC. n/k/a J.P. MORGAN SECURITIES, LLC; STRUCTURED ASSET MORTGAGE INVESTMENTS II INC.; CWMBS, INC.; COUNTRYWIDE FINANCIAL CORPORATION; CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP.; CREDIT SUISSE SECURITIES (USA) LLC f/k/a CREDIT SUISSE FIRST BOSTON LLC; CREDIT SUISSE HOLDINGS (USA), INC.; CREDIT SUISSE (USA), INC.; RESIDENTIAL FUNDING MORTGAGE SECURITIES I, INC.; RESIDENTIAL FUNDING SECURITIES, LLC; GMAC MORTGAGE GROUP LLC f/k/a GMAC MORTGAGE GROUP, INC.;

FILED
249 JUL 14 2011
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

AMENDED COMPLAINT FOR RESCISSION AND DAMAGES

ALLY FINANCIAL INC. f/k/a GMAC, INC.;)
GS MORTGAGE SECURITIES CORP.;)
GOLDMAN, SACHS & CO.; GOLDMAN)
SACHS MORTGAGE COMPANY; THE)
GOLDMAN SACHS GROUP, INC.;)
RBS SECURITIES INC. f/k/a GREENWICH)
CAPITAL MARKETS, INC.; INDYMAC)
MBS, INC.; J.P. MORGAN ACCEPTANCE)
CORPORATION I; J.P. MORGAN)
SECURITIES INC.; JPMORGAN)
SECURITIES HOLDINGS LLC;)
JPMORGAN CHASE & CO.; CHASE)
MORTGAGE FINANCE CORPORATION;)
UBS SECURITIES LLC; WAMU ASSET)
ACCEPTANCE CORP.; WAMU CAPITAL)
CORP.; WELLS FARGO ASSET)
SECURITIES CORPORATION; WELLS)
FARGO BANK, NATIONAL)
ASSOCIATION; WELLS FARGO &)
COMPANY, and JOHN DOE)
DEFENDANTS, 1-50,)
)
Defendants.)

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Plaintiff, FEDERAL HOME LOAN BANK OF INDIANAPOLIS (hereinafter the "FHLBI" or the "Bank") alleges the following based upon personal knowledge with regard to its own acts, and upon public information as well as information and belief as to all other matters. The Bank's information and belief is based on, among other things, the investigation by its counsel. The investigation included but was not limited to: (1) review and analysis of the Offering Documents for the Certificates that are the subject of this action; (2) interviews with individuals with first hand knowledge of the events alleged herein; (3) examination of relevant SEC filings, press releases and other public statements; (4) review and analysis of pleadings in other civil actions involving certain Defendants; (5) review and analysis of investigations of and complaints filed by state and federal authorities against certain Defendants; (6) published materials, media reports, congressional testimony and additional related materials; and (7) analysis of the performance and composition of the loan pools underlying the securities. Many of the facts related to Plaintiff's allegations are known only by the Defendants, or are exclusively within their custody or control. Plaintiff believes that substantial additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION

1. The action arises from the sale of over $2.7 billion in Private Label Mortgage Backed Securities ("PLMBS" or "Certificates"), a type of Residential Mortgage Backed Security ("RMBS"), by the Defendants to the Bank. The Certificates are "securities" within the meaning of the Indiana Uniform Securities Act, I.C. § 23-19-1-2(28), and Section 2(a)(1) of the Securities Act of 1933 (the "33 Act"), 15 U.S.C. § 77b(a)(1). The Defendants include the depositors/issuers, underwriters/dealers, and certain entities controlling these parties, who

offered and sold the PLMBS to the Bank. These Defendants' roles are described in detail below.

2. The Certificates were sold to the Bank by means of registration statements, prospectuses, supplemental prospectuses, and other written offering materials (collectively, "Offering Documents") that Defendants wrote, signed, and/or circulated, and which contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made not misleading.

3. Accordingly, the Bank seeks rescission and damages under the: (a) Indiana Uniform Securities Act, I.C. §§ 23-19-1-1 *et seq.*; (b) the 33 Act, 15 U.S.C. § 77a *et seq.*; and (c) applicable common law.

4. Pursuant to I.C. § 23-19-5-9(a), with respect to any claim for rescission, the Bank will tender the Certificates prior to the entry of judgment.

II. EXECUTIVE SUMMARY

A. PMLBS Defined

5. PLMBS are mortgage pass-through certificate securities entitling the holder to income payments from pools of mortgage loans.[1] The securities are referred to as "private label" because they are issued by private entities instead of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which are U.S. government-sponsored enterprises ("GSEs"). Mortgage securities issued by Fannie Mae and Freddie Mac are referred to as "agency" mortgage securities.

[1] Attached as Appendix I is a list of the PLMBS Certificates purchased by the Bank that are the subject of this action due to the Defendants' material misstatements and omissions in the Offering Documents described herein. Plaintiff identifies the PLMBS Certificates herein using the ticker symbols for each Certificate as created by Bloomberg.

6. Traditionally, the GSEs provided liquidity for the residential mortgage market by buying loans that conformed to their underwriting standards and dollar limits. In the early 2000s, PLMBS became an increasingly important adjunct to the GSEs, forming a capital market for mortgages that could not be sold to the GSEs. Certain PLMBS were secured by "prime" or "alt-a" mortgages. "Prime" mortgages were mortgages that allegedly met the credit score and other underwriting criteria of the GSEs, but were ineligible for GSE purchase because the mortgages exceeded the applicable GSE dollar limit. "Alt-A" mortgages were also ineligible for GSE due to dollar amount and/or because they contained certain disqualifying terms, such as certain types of adjustable rates, or were supported by reduced documentation. Other PLMBS were secured by "subprime" mortgages. These were mortgages that did not meet the GSE criteria for creditworthiness of the borrower but purportedly satisfied loan underwriting criteria developed by their originators.

7. Fundamentally, the value of a mortgage pass-through certificate depends on the ability of borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral the borrowers provide in the event of default. In the event that borrowers fall behind or default, the investor is exposed to loss. For this reason, rigorous and effective loan underwriting by the mortgage originators, performed in accordance with stated underwriting criteria, is of paramount importance; the absence of it – as demonstrated by this case – renders unreliable any credit rating or other attempt to assess the credit risk of the securities.

B. The Bank Purchased Only the Highest Rated (Triple-A-Rated) PLMBS

8. PLMBS are segmented into "tranches" with laddered payment priority and varying return potential for the holders of certificates representing various tranches. The most senior tranches enjoy the highest payment priority and lowest risk of default. Thus, if mortgage payments are not made, the losses are allocated first to the most junior tranches and move toward

the more senior tranches as losses cause the junior tranches to be exhausted. The senior tranches often are protected as well by certain credit enhancements, a common form of which is known as "overcollateralization." When a tranche is over-collateralized, the mortgages in that tranche have an aggregate principal balance that exceeds the aggregate principal balances of the Certificates secured thereby. For these reasons, the tranches are given different credit ratings—the higher up the ladder, the higher the rating.

9. Pursuant to both Bank policy and applicable regulatory requirements, and in order to minimize the risk of loss on the PLMBS, the Bank purchased only senior, triple-A-rated PLMBS tranches. Thus, based on the Offering Documents, the Bank believed it was buying safe and secure certificates with an extremely low risk of default—equivalent, from an investment quality standpoint, to other triple-A-rated investments. However, despite the original triple-A ratings and the abundant representations and warranties regarding the underlying mortgage pools, this was not the case, and the Bank has suffered substantial losses on these securities.

C. The Mortgage Originators Who Issued Loans Backing the Certificates Abandoned Underwriting Guidelines and Issued Loans Without Ensuring the Borrowers' Ability to Pay and Without Sufficient Collateral.

10. The mortgage originators who made the loans backing the PLMBS, many of whom were affiliates of the Defendants, sought to issue as many loans as possible to feed these Defendants' securitization machine. Whether borrowers could repay the loans and the quality of the collateral became secondary considerations to the originators' ability to sell the pooled interests on the loans. The mortgage loan originators' standard operating procedure was to approve any loan that could be sold into the secondary mortgage market. As a result, unbeknownst to the Bank, exceptions to underwriting and appraisal standards became the norm. Likewise, the originators knowingly obtained flawed appraisals of the collateral for the loans. Rather than requiring appraisals conducted in accordance with applicable appraisal standards, the

mortgage originators pressured and coerced appraisers to ensure that the appraisals came back "at value," *i.e*., the level necessary to close the loan. Consequently, the collateral for the loan pools backing the Certificates purchased by the Bank was vastly deficient.

11. The Bank also did not know that the Defendants failed to ensure that the loans they purchased and packaged into the Certificates complied with the mortgage originators' stated underwriting guidelines and appraisal standards. As revealed in recent government investigations, this approach to securitization was labeled "IBGYBG"—"I'll be gone, you'll be gone." Lost in this process was any effort by the Defendants to truthfully and accurately describe the loans in the Offering Documents so that investors such as the Bank could ascertain the true risk of the Certificates. Making matters even more egregious, the Defendants conducted a certain amount of due diligence on the loans, and were in a position to know that no real underwriting had been done.

D. The Defendants Provided Misleading Information About the Certificates in the Offering Documents They Prepared and Provided to the Bank.

12. In many arm's-length transactions, a buyer and a seller have limited disclosure obligations—buyer beware, or *caveat emptor*, is acceptable. This, however, is not the case with the sale of securities. Those who participate in the sale of securities are required to provide detailed information regarding what is being sold. Here, as required by law, the Defendants prepared detailed Offering Documents in which they purported to describe, among other things, the characteristics of the loans backing the Certificates. However, unbeknownst to the Bank, and to its great detriment, the Offering Documents contained material misstatements and omitted to disclose material information with respect to the mortgage pools backing the Certificates, and what Defendants knew about the pools. As a result, despite their original triple-A ratings and the

abundant representations and warranties regarding the underlying mortgage pools, the Certificates were far riskier than could be determined from the Offering Documents.

13. Though the Certificates themselves are complex, the abuses by the Defendants can be put in simple terms. The Offering Documents did not provide truthful or accurate information about the underwriting and appraisal standards used when the loans backing the pools were issued, or about the due diligence conducted when the loans were securitized.

14. Defendants' untrue statements and omissions of material fact went to the heart of the risk of the mortgage pools underlying the PLMBS. Specifically, Defendants failed to accurately describe key characteristics of the mortgages and the securitization of the mortgages, including, but not limited to:

a. **The Mortgage Originators' Underwriting Guidelines.** The Offering Documents contained material misstatements and omitted material information regarding the mortgage originators' abandonment of underwriting guidelines. The Defendants represented that the mortgage originators applied their stated underwriting guidelines when issuing loans to borrowers. However, the mortgage originators routinely disregarded their own guidelines and granted exceptions without proper justification.

b. **The Loan-to-Value Ratios of the Mortgage Loans and the Appraisal Standards Used to Determine the Ratios.** The Offering Documents contained material misstatements and omitted material information regarding the loan-to-value ratios ("LTVs") of the loans in the mortgage pools and the appraisal standards that were purportedly applied to determine the home values. The LTVs were purportedly based on valid appraisals performed in accordance with specific regulations and standards—but in truth, they were not based on legitimate appraisals at all. In fact, the appraisals were simply predetermined values set to ensure that the loan would close. As a result, the appraisers knew that the appraisals did not accurately reflect the value of the collateral property.

c. **The Ratings Process.** The Offering Documents contained material misstatements and omitted material information regarding the basis for the Certificates' triple-A ratings and the ratings processes. The Offering Documents represented that the rating agencies conducted analysis that was designed to assess the likelihood of delinquency and defaults in the underlying mortgage pools. However, the rating agencies knew, and the Defendants should have known, that the ratings were based on unreliable data and faulty assumptions—all of which caused the ratings to vastly understate the true risk of the PLMBS and overstate their creditworthiness.

d. Primary Residency. The Offering Documents contained material misstatements and omitted to disclose material information regarding the primary residency status of the mortgage properties – another key characteristic of the risk of the mortgage loans. The Defendants represented that certain specified percentages of the mortgage loan properties were primary residences of the borrower, instead of "second homes" or "investment properties," which carry more risk. However, in truth, the data provided by Defendants overstated the percentage of homes that were primary residences. Consequently, the statements in and omissions from the Offering Documents regarding the occupancy rates of the homes in the mortgage pools rendered the Offering Documents materially false and misleading.

e. Loan Documentation. Many of the Offering Documents contained material misstatements and omitted to disclose material information regarding the percentage of loans in the mortgage pool that were originated using full documentation.

f. Due Diligence. Many of the Offering Documents contained material misstatements and omitted material information regarding the sponsors' due diligence on the mortgage loans in the PLMBS mortgage pools. The Offering Documents stated that the underlying mortgage loans were inspected for compliance with the mortgage originators' underwriting and appraisal guidelines and documentation requirements. However, the Offering Documents omitted that the third-party due diligence firms retained to conduct the due diligence felt pressured to ignore deviations from the applicable underwriting criteria, and that even with regard to loan defects identified through the due diligence process, the sponsors nonetheless waived the defects as to a substantial percentage of these loans and, in many cases, used this information about defective loans to negotiate lower prices for the loan pools. In other words, rather than using the results of the due diligence review to eliminate defective loans from the securitization, the sponsors used them to negotiate – for *themselves* – a lower price for those loans, the risks of which they then securitized and sold to investors like the Bank.

g. Enforceability of Mortgages. Many of the Offering Documents contained material misstatements regarding the measures taken to ensure the enforceability of the mortgages and mortgage loans transferred to the trusts. In order for a mortgage to be enforced, basic steps need to be taken to validly assign the mortgage and mortgage loan to the trust and ensure that the trustee has the proper papers. These basic steps, and the representations made about these steps, were critical to investors (including the Bank), because if a mortgage cannot be enforced, then the value of the mortgage loans, and the Certificates dependent on these loans, are significantly impacted. The Offering Documents failed to disclose that in fact basic steps regarding the transfer of mortgages and mortgage loans were not followed—mortgage loans were not validly assigned, and papers necessary to ensure enforceability of the mortgage were never transferred to the trustee.

h. The Offering Documents Did Not Disclose the Compounded High-Risk Mortgages that Infected the Mortgage Pools. The Offering Documents contained certain statistical measurements of the overall mortgage pools, including measurements of the pools' weighted average LTVs, credit scores, and debt-to-income

ratios ("DTIs"). In addition to the material inaccuracy of much of this data, the Offering Documents did not disclose the compounding of risks in many mortgages in the pools. The representations in the Offering Documents indicated that a high risk according to one measure (say, a bad credit score) would be offset by a low risk according to another measure (say, a low LTV). If the Offering Documents were accurate, then, the mortgage pools would contain few if any mortgages with *compounded* high risks—with, for example, a bad credit score *and* a higher LTV. But analysis of the loans in the mortgage pools shows otherwise. Many of the mortgage loans in the pools in fact contained multiple risk factors. The undisclosed presence of a significant volume of loans with these characteristics made the Certificates much more prone to default than the Offering Documents indicated. The prevalence of these compounded high-risk loans tainted the loan pools and contributed substantially to the decline in performance and value of the Certificates.

15. The untrue, incomplete and materially misleading statements summarized above and discussed in detail below were made with respect to each of the PLMBS purchased by the Bank that are the subject of this lawsuit. The Bank reasonably relied on these statements and was misled by the omissions when deciding to purchase the securities, and the statements and omissions have caused the Bank significant losses.

16. As a result of these untrue statements in and omissions from the Offering Documents, the Bank purchased securities that were far riskier than represented by the Defendants, and that were not in truth "highest investment grade" as stated in the Offering Documents, but, instead, were low quality, high risk securities. As of the date this complaint is filed, all but four of the Certificates at issue in this case have been downgraded to below investment grade, indicating a materially higher probability of default.

E. The Bank Is Entitled to Rescission and Damages.

17. As indicated above, and described in detail below, it is not happenstance, or the result of later events, that the PLMBS failed to perform, plunged in value, and were ultimately severely downgraded. To the contrary, the PLMBS purchased by the Bank collapsed because the underlying loans were not what the Offering Documents represented them to be at the time the Certificates were issued. They were *not* backed by pools of loans issued to borrowers based on

the application of stated underwriting standards. Exceptions to underwriting guidelines were *not* justified by "compensating circumstances." Valid appraisals of the collateral for the loans were *not* performed. The Defendants did *not* engage in appropriate and effective due diligence to ensure that the loans satisfied the originators' stated underwriting guidelines.

18. Because the Offering Documents were marred by material misstatements and omissions that concealed the true risk of the Certificates, the Bank is entitled to rescission and such other make-whole relief afforded by applicable law.

19. The fair value of these Certificates has also declined dramatically. Moreover, as a result of the current and anticipated future poor performance of the mortgages underlying these Certificates, the Bank has incurred other-than-temporary impairment losses on these investments, resulting in over a hundred million dollars in losses. In addition, to the degree that the Bank has sold, and continues to sell, Certificates in the secondary market, the value of these Certificates have declined as a result of Defendants' misrepresentations and the Certificates' poor performance, and the Bank has suffered and continues to suffer losses accordingly.

20. Accordingly, the Bank seeks relief from Defendants in the manner set forth herein.

III. JURISDICTION AND VENUE

21. This Court has jurisdiction over the claims alleged in this action.

22. This Court has subject matter jurisdiction over Plaintiff's state law claims, which arise under the Indiana Uniform Securities Act, I.C. §§ 23-19-1-1 *et seq*., and under common law, because the Bank's claims arise from its transaction of business with Defendants within this State.

23. This Court has subject matter jurisdiction over Plaintiff's federal claims, which are brought pursuant to §§ 11, 12(a)(2) and 15 of the 33 Act, 15 U.S.C. §§ 77k, 77l(a)(2), and 77o, respectively, and pursuant to Section 22 of the 33 Act, 15 U.S.C. § 77v.

24. In addition, this Court has subject matter jurisdiction over the claims against Defendants pursuant to I.C. § 23-19-5-9, which creates a private right of action against any person who "sells a security in violation of" the Indiana Uniform Securities Act.

25. The Defendants are subject to personal jurisdiction in this State pursuant to Ind. Trial Rule 4.4(A) because the Bank's claims arise from the transaction of business with Defendants within this State. Furthermore, the offer and sale to the Bank of the Certificates that are the subject of this action, including certain Defendants' making of materially false and misleading statements and omission of material facts alleged herein, occurred in this State.

26. Because its activities are not localized in one state, the Bank is not a citizen of any state under 28 U.S.C. § 1332(c), so the Federal courts have no jurisdiction of this action under 28 U.S.C. § 1332(a). Furthermore, pursuant to Section 22(a) of the 33 Act, 15 U.S.C. § 77v(a), Plaintiff's claims arising under the 33 Act may not be removed to federal court.

27. Venue is proper in this County pursuant to Ind. Trial Procedure Rule 75(A). The offer and sale to the Bank of the Certificates that are the subject of this action, including certain Defendants' making of materially false and misleading statements and omission of material facts alleged herein, occurred in this County.

28. The Bank asserts no claims against any entity that has filed for bankruptcy protection.

IV. THE PARTIES

A. Plaintiff

29. Plaintiff is a bank created by the Federal Home Loan Bank Act. The headquarters of the Bank are in the city of Indianapolis, Marion County. Under its Organization Certificate, the Bank is to operate in Federal Home Loan Bank District 6, which comprises the states of Indiana and Michigan. The Bank operates in both of those states. The Bank is not an agency of the United States, and the Bank is not a citizen of any state.

30. The Bank is federally chartered, but privately capitalized and independently managed. The federal government is not involved in the day-to-day management of the Bank's operations. Management of the Bank is vested by law in the Bank's board of directors, all of whom are elected by the Bank's shareholder members. No tax dollars are involved in the operation of the Bank.

31. At the time the Bank initiated this action, the Bank had 409 members. Of those members, 217 are citizens of states other than Indiana, and 192 are citizens of Indiana.

32. As part of its business, the Bank makes advances, or loans, to its members. In 2009, 61% of those advances were made to institutions outside of Indiana. Employees of the Bank routinely travel to the offices of the Bank's members. In 2009, employees of the Bank made approximately 180 business trips to members outside of Indiana.

33. At the time the Bank initiated this action, ten of the Bank's 18 directors have their business addresses outside of Indiana, and 62% of the Bank's stock is owned by members who are based outside of Indiana.

34. In light of its public policy mission, the Bank has a very conservative investment philosophy. The Bank bought the PLMBS on the basis of factual representations designed to convince the Bank that these securities were safe, prudent, and highly rated investments. The

Bank could not and would not have purchased the PLMBS if the Offering Documents had disclosed the truth about these securities and the mortgage loans that backed them.

B. Defendants

1. The Banc of America Entities

35. Depositor/Issuer Defendant Banc of America Mortgage Securities, Inc. is a Delaware corporation. On information and belief, Banc of America Mortgage Securities, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Banc of America Mortgage Securities, Inc. was the Depositor/Issuer for Certificate BOAMS 2006-1 A1.

36. Underwriter and Seller Banc of America Securities LLC was a Delaware limited liability company that, at the time the Bank purchased the relevant Certificates, maintained a securities broker-dealer Financial Institutions Regulatory Authority ("FINRA") registration in Indiana. Banc of America Securities LLC underwrote Certificate BOAMS 2006-1 A1 and sold Certificates BOAMS 2006-1 A1, BSARM 2007-3 1A1 and WAMU 2007-HY2 1A1 directly to the Bank. Effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. All references herein to Banc of America Securities LLC are also to Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

37. Controlling Person Defendant Bank of America Corporation is a Delaware corporation. At all relevant times, Bank of America Corporation was the parent company and a controlling entity of Banc of America Mortgage Securities, Inc. and Banc of America Securities LLC. Bank of America Corporation was also the parent company of Bank of America, National

Association (which was the sponsor of the offering in which the Bank purchased Certificate BOAMS 2006-1 A1 and originated loans for the offerings in which the Bank purchased Certificates BOAMS 2006-1 A1 and GSR 2005-2F 2A1).

38. Bank of America Corporation is also named as a Successor Defendant to CWMBS, Inc. and Countrywide Financial Corporation. *See infra* § IV.C. As set forth below, on or about July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and all of its subsidiaries, including CWMBS, Inc.

39. Bank of America Corporation is also named as a Successor Defendant to Merrill Lynch Mortgage Investors, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Mortgage Lending, Inc., and Merrill Lynch & Co., Inc. *See infra* § IV.C. As set forth below, on or about January 1, 2009, Successor Defendant Bank of America Corporation acquired Merrill Lynch & Co., Inc. and all of its subsidiaries, including Merrill Lynch Mortgage Investors, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Merrill Lynch Mortgage Lending, Inc.

2. The Bear Stearns Entities

40. Underwriter and Seller Defendant Bear, Stearns & Co. Inc., now known as J.P. Morgan Securities, LLC, (hereafter together referred to as "Bear, Stearns & Co. Inc.") is a Delaware corporation, which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Indiana and is registered to do business in Indiana.[2] Bear, Stearns & Co.

[2] During the fall of 2008, Underwriter Defendant J.P. Morgan Securities Inc. merged with and into Underwriter Defendant Bear Stearns & Co., Inc. The surviving corporation changed its name from Bear Stearns & Co. Inc. to J.P. Morgan Securities Inc. The company changed its name again on or about September 1, 2010, when it converted into J.P. Morgan Securities LLC. For the sake of clarity, Plaintiff refers to this Underwriter Defendant as Bear Stearns & Co., Inc. in connection with all pre-merger acts and omissions of Bear Stearns & Co., Inc. Similarly, Plaintiff refers to this Underwriter Defendant as J.P. Morgan Securities Inc. in connection with all pre-merger acts and omissions of J.P. Morgan Securities Inc. To the extent

Inc. underwrote Certificates BSARM 2007-3 1A1 and CWHL 2007-13 A4 and sold Certificate CWHL 2007-13 A4 directly to the Bank.

41. Depositor/Issuer Defendant Structured Asset Mortgage Investments II Inc. is a Delaware corporation. On information and belief, Structured Asset Mortgage Investments II Inc. was formed and existed solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Structured Asset Mortgage Investments II Inc. was the Depositor/Issuer for Certificate BSARM 2007-3 1A1.

42. Controlling Person Defendant The Bear Stearns Companies Inc. is a Delaware corporation. At the time the Bank acquired the relevant Certificate(s), The Bear Stearns Companies Inc. was the parent company and a controlling entity of Bear, Stearns & Co. Inc. and Structured Asset Mortgage Investments II Inc. The Bear Stearns Companies Inc. was also the parent company of EMC Mortgage Corporation (which was the sponsor for the offering in which the Bank purchased Certificate BSARM 2007-3 1A1). On or about July 6, 2008, The Bear Stearns Companies, Inc. legally changed its name to The Bear Stearns Companies LLC. All references herein to The Bear Stearns Companies, Inc. are also to The Bear Stearns Companies LLC.

3. The Countrywide Entities

43. Depositor/Issuer Defendant CWMBS, Inc. is a Delaware corporation. On information and belief, CWMBS, Inc. was formed and existed solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. CWMBS, Inc. was the Depositor/Issuer for Certificates CWHL 2007-8 1A5, CWHL 2005-8R A1 and CWHL 2007-13 A4.

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that Underwriter Defendant J.P. Morgan Securities Inc. has undergone a change in corporate structure and/or ownership through merger, J.P. Morgan Securities LLC remains liable as the initial entity's successor.

44. Controlling Person Defendant Countrywide Financial Corporation is a Delaware corporation. At the time the Bank acquired the relevant Certificate(s), Countrywide Financial Corporation was a holding company which, through its subsidiaries, was engaged in mortgage lending and other real estate finance-related businesses, including mortgage banking, banking and mortgage warehouse lending, dealing in securities and insurance underwriting. Countrywide Financial Corporation managed its business through five business segments: Mortgage Banking; Banking; Capital Markets; Insurance; and Global Operations. The mortgage banking business segment was Countrywide Financial Corporation's core business and generated 48 percent of the Countrywide Financial Corporation's pre-tax earnings in 2006. At all relevant times, Countrywide Financial Corporation was the parent company and a controlling entity of CWMBS, Inc. Countrywide Financial Corporation was also the parent company of Countrywide Home Loans, Inc. which was the sponsor of the offerings in which the Bank purchased Certificates CWHL 2007-8 1A5 and CWHL 2007-13 A4), and originated loans for the offerings in which the Bank purchased Certificates BSARM 2007-3 1A1, CWHL 2007-8 1A5, CWHL 2005-8R A1, CWHL 2007-13 A4, GSR 2006-2F 3A1, GSR 2006-AR1 2A3, GSR 2006-1F 2A2, GSR 2005-3F 2A1, GSR 2005-1F 3A1, GSR 2005-2F 2A1, and GSR 2006-6F 2A1.

45. Bank of America Corporation is also named as a Successor Defendant to CWMBS, Inc. and Countrywide Financial Corporation. *See infra* § IV.C. As set forth below, on or about July 1, 2008, Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and all of its subsidiaries, including CWMBS, Inc.

4. The Credit Suisse Entities

46. Depositor/Issuer Defendant Credit Suisse First Boston Mortgage Securities Corp. is a Delaware corporation. On information and belief, Credit Suisse First Boston Mortgage Securities Corp. was formed and exists solely for the purpose of receiving and depositing loans

into trusts for PLMBS securitization. Credit Suisse First Boston Mortgage Securities Corp. was the Depositor/Issuer for Certificate CSFB 2005-8 9A1.

47. Underwriter and Seller Defendant Credit Suisse First Boston LLC is a Delaware limited liability company, which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Indiana and is registered to do business in Indiana. Effective January 16, 2006, Credit Suisse First Boston LLC changed its name to Credit Suisse Securities (USA) LLC. All references herein to Underwriter Credit Suisse First Boston LLC are also to Credit Suisse Securities (USA) LLC. Credit Suisse First Boston LLC underwrote Certificates CWHL 2007-8 1A5, CSFB 2005-8 9A1 and WFMBS 2006-10 A7 and sold Certificates CWHL 2007-8 1A5, CSFB 2005-8 9A1, RFMSI 2007-SA4 3A1, WAMU 2007-HY1 4A1, and WFMBS 2006-10 A7 directly to the Bank.

48. Controlling Person Defendant Credit Suisse (USA), Inc. is a Delaware corporation that was registered to do business in Indiana. Credit Suisse (USA), Inc. is the parent company and a controlling entity of wholly owned subsidiaries Credit Suisse First Boston Mortgage Securities Corp. and Credit Suisse First Boston LLC. Credit Suisse (USA), Inc. is also the parent of its wholly owned subsidiary DLJ Mortgage Capital LLC, which was the sponsor and an originator of loans for the offering in which the Bank purchased Certificate CSFB 2005-8 9A1.

49. Controlling Person Defendant Credit Suisse Holdings (USA), Inc. is a Delaware corporation. Credit Suisse Holdings (USA), Inc. is the parent company and a controlling entity of wholly owned subsidiaries Credit Suisse (USA), Inc., Credit Suisse First Boston Mortgage Securities Corp. and Credit Suisse First Boston LLC. Credit Suisse Holdings (USA), Inc. is also the parent of wholly owned subsidiary DLJ Mortgage Capital LLC.

5. The GMAC Entities

50. Depositor/Issuer Defendant Residential Funding Mortgage Securities I, Inc. is a Delaware corporation. On information and belief, Residential Funding Mortgage Securities I, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Residential Funding Mortgage Securities I, Inc. was the Depositor/Issuer for Certificates RFMSI 2007-S4 A4, RFMSI 2007-SA4 3A1 and RFMSI 2006-S4 A3.

51. Underwriter Defendant Residential Funding Securities, LLC, also known at times relevant hereto as GMAC RFC Securities (hereafter together referred to as Residential Funding Securities, LLC) is a Delaware limited liability company. Residential Funding Securities, LLC underwrote Certificate RFMSI 2007-SA4 3A1.

52. Controlling Person Defendant GMAC Mortgage Group, Inc., also known currently and at times relevant hereto as GMAC Mortgage Group LLC (hereafter, together referred to as "GMAC Mortgage Group, Inc.") is a Delaware corporation or limited liability company, respectively, that was and is registered to do business in Indiana. GMAC Mortgage Group, Inc. is the parent corporation or limited liability company, respectively, with 100% direct or indirect ownership, and controlling entity of Residential Funding Mortgage Securities I, Inc. and Residential Funding Securities, LLC. GMAC Mortgage Group, Inc. is also the parent of GMAC Mortgage, LLC (which originated loans for the offering in which the Bank purchased Certificates RFMSI 2007-S4 A4 and RFMSI 2007-SA4 3A1), GMAC Mortgage Corporation (which originated loans for the offering in which the Bank purchased Certificates GSR 2006-2F 3A1 and GSR 2006-AR1 2A3), HomeComings Financial, LLC (which originated of loans for the offering in which the Bank purchased Certificates RFMSI 2007-S4 A4 and RFMSI 2007-SA4 3A1), HomeComings Financial Network, Inc. (which originated loans for the offering in which the Bank purchased Certificate RFMSI 2006-S4 A3, Residential Funding Corporation (which

was the sponsor for the offering in which the Bank purchased Certificate RFMSI 2006-S4 A3) and Residential Funding Company, LLC (which was the sponsor for the offerings in which the Bank purchased Certificates RFMSI 2007-S4 A4 and RFMSI 2007-SA4 3A1).

53. Controlling Person Defendant GMAC Inc., also known at times relevant hereto as GMAC LLC (hereafter, together referred to as "GMAC Inc."), is a Delaware corporation or limited liability company, respectively, that was and is registered to do business in Indiana. GMAC Inc. offers mortgage services, including originating, purchasing, selling, and securitizing residential mortgage loans; servicing residential mortgage loans; and providing collateralized lines of credit to other mortgage originators. GMAC Inc. is the parent corporation or limited liability company, respectively, and controlling entity of Residential Funding Mortgage Securities I, Inc., Residential Funding Securities, LLC and GMAC Mortgage Group, Inc. GMAC Inc. is also the parent of originators GMAC Mortgage, LLC, GMAC Mortgage Corporation, HomeComings Financial, LLC, HomeComings Financial Network, Inc., and sponsors Residential Funding Corporation and Residential Funding Company, LLC. On May 10, 2010, GMAC Inc. changed its corporate name to Ally Financial Inc. All references herein to GMAC Inc. are also to Ally Financial Inc.

6. The Goldman, Sachs Entities

54. Depositor/Issuer Defendant GS Mortgage Securities Corp. is a Delaware corporation. On information and belief, GS Mortgage Securities Corp. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. GS Mortgage Securities Corp. was the Depositor/Issuer for Certificates GSR 2006-2F 3A1, GSR 2006-AR1 2A3, GSR 2006-1F 2A2, GSR 2005-7F 3A7, GSR 2005-3F 2A1, GSR 2005-1F 3A1, GSR 2005-2F 2A1, GSR 2006-6F 2A1, and STARM 2007-4 2A2, as well as the sponsor for the offerings in which the Bank Purchased Certificates GSR 2005-3F 2A1 and GSR 2005-2F 2A1.

55. Underwriter and Seller Defendant Goldman, Sachs & Co. is a New York corporation. Goldman, Sachs & Co. underwrote and sold the following Certificates to the Bank: CWHL 2005-8R A1, GSR 2006-2F 3A1, GSR 2006-AR1 2A3, GSR 2006-1F 2A2, GSR 2005-7F 3A7, GSR 2005-3F 2A1, GSR 2005-1F 3A1, GSR 2005-2F 2A1, GSR 2006-6F 2A1, STARM 2007-4 2A2, WAMU 2005-AR18 1A2, and WFMBS 2007-11 A2. Goldman, Sachs & Co. was also the sponsor of Certificate CWHL 2005-8R A1.

56. Controlling Person Defendant Goldman Sachs Mortgage Company, a New York limited partnership was, at the time the Bank purchased the relevant Certificates, the parent company and a controlling entity of GS Mortgage Securities Corp., as well as the sponsor for the offerings in which the Bank purchased Certificates GSR 2006-2F 3A1, GSR 2006-AR1 2A3, GSR 2006-1F 2A2, GSR 2005-7F 3A7, GSR 2005-1F 3A1, and GSR 2006-6F 2A1.

57. Controlling Person Defendant The Goldman Sachs Group Inc., a Delaware corporation that was and is registered to do business in Indiana, is the parent company and a controlling entity of Goldman Sachs Mortgage Company, Goldman, Sachs & Co. and GS Mortgage Securities Corp.

7. Greenwich Capital Markets, Inc.

58. Underwriter and Seller Defendant Greenwich Capital Markets, Inc. is a Delaware corporation, which, at the time the Bank purchased the relevant Certificates, maintained a securities broker-dealer FINRA registration in Indiana. Greenwich Capital Markets, Inc is a registered broker-dealer engaged in the U.S. government securities market and related capital markets business, and underwrote and sold to the Bank Certificates RFMSI 2007-S4 A4, RFMSI 2006-S4 A3 and WFMBS 2007-4 A16. Pursuant to its Restated Certificate of Incorporation, dated April 1, 2009, Greenwich Capital Markets, Inc. legally changed its name to RBS Securities Inc. All references herein to Greenwich Capital Markets, Inc. are also to RBS Securities Inc.

8. IndyMac MBS, Inc.

59. Depositor/Issuer Defendant IndyMac MBS, Inc. is a Delaware corporation. On information and belief, IndyMac MBS, Inc. was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. IndyMac MBS, Inc. was the Depositor/Issuer for Certificates RAST 2005-A11 2A1.

9. The JP Morgan Chase Entities

60. Depositor/Issuer Defendant J.P. Morgan Acceptance Corporation I is a Delaware corporation. On information and belief, J.P. Morgan Acceptance Corporation I was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. J.P. Morgan Acceptance Corporation I was the Depositor/Issuer for Certificate JPMMT 2005-A8 2A2.

61. Depositor/Issuer Defendant Chase Mortgage Finance Corporation is a Delaware corporation. On information and belief, Chase Mortgage Finance Corporation was formed and exists to receive and deposit loans into trusts for PLMBS securitization. Chase Mortgage Finance Corporation was the Depositor/Issuer and sponsor for Certificate CHASE 2005-A2 1A4.

62. Underwriter and Seller Defendant J.P. Morgan Securities Inc. is a Delaware corporation, which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Indiana and was and is registered to do business in Indiana. J.P. Morgan Securities Inc. underwrote and sold to the Bank Certificates CHASE 2005-A2 1A4, JPMMT 2005-A8 2A2 and WAMU 2005-AR16 1A2.

63. Controlling Person Defendant JPMorgan Securities Holdings LLC, also known at times relevant hereto as JPMorgan Securities Holdings Inc. (hereafter, together referred to as JPMorgan Securities Holdings LLC), is a Delaware corporation, JPMorgan Securities Holdings LLC is the parent company and controlling entity of J.P. Morgan Acceptance Corporation I and,

at least at the time the Bank purchased the relevant Certificates, was also the parent company of J.P. Morgan Securities Inc.

64. Controlling Person Defendant JPMorgan Chase & Co., a Delaware corporation, is the parent company and controlling entity of JPMorgan Securities Holdings LLC, J.P. Morgan Acceptance Corporation I, J.P. Morgan Securities Inc., JP Morgan Chase & Co. and Chase Mortgage Finance Corporation. JPMorgan Chase & Co. is also the parent company and a controlling entity of J.P. Morgan Mortgage Acquisition Corp., which was the sponsor for the offering in which the Bank purchased Certificate JPMMT 2005-A8 2A2, and Chase Home Finance LLC, which originated of loans for the offering in which the Bank purchased Certificate CHASE 2005-A2 1A4.

10. UBS Securities LLC

65. Underwriter and Seller Defendant UBS Securities LLC is a Connecticut limited liability company which, at all relevant times, has maintained a securities broker-dealer FINRA registration in Indiana and was and is registered to do business in Indiana. UBS Securities LLC underwrote and sold to the Bank Certificates RAST 2005-A11 2A1 and WFMBS 2007-10 1A10.

11. The WaMu Entities

66. Depositor/Issuer Defendant WaMu Asset Acceptance Corp. is a Delaware corporation. WaMu Asset Acceptance Corp. was the Depositor/Issuer for Certificates WAMU 2005-AR14 1A2, WAMU 2005-AR16 1A2, WAMU 2005-AR18 1A2, WAMU 2007-HY1 4A1 and WAMU 2007-HY2 1A1.

67. Underwriter Defendant WaMu Capital Corp. was a Delaware corporation that was registered to do business in Indiana. WaMu Capital Corp. underwrote Certificates WAMU 2005-AR14 1A2, WAMU 2005-AR16 1A2, WAMU 2005-AR18 1A2, WAMU 2007-HY1 4A1 and WAMU 2007-HY2 1A1.

12. The Wells Fargo Entities

68. Depositor/Issuer Defendant Wells Fargo Asset Securities Corporation is a Delaware corporation. On information and belief, Wells Fargo Asset Securities Corporation was formed and exists solely for the purpose of receiving and depositing loans into trusts for PLMBS securitization. Wells Fargo Asset Securities Corporation was the Depositor/Issuer for Certificates WFMBS 2007-10 1A10, WFMBS 2006-10 A7, WFMBS 2007-4 A16 and WFMBS 2007-11 A2.

69. Controlling Person Defendant Wells Fargo Bank, National Association, is a nationally chartered bank that operates branches throughout Indiana and is regulated by the Office of the Comptroller of the Currency (OCC). Wells Fargo Bank, National Association is the parent corporation and controlling entity of Wells Fargo Asset Securities Corporation. Wells Fargo Bank, National Association was also the sponsor for the offerings in which the Bank purchased Certificates WFMBS 2007-10 1A10, WFMBS 2006-10 A7, WFMBS 2007-4 A16 and WFMBS 2007-11 A2, and originated loans for the offerings in which the Bank purchased Certificates GSR 2006-AR1 2A3, GSR 2005-1F 3A1, WFMBS 2007-10 1A10, WFMBS 2006-10 A7, WFMBS 2007-4 A16 and WFMBS 2007-11 A2.

70. Controlling Person Defendant Wells Fargo & Company, a Delaware corporation, is the parent corporation—with 100% direct or indirect ownership—and controlling entity of Wells Fargo Asset Securities Corporation and Wells Fargo Bank, National Association. Wells Fargo & Company is a diversified financial services company that provides retail, commercial and corporate banking services. It has banking stores located in 39 states and the District of Columbia. Wells Fargo & Company provides additional financial services through subsidiaries that are engaged in various businesses, including: wholesale banking, mortgage banking,

consumer finance, commercial finance, securities brokerage and investment banking, insurance agency and brokerage services, and mortgage-backed securities servicing.

C. Successor Liability Allegations Against Certain Defendants

1. Successor Defendant Bank of America Corporation (Countrywide)

71. On January 11, 2008 Bank of America Corporation and Countrywide Financial Corporation announced that they had signed a merger agreement, which had been approved by the respective companies' boards of directors and was subject to regulatory and Countrywide stockholder approvals. *See* Bank of America Corporation Form 8-K filed 1/11/2008. In the press release filed as an exhibit to the 8-K, Bank of America confirmed its entry into "a definitive agreement to purchase Countrywide Financial Corp. in an all stock transaction worth approximately $4 billion." With respect to the benefits of the merger and integration of the two companies, the press release stated:

> "We are aware of the issues within the housing and mortgage industries," [Bank of America Chairman and Chief Executive Officer Kenneth D.] Lewis continued. "The transaction reflects those challenges. Mortgages will continue to be an important relationship product, and we now will have an opportunity to better serve our customers and to enhance future profitability." Countrywide's deep retail distribution will enhance Bank of America's network of more than 6,100 banking centers throughout the U.S.
>
> After closing, Bank of America plans to operate Countrywide separately under the Countrywide brand with integration occurring no sooner than 2009.

72. The merger became effective on July 1, 2008, when Successor Defendant Bank of America Corporation acquired Countrywide Financial Corporation and those entities it controlled, including Depositor/Issuer Defendant CWMBS, Inc. and sponsor Countrywide Home Loans, Inc., through an all-stock merger which, due to falling stock prices, was valued at approximately $2.3 billion. This figure is less than 16% of Countrywide's book value at the time the transaction was announced. In this transaction, Countrywide Financial Corporation merged

with and into a Bank of America Corporation subsidiary, which acquired substantially all Countrywide Financial Corporation assets and responsibility for all pre-merger liabilities and was re-named Countrywide Financial Corporation. *See* Agreement and Plan of Merger by and among Countrywide Financial Corporation, Bank of America Corporation and Red Oak Merger Corporation (Jan. 11, 2008). As the consideration for the merger, Countrywide shareholders received shares of Bank of America Corporation stock and possessed the authority to fully participate in the management of Bank of America corporation. Under the terms of the agreement, shareholders of Countrywide received .1822 of a share of Bank of America stock in exchange for each share of Countrywide

73. Bank of America repeatedly touted the benefits of the business combination, including the benefits of acquiring and incorporating into Bank of America's business model Countrywide's mortgage capabilities and deeply experienced management team, including during a January 11, 2008 call with analysts. According to at least one report, as a result of the transaction, "Bank of America gained number one market share in the origination of mortgage loans as well as additional capital markets operations involved in the packagings of mortgages into securities for investors." Rick Rothaker, *BofA Exec Tackles Countrywide*, Charlotte Observer (Oct. 21, 2008). The benefits to Bank of America were immediate. Countrywide contributed $259 million to Bank of America's operating earnings during the third quarter of 2008 alone, exclusive of restructuring and other charges. *Id.*

74. There can be no question that Bank of America assumed control of Countrywide. For instance, Bank of America stated that the merger with Countrywide was accounted for in accordance with Statement of Financial Accounting Standards ("SFAS") No. 141. Bank of America Corporation Form 10-K filed 11/10/2008 at 125. SFAS 141, which addresses mergers

and business combinations, specifies that it "applies to all transactions or other events in which an entity … obtains control of one or more businesses." SFAS No. 141 at i. Bank of America repeatedly announced that it intended to combine Countrywide's operations with its own and re-brand those combined operations with the Bank of America name, which it did in fact accomplish promptly. Countrywide did not survive with substantial assets or continue normal business operations after it was subsumed into Bank of America.

75. Bank of America issued a press release announcing that the merger had become effective and its plans with respect to combining the two companies, which stated in part:

> "Mortgages are one of the three main cornerstone consumer financial products along with deposits and credit cards," said Bank of America Chairman and Chief Executive Officer Kenneth D. Lewis. "This purchase significantly increases Bank of America's market share in consumer real estate, and as our companies combine, we believe Bank of America will benefit from excellent systems and a broad distribution network that will offer more ways to meet our customers' credit needs."
>
> * * *
>
> "Now we begin to combine the two companies and prepare to introduce our new name and way of operating," said Barbara Desoer, president of the combined mortgage, home equity and insurance businesses.
>
> * * *
>
> The company reiterated its combined national consumer mortgage division will be based in Calabasas, Calif. The combined company will begin originating mortgage and home equity products under the Bank of America brand by mid-2009.

Bank of America Corporation Press Release, Exhibit 99.1 to Form 8-K (7/1/08).

76. Moreover, Bank of America received everything it needed from Countrywide to maintain and carry on the Countrywide business and client relationships. For example, Bank of America announced that Barbara Desoer would run the combined mortgage and consumer real estate operations from Calabasas, California, where Countrywide Financial had its headquarters.

77. Inherent to the transaction was the continuity of the Countrywide business enterprise and management. For example, Bank of America named a number of Countrywide executives to Bank of America leadership roles and during various interviews and analyst calls, including the January 11, 2008 call, stated its intent to retain a number of managers, including "senior people who are very, very good operators . . . [who would] have big operating roles in this company." Bank of America announced that Countrywide Financial's incumbent president, David Sambol, would remain for at least some time to work on the transition.

78. Additionally, in the transaction, Bank of America inherited 1,000 Countrywide mortgage offices (along with, on information and belief, the ongoing business liabilities and necessary expenses attendant thereto), the majority of which it stated it intended to keep, other than as necessary to eliminate locations that overlapped with Bank of America.

79. Bank of America also assumed numerous other Countrywide-related obligations as part of the merger. For example, the Merger Agreement provided that Bank of America would provide directors' and officer's insurance for Countrywide officers and directors with respect to preexisting claims and claims arising in the future:

> (c) Parent shall cause the individuals serving as officers and directors of Company or any of its Subsidiaries immediately prior to the Effective Time to be covered for a period of six years from the Effective Time by the directors' and officers' liability insurance policy maintained by Company (provided that Parent may substitute therefor policies of at least the same coverage and amounts containing terms and conditions that are not less advantageous than such policy) with respect to acts or omissions occurring prior to the Effective Time that were committed by such officers and directors in their capacity as such; provided that in no event shall Parent be required to expend annually in the aggregate an amount in excess of 250% of the annual premiums currently paid by Company (which current amount is set forth in Section 6.7 of the Company Disclosure Schedule) for such insurance (the "Insurance Amount"), and provided further that if Parent is unable to maintain such policy (or such substitute policy) as a result of the preceding proviso, Parent shall obtain as much comparable insurance as is available for the Insurance Amount.

Agreement and Plan of Merger § 6.7 (Indemnification; Directors' and Officers' Insurance).

80. To further effect the absorption of Countrywide into Bank of America, on October 16, 2008, Bank of America announced that Countrywide Financial Corporation would no longer publicly report its own financial results and that Bank of America was transferring "substantially all of the assets and operations of Countrywide Financial Corporation and Countrywide Home Loans, Inc. to other subsidiaries of Bank of America."

81. On November 10, 2008, Bank of America publicly confirmed through an SEC filing on Form 8-K the integration of Countrywide Financial Corporation and Countrywide Home Loans, Inc. with Bank of America's other businesses and operations. That filing disclosed that, in a non-arm's length transaction dated November 7, 2008, Bank of America had transferred substantially all of the assets of Countrywide Financial Corporation and subsidiary Countrywide Home Loans, Inc. assets to Bank of America. As part of the consideration for such transfer, Bank of America Corporation assumed debt securities and related guarantees of Countrywide in an aggregate amount of approximately $16.6 billion, substituting Bank of America Corporation as the "successor corporation" and issuer/guarantor of the underlying securities. *See, for example,* 6th Supplemental Trust Deed submitted as Exhibit 4.40 to Form 8-K (11/7/08) ("Effective on and from the Effective Date, the name of the Issuer and the Guarantor (each as defined in the Trust Deed) shall be 'Bank of America Corporation,' as the successor corporation under the Trust Deed.") and other supplements submitted with the 11/7/08 Form 8-K. This amount was not sufficient, however, to satisfy Countrywide's liabilities, including the liabilities arising from its issuance of mortgage-backed securities.

82. In its 2008 Form 10-K (filed 2/27/09), Bank of America Corporation referred to itself and Countrywide as a "combined company" that would "modify or workout at least $40.0

billion in troubled mortgage loans in the next two years and estimated that these efforts will assist at least 265,000 customers."

83. On April 27, 2009, Bank of America announced that it was retiring the Countrywide name and that the combined operations of Countrywide and Bank of America would do business as Bank of America Home Loans. Many former Countrywide locations, employees, assets, and business operations now continue under the Bank of America Home Loans name. Upon information and belief, Bank of America Home Loans is a brand name that Bank of America now uses for the Countrywide mortgage origination and securitization operations that Bank of America has absorbed and consolidated with its own operations. The Form 10-K that Bank of America filed on February 26, 2010 lists Depositor/Issuer Defendant CWMBS, Inc., sponsor Countrywide Home Loans, Inc. and Controlling Person Defendant Countrywide Financial Corporation as Bank of America subsidiaries.

84. Bank of America expressly or impliedly assumed the liabilities of Countrywide Financial Corporation and its subsidiaries and specifically entered into the Countrywide merger and subsequent asset transfer with full knowledge that it was assuming substantial Countrywide liabilities.

85. Bank of America had actual or circumstantial knowledge of the potential claims against Countrywide pertaining to the securitization of Countrywide loans that failed to satisfy stated underwriting standards or were otherwise problematic as set forth herein.

86. Prior to the merger, Bank of America stated that it would conduct additional due diligence pertaining to Countrywide's exposure relating specifically to loan securitization business.

87. Upon completion of the merger, Bank of America Corporation incorporated Countrywide's mortgage-related securitization results into its own reported financial results. *See, e.g.,* Bank of America Corporation Form 10-Q (filed 11/06/2008) at 22. Bank of America continued reporting such figures until 2010, when it determined that the securitization activities it assumed from Countrywide were straining its financial performance. As a result, Bank of America recommended removal of discussion of any exposure pertaining to Countrywide-initiated securitizations from its reported results because, "Our exposure to our representations and warranties is the result of prior loan sales and securitization activities in … Countrywide Financial Corporation." Letter from John James (BofA) to Hugh West (SEC) dated August 25, 2010.

88. In a February 22, 2008 interview, Bank of America spokesman Scott Silvestri told Corporate Counsel that Bank of America had not overlooked Countrywide's legal expenses and liabilities when it decided to merge with Countrywide:

> Handling all this litigation won't be cheap, even for Bank of America, the soon-to-be largest mortgage lender in the country. Nevertheless, the banking giant says that Countrywide's legal expenses were not overlooked during negotiations. "We bought the company and all of its assets and liabilities," spokesman Scott Silvestri says. "We are aware of the claims and potential claims against the company and have factored these into the purchase."

89. A January 23, 2008 *New York Times* article similarly quotes former Bank of America Chairman and CEO Kenneth D. Lewis acknowledging that Bank of America had thought long and hard about acquiring Countrywide's liabilities:

> We did extensive due diligence. We had 60 people inside the company for almost a month. It was the most extensive due diligence we have ever done. So we feel comfortable with the valuation. We looked at every aspect of the deal, from their assets to potential lawsuits and we think we have a price that is a good price.

90. During the January 11, 2008 analyst call, Bank of America Chief Financial Officer echoed this statement:

> Now, as Ken has said the due diligence on this deal was extensive. We had more than 60 people on the ground for the better part of the last 30 days, with more focus picking up through the holidays. The focus of the due diligence, as you would expect, was on the mortgage servicing rights, credit, and legal, as well as accounting and operational areas. The results of our due diligence support our overall valuation and pricing of the transaction.

91. On January 13, 2010, Bank of America's Chief Executive Officer and President, Brian Moynihan testified to the Financial Crisis Inquiry Commission (often "FCIC") concerning the impact of the Countrywide transaction on Bank of America, including with negative and positive aspects of the acquisition:

> The Countrywide acquisition has positioned the bank in the mortgage business on a scale it had not previously achieved. There have been losses, and lawsuits, from the legacy Countrywide operation, but we are looking forward. We acquired the best mortgage servicing platform in the country, and a terrific sales force.

92. On November 16, 2010, Moynihan, publicly admitted that Bank of America had accepted liability for investors' claims concerning Countrywide's mortgage-backed securities: "There's a lot of people out there with a lot of thoughts about how we should solve this [investor demands for refunds over faulty mortgages], but at the end of the day, we'll pay for the things that Countrywide did."

93. And in a December 11, 2010 *New York Times* profile, Moynihan again publicly admitted that Bank of America would be responsible for Countrywide's liabilities:

> But what about Countrywide?
>
> "A decision was made; I wasn't running the company," Mr. Moynihan says, although he was obviously a top bank official at the time. "Our company bought it and we'll stand up; we'll clean it up."

The profile then noted that Bank of America's securities filings echoed the position taken by Moynihan that Bank of America would be responsible for Countrywide's liabilities:

> In addition to significantly increased revenues due to Countrywide's contributions, Bank of America has reported its payment on claims for defective

legacy Countrywide mortgages and announced a $4.4 billion reserve fund to pay for similar claims in the future.

94. In October 2008, Bank of America agreed to pay $8.7 billion to settle predatory lending lawsuits that various state attorneys general had filed against Countrywide. Although Countrywide originated the mortgages and was alleged to have committed the misconduct in question long before Bank of America's acquisition, Bank of America assumed financial responsibility for the settlement.

95. In May 2010, Bank of America agreed to pay $600 million to six New York retirement funds to resolve claims that Countrywide failed to properly disclose the riskiness of its lending activities. Shayandi Raice and Marshall Eckblad, *Countrywide's Mess Billed to Bank of America*, Dow Jones Newswires (June 7, 2010).

96. On June 7, 2010, Bank of America agreed to pay approximately $108 million to settle claims that its Countrywide unit assessed artificially inflated fees to approximately 200,000 Countrywide mortgage customers, even though Bank of America didn't own Countrywide when the alleged improprieties occurred. *Id.*

97. On January 3, 2011, Bank of America similarly announced that it had agreed to pay $2.8 billion to settle claims to repurchase mortgage loans that Fannie Mae and Freddie Mac had purchased from Countrywide Financial or its subsidiaries. In its press releases and presentation concerning the settlement, Bank of America admitted that it was paying to resolve claims concerning "alleged breaches of selling representations and warranties related to loans sold by legacy Countrywide."

98. Bank of America has completed actual and de facto mergers with Controlling Person Defendant Countrywide Financial Corporation and its subsidiaries, including Depositor/Issuer Defendant CWMBS, Inc. and sponsor Countrywide Home Loans, Inc., and has

absorbed Countrywide Financial and those entities controlled by it into Bank of America's own operations. Bank of America Corporation is a mere continuation of these entities. Bank of America Corporation is the successor in liability to Countrywide Financial Corporation and its subsidiaries, including CWMBS, Inc. and Countrywide Home Loans, Inc., and is jointly and severally or otherwise vicariously liable for the misstatements, omissions, and other wrongful conduct of these Defendants. Accordingly, the Bank seeks to recover any damages it is awarded against Countrywide Financial Corporation and CWMBS, Inc. from Bank of America.

2. Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (Banc of America Securities LLC).

99. As noted in § IV.B, *supra*, effective November 1, 2010, Banc of America Securities LLC merged with and into Successor Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated, a Delaware corporation. All references herein to Banc of America Securities LLC are also to Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is liable as a matter of law as successor to Banc of America Securities LLC by virtue of its status as the surviving entity in its merger with Banc of America Securities LLC.

D. Summary Charts of Defendants and Certificates

100. In sum, the "Depositor/Issuer Defendants," listed below, received or purchased and transferred or sold pools of assets to the issuing trusts identified below, and securitized in the bonds listed below, and were the "issuers" of the securities:[3]

Depositor/Issuer Defendant	Issuing Trust	Certificate(s)
Banc of America Mortgage Securities, Inc.	Banc of America Mortgage 2006-1 Trust	BOAMS 2006-1 A1
Chase Mortgage Finance Corporation	Chase Mortgage Finance Trust Series 2005-A2	CHASE 2005-A2 1A4

[3] *See* 17 C.F.R. § 230.191 ("The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the issuer for purposes of the asset-backed securities of that issuing entity").

Depositor/Issuer Defendant	Issuing Trust	Certificate(s)
Credit Suisse First Boston Mortgage Securities Corp.	Credit Suisse First Boston Mortgage-Backed P/T Certificates, Series 2005-8 Trust	CSFB 2005-8 9A1
CWMBS, Inc.	CHL Mortgage Pass-Through Trust 2007-8	CWHL 2007-8 1A5
	Resecuritization Pass-Through Trust 2005-8R	CWHL 2005-8R A1
	CHL Mortgage Pass-Through Trust 2007-13	CWHL 2007-13 A4
GS Mortgage Securities Corp.	GSR Mortgage Loan Trust 2006-2F	GSR 2006-2F 3A1
	GSR Mortgage Loan Trust 2006-AR1	GSR 2006-AR1 2A3
	GSR Mortgage Loan Trust 2006-1F	GSR 2006-1F 2A2
	GSR Mortgage Loan Trust 2005-7F	GSR 2005-7F 3A7
	GSR Mortgage Loan Trust 2005-3F	GSR 2005-3F 2A1
	GSR Mortgage Loan Trust 2005-1F	GSR 2005-1F 3A1
	GSR Mortgage Loan Trust 2005-2F	GSR 2005-2F 2A1
	GSR Mortgage Loan Trust 2006-6F	GSR 2006-6F 2A1
	STARM Mortgage Loan Trust 2007-4	STARM 2007-4 2A2
IndyMac MBS, Inc.	Residential Asset Securitization Trust 2005-A11CB	RAST 2005-A11 2A1
J.P. Morgan Acceptance Corporation I	J.P. Morgan Mortgage Trust 2005-A8	JPMMT 2005-A8 2A2
Residential Funding Mortgage Securities I, Inc.	RFMSI Series 2007-S4 Trust	RFMSI 2007-S4 A4
	RFMSI Series 2007-SA4 Trust	RFMSI 2007-SA4 3A1
	RFMSI Series 2006-S4 Trust	RFMSI 2006-S4 A3
Structured Asset Mortgage Investments II Inc.	Bear Stearns ARM Trust 2007-3	BSARM 2007-3 1A1
WaMu Asset Acceptance Corp.	WaMu Mortgage Pass-Through Certificates Series 2005-AR14 Trust	WAMU 2005-AR14 1A2
	WaMu Mortgage Pass-Through Certificates Series 2005-AR16 Trust	WAMU 2005-AR16 1A2
	WaMu Mortgage Pass-Through Certificates Series 2005-AR18 Trust	WAMU 2005-AR18 1A2
	WaMu Mortgage Pass-Through Certificates Series 2007-HY1 Trust	WAMU 2007-HY1 4A1
	WaMu Mortgage Pass-Through Certificates Series 2007-HY2 Trust	WAMU 2007-HY2 1A1

Depositor/Issuer Defendant	Issuing Trust	Certificate(s)
Wells Fargo Asset Securities Corporation	Wells Fargo Mortgage Backed Securities 2007-10 Trust	WFMBS 2007-10 1A10
	Wells Fargo Mortgage Backed Securities 2006-10	WFMBS 2006-10 A7
	Wells Fargo Mortgage Backed Securities 2007-4 Trust	WFMBS 2007-4 A16
	Wells Fargo Mortgage Backed Securities 2007-11 Trust	WFMBS 2007-11 A2

101. In sum, the "Underwriting Defendants," listed below, purchased the securities identified herein from the Depositor/Issuer Defendants (defined and identified above), and offered or sold the securities to the Bank. Together with the Depositor/Issuer Defendants, the Underwriter Defendants prepared the Offering Documents for the securities and provided them to the Bank:

Underwriter Defendant	Certificate(s)
Banc of America Securities LLC (n/k/a Merrill Lynch, Pierce, Fenner & Smith Incorporated)	BOAMS 2006-1 A1
Bear, Stearns & Co. Inc.	BSARM 2007-3 1A1 CWHL 2007-13 A4
Credit Suisse First Boston LLC	CWHL 2007-8 1A5 CSFB 2005-8 9A1 WFMBS 2006-10 A7
Goldman, Sachs & Co.	CWHL 2005-8R A1 GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-1F 2A2 GSR 2005-7F 3A7 GSR 2005-3F 2A1 GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2006-6F 2A1 STARM 2007-4 2A2 WAMU 2005-AR18 1A2 WFMBS 2007-11 A2
Greenwich Capital Markets, Inc.	RFMSI 2007-S4 A4 RFMSI 2006-S4 A3 WFMBS 2007-4 A16

Underwriter Defendant	Certificate(s)
J.P. Morgan Securities Inc.	CHASE 2005-A2 1A4 JPMMT 2005-A8 2A2 WAMU 2005-AR16 1A2
Residential Funding Securities, LLC	RFMSI 2007-SA4 3A1
UBS Securities LLC	RAST 2005-A11 2A1 WFMBS 2007-10 1A10
WaMu Capital Corp.	WAMU 2005-AR14 1A2 WAMU 2005-AR16 1A2 WAMU 2005-AR18 1A2 WAMU 2007-HY1 4A1 WAMU 2007-HY2 1A1

102. In sum, the "Seller Defendants," listed below, sold the securities identified below directly to the Bank:

Seller Defendant	Certificate(s)
Banc of America Securities LLC (n/k/a Merrill Lynch, Pierce, Fenner & Smith Incorporated)	BOAMS 2006-1 A1 BSARM 2007-3 1A1 WAMU 2007-HY2 1A1
Bear, Stearns & Co. Inc.	CWHL 2007-13 A4
Credit Suisse First Boston LLC	CWHL 2007-8 1A5 CSFB 2005-8 9A1 RFMSI 2007-SA4 3A1 WAMU 2007-HY1 4A1 WFMBS 2006-10 A7
Goldman, Sachs & Co.	CWHL 2005-8R A1 GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-1F 2A2 GSR 2005-7F 3A7 GSR 2005-3F 2A1 GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2006-6F 2A1 STARM 2007-4 2A2 WAMU 2005-AR18 1A2 WFMBS 2007-11 A2
Greenwich Capital Markets, Inc.	RFMSI 2007-S4 A4 RFMSI 2006-S4 A3 WFMBS 2007-4 A16
J.P. Morgan Securities Inc.	CHASE 2005-A2 1A4 JPMMT 2005-A8 2A2 WAMU 2005-AR16 1A2

Seller Defendant	Certificate(s)
UBS Securities LLC	RAST 2005-A11 2A1 WFMBS 2007-10 1A10

103. In sum, the "Controlling Person Defendants," listed below, controlled the Issuer/Depositor Defendants and/or Underwriter Defendants:

Controlling Person Defendant	Controlled Defendant	Defendant
Bank of America Corporation	Banc of America Mortgage Securities, Inc.	Depositor
	Banc of America Securities LLC (n/k/a Merrill Lynch, Pierce, Fenner & Smith Incorporated)	Underwriter
Countrywide Financial Corporation	CWMBS, Inc.	Depositor
Credit Suisse (USA), Inc.	Credit Suisse First Boston LLC	Underwriter
	Credit Suisse First Boston Mortgage Securities Corp.	Depositor
Credit Suisse Holdings (USA), Inc.	Credit Suisse First Boston LLC	Underwriter
	Credit Suisse First Boston Mortgage Securities Corp.	Depositor
GMAC Inc.	Residential Funding Mortgage Securities I, Inc.	Depositor
	Residential Funding Securities, LLC	Underwriter
GMAC Mortgage Group, Inc.	Residential Funding Mortgage Securities I, Inc.	Depositor
	Residential Funding Securities, LLC	Underwriter
Goldman Sachs Mortgage Company	GS Mortgage Securities Corp.	Depositor
JPMorgan Chase & Co.	J.P. Morgan Acceptance Corporation I	Depositor
	Chase Mortgage Finance Corporation	Depositor
	J.P. Morgan Securities Inc.	Underwriter
JPMorgan Securities Holdings LLC	J.P. Morgan Acceptance Corporation I	Depositor
	J.P. Morgan Securities Inc.	Underwriter
The Bear Stearns Companies Inc.	Bear, Stearns & Co. Inc.	Underwriter
	Structured Asset Mortgage Investments II Inc.	Depositor

Controlling Person Defendant	Controlled Defendant	Defendant
The Goldman Sachs Group Inc.	Goldman, Sachs & Co.	Underwriter
	GS Mortgage Securities Corp.	Depositor
Wells Fargo & Company	Wells Fargo Asset Securities Corporation	Depositor
Wells Fargo Bank, National Association	Wells Fargo Asset Securities Corporation	Depositor

E. The John Doe Defendants

104. Defendants John Doe 1-50 are other Depositor/Issuers, Underwriters, Sellers, Controlling Persons, and/or others who are jointly and severally or otherwise liable for the misstatements, omissions, and other wrongful conduct alleged herein, including the liability with respect to the Certificates at issue in this case. The John Doe Defendants may include persons or entities that are not named as Defendants at this time because Plaintiff has insufficient information as to the extent, if any, of their involvement in and liability for the matters alleged herein. Plaintiff will amend this Complaint to allege the true names and capacities of these Defendants when ascertained.

V. FACTUAL BACKGROUND

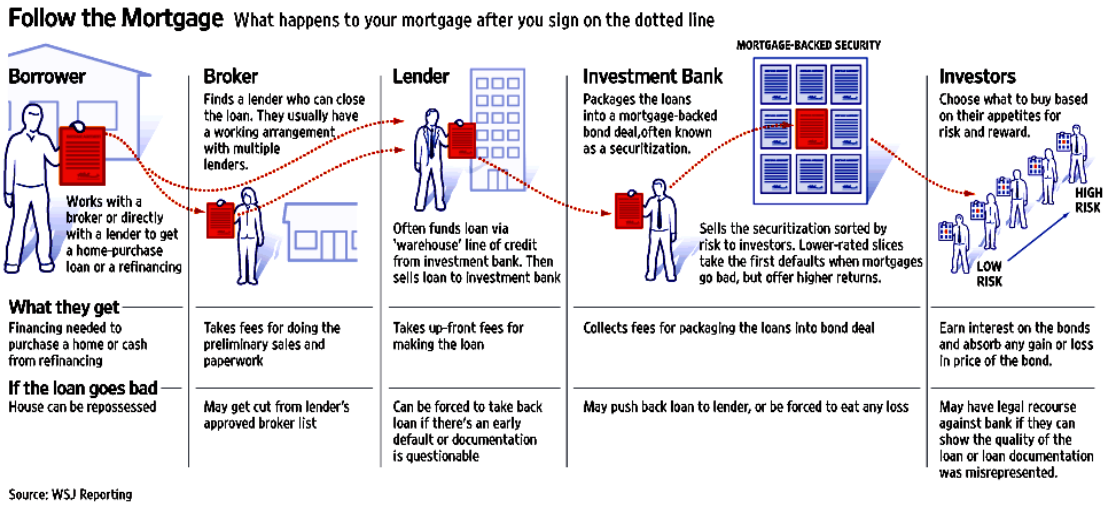
A. Mechanics of Mortgage Backed Securities

1. The Securitization Process

105. Like all residential mortgage backed securities, the PLMBS purchased by the Bank were created in a process known as "mortgage securitization." Mortgage securitization is a process by which mortgage loans are acquired from "mortgage originators," pooled together, and securities constituting interests in the cash flow from the mortgage pools are then sold to investors. The securities are referred to as "mortgage pass-through securities" because the cash

flow from the pool of mortgages is "passed through" to the securities holders when payments are made by the underlying mortgage borrowers.

106. The following graphic illustrates the securitization process:



107. Securitization involves several entities who perform distinct tasks, though, as often was the case with the PLMBS purchased by the Bank, many or all of the entities may be subsidiaries or affiliates of a single parent or holding company.

108. The first step in creating a mortgage pass-through security such as the PLMBS purchased by the Bank is the acquisition by "depositor" (referred to herein as "depositor" or "depositor/issuer") of an inventory of loans from a "sponsor" or "seller" which either originates the loans or acquires the loans from other mortgage originators in exchange for cash. The depositor is often a subsidiary or other affiliate of, and controlled by, the sponsor. *See id.*

109. The depositor then securitizes the pool of loans by forming one or more mortgage pools with the inventory of loans, and creating tranches of interests in the mortgage pools with various levels of seniority. Interests in these tranches are then issued by the depositor (who then serves as the "issuer") through a trust in the form of bonds**,** or certificates.

110. Each tranche has a different level of purported risk and reward, and, often, a different credit rating. The most senior tranches often receive the highest investment grade rating, AAA. Junior tranches, which usually have lower ratings, are more exposed to risk, but offer higher potential returns. The most senior tranches of securities will be entitled to payment in full before the junior tranches. Conversely, losses on the underlying loans in the asset pool – whether due to default, delinquency, or otherwise – are allocated first to the most subordinate or junior tranche of securities, then to the tranche above that. This hierarchy in the division of cash flows is referred to as the "flow of funds" or "waterfall."

111. The depositor/issuer works with the nationally recognized credit rating agencies, Fitch, Moody's, and Standard & Poor's (collectively, "Credit Rating Agencies"), to ensure that each tranche of the mortgage pass-through certificate receives the rating desired by the depositor/issuer (and underwriter). For PLMBS, this meant a AAA rating for the senior tranche, and lower ratings for the subordinated tranches. Once the asset pool is securitized, the certificates are issued to one or more "underwriters" (typically Wall Street banks), who resell them to investors, such as the Bank.

112. Because the cash flow from the loans in the mortgage pool of a securitization is the source of funds to pay the holders of the securities issued by the trust, the credit quality of the securities depends largely on the credit quality of the loans in the mortgage pool. The collateral pool for PLMBS often includes thousands of loans. Detailed information about the credit quality of the loans is contained in the "loan files" developed and maintained by the mortgage originators – originators that are often, and as identified herein, affiliated with and/or controlled by other parties to the securitization or one or more common controlling entities – when making the loans. For residential mortgage loans, such as the loans that backed the PLMBS purchased

by the Bank, each loan file normally contains documents including the borrower's application for the loan, verification of income, assets, and employment, references, credit reports, an appraisal of the property that will secure the loan—which will provide the basis for other measures of credit quality, such as loan-to-value ratios—and occupancy status. The loan file should also include notes from the person who underwrote the loan describing the loan's purported compliance with underwriting guidelines, and documentation of "compensating factors" that justified any departure from those standards.

113. Investors in PLMBS do not have access to the loan files. Instead, the sponsors, depositors/issuers, and the underwriters – parties to the securitization that are often, and as identified herein, affiliated with and/or controlled by other parties to the securitization or one or more common controlling entities – are responsible for gathering and verifying information about the credit quality and characteristics of the loans that are deposited into the trust, and presenting this information in prospectuses or other offering documents that are prepared for potential investors. This due diligence process is a critical safeguard for investors and a fundamental legal obligation of the sponsors, the depositor/issuers and the underwriters.

2. The Rating Process for PLMBS

114. Because, like many institutional investors, the Bank was permitted to buy only AAA rated tranches of those securities, the credit rating of the tranches of PLMBS it purchased was material to its investment decision.

115. In any PLMBS, the credit rating of each tranche is negotiated between the depositor/issuer of the securities and the credit rating agencies. In this process, the depositor/issuer provides the credit rating agency with the purported characteristics of the underlying asset pool. The credit rating agency is then supposed to evaluate, among other things:

A. The appraised value of the mortgaged property.

B. The mortgagor's ability to pay.

C. The experience and underwriting standards of the originators of the underlying loans.

D. The loan characteristics that, according to the Depositor/Issuer, underlie a particular transaction.

E. The default rates and historic recovery rates of the loans.

F. The *concentration* of the loans along a number of variables, which typically include—to name just a few—the extent to which the loans come from any particular geographic area, the extent to which the mortgagors have low FICO scores[4] or other indications of low credit quality, and the extent to which the loans were "low-document" or "no-document" loans.

G. The ability of the servicer to perform all the activities for which the servicer will be responsible.

H. The extent to which the cash flow from trust assets can satisfy all of the obligations of the PLMBS transaction. The cash flow payments which must be made from the asset pool are interest and principal to investors, servicing fees, and any other expenses for which the Depositor/Issuer is liable. The credit rating agencies are supposed to stress-test the flow of funds to determine whether the cash flows match the payments that are required to be made to satisfy the Depositor/Issuer's obligations.

116. After evaluating these objective and verifiable factors, the credit rating agency issues a rating for the security. This rating constitutes a factual representation regarding the risk

[4] A FICO score is a score developed by the Fair Isaac Corporation to assess consumer credit risk; it is the most widely used credit score in the United States.

of the security made in reliance on objectively verifiable facts, including those listed immediately above. The rating should therefore be a reflection of both the riskiness of the loans in the asset pool and the seniority of the tranche. If the rating that the credit rating agency assigns to the tranche is not in accord with the sponsor's target, then the Depositor/Issuer may "credit enhance" the structure. Such credit enhancement may include:

A. Adjusting the level of support provided by subordinate tranches.

B. Overcollateralization—that is, ensuring that the aggregate principal balance of the mortgages securing the certificates exceeds the aggregate principal balances of the certificates secured thereby.

C. Cash reserve accounts.

D. Excess spread, which is defined as scheduled cash inflows from the mortgages that exceed the interest service requirements of the related certificates.

E. Third-party contracts, under which losses suffered by the asset pool are absorbed by an insurer or other counterparty.

117. By using credit enhancement, a Depositor/Issuer may be able to elevate a bond to the highest credit rating.

118. All of the Certificates that the Bank purchased were senior certificates that were rated AAA when the Bank purchased them.

B. The Mortgage Originators Abandoned Underwriting and Appraisal Standards.

1. The Shift from "Originate to Hold" to "Originate to Distribute" Securitization Incentivized Mortgage Originators to Disregard Loan Quality.

119. As noted above, the fundamental basis upon which mortgage pass-through certificates are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral for those loans. If the borrowers cannot pay

and the collateral is insufficient, the cash flow from the certificate diminishes, and the investors are exposed to losses. For this reason, the underwriting standards and practices of the mortgage originators who issued loans that back MBS, and the representations in the Offering Documents regarding those standards, are critically important to the value of the securities and the investors' decisions to purchase the securities.

120. Yet, unbeknownst to the Bank, during the time frame that the Bank purchased the PLMBS at issue in this case, mortgage originators: (a) effectively abandoned their stated underwriting standards; (b) allowed pervasive and systematic exceptions to their stated underwriting standards without proper justification; (c) adopted practices such that variance from their stated underwriting practices was the norm; and (d) disregarded credit risk and quality controls in favor of generating loan volume. As has only now become clear, these changes in origination practices occurred in tandem with a fundamental shift in the mortgage securitization markets.

121. In the 1980s and 1990s, under the traditional model, mortgage originators held the mortgage loans they provided to borrowers through the term of the loan. They would therefore profit from the obligor's payment of interest and repayment of principal, but also bear the risk of loss if the obligor defaulted and the property value was insufficient to repay the loan. As a consequence of this arrangement, the originator was economically vested in establishing the creditworthiness of the obligor and the true value of the underlying property by appraising it before issuing the mortgage loans.

122. Additionally, the mortgage securitizations that took place in the 1980s and 1990s generally fell within the domain of GSEs Fannie Mae and Freddie Mac. These GSEs purchased the loans from the originators, securitized them, and sold them to investors. Investors in the

early GSE securitizations were provided protections because the underlying loans were originated pursuant to strict underwriting guidelines, and the GSEs guaranteed that the investors would receive timely payments of principal and interest. Because the GSEs were perceived as being backed by the federal government, investors viewed the guarantees as diminishing credit risk, if not removing it altogether.

123. Between 2001 and at least 2006, however, Wall Street investment banks and other large financial institutions moved aggressively into the securitization markets, taking market share away from the GSEs. Unlike the GSEs, which generally focused on higher-quality mortgage pools within the conforming loan limits, the Wall Street banks and large financial institutions focused primarily on "jumbo prime," "Alt-A," and "subprime" mortgage pools because of the higher fees that were available with these products. Although the definitions shifted during this period, and from originator to originator, "jumbo prime" mortgage loans were generally loans that allegedly met the credit score and other underwriting criteria of the GSEs, but were ineligible for GSE purchase because the mortgages exceeded the applicable GSE dollar limit. "Alt A" loans did not meet the GSE underwriting criteria, typically because the mortgages were supported by reduced documentation, or contained disqualifying terms, such as certain types of adjustable rates. Borrowers underlying the "Alt-A" loans typically had somewhat weaker creditworthiness than "jumbo prime" borrowers but better creditworthiness than "subprime" borrowers. "Subprime" mortgage loans were mortgages that did not meet the GSE criteria for creditworthiness of the borrower but purportedly satisfied loan underwriting criteria developed by their originators.

124. As the Financial Crisis Inquiry Commission reported in April 2010, "[t]he amount of all outstanding mortgages held in non[Agency] MBS rose notably from only $670 billion in

2004 to over $2,000 billion in 2006." This statistic demonstrates the dramatic growth of the PLMBS market during this time. FCIC, "Preliminary Staff Report: Securitization and the Mortgage Crisis." April 7, 2010.

125. This enormous increase in PLMBS securitization is reflected in the securitization volume of the sponsors of the PLMBS purchased by the Bank. For example, between 2003 and 2006, Washington Mutual Bank reported that its securitization of first lien single-family residential mortgage loans increased from $25.4 billion to $70.8 billion (an over 178% increase). Similarly, between 2003 and 2005, the Bear Stearns entities' securitizations of Alt-A mortgages more than tripled, from $6.7 billion to $22.9 billion. Other sponsors—primarily Wall Street banks—similarly expanded their securitization business during the same time period.

126. This shift was fueled by the complex interaction between record high global savings, referred to by Federal Reserve Chairman Ben Bernanke as the "global savings glut," and exceedingly low interest rates. Low interest rates made it easier and more appealing for consumers to take out home mortgage loans. But the low Federal Reserve rate also meant that the global pool of investors received only marginal returns on traditional low-risk investments, in particular U.S. Government Bonds. This created an incentive for Wall Street banks to create seemingly low-risk investment options that produced returns in excess of those of government bonds. PLMBS securitization was their answer. Thus, following the model created by the GSEs, the Wall Street banks began buying pools of mortgages from mortgage originators, securitizing the pools, and selling the bonds to global investors. Because mortgage interest rates (and even more so Alt-A and subprime rates) generally exceeded those of U.S. Government bonds, the resulting PLMBS could provide investors with the higher rate of return they were seeking.

127. The one complication that the Wall Street banks needed to solve was the rating of the securities. Debt securities secured by pools of mortgages made to lower credit quality borrowers would generally fail to meet the investment grade requirements of most institutional investors. The Wall Street banks' solution was to divide up the risks into "tranches" as discussed above, referred to generally as "structured finance." As a general rule, this allowed Wall Street to convert up to 80% of any particular PLMBS into "investment grade" securities. The remaining 20% was often purchased by hedge funds and other entities that were able to buy non-investment grade securities. The development opened the floodgates for the securitization and sale of PLMBS.

128. To ensure that the flood did not abate, the Wall Street banks bankrolled the lenders (both the ones they owned and those that were independent) so that the lenders had ample capital to issue loans. Indeed, a recent study by The Center for Public Integrity found that 21 of top 25 subprime lenders (in terms of loan volume) were either owned outright by the biggest banks or former investment houses, or had their subprime lending hugely financed by those banks, either directly or through lines of credit. *See* Who is Behind the Financial Meltdown? The Top 25 Subprime Lenders and Their Wall Street Backers, The Center for Public Integrity (May 6, 2009), http://www.publicintegrity.org/investigations/economic_meltdown/ (visited Sept. 20, 2010).

129. As the PLMBS market expanded, the traditional "originate to hold" model morphed into the "originate to distribute" model. Under the new "originate to distribute" model, mortgage originators no longer held the mortgage loans to maturity. Rather, mortgage originators sold the loans to Wall Street banks and other major financial institutions and shifted the risk of loss to the investors who purchased an interest in the securitized pool of loans.

130. The new distribution model was highly profitable for the mortgage originators in the short term. By securitizing and selling the mortgages to investors through underwriter/dealers, the mortgage originators shifted loans off their books, earned fees and, thus, were able to issue more loans. Additionally, the securitization process enabled the originators to earn most of their income from transaction and loan-servicing fees, rather than (in the traditional model) from the spread between interest rates paid on deposits and interest rates received on mortgage loans. This created an unchecked incentive to originate more and more loans to feed into the securitization machine.

131. In testimony before the Financial Crisis Inquiry Commission ("FCIC"), Sheila C. Bair, then-Chair of the Federal Deposit Insurance Corporation, explained both the misalignment of incentives arising from the sale of loans and the misalignment created by flawed compensation practices within the origination industry:

> The standard compensation practice of mortgage brokers and bankers was based on the volume of loans originated rather than the performance and quality of the loans made. From the underwriters' perspective, it was not important that consumers be able to pay their mortgages when interest rates reset, because it was assumed the loans would be refinanced, generating more profit by ensuring a steady stream of customers. The long-tail risk posed by these products did not affect mortgage brokers and bankers' incentives because these mortgages were sold and securitized.

132. An internal memorandum drafted by the former Credit Risk Officer at Countrywide Financial demonstrates how originators recognized the link between reduced underwriting standards and the ability to pass the resultant associated risks on to third parties. The Credit Risk Officer explained that "[Underwriting] Guidelines have become more aggressive …. Furthermore, the portion of our nonconforming loans that are expanded criteria has increased. Because the sub holders bear most of the credit risk we are not directly exposed to the expansion of guidelines or change in mix." Declaration of Paris Wynn In Support of

Plaintiff SEC's Ex Parte Application for Relief from Deposition Duration Limit for Deposition of John P. McMurray, *SEC v. Mozilo, et al.* (No. 09-3994) (C.D. Cal.), Ex. 1.

133. Similarly, as reported in the *Seattle Times*, executives at Washington Mutual ("WaMu") recognized and responded to the same incentive. "Now it [WaMu] began bundling ARMs and certain other mortgages into securities and selling them off -- pocketing hundreds of millions of dollars in fees immediately, while offloading any potential repayment problems. … [At this time, Kerry] Killinger hired Craig Davis, [American Savings'] director of mortgage origination, to run WaMu's lending and financial services. Davis, several former WaMu executives said, began pushing WaMu to write more adjustable-rate mortgages, especially the lucrative option ARMs. 'He only wanted production,' said Lee Lannoye, WaMu's former executive vice president of corporate administration. 'It was someone else's problem to worry about credit quality, all the details.'" Drew DeSilver, *Reckless Strategies Doomed WaMu*, Seattle Times, Oct 25, 2009, at A1.

134. As far as lenders were concerned, their profits were generated by origination of as many loans as possible, and once these loans were packaged and securitized, repayment risk was someone else's problem.

135. As Ben Bernanke, Chairman of the Federal Reserve Bank, explained in Congressional testimony:

> When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.

2. Mortgage Originators Abandoned Underwriting Guidelines in Order to Initiate High Cost Loans for Securitization.

136. The misalignment of incentives following the shift to the "originate to distribute model," noted by Mr. Bernanke and others following the collapse of the mortgage market, caused mortgage originators to violate their stated underwriting and appraisal standards, and to accept, encourage and even fabricate their own untrue information from loan applicants. This was not a problem limited to one or a few mortgage originators, but, rather, was pervasive among mortgage originators, including those that issued the loans that backed the PLMBS purchased by the Bank. Mortgage originators and the financial institutions that bankrolled them sought loan volume, not loan quality, in order to profit from the securitization market.

137. In addition—coincident with the widespread transfer to MBS purchasers of the default risk attached to mortgage loans, and in a marked departure from traditional mortgage origination procedures—originators greatly expanded their use of reduced documentation programs in which the verification or substantiation of the applicant's statements as to income, assets and employment history was limited or non-existent. While these programs were touted as providing for "streamlined" underwriting, in fact they were devices whereby originators could make loans to borrowers who would never otherwise have qualified. When these loans were securitized, investors were assured that reduced documentation programs were available only where the borrower satisfied certain FICO criteria, such as minimum FICO scores or loan-to-value and debt-to-income ratios. In fact, the originators lacked any principled basis on which to evaluate the increased credit risk posed by what would eventually become colorfully and generally accurately known as "Liar Loans," or "NINJA loans" (for "no income, no job or assets") loans. Moreover, the widespread granting of exceptions to underwriting standards meant that the minimal safeguards associated with the reduced documentation programs were

often abandoned in the headlong rush to maximize origination volume. Additionally, mortgage underwriters would often begin the underwriting of an applicant's loan under full documentation procedures, only to transfer the loan applicant to a "No Doc" program upon learning of information that would disqualify the applicant under the full documentation procedures.

138. As John C. Dugan, Comptroller of the Currency testified to the FCIC on April 8, 2010, following his description of poor underwriting practices:

> The combination of all the factors I have just described produced, on a nationwide scale, the worst underwritten mortgages in our history. When house prices finally stopped rising, borrowers could not refinance their way out of financial difficulty. And not long after, we began to see the record levels of delinquency, default, foreclosures, and declining house prices that have plagued the United States for the last two years – both directly and through the spillover effects to financial institutions, financial markets, and the real economy.

3. Mortgage Originators Manipulated Appraisals of Collateralized Real Estate in Order to Initiate Loans for Securitization.

139. Accurate appraisals prepared in accordance with established appraisal standards are absolutely essential for MBS investors to evaluate the credit risk associated with their investment. Indeed the loan-to-value metric is among the most significant characteristic of a mortgage pool because it defines the extent of the investor's "equity cushion" (*i.e.,* the degree to which values may decline without the investor suffering a loss), and it is strongly indicative of the borrower's likelihood of defaulting (because as a borrower's equity decreases, particularly to single digit percentages or below, the borrower's incentive to keep the mortgage current, or the property in good condition, decreases dramatically). But in the absence of properly prepared appraisals, the value component of the loan-to-value metric is unreliable and the metric itself becomes meaningless. The appraisal practices of the mortgage originators who issued loans that back PLMBS, and the accuracy of the representations in the Offering Documents regarding those

practices, were critically important to the value of the securities, and to the investors' decisions to purchase the securities.

140. Appraisers are governed by the Uniform Standards of Professional Appraisal Practice ("USPAP"), which are promulgated by the Appraisal Standards Board. The USPAP contains a series of ethical rules designed to ensure the integrity of the appraisal process. For example, the Third USPAP Ethics Conduct Rule provides: "An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests."

141. The Fifth USPAP Ethics Conduct Rule states: "An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions."

142. The Second USPAP Ethics Management Rule states:

> It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:
>
> 1. the reporting of a predetermined results (e.g. opinion of value);
>
> 2. a direction in assignment results that favors the cause of a client;
>
> 3. the amount of a value opinion;
>
> 4. the attainment of a stipulated results; or
>
> 5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

143. The USPAP Scope of Work Acceptability Rule states: "An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased."

144. The Appraisal Standards Board also issues Advisory Opinions regarding appropriate appraisal conduct. For example, Advisory Opinion 19 states in part:

> Certain types of conditions are unacceptable in any assignment because performing an assignment under such condition violates USPAP. Specifically, an assignment condition is unacceptable when it:
>
> - precludes an appraiser's impartiality because such a condition destroys the objectivity and independence required for the development of credible results;
>
> - limits the scope of work to such a degree that the assignment results are not credible, given the intended use of the assignment; or
>
> - limits the content of a report in a way that results in the report being misleading.

145. The USPAP Scope of Work Rule states: "For each appraisal . . . an appraiser must . . . determine and perform the scope of work necessary to develop credible assignment results."

146. Additionally, USPAP Standard 1 states: "In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal."

147. USPAP Standards Rule 2-1 states that "[e]ach written or oral real property appraisal report must "(a) clearly and accurately set forth the appraisal in a manner that will not be misleading; (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment."

148. Despite the importance of accurate appraisals and the requirements that are designed to ensure them, during the time frame that the Bank purchased the PLMBS at issue in this case, mortgage originators routinely manipulated the process for appraising the collateralized real estate properties. They did so by pressuring and coercing appraisers, and blacklisting those

that would not "come back at value." The prevalence of this problem and its impact on the financial crisis has been extensively investigated and examined in the aftermath of the market collapse.

149. According to his statements submitted in connection with his April 7, 2010 testimony before the FCIC, Richard Bitner, a former executive of a mortgage lender for 15 years and author of the book *Confessions of a Subprime Lender*, explains:

> [T]he appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted . . . .[and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value. . . . Throwing a dart at a board while blindfolded would've produced more accurate results.
>
> …
>
> If the appraisal process had worked correctly, a significant percentage of subprime borrowers would've been denied due to lack of funds. Inevitably, this would have forced sellers to drop their exorbitant asking price to more reasonable levels. The rate of property appreciation experienced on a national basis from 1998 to 2006 was not only a function of market demand, but was due, in part, to the subprime industry's acceptance of overvalued appraisals, coupled with a high percentage of credit-challenged borrowers who financed with no money down.
>
> …
>
> [T]he demand from Wall Street investment banks to feed the securitization machine couple[d] with an erosion in credit standards led the industry to drive itself off the proverbial cliff.

The Financial Crisis Inquiry Commission, Official Transcript, Commission Hearing, Apr. 7, 2010, Session 2, at 9-10.

150. Alan Hummel, Chair of the Appraisal Institute's Government Relations Committee and Past President of the Appraisal Institute, testified before the Senate Committee on Banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraisers "experience[d] systemic problems with coercion" and were "ordered to doctor their reports or else never see work from those parties again."

151. In testimony before the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, Jim Amorin, President of the Appraisal Institute, testified similarly that:

> In recent years, many financial institutions have lost touch with fundamental risk management practices, including the separation between loan production and risk management. Unfortunately, parties with a vested interest in a transaction are often the same people managing the appraisal process within many financial institutions: a flagrant conflict of interest.
>
> . . . .
>
> Another coercion tactic is the threat of being placed on a "blacklist: (aka — "exclusionary appraiser list"), commonly used to blackball appraisers. It is one thing to maintain a list of reputable businesses to work with, or to maintain a list of firms to avoid as a result of poor performance. However, [it] is another to place an appraiser on a blacklist for refusal to hit a predetermined value.

152. Manipulation and abuse of the appraisal process was not confined to the origination of subprime mortgages. Confirming the extent of the problem, a survey of 1,200 appraisers conducted by October Research Corp. found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through during the period at issue. The study also "found that 75% of appraisers reported 'negative ramifications' if they did not cooperate, alter their appraisal, and provide a higher valuation."

153. As a result of widespread appraisal abuse, the Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1472, amended Chapter 2 of the Truth in Lending Act, 15 U.S.C. § 1631, *et seq*., to specifically prohibit actions the violate "appraisal independence." Under the new Act, acts or practices that violate appraisal independence include:

> (1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an

> appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;
>
> (2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;
>
> (3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and
>
> (4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

154. All of the abuses targeted by the amended Truth in Lending Act were widespread during the time frame that the Bank purchased the PLMBS at issue, causing the appraisals of the collateralized real estate backing the PLMBS to be inflated.

4. Widespread Defaults and Delinquencies Reflected the Inevitable Consequence of Loans Issued Without Meaningful Underwriting.

155. High delinquency rates are reflective of a systematic disregard for underwriting guidelines by mortgage issuers. When effective underwriting occurs, poor credit risks are screened out. Indeed, that is the purpose of underwriting. In the absence of effective underwriting, loans are made to unqualified borrowers and fraud is not detected. When borrowers are loaned money without regard to their ability to repay it, loan delinquencies (and foreclosures) ensue. Hence, high delinquency rates in loans issued by an originator provide evidence that the originator failed to adhere to prudent underwriting practices.

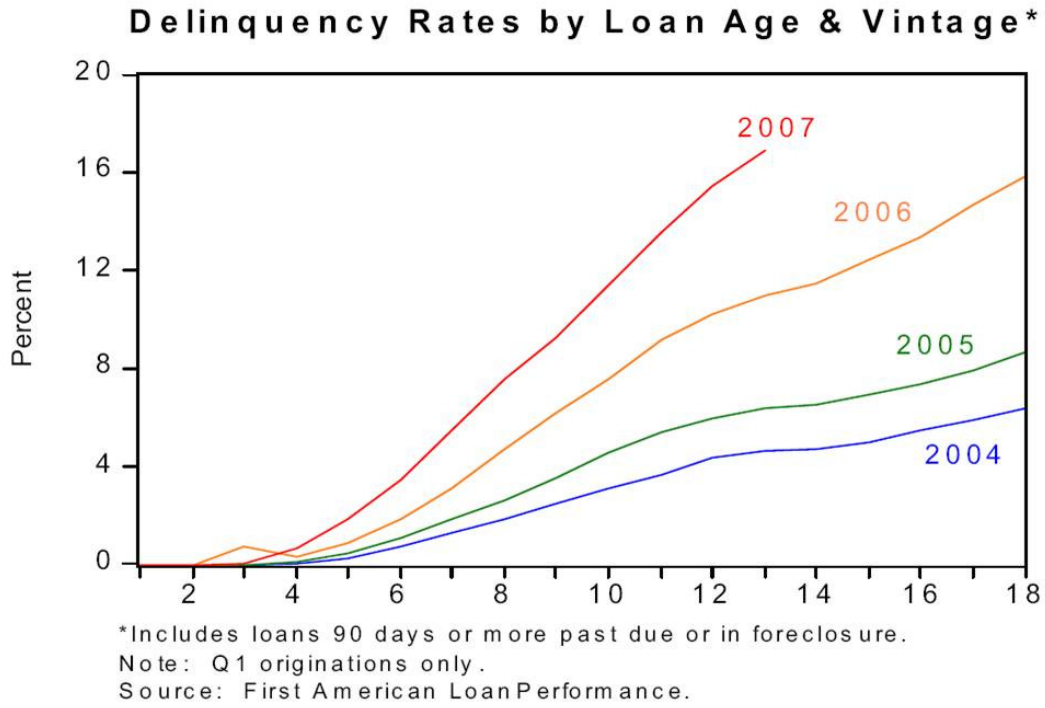
156. Numerous studies and analyses have traced the effect of poor underwriting on early payment default and delinquency rates. For example, the Federal Bureau of Investigation Mortgage Fraud Reports of 2006 and 2007 reported on the results of a BasePoint Analytics study of three million residential mortgage loans that found between 30% and 70% of early payment defaults were linked to significant misrepresentations in the original loan applications. The

BasePoint Analytics study found that loans containing egregious misrepresentations were five times as likely to default in the first six months as loans that did not.

157. An analysis of the same BasePoint Analytics study by Fitch Ratings concludes that "[h]igh risk products, which require sound underwriting and which are easy targets for fraud, account for some of the largest variances to expected default rates." Fitch notes that "in the absence of effective underwriting, products such as 'no money down' and 'stated income' mortgages appear to have become vehicles for misrepresentations or fraud by participants throughout the origination process."

158. Moreover, scholarly analysis of recent mortgage default rates has confirmed that increased delinquency rates during this period were not the result of deterioration in the credit characteristics set forth in the underwriting standards disclosed to investors, but rather they resulted from deterioration in credit characteristics of the borrowers that were not disclosed to investors. Research by University of Michigan economists indicates that increased use of low documentation underwriting – with its higher potential for borrower fraud and other abuses not discernible by MBS investors – correlates to excessive default rates. Of course, the defaults are not the result of the lack of full documentation in and of itself, but rather because of the underlying credit characteristics of the borrowers that could be masked by the borrowers and unscrupulous mortgage underwriters through the use of limited documentation.

159. Data collected on the performance of loans over the past several years and analyzed in these studies show that early payment default and delinquency rates have in fact soared as a result of faulty underwriting:



160. Review of current performance data of pools of loans securitized by the financial institutions who sponsored the PLMBS purchased by the Bank, as well as the specific loan pools backing the PLMBS purchased by the Bank, similarly show significantly increased incidence of delinquency, default and foreclosure, indicating pervasive underwriting failures by the mortgage originators at issue.

C. Federal and State Investigations, Press Reports, Publicly Available Documents Produced in Other Civil Lawsuits, and Analysis of the Mortgage Pools Underlying the Securities Identify Systematic Violation of Underwriting Guidelines by Mortgage Originators Whose Loans Back the PLMBS in this Case.

161. There have been numerous investigations into the practices of the mortgage originators who issued loans backing the PLMBS purchased by the Bank. A review of these investigations and related litigation, as well as confidential witness statements obtained during the Bank's investigation, demonstrate that mortgage originators in general, and those that issued loans that backed the PLMBS purchased by the Bank in particular, systematically violated and ignored their stated underwriting standards, rendering the statements in the Offering Documents

with regard to underwriting standards of the mortgage originators misleading. This evidence is reinforced further by the analysis of the performance of the actual loan pools backing the PLMBS purchased by the Bank.

162. As follows below, abundant additional information now available reveals the extent to which these mortgage originators abandoned sound underwriting practices.

1. Countrywide Home Loans, Inc.

163. Countrywide Home Loans, Inc. ("Countrywide") originated mortgage loans securing at least eleven of the PLMBS purchased by the Bank. Countrywide was the nation's largest mortgage lender between 2004 and 2007.

a. Government actions against Countrywide, and documents produced therein, demonstrate Countrywide's abandonment of sound underwriting practices.

164. On June 4, 2009, the SEC filed a complaint against certain senior executives of Countrywide's parent corporation, Countrywide Financial Corporation, including President, David Sambol, Chairman and CEO, Angelo Mozilo, and CFO, Eric Sieracki. *SEC v. Mozilo et al.*, No. 09-3994 (C.D. Cal.).[5] In this complaint, the SEC alleged that these three senior officers committed securities fraud by hiding from investors "the high percentage of loans it originated that were outside its own already widened underwriting guidelines due to loans made as exceptions to guidelines." That SEC complaint detailed how Countrywide was aware internally that its own underwriting guidelines were being ignored and that borrowers were lying about their income in the reduced-documentation application process.

165. According to the SEC:

[5] Countrywide Financial Corporation originated mortgage loans through its wholly owned subsidiary Countrywide Home Loans, Inc., which this Complaint refers to as "Countrywide" for simplicity. *See, e.g.*, Countrywide Financial Corporation 2006 Annual Report at 3 (Form 10-K). Thus, the allegations from, and evidence produced in, actions against Countrywide Financial Corporation, when they concern Countrywide Financial Corporation's mortgage origination business, really concern Countrywide Home Loans, Inc.

> [T]he actual underwriting of exceptions was severely compromised. According to Countrywide's official underwriting guidelines, exceptions were only proper where "compensating factors" were identified which offset the risks caused by the loan being outside of guidelines. In practice, however, Countrywide used as "compensating factors" variables such as FICO and loan to value which had already been assessed [in determining the loan to be outside the guidelines].

166. Countrywide's top-down involvement in the securitization process and complete abandonment of underwriting standards are confirmed by the documents produced in the SEC action, including internal emails, memos, minutes, presentations and deposition testimony, which only became publicly available as part of the briefing on the Countrywide Defendants' unsuccessful motion for summary judgment.

167. For example, Countrywide's Chief Risk Officer John McMurray testified as to Countrywide's adoption of a "matching" strategy, under which Countrywide matched whatever product was being offered by other originators in the marketplace. [Exh. 267] However, Countrywide's adoption of its competitors' guidelines (without adoption of corresponding credit risk mitigants) rendered Countrywide's origination practices "the most aggressive in the country." A June 24, 2005 e-mail from McMurray to Sambol stated that "[b]ecause the matching process includes comparisons to a variety of lenders, our [guidelines] will be a composite of outer boundaries offered across multiple lenders," and that because comparisons are only made to lender guidelines where they are more aggressive and not used where they are less aggressive, CFC's "composite guides are likely among the most aggressive in the industry." [Exh. 106].

168. As part of that matching strategy, Countrywide adopted a policy of underwriting ever more loans based on exceptions to their underwriting guidelines. As Sambol explained in a February 13, 2005 email to Countrywide management, Countrywide "should be willing to price virtually any loan that we reasonably believe we can sell/securitize without losing money, even if

other lenders can't or won't do the deal." [Exh. 220] Similarly, an internal Countrywide email from Managing Director, Carlos Garcia, to McMurray and Countrywide's Credit Risk Officer, Clifford Rossi, dated June 2, 2006 states that "[w]e should originate whatever we can sell to investors." [Exh. 118]

169. Ever in pursuit of the next deal, Countrywide routinely went beyond and around its publicly-touted Automated Underwriting System, the Countrywide Loan Underwriting Expert System ("CLUES"). If CLUES rejected an applicant, Countrywide subjected the loan application to a process of manual underwriting whereby the loan would be sent up the chain for approval, first to a loan officer, then to the Structured Loan Desk (also referred to as the "exception desk"), and if still not approved, the loan would be referred to Secondary Marketing where applications were routinely granted exceptions to stated underwriting guidelines, all in furtherance of Countrywide's matching strategy. As former Countrywide Managing Director for Secondary Marketing, Nathan "Josh" Adler, testified in the SEC action:

> Q. Do you know whether Countrywide sometimes originated loans that were considered to be exceptions to its underwriting guidelines?
>
> A. We did.
>
> Q. To your knowledge, was there a process by which such loans were approved?
>
> . . . .
>
> A: There generally was, yes.
>
> Q. And what is your understanding of that process?
>
> A. Well, I was—I was at the tail end of that process. There was—we had guidelines, we had kind of core guidelines, and then we had these shadow guidelines, which were the kind of the second tier guideline, if you will. And then there was this third tier which would come to me. But essentially there were—the tiering of guidelines related to the kind of the exception process. And there was an underwriting, they called it, Structured Loan Desk process in the divisions where loans would get referred to the Structured Loan Desk if they were outside, I believe, of kind of the core guidelines. And then if those loans were outside of

> even the shadow guidelines, then they would be referred to Secondary Marketing to determine if the loan could be sold given the exception that was being asked for.

[Exh. 234]

170. As the SEC alleged: "The elevated number of exceptions resulted largely from Countrywide's use of exceptions as part of its matching strategy to introduce new guidelines and product changes." SEC Compl. ¶ 29 (citing July 8, 2008 testimony of John P. McMurray at 373:25-375:6). [SOF 285/Exh. 267] In order to boost revenue from securitizations, Countrywide was willing to approve virtually any loan, regardless of deviation from stated underwriting standards, so long as it could package and re-sell the loan in a securitization. While not publicly disclosed, these facts were well known within Countrywide, including by Countrywide's highest levels of management.

171. For example, in a May 22, 2005 email to Sambol, McMurray, after noting that "exceptions are generally done at terms even more aggressive than [Countrywide] guidelines," identified a number of concerns regarding credit risk associated with Countrywide's exception loans, including the following:

(a) "Use of 2nds Liens as Credit Enhancement." Because many exceptions loans are structured as piggy-back transactions, Countrywide was taking on much of the loan's credit risk through the second lien, which is not sold into the secondary market;

(b) "R&W [representation and warranty] Exposure." Although Countrywide sold "much of the credit risk associated with high risk transactions away to third parties," Countrywide "will see higher rates of default on the riskier transactions and third parties coming back to us seeking a repurchase or indemnification" for losses due to the defaults;

(c) "Security Performance. To the extent our securities contain a greater concentration of higher risk transactions than those issued by our competitors, our security performance may be adversely impacted. The issue here is the extent our concern over security performance drives what we will or won't do on an exception."

172. McMurray also noted in his email that Countrywide's pricing models were inherently limited because they "are often used to price transactions (e.g., exceptions) beyond the scope of the data used to estimate the models." [SOF 288/Exh. 84]

173. At a June 28, 2005 Credit Risk Committee meeting, Countrywide senior executives received a presentation informing the attendees that nonconforming exceptions loans accounted for a staggering 40% of Countrywide's loan originations. [SOF 289]

174. On April 13, 2006, CEO Mozilo issued an email noting that he had "personally observed a serious lack of compliance with our origination system as it relates to documentation and generally a deterioration in the quality of loans originated versus the pricing of those loan[s]." Specifically, in his email, Mozilo explained that Countrywide was originating home mortgage loans "through our channels with disregard for process [and] compliance with guidelines."

175. During June 2006, a Credit Risk Leadership package reported that Countrywide underwrote, on an exceptions basis, 44.3% of its Pay-Option ARMs, 37.3% of its subprime first liens, 25.3% of its subprime second liens, and 55.3% of its standalone home equity loans. [SOF 293/Exhs. 4, 117]

176. During December 2006, the Credit Risk Leadership package reported similar percentages of loans underwritten on an exceptions basis: 45.4% of Pay-Option ARMs, 35.3% of subprime first liens, 24.1% of subprime second liens, and 52.6% of standalone home equity loans [SOF 294/Exh. 5].

177. Countrywide's Quality Control group performed a "4506 Audit" for the 10-month period ended on April 30, 2006, comparing the stated income from loan applications to the income reported by that borrower to the Internal Revenue Service [SOF 427/Exhs. 115, 117,

119], and concluded that 50.3% of the stated income loans audited by Countrywide showed a variance in income from the borrowers' IRS filings of greater than 10%. Of those, 69% had an income variance of greater than 50%. [SOF 428/Exh. 117] Available documents confirm that the audit results were widely known within Countrywide, having been distributed to Countrywide management, including its highest ranking officers, and were discussed at the April 24, 2006 Credit Risk Management Committee meeting [SOF 431/Exhs. 115, 117], where McMurray stated that the income discrepancies revealed in the audit were also being seen at Countrywide Home Loans. [SOF 432, Exhs. 115, 117] Rossi, testified that the "vast majority" of the income discrepancies revealed in the 4506 Audit were the result of fraud and misrepresentation. [SOF 434/Exh. 275]

178. By February 2007, internal risk management at Countrywide "noted that the production divisions continued to advocate for, and operated pursuant to, an approach based upon the matching strategy alone. . . . Additionally, [a senior risk manager] warned [Sambol] that 'I doubt this approach would play well with regulators, investors, rating agencies etc. To some, this approach might seem like we've simply ceded our risk standards and balance sheet to whoever has the most liberal guidelines.'" McMurray email to Sambol dated Feb. 11, 2007. [Exh. 109]

179. The deterioration of Countrywide's internal quality control process was noted by Countrywide's management and Corporate Credit Risk Committee. At the March 12, 2007 meeting, it was reported that of the loans reviewed through Countrywide's internal quality control process, 30.3% had deficiencies or were rated high risk, and 11.9% were rated severely unsatisfactory, and that one of the principal causes for such ratings included inadequate DTIs or LTVs, missing income or appraisal documentation, or failure to meet minimum FICO scores.

Similarly, at the May 29, 2007 meeting, attendees were informed that loans were being made "outside of any guidelines." A presentation made at the May 29, 2007 meeting notes that "loans continue to be originated outside guidelines primarily via the Secondary SLD desk, and that there is no formal guidance or governance surrounding SLD approvals." [Exhs. 133, 55, 176]

180. A December 2007 internal Countrywide memorandum quoted by the SEC states that "a Countrywide review of loans issued in late 2006 and early 2007 resulted in . . . the finding that borrower repayment capacity was not adequately assessed by the bank during the underwriting process . . . . More specifically, debt-to-income ratios did not consider the impact of principal [negative] amortization or any increase in interest." SEC Compl. ¶ 56 (quoting Mozilo memo dated December 13, 2007).

181. In employing its "matching" strategy and thereby making as many loans as possible, regardless of exceptions, Countrywide was able to enjoy tremendous profits from securitization of the loans, which also shifted the risk of the loans from Countrywide to investors:

> As indicated in a previous note, when we first started the SLD, the intent was to be able to offer at least one option for borrowers who wanted exceptions to our underwriting guides. The thought was that we would offer borrower exceptions in our two major loan programs: 30-year fixed rate and 5/1 ARMs. In addition, both of these programs were set up for Alt A and as such we could price and sell under these programs. While this process seemed to have worked well in the past, we have been recently seeing increased demand from Production for exceptions on all products in general and Pay Option loans in particular. In addition, Production has been expressing frustration that we were only offering major exceptions for 5/1 ARMs and 30-year fixed rates. As such, to the widest extent possible, we are going to start allowing exceptions on all requests, regardless of loan program, for loans less than $3 million effective immediately.
>
> The pricing methodology we will use will be similar to that which we use for 30-year fixed rates and 5-1 Hybrids. We will assume securitization in all cases.
>
> . . . .

> The methodology from a saleability point of view will also be similar to that used for 30-year fixed rates and 5-1 Hybrids. We will view the exception assuming securitization and will no longer take into account whole loan buyers. In the past, this has caused some exceptions to be declined for Ratios, Balances and LTV/CLTV[6] combinations. Provided we can sell all of the credit risk (i.e. not be forced to retain a first loss place due to a[n] 80% LTV, 60 Back-end ratios $3 million loan) we will approve the loan as a salable loan. Finally, we will not be reviewing loans from an underwriting point of view but will rather be relying on Production to make certain that the loan[s] meet all other underwriting Guideline and w[i]ll have been reviewed for compliance acceptability and fraud.

July 28, 2005 email from David Spector, Managing Director, to Countrywide Managing Directors and Secondary Marketing Management.

182. As Nathan Adler, Managing Director of Secondary Markets, testified in the SEC action:

> Q. Was one of the criteria for granting exceptions at the Secondary Loan Desk in Secondary Marketing whether or not the loan could be sold into the secondary market?
>
> A. That was the only criteria that we followed.

183. The widespread use of exceptions to its underwriting guidelines were well known within Countrywide, but permitted because, as recognized by John McMurray in his May 22, 2005 email discussed above, "CW's approach to exceptions has been lucrative over the past several years."

184. Yet Countrywide did not publicly disclose the amount of loans it was underwriting on an exception basis for any loan product or division. Paul Liu, a Countrywide attorney who participated in, and testified to, the legal work involved in the securitization process at Countrywide between 2004 and 2007, including review of offering documents such as prospectus supplements, testified in the SEC action that while the prospectus supplements he reviewed may have stated that "some of those mortgage loans may have . . . been originated with

[6] "CLTV" means "combined loan-to-value ratio"—the ratio of *all* liens on a property to the property's total appraised value.

exemptions that have compensating factors," they did not disclose the number or percentage of loans included in each securitization that were underwritten pursuant to exceptions, or even in many cases whether any loans within that securitization were underwritten pursuant to exceptions at all.

185. Indeed, Countrywide assured investors that the level of exceptions was low. Christopher Brendler, a Stifel Nicholas analyst who initiated coverage of Countrywide in early 2006, testified that Countrywide repeatedly advised conference call and investor presentation participants that it kept its "exceptions low." Brendler also testified that a low exception rate in the mortgage industry would have been 5% to 10% of total loans—not the extreme number of exceptions that Countrywide made. Brendler confirmed that such a disclosure would have been material:

> That's—that would have been a very disturbing disclosure, I believe, to know that you're basically seeking out the most aggressive policies and underwriting guidelines of your competitors without consideration for other factors. You're essentially creating a worst of the worst.

[Exh. 242]

186. On November 3, 2009, the District Court for the Central District of California denied a motion to dismiss the SEC complaint. Judge Walter specifically noted that "neither Countrywide's disclosures nor a careful review of the context of the statements convince this Court that the alleged omissions or misstatements were immaterial or not misleading as a matter of law." *SEC v. Mozilo, et al.*, No. 09-3994, slip op., at 10 (C.D. Cal. Nov. 3, 2009).

187. Subsequently, on September 16, 2010, Judge Walter denied Countrywide's motion for summary judgment. Among other key determinations, the court found:

> [The] SEC has also presented evidence that Countrywide routinely ignored its official underwriting guidelines to such an extent that Countrywide would underwrite *any* loan it could sell into the secondary mortgage market. According to the evidence presented by the SEC, Countrywide typically made four attempts

> to approve a loan. Countrywide first used an automated underwriting system known as "CLUES", which applied Countrywide's underwriting guidelines as set forth in Countrywide's technical manuals and loan program guides. . . . CLUES would either approve the loan or "refer" it to a loan officer for manual underwriting. If that loan officer lacked the authority to make an exception to Countrywide's underwriting guidelines, the loan was referred to the Structured Lending Desk, where yet another underwriter, with even more authority to waive guideline requirements, attempted to make the loan. If that attempt failed, the loan was referred to Countrywide's Secondary Markets Structured Lending Desk. According to the testimony of the Managing Director of Countrywide Home Loans' Secondary Marketing Division, once the loan was referred to Countrywide's Secondary Markets Structured Lending Desk, the sole criterion used for approving the loan was whether or not the loan could be sold into the secondary market. As a result of this process, a significant percentage (typically in excess of 20%) of Countrywide's loans were issued as exceptions to its official underwriting guidelines. As reported in one Corporate Credit Risk Committee meeting, one third of the loans referred from CLUES missed "major guidelines" and another one third missed "minor" guidelines. In light of this evidence, a reasonable jury could conclude that Countrywide all but abandoned managing credit risk through its underwriting guidelines, that Countrywide would originate any loan it could sell, and therefore that the statements regarding the quality of Countrywide's underwriting and loan production were misleading.

SEC v. Mozilo, et al., No. 09-3994, slip op., at 11–12 (C.D. Cal. Sept. 16, 2010) (citations to the record omitted).

188. In short, evidence presented to the court supported the claim that "Countrywide routinely ignored its official underwriting guidelines, and in practice, Countrywide's only criterion for approving a loan was whether the loan could be sold into the secondary market." *Id.* at 12.

189. The Attorneys General from many states also filed complaints against Countrywide. Among them, the Attorney General of California alleged based on its extensive investigation of Countrywide that the company, "did whatever it took to sell more loans, faster – including by … disregarding the minimal underwriting criteria it claimed to require." Cal. AG Countrywide Complaint at 20.

190. For example, the California Attorney General complaint quotes one former California loan officer explaining how stated income loans were sold, with a loan officer telling the borrower "with your credit score of X, for this house, and to make X payment, X is the income that you need to make"; after which the borrower would state that his or her income was X. *Id*. at 21.

191. A similar lawsuit instituted by the Illinois Attorney General, *People and State of Illinois v. Countrywide Financial Corporation,* No. 08-22994 (Cook County Ch. Ct), detailed how (a) one Countrywide employee estimated that approximately 90% of all reduced documentation loans sold out of the Chicago office had inflated incomes; and (b) one of Countrywide's mortgage brokers, One Source Mortgage, Inc., routinely doubled the amount of the potential borrower's income on stated income mortgage applications.

192. The Illinois complaint also detailed how Countrywide created incentives for its employees to increase the number of loans without concern for ability of the borrower to repay the loan. The *New York Times* described the allegations in the complaint as "paint[ing] a picture of a lending machine that was more concerned with volume of loans than quality."

193. Among the many other abuses described in the Illinois complaint, the Attorney General found that:

> [t]hrough the securitization process, Countrywide extracted hefty over-head charges, then shifted the risk of the failure of these non-traditional loans to investors. Moreover, securitization allowed Countrywide to tap those investors for much needed capital to fuel its origination process and reach its goal of capturing more and more market share. To facilitate the increase in loan origination volume, Countrywide relaxed its underwriting standards even more and sold risky, unaffordable and unnecessarily more expensive mortgage loans to millions of American homeowners.

Testimony of Illinois Attorney General Lisa Madigan before the FCIC, Jan. 14, 2010.

194. Similar allegations appear in a complaint filed by the Connecticut Attorney General, *State of Connecticut v. Countrywide Financial Corporation*, No. 08-40390945 (Hartford Super Ct.).

195. On October 6, 2008, Countrywide entities settled lawsuits brought by eleven State Attorneys General and potential claims by 28 other states**,** including all of the States in which loans backing the PLMBS purchased by the Bank were issued. The settlement valued at $8.4 billion resolved charges of violations of predatory lending, unfair competition, false advertising, and violations of banking laws, and required Countrywide to implement a program to modify certain existing loans, particularly high risk loans and pay-option mortgages that were the subject of the Attorneys Generals' investigations.

b. Private actions against Countrywide demonstrate Countrywide's abandonment of sound underwriting practices.

196. A multitude of private class action and individual cases raise further challenges to Countrywide's underwriting practices—and substantiate the challenges with witness testimony and documentary evidence. For example, Mark Zachary, a former Regional Vice President of Countrywide Mortgage Ventures, LLC, Countrywide's joint venture with the homebuilding company KB Home, detailed in a complaint how Countrywide blatantly ignored its underwriting policies and procedures. Compl., *Zachary v. Countrywide Financial Corp.*, No. 08-0214 (S.D. Tex). Mr. Zachary states that in September of 2006 he informed Countrywide executives that loan officers were helping loan applicants to submit applications with false income amounts.

197. Zachary's observations about problems with appraisals at KB Home are confirmed by documents reflecting internal correspondence within and between KB Home and Countrywide filed in *Johnson v. KB Home*, No. 09-972 (D. Ariz.).

198. Countrywide handled all of the mortgage financing and appraisal services for KB Home.

199. For example, on June 8, 2005, Christina Nickerson, a KB Home salesperson wrote: "We have an appraisal issue at IMR Mesa . . . . [T]he [lender's] appraiser can not obtain value. . . . I have asked the [lender] for a copy of the appraisal, and I requested that she try a more aggressive appraiser. . . . My suggestion is that we have [KB Home Mortgage Company, a wholly owned subsidiary of KB Home] order an appraisal from a KB friendly appraiser and see what happens." KB Home Director of Sales McLaury responded: "I agree, we need to order an appraisal from our KB friendly appraiser[.]" On June 16, the salesperson heard back: "Here's our appraisal at purchase price[,]" but McLaury complained: "It's $1,966 short isn't it? Can Ernie Carver bump it up?" Soon after, McLaury confirmed that the maneuvering had worked: "Christina and the Mesa Team, the appraisal will come in at the total sales price."

200. In another instance, in July 2006, KB Home Phoenix Vice President Stacie McDonald asked a KB Home salesman about a home for which an appraisal was low. The salesman responded: "It was approved at $290,000 with a VC of 38%, however, we were able to push appraisal to $300,000 and the addendum for $300,000 was done yesterday."

201. Similarly, in October 2007, KB Home Director of Sales McLaury instructed "friendly" appraiser Scott Dugan: "Please base your appraisal on today's base sales price, the options/upgrades the buyer purchased ($40,777), and comps in the neighborhood/area, particularly the one lot 44 (66 Lions Den Avenue) that closed at $248,643." Dugan responded: "ok."

202. KB Home salesperson, Peter Manesiotis, reported to his manager, Gregory Victors: "Appraisal came in low. This is a CW deal. How should we proceed?" Victors

responded: "Have Countrywide order a second appraisal. KB will pay for it. Speak to [loan officer] or processor to get someone who knows area. This process just worked at Mesquite. Buyer did not know about first appraisal." Manesiotis then instructed that a new appraisal be ordered and "do not notify the buyer about the first appraisal."

203. Countrywide senior executives were apparently not just aware but actively involved in this conduct. In an August 9, 2006 email sent after an appraisal was below contract price and below the level that KB Home's hand-picked appraiser, Harry, could reach, Countrywide/CWKB Vice President, Tim Ryan wrote: "Eric Sanford the western regional VP of landsafe is reviewing the appraisal—he is as high as it gets at landsafe. . . . As soon as I hear I will let you know. We are fighting all the way to the top for you." Ryan later reported: "We were just informed the original appraisal will be amended to Harry's appraisal. . . . So CW will be able to use the $687,000.00 value." On another occasion Ryan explained one scheme for generating self-perpetuating excessive appraisals: "Going forward I have asked ops to request Harry on homes that are 'decked' out—this way we know max value has been given. Under the new rules we cannot do it often, however once a few closing occur—we have comps!"

204. More evidence has been presented in lawsuits against Countrywide by the leading insurance companies that insured mortgage-backed securities sold by Countrywide. On September 30, 2008, MBIA Insurance, one of the largest providers of bond insurance, filed its complaint in *MBIA Insurance Corp. v. Countrywide Home Loans* (Sup. Ct. Cty of New York). This complaint explains how MBIA "provide[d] credit enhancement on the [mortgage-backed securities]—in the form of guarantee of repayment of principal and interest for the [mortgage-backed securities] notes in each securitization," and claims MBIA issued such insurance on the basis of fraudulent representations by Countrywide.

205. MBIA explains that:

> MBIA's re-underwriting review has revealed that 91% of defaulted or delinquent loans in these fifteen Countrywide securitizations show material discrepancies from underwriting guidelines. . . . For example the loan documentation may (i) lack key documentation such as verification of borrower income or assets; (ii) include an invalid or incomplete appraisal; (iii) demonstrate fraud by the borrower on the face of the application; or (iv) reflect that any of the borrower income, FICO score, debt, DTI or CLTV ratios, fails to meet stated Countrywide guidelines (without any permissible exception).

MBIA specifically notes that "the Defective Loans run across Countrywide's securitizations from 2004-2007, demonstrating the consistency of Countrywide's disregard for its underwriting guidelines during this period." On April 27, 2010, the Court denied Countrywide's motion to dismiss MBIA's fraud claims.

206. The September 28, 2010 Complaint filed by monoline insurer Ambac in *Ambac Assurance Corp. v. Countrywide Home Loans* (N.Y. Sup. Ct.) alleges:

> Because Countrywide [Financial Corporation, Countrywide Home Loans, Inc. and Countrywide Securities Corporation] was the nation's leading mortgage originator, its many public pronouncements that its underwriting practices were the industry's gold standard carried significant weight. Countrywide repeatedly asserted that the loans in its portfolio, from which the loans in the transactions at issue were drawn, were originated pursuant to Countrywide's strict underwriting standards that allowed "exceptions" only if compensating factors were present. But what Countrywide concealed is that, contrary to its representations, approval of "exceptions" became the rule. Countrywide failed to disclose that its business model was premised on the perpetual origination and refinancing of loans to borrowers who did not have the ability to make the required payments.

207. Ambac alleges that Countrywide made numerous false and misleading statements and omitted material facts about the quality of Countrywide's loan origination procedures and the collateral underlying the transactions. In particular, "[t]he Prospectus Supplements contained false and misleading statements concerning the quality of Countrywide's loan origination procedures and, in particular, failed to disclose that Countrywide had adopted a practice of making loans to borrowers who had little or no ability to repay their loans." Furthermore, the

loan tapes for the transactions provided by Countrywide—which were "large spreadsheets that purported to contain true and accurate information concerning the proposed loan pools, including key metrics for assessing the borrowers' ability to repay their loans and the sufficiency of the properties as collateral," and upon which Ambac was intended to rely to analyze the risks of and pricing for the proposed transactions—contained information that was materially false and misleading "in view of Countrywide's abandonment of sound underwriting practices and its knowledge of pervasive fraud."

208. The falsity of Countrywide's representations is evidenced by the performance of the underlying loans, which have defaulted at extraordinary rates. As of September 2010, more than 35,000 loans insured by Syncora, with an aggregate principal balance of more than $1.95 billion, had defaulted or have been charged-off. Further, by September 2010, Ambac had reviewed the origination files for 6,533 loans for conformance with Countrywide's loan-level representations and warranties and discovered that 6,362 of the loans—more than 97%—materially breached Countrywide's loan-level representations and warranties.

209. In *Financial Guaranty Insurance Co. v. Countrywide Home Loans, Inc.* (N.Y. Sup. Ct.), Financial Guaranty Insurance Company ("FGIC"), an insurer of Countrywide's mortgage-backed securities, alleges that, with respect to securitization it insured in 2006 and 2007, Countrywide and its corporate affiliates made multiple false misrepresentations and omissions, including that Countrywide: (a) failed to disclose an increase in its exceptions to, and expansion of, its mortgage-underwriting guidelines, including exceptions for which there were no compensating factors; (b) failed to disclose and deliberately concealed changes to its underwriting standards and procedures from those used for mortgage loans included in prior securitizations; (c) engaged in "adverse selection," whereby poor quality loans would be

securitized while loans that were expected to perform better were retained on Countrywide's books; (d) failed to disclose mortgage-loan-origination fraud, in which Countrywide and its corporate affiliates were participants or complicit; (e) misrepresented to FGIC the nature of key delinquency information; and (f) made numerous false and misleading public statements concerning the quality of Countrywide's mortgage origination process and securitized mortgage loans.

210. According to FGIC, beginning in early 2006, at the latest, Countrywide made continuing undisclosed changes in its mortgage loan origination practices, and started originating and securitizing lower-quality, poorly underwritten loans. These changes resulted in an undisclosed weakening of Countrywide's underwriting guidelines by permitting increased exceptions in originating mortgage loans, and permitting these exceptions without adequate, and in many cases any, compensating factors. Moreover, FGIC alleges that Countrywide admitted to it that Countrywide not only expanded the exception process, but also engaged in "adverse selection" by retaining fewer exception mortgage loans for its portfolio, while securitizing (for sale to investors) those loans with exceptions.

211. FGIC's allegations and Countrywide's purported admissions are supported by the analysis of professional residential mortgage loan review experts that were retained by FGIC to review statistically significant samples of mortgage loans from FGIC insured securitizations. These reviews determined that approximately *70%* of the mortgage loans in these securitizations significantly violated one or more of Countrywide's underwriting guidelines or standard mortgage underwriting practices. Unsurprisingly, the loss rate for mortgage loans found to be in breach of underwriting standards was two-and-a-half to three times the loss rate on non-breaching loans.

212. Similarly, in *Syncora Guarantee Inc. v. Countrywide Home Loans, Inc.* (N.Y. Sup. Ct.), Syncora, an insurer of Countrywide's mortgage-backed securities, alleges that, with respect to Countrywide securitizations it insured between 2004 and 2006:

> in originating the loans in these portfolios, Countrywide, *consistent with its business practices at the time, systematically ignored its own underwriting guidelines* and made imprudent loans that no reasonable underwriter would have made in a single-minded pursuit of generating ever-greater volumes of new loans. As a result, thousands of non-performing loans in the securitized portfolios violated Countrywide's own published guidelines should never have been made.

(emphasis added.)

213. Syncora alleges that the Countrywide offering documents, including the prospectuses and prospectus supplements, were replete with misrepresentations regarding Countrywide's underwriting process and failed to disclose its routine, material deviations from sound underwriting practices. Countrywide is also alleged to have materially misrepresented the accuracy of data, including DTIs and CLTVs, provided to Syncora for each securitized loan (commonly referred to as the "loan tape").

214. Syncora's review of underlying files for 3,700 defaulted loans in two of the securitizations it insured revealed that 2709 of the loans—almost 75%—have severe underwriting defects. The majority of these loans exceeded or ignored one or more Countrywide underwriting guidelines regarding excessive DTIs; excessive combined loan to value ratios; excessive loan amounts; improper calculation of first-lien debt, improper calculation of property values; patently unreasonable stated incomes; borrower fraud; indiscriminate availability of stated income loans; inflated appraisals; insufficient borrower credit; insufficient cash reserves; and/or missing documents. Indeed, Countrywide frequently breached a combination of underwriting guidelines for a given loan, which created a "layered risk," greatly increasing the likelihood of default.

215. With respect to inflated appraisals, Syncora alleges in part:

> In a review of non-performing loans in the 2005-K and 2006-D Securitizations, Syncora has found that Countrywide's appraisals of properties secured by non-performing loans show a clear pattern of inflation compared to sales prices achieved for comparable properties in the locale at the time Countrywide obtained its appraisals. Moreover, despite Countrywide's promise in the contractual documents and the Prospectuses to obtain "independent third party" appraisals, the properties underlying the vast majority of the loans in the Securitizations were appraised by Countrywide's own affiliated appraisal company, Landsafe, Inc. ("Landsafe"). Landsafe, like Countrywide Home Loans, is a subsidiary of Countrywide Financial [Corp.].

216. In sum, the evidence developed in numerous other actions against Countrywide substantiate that Countrywide abandoned its stated underwriting guidelines.

c. Confidential witnesses provide further evidence of Countrywide's abandonment of sound underwriting practices.

217. Confidential witnesses provide additional evidence of Countrywide's failure to adhere to sound underwriting practices and guidelines. For example, confidential witnesses, such as Confidential Witness ("CW")-A, a loan officer who worked at Countrywide from 1997 through 2007, CW-B, a former branch manager and regional vice president for Countrywide from September 2005 through December 2007, CW-C, a loan specialist at Countrywide's subprime lender, Full Spectrum Lending, from 2004 to 2005, and CW-V, a former Countrywide branch operation's manager from 2005 to 2010 (after Countrywide was taken over by Bank of America), all confirm that: (a) Countrywide employees faced intense pressure to close loans at any cost; (b) Countrywide increasingly approved risky, low- or no-documentation loans without adequate review; (c) Countrywide failed to adhere to underwriting guidelines; (d) Countrywide routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (e) Countrywide employees pressured appraisers to inflate home values; and (f) Countrywide employees manipulated loan data in order to close loans.

218. Specifically, CW-A stated that employees at Countrywide always faced pressure to produce and close more loans. Because CW-A's performance was judged only on how many loans he closed each month, and not on long-term performance, he used to joke to friends that his status of employment was continually under scrutiny by his employer: "I'm fired every month, and then every month they re-hire me."

219. CW-A stated that from 2004 to 2006, Countrywide's underwriting guidelines became "looser and looser and looser." During this period, the minimum credit scores required for prime or Alt-A mortgages fell repeatedly, such that a borrower with a FICO score of 680 could get a mortgage with a 100% LTV based upon stated income/stated assets documentation. CW-A also stated that Countrywide offered no income/no asset ("NINA") loans, whereby a borrower could obtain a loan without providing any employment, income, or asset documentation, and could do so without any effort or, for that matter, any way for the originator to determine whether the borrower had an ability to repay the loan. CW-A further stated that Countrywide frequently offered loans to borrowers who had been rejected by other mortgage providers. In fact, Countrywide loan officers often emphasized to prospective borrowers that Countrywide could do loans that other lenders could not.

220. According to CW-A, Countrywide had an "Exception Desk," whose purpose was to review loans that did not strictly meet the underwriting guidelines. During the 2004-2006 time period, CW-A stated that, "It got to where loan approvals with exceptions were the norm."

221. According to both CW-A and CW-B, Countrywide loan officers pressured appraisers to return values which would allow the loans to be approved. For example, Countrywide loan officers would tell the appraisers that if they did not provide the value the loan officers needed, Countrywide would not send any more work to the appraiser.

222. Both CW-A and CW-B described that, even in circumstances where the appraisers were not directly threatened, Countrywide influenced their appraisal values by telling appraisers exactly what value they needed in order to approve the loan. CW-B also explained that in other instances, Countrywide provided appraisers with the purchase price of the home and the loan amount so that the appraisers could extrapolate the minimum value needed for the appraisal. CW-B noted that Countrywide also sent appraisers additional comparables that were higher than those the appraiser initially relied upon.

223. CW-B stated as well that Countrywide's underwriting guidelines became "way too easy" to meet. As a consequence, many of Countrywide's loans ended up in default. Numerous times, he recalled thinking to himself, "people making this kind of money shouldn't qualify for a $400,000 loan." For example, he recalled seeing loan applications for $350,000 homes, with $1,900/month loan payments, when the borrowers were making only $3,000/month. The DTI on such a loan was approximately 63%. He said such situations were "absurd, but I saw it all the time."

224. Additionally, CW-B said that most approved mortgages at Countrywide had 95-100% LTVs, and most borrowers only put down zero to five percent of the purchase price. Consequently, borrowers had "no skin in the game," and when home values started to drop and the borrowers' loans were for more than the homes were worth, they had no incentive to continue making their mortgage payments. Moreover, CW-B said that Countrywide granted numerous mortgages to borrowers with 65% DTIs, and that Countrywide did not require borrowers to have any "reserves" (*i.e.*, cash in their bank accounts)—or, at most, they only had to have one month's reserve—in order to be approved.

225. CW-B also stated that Countrywide offered a "Fast and Easy" loan program, which required minimal documentation and thereby allowed mortgages to be approved more quickly. It was Countrywide's version of the stated income/stated asset mortgage. CW-B had "no doubt" that there was a lot of upward manipulation of borrower income in order to qualify borrowers for a Fast and Easy loan. Indeed, CW-B reported one employee to Countrywide's Fraud Department when he caught the employee repeatedly entering fraudulently high income. However, the Countrywide human resources department said that such reported incidents were not enough to fire the employee, and the employee was simply suspended. While the employee was suspended, CW-B examined the employee's loan files and found four to five different applications in which the employee had nearly doubled the borrowers' reported income in order to get the loans approved.

226. CW-C also saw a practice of inflating incomes on stated-income loans when she worked at Countrywide's Full Spectrum Lending division. On instruction from the branch manager, CW-C said that loan officers "recalculated income and removed [any documents] they didn't want the underwriters to see" in order to push the loans through. In addition, CW-C knew that loan officers at Countrywide cut and pasted false information into loan documents in order to get loans approved. "It was a pretty common practice," she said.

227. Like CW-A, CW-V was aware that her bosses were under a lot of pressure to produce a high volume of loans; she noted that there was a big push on volume back then and that bonuses were tied to volume. In fact, CW-V was admonished that she was being too difficult with respect to the underwriting rules, and was told that "I had to find a way to make the loans, and not try to find a way to not make them." CW-V recalls many times during her tenure when she did not believe a loan should be made, but it nevertheless was pushed through. By way

of example, CW-V recalls a Countrywide loan officer in her branch who was allowed to originate loans for his family members, notwithstanding that this violated Countrywide policy, and even though the applications only contained names and addresses and no other information. In fact, it was only after several of these loans closed, and CW-V complained to her regional manager, that her colleague was told he could no longer make loans to family.

228. CW-V also recalls instances in which she spoke with a customer over the telephone regarding missing or questionable information, and was informed by the customer that he or she just put down what the loan officer told him or her to write. When CW-V expressed her concerns to the loan officer involved, she was told *not* to contact any customers. CW-V recalls a lot of tension between the loan officers and loan processors in the branch, with the loan officers insisting that loans be processed quickly and without questions and becoming angry when loan processors attempted to verify and validate the information on the loan.

229. CW-W, a loan officer and branch manager for Countrywide, stated that verification of income under Countrywide's Fast and Easy loan program was "a joke." Moreover, if the CLUES system—Countrywide's Automated Underwriting System—did not approve a loan at first, loan officers would often simply inflate the numbers until there was an approval. There was no limit to how many times the numbers could be re-entered. In CW-W's experience, loan officers were unlikely to seek exceptions to the underwriting guidelines from the branch manager, since they could simply commit fraud on the "front end"—i.e., by inflating the numbers.

230. CW-W also said that 50% of mortgage loans were made without formal appraisals. When appraisals were done, the appraiser was told that if the property did not "come back at value," Countrywide would simply go to another appraiser thereafter. CW-W said when

an appraised property had zoning violations, or other features that would bring down the valuation, the appraiser was told to make sure their photographs of the property didn't include those features.

d. The mortgages originated by Countrywide and securitized in the PLMBS purchased by the Bank provide further evidence of Countrywide's abandonment of sound underwriting practices.

231. Countrywide originated mortgages that secured at least Securities BSARM 2007-3 1A1, CWHL 2007-8 1A5, CWHL 2005-8R A1, CWHL 2007-13 A4, GSR 2006-2F 3A1, GSR 2006-AR1 2A3, GSR 2006-1F 2A2, GSR 2005-3F 2A1, GSR 2005-1F 3A1, GSR 2005-2F 2A1, and GSR 2006-6F 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90% and 80%, the percentage of loans secured by property not the primary residence of the borrower, and the percentage of loans originated using full documentation. Moreover, as described in Paragraphs 369-70 below, many of these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Countrywide's failure to observe its stated underwriting standards. Countrywide's actual practices – including use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information – caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

232. In summary, far from following its underwriting guidelines as described in the Offering Documents and making occasional, targeted and justified exceptions when other

evidence of ability to repay justified a deviation from the guidelines, at Countrywide variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any of the Offering Documents apprise the Bank of the extent to which Countrywide deviated from its underwriting guidelines.

2. GMAC and Residential Funding Corp.

233. GMAC Mortgage Corporation, which is now known as GMAC Mortgage, LLC, and its affiliate, Residential Funding Corp. ("RFC") (together, "GMAC") were the originators of loans for at least three of the PLMBS purchased by the Bank. Both the representations of GMAC and RFC regarding their loan origination practices have been challenged by MBIA Insurance, one of the largest providers of bond insurance, which insured MBS securities sold by GMAC and RFC. GMAC also abandoned sound underwriting practices

a. Private actions against GMAC demonstrate GMAC's abandonment of sound underwriting practices.

234. In *MBIA Insurance Corporation v. GMAC Mortgage LLC* (N.Y. Sup. Ct.), GMAC MBS insurer MBIA alleges that, with respect to GMAC securitizations it insured in 2004, 2006, and 2007, GMAC represented and warranted that (a) all of the information it provided to MBIA about the mortgage loans was accurate and not misleading; (b) all of the mortgage loans in the pools were underwritten in accordance with GMAC Mortgage's underwriting standards; and (c) in the case of each loan, after receiving all applicable employment, credit, and property information, a determination had been made that the borrower was able to meet his or her monthly payments.

235. According to MBIA, GMAC "blatantly violated its contractual representations and warranties." MBIA supports this allegation by explaining that in 2009, in the face of mounting payments caused by delinquent and "charged-off" loans, MBIA began to examine the

loan files and documentation associated with thousands of loans. The result of this review clearly demonstrates that GMAC "had wholly abandoned its own underwriting policies and instead routinely approved loans to borrowers who failed to meet basic risk criteria." At least 89% of the 4,104 delinquent or charged off loans reviewed by MBIA were not originated in material compliance with GMAC's underwriting guidelines or the contractual representations and warranties made by GMAC.

236. More specifically, MBIA alleges that many of the loans it has found to be non-compliant contained multiple breaches of representations and warranties, including:

- GMAC Mortgage routinely breached its representation and warranty that the mortgage loans were underwritten generally in compliance with GMAC Mortgage's underwriting standards.

- A significant number of mortgage loans were made on the basis of "stated incomes" that were grossly unreasonable or were approved despite DTI [debt-to-income] or CLTV [combined loan-to-value] ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines or the Purchase Agreements or Prospectus Supplements.

- Contrary to its Underwriting Guidelines, GMAC Mortgage failed in many cases to verify the borrower's employment when required to do so or to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with ineligible credit scores, and approved loans without verifying that the borrower had sufficient funds or reserves.

- GMAC Mortgage used its proprietary automated electronic loan underwriting program, known as "Assetwise," to approve loans that did not comply with its Underwriting Guidelines. Assetwise assisted in the underwriting of mortgage loans by automating the process of determining whether a loan met pre-specified underwriting criteria set up in the program. GMAC Mortgage used the program itself and also made the program available to its affiliates. Assetwise, however, failed to analyze proposed mortgage loans using the criteria set forth in GMAC Mortgage's Underwriting Guidelines. As a result, GMAC Mortgage routinely contributed loans to the Transactions that failed to comply with its own underwriting standards.

- GMAC Mortgage routinely breached its representation and warranty that the mortgage loan files were complete and contained all required documents and instruments. Many of the of mortgage loan files are missing necessary mortgage

> loan documents, such as disclosures relating to loan transfers and notes establishing the first lien. The absence of these and other necessary documents from the loan files impedes the ability of the trustees for the Transactions to enforce their rights and remedies with respect to delinquent mortgages. The failure to maintain the required loan documentation also impairs proper servicing.

237. Similarly, MBIA explains, in its complaint in *MBIA Insurance Company v. Residential Funding Corporation*, No 603552-2008, (N.Y. Sup. Ct.): "Of the 1,847 mortgage loans [examined by MBIA] . . . only 129 mortgage loans—less than 7% of the mortgage loans reviewed—were originated or acquired in material compliance with RFC's representations and warranties . . . with respect to the underwriting of the mortgage loans contributed to the RFC transactions." The complaint notes that "The Underwriting Guidelines . . . only allowed RFC to make exceptions to the Underwriting Guidelines in very specifically defined and limited circumstances. . . . RFC's Underwriting Guidelines required that a form—Form 1600—be completed and approve for any exceptions made to the Underwriting Guidelines in connection with the underwriting of purchase of a mortgage loan. [Yet, in fact f]or a significant number of non-compliant mortgage loans, RFC did not identify any specifically defined exception that was permitted under the Underwriting Guidelines. Further for a significant number of mortgage loans, RFC failed to document the alleged exceptions on a form 1600 as required by the Underwriting Guidelines."

238. On information and belief, the practices and omissions described in the MBIA actions were also prevalent with respect to the Certificates purchased by the Bank for which GMAC originated underlying mortgage loans.

b. Confidential witness statements provide further evidence of GMAC's abandonment of sound underwriting practices.

239. Confidential witness CW-Z, who worked as a District Operations Manager for GMAC Mortgage from 2000 through 2007, provided further evidence of GMAC's failure to

adhere to sound underwriting practices and guidelines. CW-Z said that up to 50% of the loans that were approved in his California branch were pursuant to GMAC's "reduced documentation" program. Additionally, CW-Z stated that many prospective borrowers came to GMAC in the hopes of refinancing their ARM loans, which carried one- to three-year prepayment penalties of approximately $24,000 to $30,000.

c. The mortgages originated by GMAC and securitized in the PLMBS purchased by the Bank provide further evidence of GMAC's abandonment of sound underwriting practices.

240. GMAC originated mortgages that secured at least Securities GSR 2006-AR1 2A3, RFMSI 2007-S4 A4, and RFMSI 2007-SA4 3A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to the weighted average LTV ratios, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of GMAC's and Residential Funding's failure to observe its stated underwriting standards. GMAC's and Residential Funding's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused GMAC and Residential Funding to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

241. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at GMAC and RFC, variance from the stated standards

was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any of the Offering Documents apprise the Bank of the extent to which GMAC and RFC deviated from their underwriting guidelines.

3. IndyMac Bank, FSB

242. IndyMac Bank, FSB ("IndyMac") originated underlying mortgage loans securing at least six of the PLMBS purchased by the Bank. IndyMac also abandoned sound underwriting practices.

a. Government actions and related lawsuits and investigations demonstrate IndyMac's abandonment of sound underwriting practices.

243. In 2010, IndyMac was identified by the OCC as the twelfth worst mortgage originator in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas with the highest rates of delinquency.

244. As reported in the Audit Report of the Office of Inspector General, Department of Treasury, IndyMac made loans to borrowers who could not afford to repay them:

> IndyMac often made loans without verification of the borrower's income or assets, and to borrowers with poor credit histories. Appraisals obtained by IndyMac on underlying collateral were often questionable as well. As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, 80/20 loans, and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments.

SAFETY AND SOUNDNESS: MATERIAL LOSS REVIEW OF INDYMAC BANK, FSB, OIG-09-032, (February 26, 2009).

245. In describing what it referred to as IndyMac's "Unsound Underwriting Practices," the Inspector General's audit explained:

> IndyMac encouraged the use of nontraditional loans. IndyMac's underwriting guidelines provided flexibility in determining whether, or how, loan applicants'

employment, income, and assets were documented or verified. The following procedures were used by the thrift:

- No doc: income, employment, and assets are not verified
- No income/no assets (NINA): income and assets are not verified; employment is verbally verified
- No ratio: no information about income is obtained; employment is verbally verified; assets are verified
- Stated income: income documentation is waived, employment is verbally verified, and assets are verified
- Fast forward: income documentation is sometimes waived, employment is verbally verified, and assets may or may not be verified.

246. The Inspector General's audit also explained that:

> [A]mong other things, we noted instances where IndyMac officials accepted appraisals that were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP). We also found instances where IndyMac obtained multiple appraisals on a property that had vastly different values. There was no evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser. As illustrative of these problems, the file for one 80/20, $1.5 million loan we reviewed contained several appraisals with values ranging between $639,000 and $1.5 million. There was no support to show why the higher value appraisal was the appropriate one to use for approving the loan.

247. The Inspector General's audit contained four examples of examined loans with serious underwriting failings and questionable appraisals. These included the following examples of IndyMac's conduct and the losses resulting from IndyMac's violation of underwriting standards and reliance on faulty appraisals:

> <u>Loan 1</u>
>
> On May 2, 2007, IndyMac approved a $926,000 stated income loan for the borrower, . . . an adjustable rate mortgage with a 5-year term and a beginning interest rate of 5.875 percent, which was subject to change monthly. . . .
>
> As a stated income loan, IndyMac performed no verification of the borrower's self-employment income of $50,000 a month ($600,000 annually). IndyMac also did not verify the borrower's assets. . . .
>
> The loan file contained an appraisal which indicated that the property value was $1.43 million. This value was based on comparable properties that had been improved with single family residences. However, the comparable

properties were located closer to the ocean and bay, and their values were based on listing price instead of the actual selling price. The appraised value also did not take in consideration a slowdown in the real estate market. We saw no evidence in the loan file that IndyMac resolved these and other anomalies with the appraisal.

The borrower made payments totaling $5,389 before defaulting on the loan. The unpaid principal and interest at the time of foreclosure totaled approximately $1.01 million. At the time of our review, the property was listed for sale for an asking price of $599,000.

Loan 2

In November 2007, IndyMac approved a $3 million stated income loan, secured by the borrower's primary residence in Scottsdale, Arizona. The loan proceeds were used to refinance the primary residence which the borrower had owned for 11 years and reported its value as $4.9 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported self-employment income of $57,000 a month ($684,000 annually). Contrary to IndyMac policy, the borrower selected the appraiser who appraised the property at $4.9 million.

Notes in the loan file indicated that the borrower had listed the property for sale in November 2006, first at a price of $4.9 million that was later reduced to $4.5 million before the borrower pulled the property off the market. Despite this, the appraiser concluded that the value of $4.9 million appeared to be reasonable. IndyMac accepted the appraiser's value based on a review of online sale and public records. It did not physically inspect the property.

The borrower made no payments on the loan before default. The total delinquent loan amount as of November 2008 was $3,015,625. According to the IndyMac official, the property sold in October 2008 for $2.0 million.

Loan 3

In February 2007, IndyMac provided the borrower a stated income, 80/20 loan, for a combined total of $1.475 million, to purchase a property in Marco Island, Florida. The combined loan equaled the appraised value of the property.

As a stated income loan, IndyMac performed no verification of the borrower's reported income of $28,500 a month ($342,000 annually). For 80/20 loans, IndyMac allowed an $800,000/$200,000 maximum loan amount and a maximum combined loan amount of $1 million. This loan was an exception to IndyMac policy as the combined loan amount of $1,475,000 exceeded the maximum combined loan amount. The loan exception was approved anyway.

Various appraisals in the loan file contained significant differences with no indication of how they were resolved by IndyMac. A January 2007 appraisal valued the property at $1.48 million. A valuation analysis prepared by an IndyMac employee on January 25, 2007, stated that the skill level of the appraiser was unacceptable—the appraiser had not provided accurate comparable properties to the subject property and did not accurately consider the location of the property. The IndyMac employee estimated the property value at $1 million and recommended that another appraisal be obtained. Another note in the loan indicated that the IndyMac official overruled the employee's recommendation and the appraisal was accepted. The IndyMac official, however, adjusted the appraised value approximately 10 percent lower, to $1.33 million, citing as a justification that a property on the same street had sold for $1.97 million.

The borrower made no payments before defaulting on the combined $1.48 million loans. According to the IndyMac official, the borrower deeded the property to the thrift in lieu of foreclosure. The IndyMac official estimated in November 2008 that the property was worth about $700,000.

Loan 4

In April 2002, IndyMac approved the borrower for a stated income home equity line of credit of $550,000. This line of credit was in addition to a 80/20 loan for $3 million that the borrower already had with IndyMac. The borrower reported that the property was worth $5.2 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported gross income of $95,000 a month ($1.14 million annually) as the owner/manager of a limited liability corporation. The loan notes history did not indicate how IndyMac resolved negative information revealed in credit reports on the borrower. Two credit reports obtained in March 2002 listed serious and frequent delinquencies. An earlier credit report had noted a discrepancy with the borrower's social security number.

Various appraisals in the loan file also contained significant discrepancies with no indication of how they were resolved by IndyMac. Specifically, the appraisal for the original 80/20 loan, dated in October 2001, valued the property which the appraisal described as new construction at $5.2 million. This same value was reported by a second appraisal dated in March 2002. A third appraisal, dated in April 2002, placed the market value of the home at $508,500. The appraisal stated that the home was less than ½ mile from a hazardous waste facility. A fourth appraisal, also prepared in April 2002, valued the property at $730,000, with the lowest reasonable value at $590,000 and the highest reasonable at $900,000. This appraiser also reported that the home was built in 1959.

> The borrower made payments totaling about $11,000 before defaulting on the $550,000 home equity line of credit loan. According to the IndyMac official, the thrift was able to recover approximately $600,000 on both loans. . . .

248. A June 30, 2008 report issued by the Center for Responsible Lending entitled INDYMAC: WHAT WENT WRONG? HOW AN "ALT-A" LEADER FUELED ITS GROWTH WITH UNSOUND AND ABUSIVE MORTGAGE LENDING concluded that IndyMac often ignored its stated underwriting and appraisal standards and encouraged its employees to approve loans regardless of the borrower's ability to repay.

249. The Center for Responsible Lending's report quotes an IndyMac underwriting team leader, Audrey Streater, as stating of her time at IndyMac: "I would reject a loan and the insanity would begin. It would go to upper management and the next thing you know it's going to closing."

250. The Center for Responsible Lending's report describes the recollection of another former underwriter for IndyMac, Wesley Miller:

> [W]hen he rejected a loan, sales managers screamed at him and then went up the line to a senior vice president and got it okayed. "There's a lot of pressure when you're doing a deal and you know it's wrong from the get-go—that the guy can't afford it," Miller told CRL. "And then they pressure you to approve it." The refrain from managers, Miller recalls, was simple: "Find a way to make this work."

251. The Center for Responsible Lending interviewed another former Indymac underwriter:

> Scott Montilla, who worked as an underwriter for IndyMac in Arizona . . . says that when salespeople went over his head to complain about loan denials, higher-ups overruled his decisions roughly half the time. "I would tell them: 'If you want to approve this, let another underwriter do it, I won't touch it—I'm not putting my name on it,'" Montilla says. "There were some loans that were just blatantly overstated. . . . Some of these loans are very questionable. They're not going to perform."

b. Private actions against IndyMac demonstrate IndyMac's abandonment of sound underwriting practices.

252. Multiple insurers of IndyMac-originated loans, including MBIA Insurance Corporation, FGIC, and Syncora—all of whom have experienced unprecedented losses in connection with the financial guarantee insurance they provided on IndyMac loans—have filed suit against IndyMac alleging the abandonment of underwriting standards based, in part, on their analysis of the loan files for IndyMac loans. Some of the allegations made by the insurers are virtually identical to the allegations made by the Bank here—namely that IndyMac completely abandoned its underwriting standards in its rush to originate (and securitize) as many loans as possible.

253. By way of example, according to MBIA:

> IndyMac had abandoned any reasonable and prudent underwriting standards. In an effort to expand its market share during the mortgage lending boom, IndyMac systematically abandoned its own underwriting guidelines in pursuit of increased loan originations: it knowingly loaned millions of dollars to borrowers who could not afford to repay the loans, or who IndyMac personnel knew or should have known were including misstatements in their loan applications, often with the assistance and encouragement of IndyMac's employees and brokers, or who otherwise did not satisfy the basic risk criteria for prudent and responsible lending that IndyMac claimed to use.

254. This systematic abandonment of underwriting standards stands in sharp contrast to the representations made about IndyMac's underwriting standards in numerous documents, including investor prospectuses and prospectus supplements.

255. MBIA's allegations are supported by reviews of loan files backing PLMBS insured by MBIA. A review of the loan files of 418 defaulting loans in one of the PLMBS insured by MBIA indicated that *over 95%* of the defaulting loans failed to comply with IndyMac's representations and warranties with respect to its underwriting guidelines and policies. Similarly, a review of 297 defaulting loans in another PLMBS insured by MBIA

indicated that *over 99%* failed to comply with IndyMac's stated underwriting guidelines and policies.

256. Syncora also analyzed various IndyMac loans backing PLMBS it insured. Out of the 107 loans analyzed by Syncora, 105 of the loans breached representations and warranties made by IndyMac to Syncora. These include (a) 83 loans in breach of the representation that "each Mortgage Loan was originated in all material respects in accordance with the applicable Originator's underwriting criteria in effect at the time of origination"; (b) 57 loans in breach of the representation that "each Mortgage Note be a legal, valid and binding obligation, all parties had full legal capacity to execute the documents and convey real estate to the best of the Seller's knowledge, and there was no fraud involved in the origination of any Mortgage loan"; and (c) six loans in breach of the representation that "each Mortgage Loan contain an appraisal conforming to the standards of the applicable Originator."

257. In addition to similar allegations of the abandonment of underwriting guidelines by IndyMac, which are also based on a review of loan files, FGIC alleges that IndyMac materially misrepresented the accuracy of data provided to FGIC for a securitization it insured, including the owner-occupancy status of a property, the combined LTV for the property, the borrower's DTI, and the borrower's FICO credit score. Again, this allegation is supported by evidence obtained by FGIC from its review of loan files it obtained in the course of its investigation.

258. The three insurers noted above have not been able to conduct complete analyses of the loan pools for which they provided insurance because IndyMac, despite its contractual obligations to the insurers, has refused to provide complete access to the loan files. For this reason, all three insurers are seeking judicial relief to gain access to these various loan files.

259. Other entities are also pursuing claims against IndyMac for abandoning its underwriting guidelines. For example, in May of 2009, Deutsche Bank National Trust Company, in its capacity as a trustee, filed suit against IndyMac Bank and the FDIC (in its corporate capacity as well as in its capacity as receiver and conservator for IndyMac Bank and IndyMac Federal Bank) over the more than 150,000 mortgage loans that IndyMac Bank had originated or acquired and sold to the trust. *See Deutsche Bank Nat'l Trust Co. v. FDIC*, No. 09-3852 (C.D. Cal.). Deutsche Bank's complaint asserts claims for breach of contract, breach of the duty of good faith and fair dealing, and breach of fiduciary duty, and alleges that IndyMac breached numerous representations and warranties that it made to the trusts, including (a) selling mortgage loans into the trusts that failed to comply with IndyMac's credit underwriting standards and origination process; (b) providing mortgage loan origination files that failed to contain required documentation; (c) originating mortgage loans that did not comply with applicable law; and (d) selling mortgage loans into the trusts that did not possess the characteristics set forth in the schedules to the relevant governing agreements. Encompassed in the Deutsche Bank case are five of the IndyMac-originated Certificates purchased by the Bank, GSR 2005-2F 2A1, GSR 2005-3F 2A1, GSR 2006-1F 2A2, GSR 2006-6F 2A1, RAST 2005-A11 2A1. Hence, like the Bank, the trustee for these very Certificates contends that IndyMac abandoned its underwriting guidelines, contrary to the statements in the Offering Documents.

c. Confidential witnesses provide further evidence of IndyMac's abandonment of sound underwriting practices.

260. Confidential witnesses provide additional evidence of IndyMac's failure to adhere to sound underwriting practices and guidelines, as well as appraisal guidelines.

261. According to CW-X—a former underwriter for IndyMac in Missouri from June 2005 to June 2007—she was required on a daily basis to approve loans that she believed should

not be approved. IndyMac required underwriters who wanted to deny stated income loans to obtain management approval for the denial. As a result, CW-X was frequently overruled, even when the income provided in the application was obviously overstated, such as when a cab driver from Chicago claimed to have $12,000 a month in income. Upset at being forced to approve clearly inaccurate loan applications, CW-X many times noted in the file that "the loan was approved under duress."

262. CW-X noted that IndyMac underwriters were under a lot of pressure to approve loans. IndyMac underwriters received bonuses based on the number of loans that they permitted to be funded, not the number of loans that they reviewed. According to CW-X, this structure incentivized the approval of unscrupulous loans and opened the doors to committing fraud on the inside. CW-X stated that a broker could not commit fraud unless an underwriter approved it, and there were certain underwriters that would approve anything, no matter how blatant, because they wanted a larger paycheck. In fact, in 2007, CW-X recalled being required, along with the other underwriters in her department, to come in on a Saturday and review the loan files for stated income loans that had been previously funded. CW-X believes that during this time period a lot of questions were coming up about the loans being reviewed, and CW-X and her colleagues went through every loan her department had approved to see whether or not the stated salary was within the correct range—as indicated by salary.com—for the job description of the loan applicant. CW-X found a lot of overstated incomes in the files that had been reviewed by other underwriters—"some of the underwriters would rather see a bigger paycheck than do the right thing."

263. The statements of CW-Y, a former underwriter for IndyMac in California from 2006 to 2008, and CW-AA, a former underwriter for IndyMac in New Jersey from 2004 to 2007,

further confirm IndyMac's abandonment of underwriting standards. CW-Y stated that on several occasions she suspected that stated-income loan applications contained inflated income information. In particular, she recalls a gardener in California who purportedly made $10,000 a month. Notwithstanding her concerns, because the loan applicant had a sufficiently high FICO score, IndyMac's automated system—eMITS—approved him for the loan. When CW-Y questioned this approval, she was informed that because the system approved it, she needed to process the loan. CW-Y also recalled that the bonus system—which was based on the number of loans funded—incentivized underwriters to quickly approve loans. Those underwriters who failed to meet their quotas were written up. Similarly, CW-AA reported that no-documentation and stated income loans were "the norm" during CW-AA's tenure as an underwriter, and CW-AA stated that his managers approved loans that CW-AA would not have approved, and were known to overrule CW-AA on loans that he denied. CW-AA believed that IndyMac did too many no-doc and stated income loans, and approved deals that should not have been approved.

264. CW-X also discussed the loosening of appraisal standards. When CW-X first started at IndyMac, the bank had an automated system for scoring appraisals that took into account different factors such as the location of the property and the date of the comparable sales. Based on the scoring of this data, certain appraisals were sent to IndyMac's appraisal review department, which denied a lot of loans. According to CW-X, at a certain point management concluded that too many loans were being reviewed and denied, so management relaxed the standards, thereby reducing the number of appraisals automatically sent to the review department. CW-X worked on the same floor as the appraisal review department, and recalls talking with appraisal reviewers who complained "a lot" that they had a strong belief that "they

weren't seeing appraisals [they should be seeing]," i.e., that suspect appraisals were not being reviewed.

265. CW-X's statements were confirmed by CW-BB, who began working for IndyMac in California as a licensed real estate appraiser trainee and who did appraisals for IndyMac in 2006 and 2007. CW-BB recalls being blacklisted over her appraisal of a California home with a separate guest house. Consistent with standard appraisal practices, CW-BB did not include the guest house's square footage in the main house, and refused to do so even under pressure from IndyMac. CW-BB's refusal prompted IndyMac to stop sending her work, and an IndyMac representative verbally confirmed that she had been placed on a blacklist.

d. The mortgages originated by IndyMac and securitized in the PLMBS purchased by the Bank provide further evidence of IndyMac's abandonment of sound underwriting practices.

266. IndyMac originated mortgages that secured at least Securities GSR 2006-1F 2A2, GSR 2005-3F 2A1, GSR 2005-2F 2A1, GSR 2006-6F 2A1, and RAST 2005-A11 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90% and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described in paragraphs 592-593 below, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of IndyMac's failure to observe its stated underwriting standards. IndyMac's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from those reported in the Offering Documents, and whose likelihood of default was

much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

267. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at IndyMac variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which IndyMac deviated from its underwriting guidelines.

4. Washington Mutual Bank

268. Washington Mutual Bank ("WaMu") originated underlying mortgage loans securing at least six of the PLMBS purchased by the Bank.

269. Investigations into the practices of WaMu reveal the depth and breadth of its abandonment of underwriting standards and appraisal standards.

270. A review of the investigations and related litigation involving WaMu, as well as confidential witness statements obtained during the Bank's investigation, demonstrate that these mortgage originators systematically violated and ignored their stated underwriting guidelines, rendering materially misleading the statements in the Offering Documents regarding underwriting practices, appraisals, and LTVs. This evidence is reinforced further by the analysis of the performance of the actual loan pools backing the PLMBS purchased by the Bank.

a. Government actions and related lawsuits and investigations demonstrate WaMu's abandonment of sound underwriting practices.

271. As reported at the Senate Subcommittee hearing on Wall Street and the Financial Crisis held on April 13, 2010, the Subcommittee identified multiple high risk loan practices by WaMu, including:

> **Shoddy Lending Practices.** WaMu used shoddy lending practices riddled with credit, compliance and operational deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors.
>
> **Steering Borrowers to High Risk Loans**. WaMu too often steered borrowers into home loans they could not afford, allowing and encouraging them to make low initial payments that would be followed by much higher payments, and presumed that rising home prices would enable those borrowers to refinance their loans.
>
> **Securitizing Delinquency-Prone and Fraudulent Loans.** At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.
>
> **Destructive Compensation.** WaMu's compensation system rewarded loan officers and loan processors for originating large volumes of high risk loans, [and] paid extra to loan officers who overcharged borrowers or added stiff prepayment penalties . . . .

272. A November internal 2005 review of WaMu loans in southern California found "an extensive level of loan fraud . . . virtually all of it stemming from employees in these areas circumventing bank policy surrounding loan verification and review." According to the *Seattle Times*, "[a]t one California office, 58 percent of loans examined in an internal review were fraudulent; at another, 83 percent." Drew DeSilver, *WaMu Execs Saw Warning Signs of Deteriorating Loans*, Seattle Times, Apr. 12, 2010, at A1.

273. A WaMu PowerPoint presentation presented to Kerry Killinger, Steve Rotella and many other WaMu executives was disclosed at the April 13, 2010 hearing before the Senate Subcommittee on Investigations. The presentation, which examined the risk management of WaMu's home loan division, examined 187 loan files that had a first payment default. The presentation revealed that of these 187 files, there was "confirmed fraud" on 115. 17 were "highly suspect." 133, or 71%, "had credit evaluation or loan decision errors." 58, or almost one-third, "had appraisal discrepancies or issues that raised concerns." Of the 187 loans, 112 had

required no documentation of income; out of these 112, 80 were identified "for lack of reasonableness of income."

274. Another internal memorandum presented at the Senate Subcommittee hearings, titled "So. California Emerging Markets Targeted Loan Review Results," explained that "[o]f the 129 detailed loan review[s] that have been conducted to date, 42% of the loans reviewed contained suspect activity or fraud, virtually all of it attributable to some sort of employee malfeasance or failure to execute company policy. . . . On average, 78% of the funded retail broker loans reviewed were found to contain fraud . . . principally centered in misrepresentation of loan qualifying data and appraisal issues."

275. Another exhibit at the April 13, 2010 Senate Subcommittee hearing explained how: "[o]ne Sales Associate admitted that during that crunch time some of the Associates would 'manufacture' asset statements from previous loan docs and submit them to the LFC [Loan Fulfillment Center]. She said the pressure was tremendous from the LFC to get them the docs since the loan had already funded and pressure from the Loan Consultants to get the loans funded [sic]."

276. At one point, the *Seattle Times* reports that over three quarters of WaMu's $58.9 billion portfolio of option-ARM loans had been issued as limited documentation loans. Drew DeSilver, *Big Dreams of WaMu Dashed By Risky Loans*, Seattle Times, Sept. 21, 2008 at H1.

277. As explained in the *Seattle Times*, WaMu increasingly favored "low-documentation" loans, "lean[ing] more and more heavily on credit scores, which could be ascertained while the borrower was still on the phone." Nancy Erken, a WaMu loan consultant in Seattle, is quoted as stating that at WaMu at this time "the big saying was 'a skinny file is a good file.'" She also explained how she would try to document borrowers' ability to afford their loans

but that her experience was that when she would "take the files over to the processing center in Bellevue . . . . [T]hey'd tell me 'Nancy, why do you have all this stuff in here? We're just going to take this stuff and throw it out.'" DeSilver, *Reckless*, Seattle Times, *supra* ¶ 133 at A1.

278. In a 2005 memo obtained by the *Seattle Times*, WaMu risk managers were told they needed to "shift ways of thinking" so they would no longer be a "regulatory burden" on lending operations and instead act as a "customer service" to support growth. *Id.*

279. The *Seattle Times* further reported that Dale George, a senior credit-risk officer in Irvine, California attended an "all hands" meeting of risk managers where Melissa Martinez, WaMu's chief compliance and risk oversight officer, emphasized "the softer side of risk management." George explained that the message was: "They weren't going to have risk management get in the way of what they [production] wanted to do, which was basically lend the customers more money." *Id*.

280. WaMu Senior Mortgage Underwriter Keysha Cooper, who started at WaMu in 2003 and left in 2007, was quoted by the *New York Times* explaining that "[a]t WaMu it wasn't about the quality of the loans; it was about the numbers . . . . They didn't care if we were giving loans to people that didn't qualify. Instead it was 'how many loans did you guys close and fund?'" Cooper continued to explain how the pressure became intense in 2007 and admitted that "I swear 60 percent of the loans I approved I was made to . . . . If I could get everyone's name, I would write them apology letters." Gretchen Morgenson, *Was There a Loan It Didn't Like?*, N.Y. Times, Nov. 1, 2008 at BU1.

281. Another *Seattle Times* report quotes Mary Kay Morse, a 20-year veteran at WaMu whose job was to persuade independent brokers to make option ARM loans, stating, as to option-ARMs: "I hated that loan . . . . It's just not a good loan. It wasn't good for the borrower." She

continued that whereas at one time: "I always felt like I worked for a really honest industry that cared for the borrowers they dealt with," in her opinion the corporate culture had changed to: "[w]e just want to do the most we can to make money for the bank." David Heath, *Hometown Bank Turned Predatory,* Seattle Times, Oct. 26, 2009, at A1.

282. The reason for WaMu's adoption of these highly risky and unsuitable products was simple. As the *Seattle Times* explained:

> As demand [for traditional loans] waned, lenders tried to entice business by slashing profit margins on conventional mortgages, such as the 30-year fixed. WaMu's chief business was making home loans, yet it lost money on that segment in the third quarter of 2003.
>
> By November, WaMu had eliminated 4,500 full-time jobs in home lending and ousted the division head. By year's end, its mortgage business had shrunk with alarming speed, down by about half from the summer.
>
> After [Kerry] Killinger [WaMu's CEO] finished speaking, Chief Financial Officer Tom Casey got up and presented WaMu's solution.
>
> WaMu had other types of loans, such as subprime and home-equity lines of credit, that remained highly profitable. He noted there was even a specialty loan for borrowers with good credit that remained lucrative, the option ARM.
>
> As Casey explained it, the bank recently had beefed up its commissions and retrained its sales force to push option ARMs. In just the past few months, they had climbed from 15 to 35 percent of its mortgage business.
>
> The loan—mind-numbingly complex and highly risky for both the bank and its customers—originally was created for the savviest and most risk-tolerant of borrowers.

Heath, *supra* ¶ 281 at A1.

b. WaMu manipulated the appraisal process.

283. WaMu manipulated the appraisal process to inflate the reported value of real estate properties thereby artificially lowering the LTVs based on the appraisals. Multiple government investigations, including ones by the Senate Permanent Subcommittee on Investigations and the New York Attorney General's office, have examined the appraisal

practices of WaMu. The internal documents recently released to the public by these investigations reveal that: (1) appraisal fraud infected the origination of mortgages; and (2) WaMu actively pressured appraisers to inflate their appraisals or manipulated the appraisals themselves so that more loans could close and subsequently be securitized.

284. Internal WaMu documents released by the Senate Subcommittee on Investigations demonstrate that appraisal fraud infected its mortgage origination process. According to an internal WaMu memorandum presented at the April 2010 Senate Subcommittee hearing regarding a review of loans from 2003-2005, *78%* of the funded retail broker loans reviewed by WaMu's Risk Mitigation department were found to contain fraud that principally involved misrepresentation of loan qualifying data and appraisal issues.

285. One specific example of appraisal fraud for a WaMu originated loan involved an appraisal value for a property that apparently was based on both the value of the property *and the value of another house located in Mexico*. As WaMu's internal "Fraud Risk" PowerPoint notes, the inclusion of this additional house might explain why the appraisal value of $400,000 was so much higher than the $240,000 sales price of the property. Moreover, the appraisal omitted other important information, including that the property use was "illegal" because there was a third unpermitted unit on the property. This appraisal was not referred to an underwriter because the WaMu office manager waived the requirement for an underwriter to review the appraisal.

286. Another specific example for a WaMu originated loan involved an appraisal that contained false data regarding the subject property's site and building sizes as well as numerous warning signs that the appraisal was unreliable. The borrowers were refinancing a first mortgage that they had previously obtained from WaMu a year earlier. According to the Fraud Report, the appraisal contained multiple red flags. The property had appreciated in value by *90%* (from

$322,000 to $610,000) in a *single year*; the occupancy type was an investment property; the automated valuation model ("AVM") reflected a more probable value of $400,000. Further, the "comparables"—properties with characteristics similar to the appraised property—did not appear comparable; two out of the three "comparable" properties were located 3-4 miles away, and the comparable properties were given large upward adjustments in value to account for differences in design, functionality, square footage and lot size. Notwithstanding these warnings, the appraisal was not reviewed by underwriters. The Fraud Report also notes that the refinancing transaction was a "cash out refinance," and that the funds from this refinancing were needed *to close another loan that WaMu was processing for the borrower*. In other words, not one, but two transactions were dependent upon the appraisal coming in at value, even if that meant a 90% increase in the appraised value over the course of a single year.

287. Another internal document dated December 2006 states that "[WaMu subsidiary] Long Beach [Mortgage] represents a real problem for WaMu," and forwards the results of the "post-funding review team" tasked with reviewing, on a monthly basis, 275 loans within 15 days of funding. The review team identified, as a "top five priority" issue "[a]ppraisal deficiencies that could impact value and were not addressed." The review also emphasized that both the Corporate Credit Review department and the Senior Credit Officer Subprime were focused on "two key facts"—that "[t]he non accrual rate had increased year over year from 3.53% to 6.13%," and that "[o]n a vintage basis the deterioration was accelerating in recent vintages with each vintage since 2002 having performed worse than the prior vintage." As noted above, LTVs and a borrower's equity in his or her home are strongly indicative of a borrower's likelihood of defaulting. To the degree that inflated appraisals understate the LTVs, and overstate a

borrower's equity, one would expect to find increasing rates of non-accrual correlated with increasingly unreliable appraisals.

288. On November 1, 2007, the New York Attorney General filed *People v. First Am. Corp. and First Am. eAppraiseIT*, No. 46796/2007 (N.Y. Sup. Ct.) ("eAppraiseIT Compl."), alleging that eAppraiseIT colluded with WaMu to inflate the appraisal value of homes.

289. eAppraiseIT was one of two appraisal management firms hired by WaMu in the Spring of 2006 when WaMu decided to close its internal appraisal office. WaMu was eAppraiseIT's largest client, and on information and belief, eAppraiseIT performed appraisals for loans included in the loan pools for Certificates purchased by the Bank.

290. The New York Attorney General's complaint, which relies on multiple internal documents and emails—many of which have only recently become publicly available—demonstrates that WaMu actively encouraged the manipulation of appraisals to facilitate the origination of more and more mortgages for securitization. In 2009, the trial court denied eAppraiseIT's motion to dismiss, finding that the complaint sufficiently alleged a violation of New York law, "insofar as the intentional misleading of consumers in this state relating to the accuracy and independence of appraisals constitutes fraudulent and deceptive business practices that the [Attorney General] may seek redress for." *People v. First Am. Corp.*, 24 Misc. 3d 672, 682 (N.Y. Sup. Ct. 2009).

291. From its inception, the relationship between WaMu and eAppraiseIT was focused on undermining the appraisal process by pressuring appraisers to come in "at value"—provide appraisals that were equal to or greater than a property's purchase price in order for a transaction to close. WaMu's efforts to pressure appraisers included (1) excessive "Reconsideration of Value" requests to reconsider appraisals that were too low to permit a loan to be funded; (2)

demanding that "business managers"—many of whom were former WaMu employees—have the authority to overrule appraisals that were too low; (3) constantly complaining that appraisals by eAppraiseIT appraisers were lower than appraisals from eAppraiseIT's chief competitor; (4) making clear to senior management at First American (eAppraiseIT's parent company) that any expanded business relationship was contingent upon the "resolution" of the appraisal issue to WaMu's satisfaction; and (5) ultimately creating a blacklist designed to punish appraisers who failed to inflate their appraisals to come in "at value."

292. According to the New York Attorney General's complaint, and the internal documents referenced therein:

- WaMu retained eAppraiseIT in Spring 2006, after WaMu decided to close its internal appraisal office and terminate its staff appraisers. WaMu quickly became eAppraiseIT's largest client.

- From the beginning, WaMu possessed the ability to pressure eAppraiseIT's staff and third party appraisers to increase their valuations. WaMu had a contractual arrangement with eAppraiseIT whereby WaMu could challenge an independent appraiser's conclusions by requesting a "Reconsideration of Value," if WaMu disagreed with an appraisal. WaMu frequently ordered Reconsiderations of Value from eAppraiseIT.

- eAppraiseIT also hired approximately 50 former WaMu appraisers as eAppraiseIT staff appraisers and Appraisal Business Managers. At WaMu's request, these "business managers" were authorized to override and revise the values reached by staff and third party appraisers. According to a September 29, 2006 email from a WaMu executive to senior executives at eAppraiseIT, the business managers would be responsible for "proactively making a decision to override and correct the third party appraiser's value or reviewer's value cut, when considered appropriate and supported."

- Almost immediately after retaining eAppraiseIT, WaMu's loan production staff began to complain that eAppraiseIT's appraisals were too low. On August 9, 2006, eAppraiseIT's President informed WaMu executives that "[w]e need to address the [Reconsideration of Value] issue . . . . The Wamu internal staff we are speaking with admonish us to be certain we solve the [Reconsideration of Value] issue quickly or we will all be in for some pretty rough seas."

- The following week, eAppraiseIT's Executive Vice President informed eAppraiseIT's President that WaMu's loan officers would often pressure WaMu

internal appraisal field managers for a "extra few thousand," or "tell[] them specifically what they needed," or "would ask for several [Reconsiderations of Value] on the same property." According to the vice president, "[h]aving loan officers ask for a few thousand dollars because it is within the range is something we do not currently do for any client . . . . It is also direct pressure on the appraiser for a higher value without any additional information."

- During the latter part of 2006, WaMu repeatedly complained to eAppraiseIT regarding low appraisals. On December 2, 2006, an internal eAppraiseIT communication notes that "we know [WaMu is] going to complain about the excessive number of low values because the majority of orders are not going to [WaMu's] preferred appraisers."

- By December 2006, WaMu had reassigned all of its Northern California appraisal work to Lender Services, Inc. and away from eAppraiseIT. One eAppraiseIT executive told his colleagues that WaMu's criticism stemmed from the fact that "values are coming in lower with [eAppraiseIT]," than with Lender Services, Inc., its top competitor for WaMu work, and that "[t]he [WaMu] managers indicated that if the loan consultants had a choice they would prefer to use [Lender Services] over eAppraiseIT because they feel they will have less problem with the values."

- In addition to pressuring eAppraiseIT regarding low appraisals, WaMu also indicated to First American, eAppraiseIT's parent company, that WaMu would be open to expanding its business relationship with First American, provided the appraisal issues were "resolved." According to a First American executive, the President of WaMu mortgage told him that "if the appraisal issues are resolved and things are working well he would welcome conversations about expanding our relationship."

- In early 2007, WaMu directed eAppraiseIT to stop using panels of staff and third party appraisers to perform WaMu appraisals, and demanded that eAppraiseIT use "Proven Appraisers" selected by WaMu. The President of eAppraiseIT explained to First American executives the reason for this change: "Performance ratings to retain position as a Wamu Proven Appraiser will be based on how many come in on value, negating the need for a[] [Reconsideration of Value]."

- eAppraiseIT's President informed the First American executives that "we have agreed to roll over and just do it." The President of eAppraiseIT also wrote to WaMu's executives stating that "Wamu proven appraisers bring the value in a greater majority of time . . . . I am fine with that, of course, and will happily assign Wamu orders to Wamu proven appraisers instead of eAppraiseIT's approved panel appraisers whenever possible."

- Internal eAppraiseIT communications indicate that WaMu's *lending department* was in charge of selecting the preferred appraisers. An eAppraiseIT Appraisal Specialist contacted the Executive Vice President, the Chief Operating Office and

the Chief Appraiser about two "good, solid long-time wonderful appraisers" that were removed from the WaMu panel "for no apparent reason" after having "value issues." The Chief Appraiser informed him that "[t]he probability that a loan officer requested him to be removed is pretty high I think because that is what they did with the Master List; they sent it out to Lending to choose."

- eAppraiseIT was willing to accede to WaMu's demands that its lending department select its appraisers, despite knowing that these demands violated federal law and professional appraisal standards by compromising appraiser independence. eAppraiseIT's President expressly acknowledged that "[w]e view this [agreeing to WaMu's demands] as a violation of the OCC, OTS, FDIC, and USPAP influencing regulation."

293. In addition, documents that have only recently become publicly available demonstrate WaMu's efforts to manipulate the appraisal process.

294. The Bank has reviewed an August 10, 2010 affidavit by Peter Gailitis, a former Chief Appraiser for eAppraiseIT. Mr. Gailitis was promoted to Chief Appraiser in 2006, and was Chief Appraiser during the time period that WaMu outsourced its appraisal business to eAppraiseIT.

295. The Gailitis Affidavit indicates that from the beginning of eAppraiseIT's relationship with WaMu in Spring 2006, WaMu began pressuring eAppraiseIT appraisers to inflate their appraisals. (*Id.*, ¶¶ 5, 6) According to Mr. Gailitis, shortly after eAppraiseIT began performing appraisals for WaMu loans, Mr. Gailitis began receiving "many complaints" from WaMu managers over the "allegedly low values" being provided by eAppraiseIT appraisers. (*Id.* ¶ 6)

296. One of WaMu's primary methods for increasing appraisals was to flood eAppraiseIT with requests for Reconsiderations of Value. According to Mr. Gailitis, WaMu submitted considerably more Reconsiderations of Value than any other eAppraiseIT client, with the volume from WaMu loan officers reaching *four hundred* Reconsiderations of Value per month at one point. (*Id.*, ¶ 6) WaMu loan officers would file a Reconsideration of Value simply

because the appraised value of a property was too low for a loan to close, and use the Reconsideration of Value as a tool for obtaining a sufficient increase in value for the transaction to go forward. (*Id*., ¶ 6)

297. In addition to abusing the Reconsideration of Value process, WaMu also sought to use its considerable economic leverage to manipulate the appraisal process. Mr. Gailitis testified that WaMu was eAppraiseIT's largest client, and that WaMu management would pass along the complaints regarding low appraisals to eAppraiseIT management, along with a threatened loss of business if the complaints from WaMu's retail divisions did not stop. (*Id*., ¶ 7)

298. An internal email from David Feldman, the Executive Vice President of eAppraiseIT, to Anthony Merlo, the President, also makes clear that WaMu's manipulation of the appraisal process pre-dated its relationship with eAppraiseIT. (Aug. 15, 2006 email from Mr. Feldman to Mr. Merlo.) According to Mr. Feldman, WaMu had an "extra few thousand" policy under which loan officers would ask for, and apparently receive, increases in appraisals of a few thousand dollars if the inflated appraisal was still "within the range." Mr. Feldman emphasized that this was something that eAppraiseIT does "not currently do for any client," and that it constitutes "direct pressure on the appraiser for a higher value without any additional information." Mr. Feldman also noted that the WaMu staff he spoke with indicated that this "policy was abused in many ways including calling the [appraisal field manager] and telling them specifically what they needed," or asking for multiple Reconsiderations of Value on the same property (a practice that became so prevalent that the appraisal field managers began allowing only one Reconsideration of Value for free and then charging $175 for each additional one).

299. A fall 2006 email from eAppraiseIT President Merlo to executives at First American (eAppraiseIT's parent company) and WaMu further illustrates WaMu's efforts to manipulate the process and eAppraiseIT's concerns. (Sept. 13, 2006 email from Mr. Merlo to Mr. Sando.) Mr. Merlo's email forwards various instances of WaMu pressure on appraisers, including WaMu production staff regularly contacting appraisers to "argue and often berate them" over their appraisals, or informing appraisers that if they do not increase their valuations, the appraisal request will be given to another appraiser to get the appropriate "price." Mr. Merlo warns that these efforts to pressure appraisers are "getting outrageously unethical and now borderline dangerous," and he implores WaMu's executives to "respond [with] what you will do to have this stopped within the WaMu organization." As Mr. Merlo candidly acknowledges, WaMu's actions are "pure pressure to commit fraud."

300. Notwithstanding President Merlo's concerns, WaMu continued its efforts to manipulate the appraisal process. In April 2007, eAppraisetIT expressed concern that WaMu loan production staff had "a great deal to do with selecting appraisers," which was "directly in contradiction" with the interagency guidelines adopted by the OTS, the agency responsible for regulating WaMu. (Apr. 17, 2007 memo to WAMU Oversight Team)

c. WaMu engaged in reckless lending.

301. At WaMu, mortgage originators were paid more for originating loans that carried higher profit margins for WaMu and had commensurately higher risk. As James G. Vanasek, WaMu Bank's former Chief Credit Officer/Chief Risk Officer, testified to the Senate Permanent Subcommittee on Investigations:

> Because of the compensation systems rewarding volume vs. quality and the independent structure of the loan originators, I am confident that at times borrowers were coached to fill out applications with overstated incomes or net worth adjusted to meet the minimum underwriting policy requirements.

In a document entitled "2007 Product Strategy," WaMu noted that it must "maintain a compensation structure that supports the high margin product strategy." The *Seattle Times* reported how a 2007 compensation grid revealed that "the company paid the highest commissions on option-ARMs, subprime loans and home-equity loans. A $300,000 option ARM, for example, would earn a $1,200 commission, versus $960 for a fixed rate loan of the same amount. The rates increased as a consultant made more loans. . . ." DeSilver, *Reckless*, Seattle Times, *supra* ¶ 133. Likewise, a WaMu "Retail Loan Consultant 2007 Incentive Plan" explained that "[i]ncentive tiers reward high margin products... such as the Options ARM, Non-prime referrals and Home Equity Loans . . . ."

302. In April 2010, the Senate Permanent Subcommittee on Investigations held a series of hearings into the causes of the financial crisis. The Senate Subcommittee concluded that WaMu often steered borrowers into home loans with low initial payments they could afford only in the short term, if at all, presuming that rising home prices would enable those borrowers to refinance or sell their homes before the loan payments increased beyond a level they could not afford. Internal compensation schemes encouraged such conduct because loan officers and loan processors were rewarded for originating high risk loans and for placing borrowers in high interest loans with large prepayment penalties.

303. The details of how WaMu paid brokers to press borrowers into buying unsuitable loans at high interest rates, and often pressured borrowers to refinance from a fixed rate loan into a variable rate loan with higher interest rates, is illustrated by the story of Bob Houk:

> Usually, Bob Houk's wife handled the family's money matters. But after being diagnosed with a brain tumor, she was in and out of the hospital, so he took over. In late 2006, he received a postcard with WaMu's logo on it.
>
> Houk already had a 30-year WaMu mortgage at a fixed rate of 4.6 percent. But the postcard promised to lower the monthly payments on their Bainbridge Island home with an adjustable-rate mortgage starting at only 1 percent interest.

He liked the idea of cutting expenses. A son was in college, his wife was on disability from her job as a nurse, and Houk, a physician assistant at Group Health, worked only part time to be at her side.

Houk called the number on the card, reached an independent mortgage broker in California, and made all the arrangements over the phone. Soon someone came to his house with papers to sign. Houk was impressed at how easy the process was.

But a couple of months later, Houk noticed something on his monthly statement that gave him a sick feeling. Instead of one low monthly payment, there were now options. His minimum monthly payment of only $1,018 was there. But there were also higher-priced options for paying interest only or for paying interest and principal. Just covering the interest that month would cost him about $1,000 more.

The 1 percent interest rate Houk thought he was getting was only good for the first month. It had reset to 7.4 percent, nearly 3 percentage points above his previous WaMu loan. This was buried in the fine print in a sheaf of legal documents he had signed. "Who in their right mind would give up a 4.6 percent loan?" Houk said. "I felt totally duped."

Houk said he called Washington Mutual, but the woman he talked to said nothing could be done. WaMu just gets the loan from the broker, he recalled her saying, so the bank's not responsible.

To drum up customers for these overpriced loans, WaMu offered hefty commissions to its sales force.

Loan officers working inside WaMu were rewarded with higher commissions for signing up a borrower for an option ARM rather than a conventional loan.

But WaMu made the vast majority of its option ARMs through its network of independent mortgage brokers. They worked in a loosely regulated industry. In many states, the job required no education, no background check and no oversight. While there are reputable brokers, the industry suddenly attracted a motley crew, who could make six figures in a year in commissions.

WaMu did not reward brokers for getting its customers the best deal. Just the opposite. The worse the terms were for borrowers, the more WaMu paid the brokers.

A WaMu daily rate sheet obtained by The Seattle Times shows how lavish the rewards could be. On an option ARM, WaMu would reward brokers as much as 3 percent of the loan amount—more than triple the standard commission at the time.

> Brokers would get an additional point—1 percent of the loan—for roughly every half-point in higher interest the borrower paid. So the broker would get 3 percent of the loan if he could get the borrower to pay 1.5 percent above the market rate.
>
> WaMu could afford to pay such high commissions, called "yield spread premiums," because the money actually came from the borrower in the form of higher interest rates and prepayment penalties.
>
> Houk's broker, for example, got paid a commission of $9,498 on a $316,000 loan, according to loan documents.

Heath, *supra* ¶ 281 at A1.

304. Of particular note among the many other cases against WaMu with regard to its loan origination practices, in September of 2010, Deutsche Bank National Trust Company, in its capacity as a trustee, filed suit alleging breach of contract and seeking a declaratory judgment and damages over 99 different trusts created, sponsored and/or serviced by WaMu, and which included loans originated by WaMu. *See* Am. Compl., *Deutsche Bank Nat'l Trust Co. v. FDIC*, No. 09-cv-1656-RMC (D.D.C. Sept. 8, 2010). The allegations in Deutsche Bank's complaint are very similar to the ones made by the Bank here. These allegations include that WaMu engaged in "shoddy lending practices," "performed inadequate underwriting," and securitized "delinquency prone and fraudulent loans." The trustee's contract claim is based on numerous breaches of representations and warranties, that the loans were written in accordance with the seller's underwriting guidelines as described in the prospectus supplement, that appraisals were conducted generally in accordance with WaMu's underwriting guidelines, that the LTV for each mortgage loan was no greater than 100% at the time of origination, and that "to the best of the seller's knowledge, no misrepresentation, negligence, fraud or similar occurrence with respect to a Mortgage loan has taken place on the part of any person, including without limitation, the Mortgagor, any appraiser, builder or developer, or any other party involved in the origination of the mortgage loan."

d. Confidential witnesses provide further evidence of WaMu's failures to adhere to sound underwriting practices and manipulation of the appraisal process.

305. Confidential witnesses such as CW-D provide further evidence that WaMu abandoned sound underwriting practices. CW-D worked at WaMu from 1987 until the fall of 2006. During her time at WaMu, CW-D held such positions as personal financial manager, assistant branch manager, and branch manager. In these capacities, CW-D worked in consumer lending, including loan origination.

306. CW-D saw many "stated income" loans at WaMu. If the borrower had false documents or if CW-D believed that the borrower's income would not be high enough (as evidenced by paystubs) to qualify for a loan, CW-D would instruct the borrower not to show her the documents and she would simply offer a "stated income" loan.

307. CW-D also said that WaMu underwriters frequently made exceptions on the loans in order to approve them; moreover, she knew who the "lenient" underwriters were and would direct her loans to them so that they would be approved. CW-D used different tactics in order to get loans approved by the underwriter; for example, she would write the documents up in a special way so that the loans would always be approved, even if a borrower was not strong enough to otherwise qualify.

308. Even if loans were declined by certain underwriters, CW-D said she could always ask for the loan to be reviewed again. Sometimes she would call the borrower to tell them why a loan was denied, and the borrower would come back with new facts or new documentation. According to CW-D, there was a lot of "fudging" that took place in those situations.

309. CW-D also confirmed that during the time period she was employed at WaMu, including 2005 and 2006, appraisals were manipulated to reach a value necessary for the loan to close. CW-D would order appraisals from the WaMu appraisal department by saying "this is

what I need," or "this is what the customer thinks it's worth." CW-D was trained to forward all information on the application to the appraisers, including the homeowner's estimate of value, even if the estimated home value looked high. The FDIC's Office of Inspector General has found this practice to be inconsistent with "standard residential appraisal methods" because providing the homeowner's estimate of the value of the home to the independent appraiser biases the appraiser's evaluation. (Evaluation of Federal Regulatory Oversight of Washington Mutual Bank at p. 11, Report No. EVAL-10-002 (April 2010)). Pursuant to USPAP Rule 1-2(b), appraisers must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

310. While CW-D normally submitted appraisal requests to the appraisal department for a coordinator to handle, CW-D could, and did, request specific appraisers if she needed a certain value in a certain neighborhood. CW-D knew the appraisers' reputations for being high or low with respect to certain neighborhoods, and she used that knowledge in requesting certain appraisers in order to get the value the client needed for the loan to close.

311. If an appraisal came back lower than what was needed to close the deal, CW-D had several options available to increase the appraisal. If the appraisal was close to the required value, CW-D would call the appraiser and negotiate for a higher number. For some of the time CW-D worked at WaMu, the appraisal department was either in the same building or across the street, which allowed CW-D to walk to the appraisal department and directly negotiate with the appraisers to see what could be done to increase the value of the appraisal so the loan could close.

312. If the appraisal was significantly lower than the required value, CW-D would tell the customer to find additional comparable properties within a two-mile radius to justify

increasing the appraisal value, even though standard practice generally required a comparable to be within a one mile radius of the property. If there were not any comparables within a two-mile radius that would justify an increase, the customer would pull higher value comparables from even farther afield.

313. In addition to CW-D, CW-FF provided additional evidence confirming the manipulation of appraisals by WaMu. CW-FF was a staff appraiser at eAppraiseIT from 2002 until February 2007. CW-FF appraised homes for a variety of lender who used eAppraiseIT's services, including WaMu.

314. According to CW-FF, after WaMu closed its in-house appraisal department and chose eAppraiseIT as one of its two preferred appraisal management companies, eAppraiseIT hired several former WaMu appraisers to serve as "business managers." These business managers supervised the eAppraiseIT staff appraisers and were also "in contact" with WaMu loan officers.

315. According to CW-FF, prior to WaMu retaining eAppraiseIT, the eAppraiseIT staff appraisers were left alone and were not routinely pressured to increase values. After eAppraiseIT hired WaMu's former appraisers as managers, they pressured everyone, including CW-FF, to increase appraisal values. Beginning in approximately mid-2006, CW-FF began reporting to a business manager in Arizona. CW-FF's manager was in touch with WaMu loan officers who complained about CW-FF's low valuations on refinancing transactions. CW-FF's manager then called her, advised her of the complaints, and informed her that she was tired of getting complaints from the loan officers about CW-FF's low values.

316. CW-FF's manager constantly pressured her to increase values by modest amounts, telling her that "just a couple thousand more and the loan would go through," or

"[t]here's got to be something you're not looking at." In many instances, CW-FF's manager would tell her that WaMu had requested she look at other comparables that simply were not comparable, and force CW-FF to explain why the comparables WaMu identified were not appropriate. CW-FF estimates that this occurred for 75% of the appraisals she performed for WaMu.

317. CW-FF eventually asked not to be assigned any WaMu appraisals, despite the fact that roughly 50% of her workload was WaMu transactions. While eAppraiseIT had other clients, her business manager nevertheless informed her that she "wouldn't get any work." In February 2007, CW-FF left eAppraiseIT. Based on CW-FF's experience, "eAppraiseIT prostituted themselves for WaMu. I can't understand why they didn't treat WaMu like any other lender."

318. The statements of CW-JJ also confirms the pressure that WaMu exerted on eAppraiseIT and the appraisers working for eAppraiseIT. CW-JJ is an independent real estate appraiser who received assignments from WaMu through eAppraiseIT. CW-JJ believes that he performed work for WaMu between approximately November 2005 and April 2007. CW-JJ stated that after WaMu closed its in-house appraisal department, a former WaMu appraiser was hired by eAppraiseIT to serve as his district or regional manager. CW-JJ also noted that many former WaMu staff appraisers were hired in similar manager capacities at eAppraiseIT.

319. According to CW-JJ, "within the individual purview of the district manager, it was commonplace for them to come back for revision or reconsideration [of an appraisal]. It was understood that when they asked, you complied." CW-JJ believes that as a conservative estimate, 10% of the reports he wrote for WaMu resulted in a value adjustment that CW-JJ made at the request of the eAppraiseIT manager.

320. CW-II and CW-HH explained what occurred if an appraiser refused to bow to WaMu pressure. CW-II was an independent appraiser that received assignments through eAppraiseIT, LSI, and directly from WaMu. CW-II was placed on WaMu's list of "approved appraisers," and estimates that around 75% of her appraisals were for WaMu.

321. CW-II recalls being pressured by WaMu to increase appraisal values on several occasions, and she believes that this pressure occurred between November 2005 and April 2007. CW-II would be told that she was missing the sales price by a small amount, and that because the market was going up, her appraisal should also increase. On one occasion, an appraisal was reassigned from CW-II to a staff appraiser because her appraisals were too conservative.

322. CW-II was ultimately removed from the "approved appraiser" list because of her view that the market was declining in value. The standard appraisal form that CW-II used included a section on market condition, and required appraisers to check a box indicating whether market values were stable, increasing, or decreasing at the time the appraisal was made. Sometime between November 2005 and April 2007, CW-II indicated that property values were decreasing. According to CW-II, this was a "big no-no," because if the market was in decline, WaMu would not be able to resell the loan on the secondary market, or if they did, the loan would have to be discounted. WaMu "hassled" CW-II for her conclusion, and a WaMu employee even called her to try to convince her that market values were not declining. WaMu subsequently removed CW-II from the approved appraiser list—informing her via a telephone call—and she never received work from WaMu again.

323. CW-HH is an independent appraiser and has prepared appraisals for a variety of lenders, including WaMu. In the spring of 2006, in connection with a WaMu loan application, CW-HH appraised a home for $2.2 million. While CW-HH's supervisor reviewed the appraisal,

and agreed with the valuation, a WaMu staff appraiser subsequently sent CW-HH a letter indicating that she disagreed with the valuation, and was increasing it by $500,000 to $2.7 million. CW-HH was confident that his appraisal was accurate, in part because it was based on comparable properties on the same street as the subject property, and contacted WaMu's chief appraiser in the area to express his concerns about the inflated appraisal. Far from being concerned, WaMu's chief appraiser informed CW-HH that WaMu "could change the value to anything it wanted."

324. After this incident, CW-HH's assignments for WaMu decreased, even though he believed he remained on the "panel" of preferred appraisers. CW-HH also recalls an instance where a WaMu appraisal was assigned to him, only to be reassigned thirty minutes later at the request of the WaMu loan officer, who believed that CW-HH was "too conservative." According to CW-HH, this behavior was "typical"—it was either "their way or the highway."

325. CW-GG also confirmed that the time pressures placed on auditors hurt the quality of the loan review. From 2005 to early 2006, CW-GG was a senior staff appraiser at WaMu. CW-GG's position was eliminated in 2006 when WaMu eliminated its in-house appraisal department, but CW-GG rejoined WaMu in 2007 as an appraisal reviewer in the quality control department.

326. According to CW-GG, WaMu senior staff appraisal reviewers had to meet volume quotas that harmed the quality of their reviews. While CW-GG is not sure of the exact quota, he believes that "front-end" reviewers were required to review 20 appraisals per day, in contrast to quality control reviewers who were only expected to review 8 to 10 appraisals per day. CW-GG explained that "front-end" appraisals had an effect on production in that they were required to fund loans, whereas no one relied on quality control's appraisals for funding.

327. As a quality control review appraiser, CW-GG saw many fraudulent appraisals in approved WaMu loans. CW-GG estimates that a very high number, probably 15-20% of the appraisals he reviewed were inflated or fraudulent. Although most of the fraudulent appraisals were of collateral securing loans approved by Washington Mutual origination subsidiary, Long Beach Mortgage, CW-GG also saw many fraudulent appraisals in approved WaMu loans, as well. According to CW-GG, "the problem was on the lending side of the business. It was pure greed," fostered by a desire to make as many loans as possible.

328. CW-GG also explained that WaMu implemented an appraisal tracking and review system called OPTISValue. OPTISValue reviewed an appraisal for key characteristics, and if those characteristics were satisfied, it could approve the appraisal. WaMu could change the key characteristics that the OPTISValue system used to determine whether an appraisal would be approved or flagged for secondary review. CW-GG believes that as time went on, the key characteristics were loosened because, as a lender, WaMu wanted "to get everything approved." According to CW-GG, while OPTISValue was initially designed from a risk standpoint, it was geared towards "cookie cutter loans," and was not designed to catch fraud. For this reason, there were red flags in loan applications that a human appraiser or underwriter would have caught, that OPTISValue would not.

329. Another Confidential Witness, CW-EE, confirmed the flaws in the OPTISValue program. CW-EE was a senior staff appraiser at WaMu from 1999 until September 2006.

330. Prior to 2002, WaMu administrative staff reviewed appraisals using checklists to assist them in finding risky characteristics that warranted further review by a certified appraiser.

331. Starting in 2001 or 2002, WaMu began automating its appraisal review process by using OPTISValue. After 2002, all appraisals were automatically reviewed by the OPTISValue

system. OPTISValue performed the initial appraisal screening that humans had previously done, thus eliminating human involvement from the first stage of review, and creating a system where certain appraisals would be automatically approved without ever being reviewed by a person.

332. According to CW-EE, OPTISValue automatically approved a huge percent of appraisals; CW-EE estimates that more than 50% of all appraisals sent to WaMu were never looked at by a human. Both in-house production appraisers and fee appraisers knew that if "they came in with a value that worked"—a value that was equal to or greater than the purchase price—their appraisal would never be questioned because OPTISValue would approve it without any review. The use of an automated system, coupled with increasingly relaxed appraisal standards, resulted in inflated appraisals. CW-EE recalls seeing a "whole bunch of appraisals with inflated values," and was aware of loans that were supported with inflated or otherwise fraudulent appraisals that were still approved.

333. The confidential witness statements quoted above demonstrate that WaMu routinely accepted—in fact demanded—appraisals that were conducted in violation of USPAP standards. Because WaMu insisted upon certain results, negotiated results with appraisers, and pressured appraisers to increase values, the resulting appraisals simply were not performed with "impartiality, objectivity, and independence" as required by the USPAP Ethics Conduct Rule. Instead, appraisers routinely allowed the "intended use of an assignment or a client's objectives to cause the assignment results to be biased" in violation of the USPAP Scope of Work Acceptability Rule. Additionally, by threatening appraisers regarding the availability of future work and removing appraisers from the list of accepted appraisers, WaMu forced appraisers to violate the USPAP Ethics Management Rule, which precludes the acceptance of assignments that are contingent upon either "the reporting of a predetermined result" or "a direction in

assignment results that favors the cause of a client." Ultimately, the systemic coercion of appraisers caused a fundamental violation of USPAP Standard 1, which requires that appraisers "correctly complete research and analyses necessary to produce a credible appraisal." As discussed in public reports and confirmed by confidential witnesses, WaMu's appraisal abuse was standard operating procedure.

e. The mortgages originated by WaMu and securitized in the PLMBS purchased by the Bank provide further evidence of WaMu's abandonment of sound underwriting practices.

334. WaMu originated the mortgages that secured at least 3 securities purchased by the Bank. As discussed in detail below, the Offering Documents contained serious material misstatements and omissions regarding specific characteristics of the loan pools securing these Certificates, including misstatements with respect to their weighted average LTVs and the percentages of loans with LTVs in excess of 100%, 90% and 80%, and the failure to disclose the compounded high-risk mortgages that infected the loan pools. Moreover, as described in paragraphs 592-593 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of WaMu's failure to observe its stated underwriting standards. WaMu's actual practices—including use of unreliable and biased collateral valuations in lieu of appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTVs were far different from those reported in the Offering Documents. As a result, the likelihood of default for these loans was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

335. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was in fact the norm at WaMu,

and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of WaMu's pervasive and systematic disregard of its stated underwriting guidelines and its failure to adhere to standard appraisal practices.

5. Wells Fargo

336. Wells Fargo originated underlying mortgage loans securing at least six of the PLMBS purchased by the Bank.

a. Investigations, lawsuits and confidential witness statements demonstrate that Wells Fargo abandoned underwriting guidelines.

337. In denying in part a motion to dismiss in *In re Wells Fargo Mortgage-Backed Securities Litigation*, No. 3:09-1376 (N.D. Cal.) ("*Wells Fargo* Complaint"), the court found that plaintiffs had adequately pled that "variance from the stated [underwriting] standards was essentially [Wells Fargo's] norm" and that this conduct "infected the entire underwriting process."

338. The *Wells Fargo* Complaint is supported by numerous confidential witness statements substantiating the allegations that Wells Fargo abandoned underwriting guidelines, increasingly made exceptions without compensating factors, sacrificed underwriting standards to loan volume, and manipulated loan information in order to close loans without regard to borrowers' ability to repay the loans.

339. Confidential witnesses contacted in connection with the Bank's investigation provide additional evidence of Wells Fargo's repeated failure to adhere to sound underwriting practices and guidelines. Statements by confidential witnesses confirm that: (a) Wells Fargo underwriters faced intense pressure to close loans at any cost; (b) Wells Fargo increasingly approved risky, low- or no-documentation loans without adequate review; (c) Wells Fargo

routinely approved loans that contained exceptions for which there were no reasonable compensating factors; (d) Wells Fargo employees approved loans with inflated appraisal values; and (e) Wells Fargo employees manipulated data in order to close loans.

340. Confidential witnesses include CW-E, CW-F, and CW-LL. CW-E worked as an underwriter at Wells Fargo for five years and left the company in approximately 2006. She helped start one of Wells Fargo's wholesale lending offices. The wholesale lending office received mortgage applications from various brokers in the area and then underwrote, approved, and funded such mortgages. CW-F was an underwriting manager at a Wells Fargo branch in California from 2004 until late 2007, when Wells Fargo closed the branch. The branch was a "MAP" center, which was a location where Wells Fargo loans were registered, underwritten, processed, closed, and shipped out for sale in pools. CW-LL was a quality control specialist at Wells Fargo Mortgage in Maryland from January 2004 through August 2005. CW-LL audited conventional mortgage loan files from all over the United States that had already been through Wells Fargo underwriting, but which had not yet closed. CW-LL was one of five quality control specialists in the office who evaluated the work of underwriters "to make sure they were underwriting correctly."

341. CW-LL noticed an increase in the number of exceptions made in loan files, "when the sales numbers weren't where they were supposed to be at the end of a month." In such cases, CW-LL said, Wells Fargo granted more exceptions to meet sales goals. "The sales force was driving the business, as opposed to underwriting management doing the driving . . . . It came down to volume and keeping up with our lender peers and getting market share." And according to CW-F, officers and underwriters at Wells Fargo received commissions and/or bonuses based on the number of loans closed.

342. Among Wells Fargo's abuses of underwriting standards, confidential witnesses detailed a practice of approving risky loans based upon little or no documentation. CW-E explained that underwriters at Wells Fargo's branches used two Automated Underwriting Systems (often, "AUS"), which were pre-programmed with the minimum credit scores, LTVs and DTIs, cash reserve levels, and documentation levels needed for the borrower to qualify for the various mortgage products that Wells Fargo offered. If these AUS returned an "approve" or "accept" result, then Wells Fargo typically approved the application and funded the mortgage. CW-E commented that she was skeptical of the "approvals" that came from the AUS, and often thought to herself, "How did it approve *this*?" The systems approved borrowers who "never should have been approved."

343. For example, the AUS would approve a borrower with recent late payments, a 50-55% DTI, a 650 credit score, and no cash reserves. CW-E would have questioned such an application. However, so long as the AUS approved the loan, the underwriters in Wells Fargo's branches were not required to look any deeper. In CW-E's view, the integrity of mortgage origination "all fell apart when the AUS became the standard." She explained that by the mid-2000s, when the AUS were being relied upon almost exclusively, she no longer agreed with the loans that were being approved because the underwriting guidelines had become so loose.

344. CW-LL described 2004 and 2005 as the era of "creative financing programs" at Wells Fargo such as no-doc and stated income loans. "It was a free-for-all at that point. You would see a file where a janitor was stating he made $5,000 a month and his debt ratio was right where our cut-off was. CW-LL said that it was obvious that a loan officer, who would have been aware of the debt ratio required for loan approval, had either "filled out the paperwork or coached the borrower." When CW-LL inquired about facts like this, he was told "there were

compensating factors like a good FICO score or stated assets of $10,000 or something like that." However, "there was no way to verify it."

345. CW-LL saw exceptions to underwriting guidelines involving business tax returns. For example, if lending guidelines required three years of business tax returns, a borrower might provide just two years of such returns, and Wells Fargo would waive the requirement for providing documents for a third year.

346. According to CW-E, her superiors at Wells Fargo "didn't want to hear" her concerns about mortgages being approved for borrowers with questionable credit, high debt levels, high LTVs, or minimal cash reserves. Throughout her time with Wells Fargo, the origination and underwriting emphasis was completely sales-oriented. According to CW-E, the motto at the company was "sales rules," and underwriters had no say in the kinds of borrowers that the AUS approved.

347. The only time human underwriters were involved in the underwriting process was when the AUS recommended a loan for "refer" instead of "accept." A result of "refer" meant that the application did not meet the underwriting guidelines programmed into the AUS. These loans required manual underwriting, and most of the time they were still approved.

348. CW-E stated that underwriters at Wells Fargo were pressured to approve applications on which the AUS returned a "refer" result because "sales rules." Underwriters were pressured to approve the loans because if they did not, they were at risk of suddenly being fired. As stated by CW-E, "The loan officer or broker would go to the Operations Manager and complain, and suddenly people [underwriters] were no longer there." Additionally, underwriters received e-mails directly from the outside mortgage brokers or loan officers indicating that they weren't happy with the underwriter's decision not to approve an application. Many mortgage

brokers expected the underwriter to approve all of his or her loans. In general, CW-E stated that the mortgage brokers and loan officers "learned how to get away with what they needed in order to get the loans approved."

349. CW-E explained that, in deciding whether to approve loans, underwriters disregarded whether the borrower had the ability to repay the loan: "We were just supposed to ignore all the warning signs." Thus, even for government loan programs for which LTVs were often in the range of 95-100%, FICO scores were as low as 550 to 560, DTIs were as high as 55%, and cash reserves were only required "sometimes." Many of the conventional loans that CW-E underwrote between 2004 and 2006 were stated income/stated asset or no-income/no-asset loans.

350. Confidential witnesses also described Wells Fargo's standard practice of approving exceptions that deviated from prudent underwriting guidelines. According to CW-F, about 30-40% of the time, Wells Fargo loan officers issued exceptions to underwriting guidelines on loans that otherwise would have been rejected.

351. CW-F noticed that the exceptions that Wells Fargo granted increased in late 2006 or early 2007, in conjunction with Wells Fargo's decision to tighten its underwriting guidelines. Wells Fargo's sales staff could not understand why a loan that would have been approved the prior year could not be approved in the current year, and did not accept the tightened guidelines. According to CW-F, the sales staff "wouldn't take 'no' for an answer," and therefore placed tremendous pressure on the Wells Fargo underwriters to approve their loans. Even where the Wells Fargo underwriters would deny requests for exceptions, Wells Fargo's sales staff would take their loans to lead underwriters and risk managers to have the decisions overridden.

According to CW-F, the increase in exceptions countered Wells Fargo's efforts to tighten the underwriting guidelines.

352. Evidence also exists that Wells Fargo employees also manipulated loan data in order to close loans and generate volume. For example, CW-F was aware of circumstances in which loan files were doctored by sales staff in order for the loans to be approved.

353. Confidential witnesses also detailed how mortgages approved by Wells Fargo were based upon inflated appraisal values. According to CW-E, the outside mortgage brokers who brought the loans to her branch for approval chose the appraisers that they wanted to use. The outside brokers, loan officers, and appraisers all had a vested interest in the appraised value being accepted and the mortgage application being approved by Wells Fargo, since they all made money off of the transaction. Consequently, they all had a "let's make a deal mentality" about reaching an appraisal value that supported the amount of the mortgage loan.

354. CW-CC has been a licensed appraiser in Washington since 1992. In the spring of 2007, CW-CC was given an assignment by Rels Valuation—the appraisal management firm used by Wells Fargo—to appraise a home on the outskirts of Seattle. CW-CC's appraisal noted that the house was being remodeled, that the remodel was incomplete, and that the house was consequently not habitable. After submitting his appraisal, CW-CC was contacted by both Wells Fargo underwriters and Rels customer service representatives, ordering him to change his appraisal to state that the house remodel was complete. This pressure culminated with CW-CC receiving a phone call from a Rels Valuation Area Manager informing him that "you appraisers take USPAP [the uniform appraisal standards] too seriously," and that if CW-CC failed to alter his appraisal, he would be blacklisted. When CW-CC refused on the grounds that changing the

appraisal would violate appraisal standards, he was blacklisted and ceased receiving work from Wells Fargo.

355. CW-DD, who formerly worked as a review resolution coordinator for Rels Valuation from February 2007 to July 2010, confirms the problematic nature of the appraisal process. According to CW-DD, Wells Fargo had an unwritten "Five Percent Rule," whereby if a Rels review appraiser came up with a new value that was within 5% of the original value, the higher value was automatically accepted.

356. CW-DD also stated that from the beginning of his tenure at Rels in 2007, until the implementation of the new Federal Home Valuations Code of Conduct in 2009, pressure from Wells Fargo officers occurred quite frequently, with CW-DD receiving at least one call a day from a review appraiser complaining that a Wells Fargo loan officer contacted him or her directly. CW-DD also sat near 18 review resolution analysts that were tasked with resolving appraisals in which the original appraiser and the review appraiser could not agree on the value. On multiple occasions, CW-DD recalls a Rels national review manager arguing with the review analysts and telling them what he believed was the correct value. CW-DD believes that this constituted undue pressure on review analysts. According to CW-DD, "[o]n the one hand the review manager was trying to run a delicate balancing act with the client, Wells Fargo. But on the other hand, you have to draw the line. Most of the stuff that I saw I felt like it was a little over the line."

357. CW-DD also emphasized that not every appraisal ordered by Rels Valuation for Wells Fargo was reviewed by human eyes. Rels relied on a computer program, called ACE, to identify problematic appraisals. While the system caught clerical errors or omissions, appraisals

containing "egregious violations of USPAP" were sometimes not identified until after the loan had closed.

b. The mortgages originated by Wells Fargo and securitized in the PLMBS purchased by the Bank provide further evidence of Wells Fargo's abandonment of sound underwriting practices.

358. Wells Fargo originated mortgages that secured at least Securities GSR 2006-AR1 2A3, GSR 2005-1F 3A1, WFMBS 2007-10 1A10, WFMBS 2006-10 A7, WFMBS 2007-4 A16, WFMBS 2007-11 A2. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90% and 80%, the percentage of loans secured by property not the primary residence of the borrower, and the percentage of loans originated using full documentation. Moreover, as described in Paragraphs 592-593 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Wells Fargo's failure to observe its stated underwriting standards. Wells Fargo's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

359. Thus, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at Wells Fargo, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay.

Nowhere did any Offering Document apprise the Bank that Wells Fargo abandoned its underwriting guidelines.

6. American Home Mortgage

360. American Home Mortgage ("AHM") originated underlying mortgage loans for at least two of the PLMBS purchased by the Bank. AHM also abandoned sound underwriting practices.

a. Investigations, lawsuits and confidential witness statements demonstrate that AHM abandoned sound underwriting practices.

361. The *Wells Fargo* Complaint details how an internal AHM "Credit Update" presentation dated from October 2005 detailed revised credit factors to be used in making loans to high risk borrowers. The Credit Update sets forth the new "guideline interpretations" under a heading "Where We Are Now" which included:

- Not requiring verification of income sources on stated income loans;
- Reducing the time that need have passed since the homeowner was in bankruptcy or credit counseling;
- Reducing the documentation required for self-employed borrowers; and
- Broadening the acceptable use of second and third loans to cover the full property value.

These new guideline interpretations, which were not disclosed in the Offering Documents, relaxed substantially, or sometimes rendered meaningless, AHM's prior underwriting guidelines.

362. The *Wells Fargo* Complaint specifically identifies an internal AHM email sent on November 2, 2006, from Steve Somerman, an AHM Senior Vice President of Product and Sales Support in California, stating that AHM would make a loan to virtually anyone, regardless of the borrower's ability to verify income, assets or even employment. The email specifically urged loan officers to make stated income loans, no income loans, no asset loans, and "No Doc" loans.

363. Confidential witness statements confirm this policy and practice at AHM. As these confidential witnesses attest, at AHM underwriting guidelines were benchmarks against which exceptions were routinely granted; they were not "strict rules."

364. CW-KK was a senior underwriter at AHM in New York from 2000 through 2007. As an underwriter at AHM, CW-KK handled a lot of "No Income, No Asset" loans, known as "NINAs," as well as No Doc loans, which required little documentation or verification. Under the company's underwriting guidelines, these loans were supposed to have certain credit scores, assets, and post-closing reserves in order to be approved.

365. Notwithstanding these supposed underwriting guidelines, CW-KK confirmed "it was a given" that AHM would make exceptions to the underwriting guidelines. The mortgage aggregators or sponsors to whom AHM sold the loans were aware that these guidelines were being abandoned, and were usually willing to accept the risk.

366. "If the file was creditworthy other than the exception, American Home Mortgage got it approved," CW-KK said. A required credit score, asset amount or reserve level could be waived by the company and those to whom it sold the loans. "They were guidelines at the end of the day; they weren't strict rules."

367. CW-KK said that loans he did not believe were creditworthy, and which he rejected, were passed on to his managers. His managers would frequently approve those loan files.

368. CW-MM worked as an underwriter at American Brokers Conduit, a wholesale originator that was a division of American Home Mortgage Investment Corporation, in its Charlotte, North Carolina office from June 2006 to August 2007.

369. CW-MM was expected every day to review five residential home loans originated by independent brokers. "There was a push in the wholesale office to get loans closed," CW-MM said.

370. CW-MM objected to closing loans that lacked documentation, such as documentation of sufficient income or asset verification. Her supervisor derided her for being such a stickler. "She felt like I over-scrutinized the loans," CW-MM said. "I thought that was what was needed." CW-MM also said that her supervisor did not like it when CW-MM rejected a loan because it failed to meet guidelines. Her supervisor sometimes would override her decisions.

371. CW-MM was verbally reprimanded for rejecting too many loans. "I was spoken to more than once because I would not approve loans that did not meet the guidelines."

372. CW-MM also saw appraisals on properties in Atlanta that she felt were inflated. However, she did not have an option to order a second appraisal. "We couldn't do anything about it," she said. When CW-MM brought to her managers' attention a loan with what she thought was an inflated appraisal, they did not want her to do any further research. Instead, they usually approved it on the spot. "We could take it to the managers and if they felt it was okay, we went with it."

b. The mortgages originated by AHM and securitized in the PLMBS purchased by the Bank provide further evidence of AHM's abandonment of sound underwriting practices.

373. AHM originated mortgages that secured at least Securities GSR 2006-AR1 2A3 and WFMBS 2007-10 1A10. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90% and 80%, the percentage of loans

secured by property not the primary residence of the borrower, and the percentage of loans originated using full documentation. Moreover, as described in paragraphs 592-593 below, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of AHM's failure to observe its stated underwriting standards. AHM's actual practices – including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information – caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

374. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at AHM, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that AHM abandoned its underwriting guidelines.

7. Chase Home Finance LLC and JPMorgan Chase Bank, N.A.

375. Chase Home Finance LLC ("Chase Home Finance") and/or JPMorgan Chase Bank, N.A. ("JPMorgan Chase") originated underlying mortgage loans for at least four of the PLMBS purchased by the Bank. Chase Home Finance and JPMorgan Chase (collectively referred to herein as the "Chase Originators") also abandoned sound underwriting practices.

376. The Chase Originators' departure from sound underwriting standards has been confirmed by JP Morgan Chase & Co. ("JPMC") Chairman and CEO, Jamie Dimon. In his January 13, 2010 testimony before the FCIC, Dimon stated that "the underwriting standards of our mortgage business should have been higher." Dimon confessed that JPMC, the parent

company of the Chase Originators, "misjudged the impact of more aggressive underwriting standards and should have acted sooner and more substantially to reduce the loan-to-value ratios."

a. Investigations and confidential witness statements demonstrate that the Chase Originators abandoned sound underwriting practices.

377. In an undated internal memorandum that became public in March 2008, Chase Originator employees circulated tips for using "Cheats & Tricks" to allow Chase loan originators to circumvent the Chase Originators' in-house automated loan underwriting system to get risky loans approved. The memo provides that the secret to getting risky loans approved is to inflate the borrower's income or to otherwise falsify their loan application.

378. The memo suggests that the Chase Originators' automated loan-origination system, called "Zippy," "can be adjusted" to "get the findings you need" by trying some of these "handy steps":

> (1) In the income section of your 1003, make sure you input all income in base income. DO NOT break it down by overtime, commissions or bonus.
>
> (2) NO GIFT FUNDS! If your borrower is getting a gift [to cover some or all of the down payment], add it to a bank account along with the rest of the assets. Be sure to remove any mention of gift funds on the rest of your 1003.
>
> (3) If you do not get Stated/Stated, try resubmitting with slightly higher income. Inch it up $500 to see if you can get the findings you want. Do the same for assets.

379. Thus, according to the memo, Chase Originator employees should "never fear" if they "do not get stated income / stated asset findings" on the first attempt because they can try and try again until they get their desired result. By lumping contingent income with base income, concealing the receipt of gifts (which are typically required to be specifically disclosed in loan applications), and artificially inflating income, Chase loan originators were able to

approve countless loans that otherwise would not have satisfied Zippy's stated underwriting guidelines.

380. As the "Zippy Cheats & Tricks" memo reveals, "If you get a "refer" or if you DO NOT get Stated Income / Stated Asset findings. . . . Never Fear!! ZiPPY can be adjusted (just ever so slightly). Try these steps next time you use Zippy! You just might get the findings you need!!"

381. Confidential witnesses confirm this prevailing attitude of using "cheats and tricks" designed to game the system and approve loans that are not in accordance with stated underwriting guidelines. These confidential witness statements provide evidence that (1) the Chase Originators' employees faced intense pressure to close loans at any cost; (2) the Chase Originators' employees manipulated loan data in order to close loans; (3) the Chase Originators approved loans based upon inflated appraisal values; and (4) the Chase Originators failed to adhere to sound underwriting guidelines.

382. CW-C was a loan processor and assistant to the branch manager at a Florida branch of Chase Home Finance from April 2006 until August 2007.[7] She stated that Chase Home Finance employees faced enormous pressure to close loans because their salaries were dependent solely upon quantity. For example, loan officers only received a salary their first two months at the company. After the second month, their income was based upon commissions for the number of loans they closed; if they did not close loans, they did not receive a paycheck. CW-H echoed similar comments, and said that staff underwriters at JPMorgan Chase received a salary plus bonus pay that was based on the quantity of funded loans.

[7] CW-C had earlier worked for Countrywide. *See supra* ¶¶ 217, 226.

383. According to CW-C, branch and regional managers pressured loan officers to meet monthly quotas. If a loan officer worked two months without closing a loan, he or she could be fired. Thus, "loan officers walked around on eggshells at month end" for fear of losing their job or not getting the commission that fed their families.

384. Underwriters at Chase Home Finance also received monthly bonuses based upon the volume of loans closed, and management pressured such underwriters to close loans. CW-C's regional manager would send the branch managers below him to Chase Home Finance's underwriting office in New Jersey "to work the magic" and close the loans.

385. Due to the pressure that was placed upon Chase Home Finance employees to close loans at any cost, many employees inflated borrowers' income and modified loan files in order to push loans through. "It was very common to take stuff out of the loan file" in order to get a loan approved, said CW-C. For example, loan officers removed bank statements, paystubs, or other documents which showed the borrower's income so that the loans would not be hindered in closing.

386. According to CW-C, "loan officers knew [the borrowers] were making less income" than was stated on the loans because, acting on orders from the branch manager, the loan officers inflated the borrowers' income. As an example, CW-C stated: "You'd see a guy that owned a pizzeria that was making millions and you knew there was just no way."

387. Knowledge of the inflated incomes flowed to management at Chase Home Finance because loan officers often brought their loans to the branch manager for help and instruction on how to make them close. In fact, said CW-C, "The branch manager often fixed the loan . . . [he] figured out what LTV [the borrower] needed to close the loan and inflated the

income to make the loan work." Branch managers also called the regional managers above them to help close problem loans.

388. CW-C summed up the overall attitude at the Chase Home Finance branch where she worked: "It's okay to do what you have to do to get the loans closed."

389. The statements of CW-G, a senior loan underwriter at Chase Home Finance from December 2004 to August 2005, illustrate similar problems, including that Chase Home Finance closed loans based upon stated incomes that were false and inflated. CW-G recalled circumstances in which mortgage brokers changed applicants' stated incomes before they submitted the loan files to Chase Home Finance. Then, after the loans closed and weren't performing, Chase Home Finance would contact the borrower and "hear the borrower say, 'I never said I make that much.'"

390. CW-G also said that he commonly reviewed loan files that contained "questionable" statements of income. In fact, "[i]t happened daily," said CW-G, and "[y]ou'd see self-employed people, like a landscaper, who stated they made $10,000 a month," without an adequate savings history or FICO score. When CW-G determined that the stated income was "not do-able," based upon his review of the website salary.com or an occupational jobs handbook, he notified his manager or other supervisors. "There was never any push-back. They wanted the loans booked and funded." However, he was always told that "it meets the FICO score and savings history guidelines so we do the loan." It was "one size fits all." According to CW-G, "It really wasn't common sense-based, but based on the FICO scores you could sell the loan to investors. [Management] wanted quantity, not quality." Loans were issued based on "FICO and income. This was not common-sense underwriting. It was not based on risk, but

almost like on the game show "Let's Make a Deal": they made a deal based on satisfaction of these two criteria" only.

391. In addition to approving loans based upon inflated incomes, CW-G also said that Chase Home Finance employees approved loans based upon inflated appraisal values. According to CW-G, Chase Home Finance employees were "not allowed to contest appraisals that appeared to be inflated." As a result of the housing bubble, appraisers overadjusted and ensured that the appraisals came in at or above the sales price. For example, CW-G said he recalled one subdivision in California in which homes sold in the second phase of the subdivision build-out doubled the value of those sold in the first phase, which had occurred just a few months earlier. In this regard, CW-G said, "[t]he first phase appraisals were valued at $200,000. The second phase, based on speculative investors buying and selling, pushed the values to $400,000. You'd look at the comps and there would be two inside the 'division' and one outside, but you couldn't contest the value."

392. CW-H, a senior underwriter at JPMorgan Chase Bank, N.A. from April 2001 to June 2008, stated that managers at JPMorgan Chase Bank, N.A. often overturned the decisions of lower-level underwriters to reject stated-income loans. According to CW-H, "If the manager felt the income made sense and the underwriter didn't, the manager could overturn it."

b. The mortgages originated by the Chase Originators and securitized in the PLMBS purchased by the Bank provide further evidence of abandonment of sound underwriting practices.

393. Chase Home Finance originated mortgages that secured at least Securities CHASE 2005-A2 1A4, GSR 2005-1F 3A1, GSR 2005-2F 2A1, and JPMMT 2005-A8 2A2. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with

LTV ratios in excess of 100%, 90% and 80%, the percentage of loans secured by property not the primary residence of the borrower, and the percentage of mortgages originated using full documentation. Moreover, as described in paragraphs 592-593 below, several of these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Chase Home Finance's failure to observe its stated underwriting standards. Chase Home Finance's actual practices – including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information – caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

394. In summary, far from following their underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at the Chase Originators, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank that the Chase Originators abandoned their underwriting guidelines.

8. PHH Mortgage Corp.

395. PHH Mortgage Corporation originated underlying mortgage loans securing at least one of the PLMBS purchased by the Bank. PHH Mortgage Corporation also abandoned sound underwriting practices.

396. Confidential witnesses provided evidence that PHH Mortgage Corp. failed to adhere to sound underwriting practices, and created a culture in which exceptions to underwriting standards were the norm. Statements by CW-I, a loan counselor and junior underwriter at PHH Mortgage Corp. from 1997 until October 2007, confirm that (1) PHH

Mortgage Corp. employees faced intense pressure to close loans at any cost; (2) PHH Mortgage Corp. increasingly approved risky, low- or no-documentation loans without adequate review; and (3) PHH Mortgage Corp. employees manipulated data in order to close loans.

397. As a loan counselor, CW-I worked directly with borrowers and financial advisors to process loans. When she became an underwriter in May 2005, she transitioned to evaluating high-risk mortgage loan applications to determine whether the loans met PHH Mortgage Corp.'s guidelines. As was the situation with the other mortgage origination companies identified above, loan officers at PHH Mortgage Corp. received commissions based on the number of loans closed. Thus, employees were pressured to value quantity over quality.

398. During her time at PHH Mortgage Corp., CW-I said she underwrote loans that clearly contained inflated income values. She knew that the values were inflated because the stated incomes seemed unreasonable; for example, a hairstylist would be making a lot more money per month than was typical for someone in that industry. CW-I said that she looked at the loans and thought, "There's no way." Nevertheless, CW-I approved the loans because the income was "stated and we had to take [the borrower's] word for it."

399. PHH Mortgage Corp. had a policy which prohibited underwriters from investigating the veracity of stated income. Consequently, underwriters at PHH Mortgage Corp. did not use any tools like Salary.com to verify the borrowers' income. Between 2005 and 2007, CW-I explained that it was common practice across the mortgage industry to accept stated income without further investigation. "They called them liar loans for a reason," said CW-I, "It was the nature of the beast back then."

400. CW-I also reviewed loan documents that she knew had been altered by the borrower or a loan officer at PHH Mortgage Corp. because "the data did not match up." As an

example, CW-I recalled situations in which the borrower's bank statements did not agree with other documents in the loan file.

401. CW-I said she suspected that PHH Mortgage Corp.'s loan officers removed loan documents from the files if such documents might keep the loans from closing. She knew such practices happened because, "Everybody did it to get the loan approved. That was how it was in the industry."

402. PHH Mortgage Corp. originated mortgages that secured at least Security GSR 2005-2F 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing this Security, including misstatements with respect to the percentages of loans with LTV ratios in excess of 100%, 90% and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶ 592-593, this security has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of PHH Mortgage Corp.'s failure to observe its stated underwriting standards. PHH Mortgage Corp.'s actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

403. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at PHH Mortgage Corp., variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or

effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which PHH Mortgage Corp. deviated from its guidelines.

9. National City Mortgage Company

404. National City Mortgage Co. ("National City") was the mortgage making subsidiary of National City Corporation ("NCC"). National City originated loans for at least two of the PLMBS purchased by the Bank. National City also abandoned sound loan underwriting practices.

405. In 2008, NCC disclosed that it was the subject of an informal SEC investigation concerning, among other things, its loan underwriting practices.

406. The U.S. Department of Housing and Urban Development's Office of Inspector General ("OIG") has repeatedly called into question National City's loan origination practices. The OIG found that multiple deficiencies in compliance with HUD lending guidance "occurred as a result of the Company's dramatic increase in loan volume, and the concurrent staffing shortages caused by such increased volume" and "because National City lacked adequate procedures and controls to ensure its employees followed HUD's requirements."

407. As a result, OIG recommended that National City indemnify or reimburse HUD for the losses incurred in connection with the improperly submitted loans and pay civil monetary penalties.

408. OIG Reports in 2006 and 2008 found that National City continued to fail to comply with HUD's requirements regarding loan underwriting and quality control. Audit Report, Office of the Inspector General, National City Mortgage Company Non-Supervised Lender, No. 2006-CH-1014, at 6-8 & 10 (July 31, 2006) ("2006 Audit"); U.S. Department of Housing and Urban Development, Office of Inspector General, Semiannual Report to Congress, October 1, 2007, through March 31, 2008, at 9. The 2006 Audit found that nearly half the loans

in the OIG statistical sample did not fully meet HUD's requirements. 2006 Audit at 1. The OIG specifically concluded that "the underwriting deficiencies were material as well as technical and included errors and documentation omissions clearly contrary to prudent lending practices. Further, National City incorrectly certified to the integrity of the data supporting the underwriting deficiencies and to the due diligence used in underwriting. . . " *Id*. at 2.

409. Upon information and belief, these same "staffing shortages" and "lack[of] adequate procedures and controls" led to equally widespread "underwriting deficiencies . . . contrary to prudent lending practices" in the issuance of all National City mortgages.

410. National City originated mortgages that secured at least Securities GSR 2005-3F 2A1, and GSR 2005-2F 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, the percentage of loans secured by property not the primary residence of the borrower, and the percentage of loans originated using full documentation. Moreover, as described below, *see infra* ¶¶ 592-593, Security GSR 2005-2F 2A1 has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of National City's failure to observe its stated underwriting standards. National City's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

411. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at National City, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any of the Offering Documents inform the Bank that National City effectively abandoned its underwriting guidelines in order to issue and securitize as many loans as possible.

10. SunTrust Mortgage, Inc.

412. SunTrust Mortgage, Inc. ("SunTrust") originated underlying mortgage loans securing at least one of the PLMBS purchased by the Bank, Certificate STARM 200-4 2A2. SunTrust abandoned sound underwriting practices.

413. CW-K, a mortgage loan officer at SunTrust from 2005 until 2008, provided evidence of SunTrust's failure to adhere to sound underwriting practices and guidelines. CW-K's statements demonstrate that (1) SunTrust employees were pressured to close loans at any cost; (2) SunTrust employees manipulated loan files in order to get loans approved; (3) SunTrust coaxed elderly borrowers into loans they could not afford; and (4) SunTrust abandoned its underwriting guidelines and granted exceptions when there were no reasonable compensating factors.

414. According to CW-K, SunTrust employees were pressured to close at least $1 million in loans each month. Inside loan officers at SunTrust received a salary and commission based upon the number of loans closed. Outside loan officers only worked for commissions, and did not receive any payments unless they surpassed the quota for closed loans. As CW-K explained, if a loan officer surpassed the $1 million quota, they received a set commission; loan

officers who surpassed $2.5 million in closed loans received a $3,000 bonus. "That's where the greed came in," said CW-K.

415. CW-K described SunTrust loan officers as being "cut-throat." For example, SunTrust loan officers would team up with realtors to coax elderly borrowers into using SunTrust as their lender on a new home purchase. "They'd approach an elderly woman and get her to list her house," said CW-K, and then the SunTrust loan officers would talk the elderly woman into buying a new home before the old one had sold. These loan officers would convince the woman "to go into a balloon note [interest only]" on the new house, but the borrower "never got her old house closed," so she was left with two mortgages, one of which she could not afford. "This happened a lot," said CW-K.

416. Besides issuing loans to borrowers who could not afford them, CW-K explained that SunTrust employees manipulated loan files in order to get loans approved. According to CW-K, "there was a lot of crazy paper" at her branch in Florida. For example, CW-K said that SunTrust loan officers ran loan applications through the desktop underwriting ("DU") system and if the borrower's "numbers" (LTV and DTI ratios) did not meet the company's guidelines, it was not uncommon for a loan officer to falsify the ratios and pretend that they never ran the loan through DU by erasing the evidence. CW-K also recalled that SunTrust loan officers called borrowers and coached them into giving a verbal statement of their ratios that would enable their loans to qualify.

417. Additionally, CW-K said that some loan officers at SunTrust knowingly assisted self-employed borrowers in inflating their income and employment histories by ignoring false data in letters provided by the borrowers' certified public accountants ("CPAs"). For example, said CW-K, if SunTrust's loan product guidelines required that a self-employed borrower had to

have worked for a company for a minimum of two years, but the borrower fell short of that timeline, the loan officer allowed the borrower to file a letter from their CPA falsely stating that the borrower had indeed been employed for two years. CW-K said that she knew the letters were falsified because she knew "the borrower had told the loan officer that they had worked for 'almost two years.'"

418. CW-K also recalled that some CPA letters falsely supported inflated incomes, but SunTrust loan officers nevertheless accepted these letters as valid documentations of income.

419. Besides these examples of manipulating loan files, CW-K also recalled that some loan officers coached borrowers on how to change their tax documentation so that the numbers would support loan approval. In this regard, CW-K said that SunTrust offered "no-ratio loans" for self-employed borrowers who had been in business for three to five years. CW-K remembered one borrower who made $250,000 in gross profit and $40,000 in net profits. Although CW-K refused to grant him a loan, "other loan officers would get the borrower to doctor up their taxes." In fact, said CW-K, it was not uncommon for CW-K to deny a loan only to have the loan transferred to another loan officer for approval.

420. CW-K described two reasons that SunTrust approved loans which should not have been approved (1) "Some loan officers knew how to smooth [CW-K's manager] over with loan documents," so that the manager would not notice false ratios or inflated income; and (2) managers approved loans that did not meet SunTrust's guidelines because the loans came from "high producers" or "strong money makers" for the company. With respect to the second issue, CW-K explained that if a loan officer closed a lot of loans, they had more room to make exceptions to guidelines.

421. CW-K said that all of these deviations from underwriting guidelines, which she said were motivated by greed, continued throughout her entire tenure at SunTrust.

422. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratios, the percentages of loans with LTV ratios in excess of 100%, 90% and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described in paragraphs 592-593 below, Security STARM 2007-4 2A2 has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of SunTrust's failure to observe its stated underwriting standards. SunTrust's actual practices – including the use of unreliable appraisals, routine granting of underwriting exceptions and reliance on unverified borrower-supplied information – caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

423. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, variance from the stated standards was the norm at SunTrust. Many loans were made with essentially little to no underwriting and little to no effort to evaluate the borrower's ability to repay. Nowhere did any Offering Document apprise the Bank that SunTrust abandoned its underwriting guidelines.

11. HomeComings Financial, LLC and HomeComings Financial Network, Inc.

424. HomeComings Financial, LLC and/or HomeComings Financial Network, Inc. (collectively referred to herein as "HomeComings") originated underlying mortgage loans

securing at least three of the PLMBS purchased by the Bank. According to SEC filings, HomeComings Financial Network, Inc. changed its name to HomeComings Financial, LLC in October 2006; consequently, these entities are collectively referred to herein as "HomeComings." HomeComings is an affiliate of RFC and GMAC. HomeComings also abandoned sound underwriting practices.

425. Confidential witnesses provided evidence of HomeComings' failure to adhere to sound underwriting practices and guidelines. Statements by CW-L, an underwriter at HomeComings from January 2006 until December 2006, and CW-M, an underwriter for HomeComings from May 2005 until his office closed in October 2007, confirm that HomeComings (a) made loans to borrowers when it was clear that they could not afford to make the monthly payments; (b) approved risky, low- or no-documentation loans; (c) approved exception loans for which there were no reasonable compensating factors; and (d) abandoned sound underwriting practices.

426. CW-L said a lot of the problem with HomeComings' mortgages during his employment was due to "what became the norm" in the lending industry: underwriting guidelines became really loose, and "the gray areas became even grayer." According to CW-L, he and other underwriters thought the extent to which the guidelines relaxed was "ridiculous."

427. During his tenure at HomeComings, CW-L underwrote full-documentation, stated income, stated income/stated asset ("SISA"), and no income/no asset ("NINA") documentation loans. Of these, the majority—75%—were stated income loans. According to CW-L, it was the stated income and the option-ARM (negative amortization) loans that "killed the industry."

428. Both CW-L and CW-M explained that HomeComings employed automated underwriting systems ("AUS") to underwrite loans. According to CW-M, HomeComings

employees had the choice of two different options: (1) Desktop Underwriter ("DU"), and (2) Assetwise. As CW-M explained, HomeComings employees used DU for subprime applications from low-income applicants because it approved loans with higher debt-to-income ratios than Assetwise.

429. CW-L said that, with respect to Assetwise, HomeComings employees entered borrowers' information into the system and the computer provided its findings. As CW-L explained, "One of my problems was that [a loan application] would fit inside the guidelines, but if you read between the lines, you could see that the borrower was not going to be able to make the payments." Nevertheless, when CW-L raised such concerns to her supervisor, she was told: "It fits, you do the loan. We're going to do this deal."

430. Irrespective of which AUS HomeComings employees chose, CW-M said that virtually all of the loan applications ended up being approved. Moreover, once the AUS approved the application the underwriters could not change the decision.

431. Besides approving loans that CW-L believed borrowers could not afford, CW-L also noted that mortgage brokers often appealed loans to CW-L's supervisor that had been denied by HomeComings' underwriters. CW-L's supervisor then instructed CW-L and other underwriters that they had to sign off on the loans.

432. CW-M also explained that underwriters searched for compensating factors which would enable them to approve loans, even in the presence of "red flags." For example, if a stated income application reflected a monthly income of $10,000 or more, that would be a "red flag," and the underwriter would review the loan application to find "contributing factors" which would nevertheless allow the loan to be approved.

433. HomeComings originated mortgages that secured at least Securities RFMSI 2007-S4 A4, RFMSI 2007-SA4 3A1, and RFMSI 2006-S4 A3. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing this security, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, the percentage of loans secured by property not the primary residence of the borrower, and the percentage of the loans originated using full documentation. Moreover, as described below, *see infra* ¶¶ 592-593, these Securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of HomeComings' failure to observe its stated underwriting standards. HomeComings' actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

434. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at HomeComings variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which HomeComings deviated from its underwriting guidelines.

12. GreenPoint Mortgage Funding, Inc.

435. GreenPoint Mortgage Funding, Inc. ("GreenPoint") originated underlying mortgage loans securing at least one of the PLMBS purchased by the Bank. GreenPoint also abandoned sound underwriting practices.

436. GreenPoint was headquartered in Novato, California and had branches in 19 states. It offered mortgage loan products in 45 states. GreenPoint was owned by Capital One Financial Corporation, which acquired it in December 2006 when Capital One bought North Fork Bancorp.

437. GreenPoint was the nation's seventh largest originator of Alt-A mortgages, and it specialized in offering programs for borrowers with credit scores down to 620, as well as option ARMS, second mortgage, jumbo loans, and other high risk products.

438. Capital One closed GreenPoint Mortgage in August 2007 because Capital One did not intend to keep mortgage loans on the balance sheets, and by August 20, 2007 it found itself "with more than $600 million in second mortgages" on its books.

439. Confidential witness CW-N, a senior loan underwriter at GreenPoint from October 1997 until the company shutdown in August 2007, confirmed that (1) GreenPoint employees faced intense pressure to close loans at any cost; (2) GreenPoint managers overrode employees' decisions to reject loans and approved loans based upon inflated incomes; (3) GreenPoint approved loans that contained exceptions for which there were no reasonable compensating factors; and (4) GreenPoint failed to adhere to sound underwriting guidelines.

440. According to CW-N, sales staff and managers at GreenPoint received bonuses based on the number of loans closed. CW-N stated that "sales had tremendous authority" at GreenPoint, and "[t]hey were in business to make more money. They would try to find any way to close a loan."

441. Due to the emphasis on sales, GreenPoint managers emphasized quantity over quality. Between 2005 and 2007, CW-N said that stated income loans became increasingly popular and GreenPoint managers approved loans based upon inflated incomes that CW-N believed should not have been approved. CW-N saw a lot of loans with stated "income that was more than could be justified by the borrower's employment." When CW-N denied loans because she believed the income was inflated, sometimes the underwriting managers, operations managers, and the regional operations manager overrode her decisions to deny the loans.

442. More often than not, CW-N believed that her managers overrode her denials due to the incentives that they received based upon loan volume. As CW-N said, "They were making the decision because they had to hit certain sales numbers." CW-N was aware of such targets because of comments made in operations meetings about the company needing to meet certain goals.

443. GreenPoint originated mortgages that secured at least Security CSFB 2005-8 9A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, and the percentage of loans secured by property not the primary residence of the borrower. Moreover, as described below, *see infra* ¶¶ 592-93, this Security has exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of GreenPoint's failure to observe its stated underwriting standards. GreenPoint's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that

reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

444. In summary, far from following its underwriting guidelines and making occasional, targeted and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at GreenPoint, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which IndyMac deviated from its guidelines.

13. Bank of America, N.A.

445. Bank of America, N.A. ("Bank of America") originated underlying mortgage loans securing at least two of the PLMBS purchased by the Bank. Bank of America also abandoned sound underwriting practices.

446. Confidential witnesses provided evidence of Bank of America's failure to adhere to sound underwriting practices and guidelines. Statements by CW-O, who worked for Bank of America from August 2004 through April 2008 as a bank teller, sales and service specialist, and personal banker, confirm that Bank of America (a) adopted practices encouraging employees to disregard a borrower's ability to qualify for a loan; (b) pressured employees to generate large quantities of loans at any cost; (c) created an environment where employees manipulated loan data in order to get loans approved; and (d) failed to adhere to its own underwriting guidelines.

447. During his time at Bank of America, CW-O was involved in the bank's retail and consumer banking operations, including generating residential mortgages by taking mortgage applications from prospective borrowers who applied through his branch office. CW-O ultimately left Bank of America because of "unethical stuff" he observed in the mortgage lending side of Bank of America's business.

448. Specifically, CW-O said there was "horrible" pressure to generate quantities of loan applications and approved loans. According to CW-O, Bank of America imposed a *quarterly* requirement to book one million dollars in mortgage loans per banker. CW-O received a notice when mortgage applications that he prepared were approved for funding and were thus "booked" for purposes of meeting his one-million-dollar requirement. To meet these requirements, CW-O said he and his colleagues were told to enter mortgage applications regardless of whether it appeared the borrower would qualify for the loan. These practices led CW-O to view Bank of America's way of doing business as "fast food banking."

449. CW-O explained that there were times at quarter-end when Bank of America employees would believe that they weren't going to meet the million-dollar-per-quarter quota. Suddenly, the employee's loan would be booked because the Branch Manager had gone to the Regional Manager, who "pulled some strings" to get the loan approved.

450. Additionally, CW-O believed that Bank of America was lax on enforcing its own credit guidelines. He recalled that borrowers with a lower FICO score than was required still obtained mortgages from his branch.

451. CW-O described other practices with which he was uncomfortable, including manipulating loan data to get loans approved. For example, CW-O said that he and other bankers in his branch regularly rounded up applicants' salaries on the loan applications. Specifically, if someone's income was $34,000 annually, Bank of America employees would round it up to $40,000 to make the figure look better for loan approval purposes. CW-O said that Bank of America employees also inflated how long an applicant had worked for his or her current employer. If the applicant had only worked for an employer for one year and the

qualifications required two years with that employer, the Bank of America employee would input on the application that the person had worked for his or her company for three years.

452. CW-O said that he understood these practices were necessary in order to have greater success meeting the quarterly quota of one million dollars in booked mortgage volumes.

453. Bank of America originated mortgages that secured at least Securities BOAMS 2006-1 A1 and GSR 2005-2F 2A1. As discussed in detail below, the Offering Documents contained serious material misstatements regarding specific characteristics of the loan pools securing these Securities, including misstatements with respect to their weighted average LTV ratio, the percentages of loans with LTV ratios in excess of 100%, 90%, and 80%, the percentage of loans secured by property not the primary residence of the borrower and the percentage of loans originated using full documentation. Moreover, as described below, *see infra* ¶¶ 592-593, these securities have exhibited excessive delinquency and foreclosure rates. These circumstances are strong evidence of Bank of America's failure to observe its stated underwriting standards. Bank of America's actual practices—including the use of unreliable appraisals, routine granting of underwriting exceptions, and reliance on unverified borrower-supplied information—caused it to originate loans whose actual LTV ratios and primary residence rates were far different from that reported in the Offering Documents, and whose likelihood of default was much higher than that of loans issued under underwriting standards of the type described in the Offering Documents.

454. In summary, far from following its underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, in fact, at Bank of America, N.A., variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or

effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which Bank of America, N.A. deviated from its underwriting guidelines.

14. Other Mortgage Originators Also Abandoned Sound Underwriting Practices in Order to Issue Loans for Securitization.

455. On information and belief, based on government reports and assessment of mortgage origination practices during the time period that the loans at issue were issued, as discussed above, *see supra* §§ V.B. and V.C.1-13, and the Bank's own investigation, each of the other mortgage originators who issued loans that backed the PLMBS purchased by the Bank similarly abandoned their underwriting guidelines in order to increase loan volume. These abuses were pervasive in the mortgage origination industry and were the standard operating practice of mortgage originators who issued loans so that they could be sold and securitized either by their affiliates or other financial institutions who acted as Depositors/Issuers, and Underwriters of PLMBS.

456. Accordingly, instead of following their underwriting guidelines and making occasional, targeted, and justified exceptions when other evidence of ability to repay justified a deviation from the guidelines, at these mortgage originators, variance from the stated standards was the norm, and many loans were made with essentially little to no underwriting or effort to evaluate ability to repay. Nowhere did any Offering Document apprise the Bank of the extent to which these mortgage originators deviated from their underwriting guidelines.

D. The Securitization Process Was Plagued by Conflicts of Interest and Misplaced Incentives.

457. A handful of large financial institutions dominated every aspect of the mortgage securitization process. They owned many of the mortgage originators themselves, and funded the lending activities of many of the originators they did not own outright. As a result, these large financial institutions—and the sponsors, Depositors and Underwriters that were divisions

of these institutions—were in a position to scrutinize the practices of the originators and examine closely the mortgages placed in the pools. Indeed, they had the legal responsibility to do so and to provide investors with complete and accurate information.

1. The Vertical Integration of Many of the Firms Involved in the Issuance of the PLMBS Purchased by the Bank Provided the Defendants with Access to Information Regarding the Mortgage Originators' Abandonment of Underwriting Guidelines.

458. Most of the PLMBS purchased by the Bank were issued by vertically-integrated firms which were involved in several if not all of the stages of the securitization of the PLMBS—loan origination, sponsoring, obtaining credit ratings, issuing, underwriting, and selling the securities. The following table provides examples of the vertical integration of numerous entities involved in various of the PLMBS purchased by the Bank:

Sponsor	Certificate	Roles of Affiliated Entities
Bank of America, National Association	BOAMS 2006-1 A1	Originator: Bank of America, National Association Underwriter: Banc of America Securities LLC Depositor: Bank of America Mortgage Securities, Inc. Servicer: Bank of America, National Association
EMC Mortgage Corporation (affiliate of Bear Stearns & Co., Inc.)	BSARM 2007-3 1A1	Underwriter: Bear Stearns & Co. Inc. Depositor: Structured Asset Mortgage Investments II, Inc. (affiliate of Bear Stearns & Co., Inc.)

Sponsor	Certificate	Roles of Affiliated Entities
Chase Mortgage Finance Corporation	CHASE 2005-A2 1A4	Originator: Chase Home Finance LLC Depositor: Chase Mortgage Finance Corp. Seller: Chase Mortgage Finance Corp. Underwriter: J.P. Morgan Securities Inc. Servicer: J.P. Morgan Chase Bank, N.A.
Credit Suisse First Boston	CSFB 2005-8 9A1	Originator: DLJ Mortgage Capital, Inc. Depositor: Credit Suisse First Boston Mortgage Securities Corp. Underwriter: Credit Suisse First Boston LLC
Countrywide Home Loans, Inc.	CWHL 2007-8 1A5 CWHL 2007-13 A4	Originator : Countrywide Home Loans, Inc. Depositor: CWMBS, Inc. Underwriter: Countrywide Securities Corp. (for CWHL 2007-13 A4) Master Servicer: Countrywide Home Loans Servicing LP
Goldman Sachs Mortgage Company	GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2005-3F 2A1 GSR 2005-7F 3A7 GSR 2006-1F 2A2 GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-6F 2A1	Depositor: GS Mortgage Securities Corp. Underwriter: Goldman Sachs & Co.

Sponsor	Certificate	Roles of Affiliated Entities
JP Morgan Mortgage Acquisition Corp.	JPMMT 2005-A8 2A2	Originator: JP Morgan Chase Bank Depositor: JP Morgan Acceptance Corporation I Underwriter: JP Morgan Securities Inc. Servicer: JP Morgan Chase Bank, N.A.
IndyMac Bank	RAST 2005-A11 2A1	Originator: IndyMac Bank Depositor: IndyMac MBS, Inc. Master Servicer: IndyMac Bank
Residential Funding Corporation	RFMSI 2006-S4 A3 RFMSI 2007-S4 A4 RFMSI 2007-SA4 3A1	Originator: Homecomings Financial Network (subsidiary of Residential Funding Corporation) Depositor: Residential Funding Mortgage Securities I, Inc. Underwriter: Residential Funding Securities, LLC Master Servicer: Residential Funding Corp.
SunTrust Mortgage, Inc.	STARM 2007-4 2A2	Originator: SunTrust Mortgage, Inc. Underwriter: SunTrust Robinson Humphrey, Inc. Servicer: SunTrust Mortgage, Inc.

Sponsor	Certificate	Roles of Affiliated Entities
Washington Mutual Bank	WAMU 2005-AR14 1A2 WAMU 2005-AR16 1A2 WAMU 2005-AR18 1A2 WAMU 2007-HY1 4A1 WAMU 2007-HY2 1A1	Originator: Washington Mutual Bank Depositor: WaMu Asset Acceptance Corp. Underwriter: WaMu Capital Corp. Servicer: Washington Mutual Bank
Wells Fargo Bank, National Association	WFMBS 2006-10 A7 WFMBS 2007-4 A16 WFMBS 2007-10 1A10 WFMBS 2007-11 A2	Originator: Wells Fargo Bank, National Association Depositor: Wells Fargo Asset Securities Corporation Master Servicer: Wells Fargo Bank, National Association Custodian: Wells Fargo Bank Paying Agent: Wells Fargo Bank, National Association

459. Between 2005 and 2007, the number of vertically-integrated firms grew significantly because investment banks and other issuers of mortgage-backed securities sought to ensure a steady supply of mortgage loans for securitization and sale to investors. Yet, as a result of their direct involvement in the origination of the loans they securitized, the vertically integrated firms, and specifically, the Depositor/Issuer and Underwriter affiliates of the firms had immediate access to, and often first-hand knowledge of, the lending and underwriting practices of the mortgage originators.

460. For example, in WFMBS 2006-10 A7, WFMBS 2007-4 A16, WFMBS 2007-10 1A10, and WFMBS 2007-11 A2, the Wells Fargo entities, including Wells Fargo & Company and its subsidiaries (which were also subsidiaries of the originator) knew precisely what

mortgage originator Wells Fargo Bank, National Association was doing when it issued loans to people without regard to their ability to pay, and without any meaningful mortgage underwriting. The same is true for the other vertically integrated entities listed above.

461. The vertical integration of these firms created enormous incentives to push their affiliated originators to loosen standards so that more loans could be issued and more securitization sold. In this regard, the Depositor/Issuer Defendants and Underwriter Defendants themselves dictated and were well aware of the quality of the loans.

462. The circular nature of these integrated transactions can easily be seen by a quick examination of the Servicing Agreement for Certificate WFMBS 2007-10 1A10, which provides that Controlling Person and Master Servicer Wells Fargo Bank, National Association "will supervise, monitor and oversee the performance of" Servicer Wells Fargo Bank, National Association. Servicing Agreement for Certificate WFMBS 2007-10 1A10, dated as of June 28, 2007, Exhibit 10.1 to Wells Fargo Asset Securities Corporation Form 8-K (dated June 28, 2007), Recitals.

463. Rather than use their superior access to information about the underlying mortgage pools and their unique ability to exert influence over the underwriting standards responsibly, the Depositor/Issuer and/or Underwriter Defendants at the vertically-integrated firms accepted defective loans that their affiliates originated. The reason was straightforward. They made more money that way on the front end, when issuing the loans, and on the back end, when securitizing them. Adequate due diligence and exclusion of defective loans would have cut into their profits and slowed down the securitization machine.

2. Financial Ties Between the Investment Banks and Non-Bank Lenders Provided the Defendants with Access to Information Regarding the Mortgage Originators' Abandonment of Underwriting Guidelines.

464. Even where the parties involved in the securitization were not all affiliated under a single parent (for example, where a sponsor purchased the loans from an unaffiliated mortgage originator) the Depositor/Issuer and Underwriter Defendants had access to information about the mortgage originators' abandonment of underwriting guidelines. This was the result of the close financial ties between the unaffiliated mortgage lenders and the investment banks and large financial institutions that funded them.

465. An example of this relationship is the credit facilities mortgage originators maintained with the large financial institutions that were involved in the securitization and underwriting of the PLMBS that were backed by those originators' loans. For example, Countrywide Financial Corp., collectively with its origination subsidiary, Countrywide Home Loans, Inc., had credit agreements with Bank of America, J.P. Morgan Chase, Citicorp USA (part of Citigroup), Barclays, and Deutsche Bank, which funded Countrywide's origination business. Likewise, American Home Mortgage Investment Corp., collectively with its subsidiaries, including originator American Home Mortgage Corp., had warehouse lines of credit with Bear Stearns, Bank of America, N.A., Morgan Stanley Bank, J.P. Morgan Chase, Credit Suisse First Boston Mortgage Capital LLC, and others, which funded American Home Mortgage's origination business. *See* John Dunbar and David Donald, *The Roots of the Financial Crisis: Who is to Blame?* (May 6, 2009), *available at* http://www.publicintegrity.org/investigations/economic_meltdown/articles/entry1286 (noting that 21 of the 25 largest subprime lenders were financed by Wall Street banks); *see also* American Home Mortgage Investment Corp. 10-Q for the quarter ended Sept. 30, 2006.

466. Many mortgage originators, including those that issued loans backing the PLMBS purchased by the Bank, depended on credit facilities of this sort to fund their operations. The originators would borrow from these credit facilities, pursuant to "warehouse agreements" so that they could continue to make loans to home buyers. When loans were sold, the originators would repay the warehouse agreements. When loans serving as collateral lost value, these large financial institutions would make margin calls requiring the originators to pay cash to them. In connection with this process, the mortgage originators provided these investment banks and large financial institutions with documents about the underlying loans, including performance characteristics and early warning signs of poor credit quality. The files were then passed to other divisions of these institutions for review and securitization. *See* Mortgage Bankers Association Warehouse Flowchart: Securitization, *available at* http://www.mbaa.org/files/ResourceCenter/WarehouseLending/FlowchartSecuritization.pdf (last visited Sept. 15, 2010).

467. These large financial institutions and investment banks also entered into purchase agreements with non-bank lenders so that they were assured access to a batch of mortgages to securitize, and the originators were guaranteed a buyer for the mortgages they made. As part of the agreement, these institutions typically set the prices and quantities of the types of loans they wanted to buy, and also had access to loan information prior to purchase.

468. The large financial institutions that operated credit facilities for non-bank lenders and entered into purchase agreements did not limit their activities to just funding the lenders. To the contrary, they funded the lenders so that the lenders could issue more loans for the investment banks to securitize and sell to investors. These inter-relationships are illustrated by Certificate WFMBS 2007-10 1A10. UBS Securities LLC was an underwriter for this security,

and its affiliate, UBS Real Estate Securities Inc., provided a warehouse line of credit to American Home Mortgage Investment Corp., an originator of mortgage loans that backed the security. Because these institutions were involved in several if not all of the steps of securitization, they had access to information about the problems in the loan pools.

469. In addition, the sponsors, Depositor/Issuer and Underwriter Defendants had access to information about the mortgage originators' practices as a result of their roles negotiating with the originators regarding the quality and characteristics of the loans in the mortgage pools they purchased.

3. The Large Financial Institutions' Conflicts of Interest Undermined Adequate Due Diligence and Disclosure to Investors.

470. The multiple roles of the large financial institutions in the securitization process created conflicts of interest that prevented the institutions from engaging in adequate due diligence on the loan pools. For example, these large financial institutions did not use their influence and control over the mortgage origination process to ensure that underwriting guidelines were followed, because to do so would have jeopardized repayment of their warehouse lines of credit. By keeping the mortgage origination wheel turning, these large financial institutions (by and through the Certificate's sponsors, the Depositor/Issuer Defendants, and the Underwriter Defendants) not only secured repayment on existing warehouse lines, but also paved the way for ever increasing lines in the future, with additional short-term profits. While these financial institutions eventually shut down their lines of credit, they did so only after the originators' financial condition deteriorated to the point that the financial institutions faced the risk of non-payment. Ironically, this risk was created by ever increasing numbers of repurchase demands by the financial institutions themselves for defective loans sold to them by the originators.

471. Similarly, conflicts prevented these large financial institutions from insisting on compliance with underwriting guidelines when they purchased loans at "loan auctions." At the loan auctions, the mortgage originators would set a date and time for the sponsors to purchase a block of mortgage loans. In advance of the auction, the mortgage originator would provide certain potential bidders with a bid stipulation sheet that described the general characteristics of the loan pool being auctioned and the variance rate of the pool. Large financial institutions depended on the auctions to feed loans into their securitization machines. But they also feared that they would lose access to the bid stipulations sheets and other information from mortgage originators if they conducted rigorous quality reviews of the subject mortgage and rejected loans as being non-compliant with the mortgage originators' stated guidelines. Thus, to curry favor with the mortgage originators and assure a continued pipeline of mortgages (however flawed) for securitization, the parties who should have protected the quality of the mortgages being deposited into the pools instead ignored the flaws with the mortgages.

472. Simply put, as a result of corporation affiliations and conflicted relationships in the industry, many large financial institutions, by and through the sponsors and affiliated Depositor/Issuer and Underwriter Defendants, failed to appropriately fulfill their due diligence function with respect to the mortgages placed in the pools. Instead, they utilized the securitization process to pass the risk of default down the line to investors, such as the Bank, through the use of materially false and misleading Offering Documents.

473. Confidential witnesses confirmed the failings of the Defendants' due diligence process, and their representations about the process. For example, statements by CW-P, an associate in RBS Greenwich Capital's[8] asset-backed finance modeling group from October 2004

[8] Until April 1, 2009, RBS Greenwich Capital was the marketing name which encompassed The Royal Bank of Scotland's North American broker-dealer entities, including Underwriter and Seller Defendant Greenwich Capital

to February 2006, demonstrated that RBS Greenwich employees modeled the flow of funds for the PLMBS based upon superficial information which did not adequately account for non-conformities in the underlying asset pools. CW-P also described how employees at RBS Greenwich turned a blind eye to red flags regarding the quality of the loans that were being packaged into mortgage-backed securities. CW-P explained that employees at RBS Greenwich ignored red flags because they stood to gain significant profits from securitization: "I knew we were destroying the economy . . . . But if you're making $40 million a year, do you care? No."

4. Sponsors Undermined and Misused Loan Pool Due Diligence Results Prepared by Third-Party Firms.

a. Sponsors directed the due diligence process and were provided with detailed reports describing the results of the process.

474. Information obtained from press reports, government investigations and confidential witnesses demonstrates that the large financial institutions that retained third-party due diligence firms to conduct loan pool due diligence both manipulated the due diligence process and disregarded the results of the process. They did this to maximize their profits from issuing and selling mortgage-backed securities. Thus, in yet another way, the ability of these vertically-integrated financial institutions to shift the risk of loss to downstream investors, such as the Bank, caused the Defendants to disregard problem loans.

475. The two firms that dominated the third-party due diligence market were Clayton Holdings, Inc. ("Clayton") and The Bohan Group ("Bohan"). Upon information and belief, both Clayton and Bohan were retained by Defendants or their affiliates to conduct third-party reviews of loans pools purchased by the sponsors of the PLMBS at issue. According to Clayton's Form 10-K for the fiscal year ended December 31, 2006, Clayton monitored over $418.0 billion in

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Markets, Inc., n/k/a RBS Securities Inc. *See* The Royal Bank of Scotland, "RBS Greenwich Capital Re-Name and Re-Brand FAQ's," March 6, 2009, *available at* http://www.rbsgc.com/images/panels/rbsm/document/faq.pdf (last visited Oct. 3, 2010). As used herein, "RBS Greenwich" is meant to encompass these entities.

loans underlying mortgage-backed securities, which represented 22.8% of the total outstanding U.S. non-GSE mortgage-backed securities at such date. During 2006, 2005, and 2004, Clayton worked with each of the 10 largest non-agency mortgage-backed securities underwriters, as ranked by *Inside MBS & ABS,* which accounted for 73%, 73%, and 78% of total underwriting volume during those respective periods.

476. Confidential witnesses, who worked at Clayton during the relevant time period and were familiar with the identity of Clayton's clients and the due diligence performed by Clayton during the relevant time period, named several different entities which they knew had hired Clayton to perform due diligence on loan pools. These confidential witnesses include CW-R, an underwriting consultant at Clayton from 1999 until 2006, who underwrote mortgage-backed securities for a "lot of investment banks" that hired Clayton; CW-S, an underwriter at Clayton from 2002 until 2008, who reviewed loans for investment banks which hired Clayton; and CW-T, who worked as a valuation specialist at Clayton from January 2006 until March 2008 and reviewed appraisals and properties in loan files on behalf of investment banks that hired Clayton. Together, CW-R, CW-S, and CW-T confirmed that Clayton was hired to perform due diligence on underlying loan pools by such sponsors/investment banks as Morgan Stanley, RBS Greenwich, Countrywide, Nomura, Washington Mutual, Webster Financial, Deutsche Bank, National City, and Lehman Brothers.

477. Less information is publicly available about Bohan's due diligence business because it is a privately held company. However, press reports and confidential witnesses confirm that Bohan provided third-party loan pool due diligence to a large number of financial institutions. For example, CW-U, who worked as an underwriter at Bohan from 2003 to 2006

and reviewed loans that Bohan's clients were considering for securitization, said that Bohan's clients included Morgan Stanley, Chase, Deutsche Bank, J.P. Morgan, and others.

478. Sponsors that retained Clayton, Bohan, and other third-party due diligence firms for loan pool review maintained close contact and control over the process. As explained by Vicki Beal, Senior Vice President of Clayton Holdings in her September 23, 2010 written testimony before the FCIC:

> The loan review process is conducted as follows:
>
> - A client reviews a pool of loans and selects a sample of loans for diligence review.
> - Client hires Clayton to perform diligence on the sample. Client gives Clayton's Client Services Manager instructions on the type and scope of review and the time frame for the deal.
> - Client sends or has sent to Clayton a tape containing loan information from the originator, which Clayton programmers "crack" and load into the CLAS system.
> - At the end of each day, the lead underwriter generates reports for the client that summarizes Clayton's findings, including exception reports.

479. In addition, during the review process, the financial institutions often put their own employees on-site to oversee the review process. For example, according to CW-S, Morgan Stanley and RBS Greenwich always sent their own employees to the mortgage originator's site.

480. Numerous confidential witnesses confirm that due diligence reports are provided to the financial institutions that retained the third-party due diligence firms. According to CW-T, Clayton's clients "had access to our [Clayton's] databases," and "could see everything." CW-S also explained that Clayton's lead underwriters could consult with the sponsor's representatives to determine if the sponsor wanted particular loans "kicked out" of the mortgage pools.

481. Indeed, as Ms. Beal reported to the FCIC: "The work product produced by Clayton is comprised of reports that include loan-level data reports and loan exception reports. Such reports are "works for hire," the property of our clients and provided exclusively to our

clients." Thus, on information and belief, the investment banks that hired Clayton (including the Defendants) should have known about the red flags that the third-party underwriters identified.

482. Similarly, Bohan employed "lead" underwriters, who communicated directly with the investment banks that retained them to review loan pools. As was the case with Clayton, CW-U said that many of the sponsors sent their own employees to the originator's sites to review the loans that were being considered for inclusion in a mortgage pool and subsequent securitization. CW-U also explained that the sponsors had access to Bohan's computer system and could view which loans were being approved or rejected. Thus, on information and belief, the investment banks (including the Defendants) should have known about the red flags that the third-party underwriters identified.

b. The Defendants manipulated and misused due diligence results.

483. As Ms. Beal testified with regard to Clayton, the large financial institutions (referred to as "clients" in her testimony) determined the type and scope of review performed on the loan pools. Yet, rather than directing the firms to conduct thorough reviews that were most likely to identify defective loans, these financial institutions pressured the loan reviewers to disregard problem loans through exceptions and offsets that did not satisfy the applicable underwriting guidelines.

484. According to confidential witnesses, third-party due diligence underwriters were pressured by the financial institutions that hired them to depart from the standards so that loans were not tagged as defective. For example, CW-S, a Clayton employee, stated that one out of every four or five loans that he reviewed on behalf of Clayton clients did not meet the originator's guidelines. Although he felt many of the loans were "dead assets" (the lowest rating Clayton gave), he was required by the client to provide "compensating factors," which were reasons why the loan should be considered for inclusion in the mortgage pool.

485. Similarly, CW-U said that she reviewed many loans requiring no documentation at Bohan. Yet, she was not allowed to challenge the borrower's claims. As CW-U said, "Whatever [the borrower] filled out on an application got through." When she informed a lead underwriter that she suspected the borrower's income was inflated, the lead underwriter pointed to the borrower's signature and fine print at the bottom of the loan application that indicated the borrower swore the information to be true. The lead underwriter told CW-U, "You can't call the borrower a liar." Due to such actions by the lead underwriters, CW-U received the impression that the investment banks who were buying the loans to securitize them did not care about inflated income.

486. Bohan employees were pressured by the investment banks and financial institutions who hired them to leave information out of their reports that detailed non-compliant loans that should have been excluded from the pool. For example, CW-U explained that many underwriters at Bohan did not include in their reviews the borrower's fee associated with rebates on wholesale loans. A rebate is negative points on a loan, whereby a borrower pays the lender for a higher interest rate in order to have lower up-front costs. The Bohan employees left such information out of their reports because if they mentioned it, the loans would often be considered predatory. CW-U recalled one rebate situation in which the borrower refinanced a property three times over a one-year period. When she reviewed the loan on the third refinancing, she discovered that the borrower was seeking the loan to pay off $5,000 in bills and to obtain $8,000 cash, but the rebate fees totaled $12,000. CW-U thought the loan was ultimately included in the mortgage pool because nothing was wrong with the loan, except that the borrower was getting nothing out of it and was "an older person that was being taken advantage of."

487. Further compounding the problems, Clayton employees were instructed to review fewer loans in the loan pools as the securitization market grew. Frank P. Filipps, Clayton's chairman and CEO, stated that "[e]arly in the decade, a securities firm might have asked Clayton to review 25 to 40 percent of the sub-prime loans in a pool, compared with typically 10% in 2006." *See* E. Scott Reckard, *Sub-Prime mortgage watchdogs kept on leash; loan checkers say their warnings of risk were met with indifference*, *Los Angeles Times,* March 17, 2008, at C1.

488. According to Ms. Beal's 2010 testimony before the FCIC, as the securitization markets grew even more frenzied "when lenders and securitizers were trying to sell off as much as they could before the market collapsed, that figure reached as low as 5 percent."

489. Notably, according to Bohan President Mark Hughes: "By contrast, loan buyers who kept the mortgages as an investment instead of packaging them into securities would have 50% to 100% of the loans examined." *See* Reckard, *supra*, at C1.

490. As explained by Paul Muolo and Matthew Padilla in Chain of Blame 228 (2010):

> There were two reasons the [Wall] Street firms reviewed only a small sample of the loans they were buying . . . . The most important reason was the relationship with the lender. "The lower the sample you requested [of the lender], the more likely it was that you'd win the bid." . . . . Lenders like Aegis and First Franklin had so many Street firms interested in buying their subprime and alt-A mortgages they could tell potential suitors that if they wanted to win the bid for the loan pool they should agree to review just a fraction of the mortgages.

491. Even though the third-party due diligence providers were instructed to review smaller samples of the mortgage pools over time, the demand for mortgage-backed securities was so great that, in the aggregate, the third-party due diligence firms were reviewing staggering quantities of loans. According to Chain of Blame at 228, "In 2006, rank-and-file clerks hired by Clayton vetted a million individual mortgages for Wall Street firms . . . ." The pressure to review such large volumes of loans forced third-party employees to hurry and prevented them from adequately reviewing the loan files.

c. The Defendants should have known that defective loans were being included in loan pools.

492. Notwithstanding pressures on loan reviewers to look the other way, the third-party due diligence process provided the Defendants with access to extensive information about loan pool defects. Yet, the Defendants to a large degree disregarded this information. As reported by the *Los Angeles Times*, Clayton and Bohan employees (including eight former loan reviewers who were cited in the article) "raised plenty of red flags about flaws so serious that mortgages should have been rejected outright—such as borrowers' incomes that seemed inflated or documents that looked fake—but the problems were glossed over, ignored, or stricken from reports." Reckard, *supra*, at C1.

493. Ironically, while the financial institutions and investment banks pressured third-party reviewers to make exceptions for defective loans, they often utilized information about bad loans to negotiate a lower price for the pool of loans from the seller (i.e. originator). Indeed, according to Clayton's former president, D. Keith Johnson's September 2010 testimony before the FCIC, this was one of the primary purposes of the due diligence review.

494. CW-U, who worked at Bohan from 2003 to 2006, confirmed that Bohan's review was used by its clients in price negotiations between the sponsors and the mortgage originators. The sponsors could request a discount if Bohan's reviewers rejected a large number of the loans. This is not to say that the investment banks actually eliminated all of the defective loans from the pools. To the contrary, they obtained a lower price for the pools because the defective loans *stayed in the pools*.

495. Recent testimony before the FCIC reveals the extent of this contrivance with regard to loans reviewed by Clayton. During 2006 and the first half of 2007, Clayton reviewed 911,039 loans issued by various originators (including Countrywide) for securitization by its

clients (Bank of America and JPMorgan Chase, Citigroup, Goldman Sachs, Morgan Stanley, Bear Stearns and Lehman Brothers). Clayton determined that 28% or 255,802 mortgages that they reviewed did not satisfy applicable underwriting guidelines. Of this number, Clayton's Wall Street clients "waived" 100,653 of them, or 39 percent of those loans that did not meet basic standards. *See* Testimony of Beal, Johnson, and supporting waiver reports documents, attached hereto at Appendix II.

496. Clayton provided the FCIC with documents showing the defect and waiver rate for some of the financial institutions and investment banks who had retained Clayton to conduct loan pool due diligence. Clayton's documents reveal the following rejection and waiver rates for entities who were involved in the securitization of the PLMBS purchased by the Bank:

Client:	**Percentage of Mortgages Rejected by Clayton:**	**Percentage of Rejected Mortgages Subsequently Waived by Client:**
Bank of America	30%	27%
Bear Stearns / EMC Mortgage Corporation	16%	42%
Countrywide	26%	12%
Goldman Sachs	23%	29%
JP Morgan Chase	27%	51%
WaMu	27%	29%

497. These large financial institutions, including the Defendants, however, did not disclose to investors, including the Bank, that (1) Clayton had informed their clients that a substantial percentage of loans in the loans pools backing PLMBS were defective; (2) that the Defendants, nonetheless, had waived the defects as to a substantial percentage of these loans; and

(3) that the Defendants had used the due diligence reports to negotiate a lower price for the loans pools.

498. Indeed, as Keith Johnson, the former President of Clayton testified to the FCIC, Clayton "looked at a lot of prospectuses" and the firm wasn't aware of any disclosure to investors of Clayton's "alarming' findings." Similarly, Clayton Vice President Ms. Beal testified that:

> To our knowledge, prospectuses do not refer to Clayton and its due diligence work. Moreover, Clayton does not participate in the securities sales process, nor does it have knowledge of our loan exception reports being provided to investors or the rating agencies as part of the securitization process.

Beal, Sept. 23, 2010 FCIC Written Testimony (attached hereto at Appendix II). The 2011 FCIC Report concurs: the disclosures in the Offering Documents were "insufficient for investors to know what criteria the mortgages they were buying actually did meet." FCIC Report at 169.

499. The Offering Documents fail to state that: (1) Clayton had informed the sponsors and Underwriters that a substantial percentage of loans in the loans pools backing PLMBS were defective; (2) that the sponsors and Underwriters, nonetheless, waived the defects as to a substantial percentage of these loans; and (3) that the sponsors used the due diligence reports to negotiate a lower price for the loans pools.

500. The 2011 FCIC Report reveals that Clayton would approve no more than 54% of the loans it reviewed as satisfying stated underwriting standards. FCIC Report at 166. In testimony before the FCIC in September 2010, Keith Johnson said that "54% to me says there [was] a quality control issue in the factory" for mortgage-backed securities. Johnson concluded that Clayton's clients often waived loans to preserve their business relationship with the loan originator, because a high number of rejections might lead the originator to sell the loans to a competitor. *Id.*

5. Defendants' Own Due Diligence Identified a High Number of Defective Loans in the Mortgage Pools Backing PLMBS.

501. The financial institutions that dominated the securitization markets did not just obtain information about defective loan pools from third-party due diligence firms, but also through their own in-house due diligence efforts.

502. By way of example, in its investigation into the "causes … of the current financial and economic crisis in the United States," the FCIC examined in particular Citigroup's securitization practices. The FCIC heard testimony from Richard M. Bowen, III, the former Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for CitiFinancial Mortgage (Citigroup's subprime mortgage lending subsidiary) from 2002-2005 and starting in 2006, Business Chief Underwriter for Correspondent Lending in Citigroup's Consumer Lending Group. In the latter position, Mr. Bowen supervised 220 professional underwriters and exercised direct oversight over the underwriting or more than $90 billion of mortgages annually.

503. Mr. Bowen testified that each year since 2005, Citigroup's mortgage operation systematically acquired tens of billions of dollars of risky loans that violated Citigroup's own underwriting criteria and were likely to default. He also testified that Citigroup's Wall Street Chief Risk Officer routinely overruled underwriters' rejections of pools of both prime and subprime mortgages that did not satisfy Citigroup's underwriting criteria for purchase, causing Citigroup to purchase billions of dollars of loan pools that fell far short of underwriting standards. Mr. Bowen testified that "[d]uring 2006 and 2007, I witnessed business risk practices which made a mockery of Citi credit policy. . . ."

504. Mr. Bowen reported that he discovered that of the $50 billion of prime mortgages purchased in 2006, "over 60% of these mortgages purchased and sold were defective." He testified

further that he "started issuing warnings in June of 2006 and attempted to get management to address these critical risk issues. These warnings continued through 2007 and went to all levels of the Consumer Lending Group." Likewise, he reported systematic abuses in the subprime pools as well.

505. Mr. Bowen also testified that he recommended that Citigroup not purchase Ameriquest, because his due diligence found that the loans originated by Argent, Ameriquest's wholesale division lender, did not meet the standards they had represented to Citigroup. Specifically, Mr. Bowen testified that "we sampled the loans that were originated by Argent and we found large numbers that did not – that were not underwritten according to the representations that were there."

506. Mr. Bowen submitted with his testimony an email that he sent to Citigroup's then Chairman of the Board, Robert Rubin, in late 2007 documenting his concerns. One email stated:

> During 2006-7 there were pools of mortgage loans aggregating $10 billion which were purchased from large mortgage companies with significant numbers of files identified as "exceptions" (higher risk and substantially outside of our credit policy criteria). These exceptions were approved by the Wall Street Channel Chief Risk Officer, many times over underwriting objections and with the files having been turned down by underwriting. These pools involved files aggregated and originated by Merrill Lynch, Residential Funding Corp, New Century, First NLC and others.

Available at http://www.fcic.gov/hearings/pdfs/2010-0407-Bowen.pdf. Citigroup disregarded the warnings and red flags and completed the acquisition.

507. Citigroup's practices were not unique. On May 12, 2010, the Wall Street Journal reported that "[f]ederal prosecutors, working with securities regulators, are conducting a preliminary criminal probe into whether several major Wall Street banks misled investors about their roles in mortgage-bond deals, according to a person familiar with the matter." The article noted that:

> the banks under early-stage criminal scrutiny—J.P. Morgan Chase & Co., Citigroup Inc., Deutsche Bank AG and UBS AG—have also received civil subpoenas from the Securities and Exchange Commission as part of a sweeping investigation of banks' selling and trading of mortgage-related deals, the person says. Under similar preliminary criminal scrutiny are Goldman Sachs Group Inc. and Morgan Stanley, as previously reported by The Wall Street Journal.

508. Upon information and belief, the other Issuer/Depositor and Underwriter Defendants similarly knew of and ignored red flags generated by their own due diligence as well by third-party due diligence firms hired by the Defendants indicating that the pools of loans they purchased and sold in securitizations were far riskier than was represented to investors, including the Bank.

6. The Vertical Integration of Many of the Firms Involved in the Issuance of the PLMBS Purchased by the Bank Enabled the Controlling Person Defendants to Control the Management and Policies of the Controlled Entities.

509. The Controlling Person Defendants, which had a 100% or substantial majority direct or indirect ownership in the respective Depositor/Issuer and/or Underwriter Defendants, had the power to, and did, conduct and participate, directly and indirectly, in the management and control of all aspects of the management and policies of the Controlled Entities, including the securitizations and offer and sale of the Certificates that are the subject of this litigation, as evidenced by, inter alia,

A. The Controlling Person Defendants created the respective Depositor/Issuer Defendants as their special purpose entities for the purpose of issuing the Certificates that are the subject of this action;

B. The Controlling Person Defendants played other important and vital roles regarding the structuring and administration of the issuing trusts and Certificates, which allowed them to exercise substantial control over many parties to the securitization, including the respective Depositor/Issuer and/or Underwriter Defendants;

C. Revenue from the securitizations inured to the benefit of the Controlling Person Defendants;

D. Statements in the Controlling Person Defendants' SEC filings show control through comprehensive involvement with the Controlled Entities' operations;

E. The Controlling Person Defendants directly participated in the issuance of the Certificates, including touting their extensive activity and experience in the securitization market, particularly in initiating securitization of the residential mortgage loans they originated or acquired in the secondary mortgage market and transferring those loans to Depositor Defendants, for sale through the trust to purchasers such as the Bank;

F. The Controlling Person Defendants frequently and prominently identified themselves in the Offering Documents; and/or

G. Officers and/or directors of the Controlling Person Defendant frequently signed the respective registration statements.

510. In addition, the Controlling Person Defendants were frequently parties to the agreements necessary to the securitizations, such as the Pooling and Servicing Agreement, Mortgage Loan Purchase Agreement, Servicing Agreement, Assignment, Assumption and Recognition Agreement, including amendments, restatements and exhibits thereto, which agreements frequently:

A. Were between vertically integrated entities;

B. Were signed by the same officer or director of the Controlling Person Defendant on behalf of the Controlled Entity or someone at the same address;

C. For purposes of providing formal notice under the agreement, identified a single individual and/or address as the notice recipient for two or more parties to the agreement; and

D. Provided for indemnification by the Controlling Person Defendant.

511. The control of the vertically integrated firms of all aspects of the securitization is apparent in the following prospectus language:

> GSMC [GS Mortgage Securities Corp.] was formed in 1984. Its general partner is Goldman Sachs Real Estate Funding Corp. and its limited partner is The Goldman Sachs Group, Inc. (NYSE:GS). . . . GSMC purchases closed, independently funded, first- and subordinate-lien residential mortgage loans for its own investment, securitization, or resale.
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> * * *
>
> GSMC has been active as a sponsor in the securitization market since 2001. As a sponsor, GSMC acquires residential mortgage loans in the secondary mortgage market and initiates the securitization of the loans it acquires by transferring the mortgage loans to the depositor, which loans will ultimately be transferred to the issuing entity for the related securitization.
>
> As of January 1, 2006, GSMC has sponsored the securitization of approximately $100,913,776,942 of residential mortgage loans, which include prime, subprime, Alt-A, FHA/VA, second lien, HELOC, "scratch and dent," re-performing and seasoned loans.
>
> * * *
>
> Prior to acquiring any mortgage loans, GSMC will conduct a review of the related mortgage loan seller. GSMC's review process consists of reviewing select financial information for credit and risk assessment and underwriting guideline review, senior level management discussion and background checks. The scope of the loan due diligence will depend on the credit quality of the mortgage loans.
>
> The underwriting guideline review considers mortgage loan origination processes and systems. In addition, such review considers corporate policy and procedures relating to HOEPA and state and federal predatory lending, origination practices by jurisdiction, historical loan level loss experience, quality control practices, significant litigation and material investors.
>
> * * *
>
> THE DEPOSITOR
>
> The Depositor is GS Mortgage Securities Corp., a Delaware corporation. The Depositor is a wholly-owned subsidiary of the Sponsor, GSMC, and is an affiliate of the Underwriter. The Depositor will not have any business operations other than securitizing mortgage assets and related activities.

THE ISSUING ENTITY

> GSR Mortgage Loan Trust 2006-1 F, the issuing entity, will be formed on the closing date pursuant to the Trust Agreement. The issuing entity will be a New York common law trust with no officers or directors and no continuing duties other than to hold and service the Mortgage Loans and related assets and issue the certificates. The fiscal year end for the issuing entity will be December 31, commencing with December 31, 2006.

GSR 2006 1F Pros. Sup. S-65-66. Substantively similar language appears in the Prospectus Supplements for the Certificates involving the other Controlling Person Defendants named herein.

512. Thus, in short, the Controlling Person Defendants controlled, influenced, or participated in essentially all material aspects relating to the acquisition, structure and sale of the Certificates purchased by the Bank identified herein.

513. The Controlling Person Defendants' control, position and influence over the Controlled Defendants made them privy to, and provided them with actual knowledge of, the material facts and omissions concealed from the Bank with regard to the underlying mortgage pools.

E. The Securitization Process Was Supported by Credit Ratings that Materially Misstated the Credit Risk of the PLMBS.

514. The triple-A credit ratings of the PLMBS played a crucial role in the Bank's purchase of PLMBS. Pursuant to Bank policy, the Bank could only purchase triple-A rated tranches of the Certificates. Without that rating, no purchase would have occurred. Thus, the Bank relied to its detriment on the ratings and the Defendants' representations regarding the ratings in the Offering Documents.

515. The Defendants well understood (and banked on) the important role the credit ratings played in the PLMBS markets. They featured the ratings prominently in the Offering Documents and discussed at length the ratings received by the different tranches of the PLMBS,

and the bases for the ratings. Yet, the Credit Rating Agencies knew, and the Defendants should have known, that the ratings were not reliable. Those ratings were bought and paid for and were based on flawed information.

1. The Credit Rating Agencies Knew That the Credit Ratings Were Unreliable, Based As They Were on Underwriting Standards That the Credit Rating Agencies Knew Had Been Abandoned.

516. The Credit Rating Agencies knew that many mortgage originators had abandoned their stated mortgage underwriting guidelines, and thus knew that the ratings were false when made.

517. The Senate Subcommittee on Investigations, for example, uncovered internal rating agency emails from the summer and fall of 2006 noting that "there has been rampant appraisal and underwriting fraud in the industry for quite some time"; that "underwriting fraud[,] appraisal fraud and the general appetite for new product among originators [are] resulting in loans being made that shouldn't be made"; and that "this is like another banking crisis potentially looming."

518. S&P became so concerned with underwriting standards that, when it was asked to rate certificates backed by loans that Fremont Investment and Loan had originated, one analyst asked his supervisors whether he should treat Fremont collateral differently. "No," one of his supervisors responded, "we don't treat their collateral any differently." The other supervisor said that as long as there were current FICO scores for the borrowers, then the analyst was "good to go," no matter how little documentation the origination process required, and regardless of any other characteristic of the mortgage loans. While Fremont Investment and Loan is not identified in the Offering Documents as a relevant originator in this case, its underwriting standards – in the documentation it required and otherwise – were typical of the underwriting standards of the relevant originators here. The concerns the analyst expressed about Fremont were just as

applicable to other originators, whose underwriting standards the Credit Rating Agencies knew just as well as they did Fremont's.

519. Based on its investigation, the Senate Subcommittee on Investigations found that from 2004 to 2007, all three of the Credit Rating Agencies knew of the increased risks caused by mortgage fraud and lax underwriting standards, but failed to factor those risks into their rating models. S. Subcomm. on Investigations, 112th Cong., *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* 311-12 (2011) (hereinafter S. Subcomm., *Anatomy of a Financial Collapse*).

520. In June 2005, for example, an outside mortgage broker wrote to Susan Barnes, the head of the S&P group that rated PLMBS, advising her that "attention to loan risk" had drastically deteriorated among mortgage originators. *Id.* at 269.

521. Here, just as in other cases, the Credit Rating Agencies did not factor the abandonment of underwriting standards into their analysis of the PLMBS that are the subject of this lawsuit. Instead, they based their ratings on underwriting standards they knew to have been abandoned in practice.

522. The problem, then, may be briefly stated: garbage in, garbage out. The Credit Rating Agencies based their ratings on underwriting standards they knew to have been abandoned. They thus knew those ratings to be unreliable.

2. The Credit Ratings Were Compromised by Conflicts of Interest, Manipulation and Misinformation.

523. The Credit Rating Agencies received enormous revenues from the sponsors, Depositors, and Underwriters who paid them for rating the products they sold.

524. Because the desired rating of a securitized product was the starting point for any securities offering, the Credit Rating Agencies were actively involved in helping Depositors,

sponsors, and Underwriters structure the products to achieve the requested rating. As a result, the Credit Rating Agencies essentially worked backwards, starting with the clients' target rating and thereafter working toward a structure that could conceivably yield the desired rating.

525. A 2008 SEC Report entitled "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies" ("Summary Report") revealed that the sponsors, Depositors, Underwriters, and Credit Rating Agencies worked together so that securities would receive the highest ratings:

> Typically, if the analyst concludes that the capital structure of the [PLMBS] does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche—as the highest rated tranche—pays the lowest coupon rate of the [PLMBS] tranches and, therefore, costs the arranger the least to fund.

526. As a result of this collaboration with the Credit Rating Agencies, Depositors/Issuers, sponsors, and Underwriters were able to manipulate the system to achieve inflated ratings. For example, through repeated interactions with the Credit Rating Agencies, the sponsors and Depositors/Issuers—and the Underwriters working with them—could effectively reverse engineer aspects of the ratings models and then modify the structure of a financing to improve its ratings without actually improving its credit quality. In this process, the Depositors/Issuers, sponsors, and Underwriters could change aspects of PLMBS very slightly—but without any real effect on the economic reality of the instruments—or simply present the same data in a different way, and get better ratings. Gretchen Morgenson & Louise Story, *Rating Agency Data Aided Wall Street in Deals*, N.Y. Times, Apr. 23, 2010.

527. This rating process was further compromised by "ratings shopping." The Defendants did not pay for the Credit Rating Agencies' services until after the Credit Rating

Agencies gave a preliminary rating to the clients. This practice created what were essentially bidding wars—contests in which the clients would hire the agency that provided the highest rating for the lowest price. The Credit Rating Agencies were paid only if they provided the desired ratings, and only if the transaction closed with those ratings. "Ratings shopping" jeopardized the integrity and independence of the rating process.

528. The Senate Subcommittee on Investigations has detailed numerous instances in which the Credit Rating Agencies gave "special treatment" to investment bankers who complained about rating decisions. "In many instances," the Subcommittee concluded, this special treatment "cross[ed] over form the healthy give and take involved in complex analysis to concessions made to prevent the loss of business." S. Subcomm., *Anatomy of a Financial Collapse, supra*, at 280. Thus, even the *threat* of ratings shopping had a real effect on the Credit Rating Agencies' ratings.

529. Raymond McDaniel, Moody's CEO, realized that the market-share war had undermined the Ratings Agencies' work product. In an internal presentation to Moody's Board of Directors in 2007, he stated:

> The real problem is not that the market does underweights [sic] ratings quality but rather that . . . it actually penalizes quality by awarding rating mandates based on the lowest credit enhancement needed for the highest rating. Unchecked, competition on this basis can place the entire financial system at risk.[9]

530. McDaniel described to the board how Moody's has "erected safeguards to keep teams from too easily solving the market share problem by lowering standards" but then stated, **"This does NOT solve the problem."** Turning then to a topic he referred to as "Rating Erosion by Persuasion," McDaniel observed, "Analysts and [managing directors] are continually 'pitched' by bankers, issuers, investors" and sometimes "we 'drink the kool-aid.'"

[9] Exhibit to October 22, 2008, hearing before the House Oversight Committee.

531. As these examples illustrate, the Credit Rating Agencies were aware that clients were able to—and did—manipulate the system to receive the highest possible rating without actually structuring their deals so as to merit that rating.

3. The Credit Ratings Were Unreliable Due to the Use of Inaccurate, Outdated Models, and Inadequate Resources.

532. The outdated models used by the Credit Rating Agencies turned out PLMBS ratings that the Credit Rating Agencies knew to be inaccurate.

533. The models relied on pre-2000 data—reliance that, for a number of reasons, produced wildly inaccurate results. First, this pre-2000 data ignored the dramatic changes in the mortgage industry following 2000: increased lending to riskier borrowers, increased origination of riskier kinds of mortgage loans, and a dramatic rise in housing prices. Second, the pre-2000 data, as the Congressional Research Service reported in 2009, was based on a "benign period of economic moderation in financial markets and rising house prices." Congressional Research Serv., *Credit Rating Agencies and Their Regulation* 7 (2009); *accord*, S. Subcomm, *Anatomy of a Financial Collapse, supra*, at 288-89. They were useless in predicting the likelihood of default in a time of macroeconomic crisis and falling housing prices.

534. The models had other flaws too. The Credit Rating Agencies failed to account for any risk of a nationwide decline in home prices, and they miscalculated the interdependence among loan defaults—the likelihood that an economic storm would sink more than one financial ship.

535. The Credit Rating Agencies knew of these flaws, but did nothing to fix them.

536. In 2007, for example, Vickie Tillman, an S&P Executive Vice President, stated before the Senate Banking Committee: "We are fully aware that, for all our reliance on our

historically rooted data that sometimes went as far back as the Great Depression, some of that data has proved no longer to be as useful or reliable as it has historically been."

537. In an April 27, 2008 article in the New York Times Magazine, Mark Adelson, a former Managing Director in Moody's structured finance division, criticized Moody's use of historical data about 30-year fixed mortgages to predict defaults and delinquencies in the new mortgage market—describing it as "observing 100 years of weather in Antarctica to forecast the weather in Hawaii."

538. In fact, the Credit Rating Agencies themselves did not believe the results their models turned out.

539. In an April 2007 electronic communication uncovered by the Senate Subcommittee on Investigations, two S&P analysts agreed that a particular mortgage-backed deal was "ridiculous," and that the model "definitely does not capture half the ris[k]." A month later, one of those analysts complained that "no body [sic] gives a straight answer about anything around here," and that there were no "clear cut parameters on what the hell we are supposed to do."

540. Eric Kolchinsky, a former managing director at Moody's, testified before the House Oversight and Government Reform Committee on September 30, 2009 that "[m]ethodologies produced by Moody's for rating structured finance securities are inadequate and do not realistically reflect the underlying credits. Rating models are put together in a haphazard fashion and are not validated if doing so would jeopardize revenues."

541. Compounding the inherent problems with the rating models was the fact that the Credit Rating Agencies simply did not commit the resources necessary to adequately rate residential-mortgage-backed financial products.

542. Frank L. Raiter, who from 1995 until 2005 was a Managing Director at S&P and head of its Residential Mortgage Rating Group, stated in prepared testimony before the Senate Subcommittee on Investigations that "in the residential ratings group[,] . . . between 1995 and 2005[,] rating volumes grew five or six fold without similar increases in staffing. Rating production was achieved at the expense of maintaining criteria quality."

543. This inadequate staffing had practical consequences: it meant that the Credit Rating Agencies were not able to improve the models that they knew produced inaccurate and misleading ratings. As Raiter testified, by early 2004 S&P had developed a model that took into account much more historical data than had been analyzed previously—a new model suggesting that the model then in use "was underestimating the risk of some Alt-A and subprime products." Due to inadequate staffing, this model "was never implemented." If S&P had implemented the new model, stated Raiter, it would have required much greater credit enhancement from PLMBS issuers in 2005, 2006, 2007—without which the PLMBS would have been assigned much less favorable ratings.

544. Similarly, Jerome Fons, a former Managing Director of Credit Policy at Moody's, testified before the House Oversight Committee on October 22, 2008 that when evidence arose that previously assigned ratings of PLMBS were inaccurate, the Credit Rating Agencies "did not update their models or their thinking."

545. As these examples illustrate, the Credit Rating Agencies knew that the unreliability of their models meant that their ratings of PLMBS did not accurately reflect the likelihood of payment.

4. The Credit Rating Agencies Knew That Their PLMBS Ratings Fundamentally Differed from Their Ratings of Corporate Bonds.

546. Neither the Credit Rating Agencies nor the Defendants disclosed to investors that the ratings of PLMBS were materially different from, and less reliable than, standard corporate bond ratings.

547. Instead, the Credit Rating Agencies represented that the credit ratings were comparable to corporate bonds. Moody's stated in a 2004 presentation that, "The comparability of these opinions holds regardless of the country of the issuer, its industry, asset class, or type of fixed-income debt." A May 2007 S&P document on rating methodology stated: "Our ratings represent a uniform measure of credit quality globally and across all types of debt instruments. In other words, an 'AAA' rated corporate bond should exhibit the same degree of credit quality as an 'AAA' rated securitized debt issue."

548. In fact, however, the Credit Rating Agencies did not simply estimate expected loss and/or probability of default in determining the PLMBS ratings in this case, as they do with corporate bonds. Rather, they employed mathematical credit risk models based on random event simulations to determine the estimated loss distributions associated with the great many separate assets that back the PLMBS. These models required the Credit Rating Agencies to make many estimates and assumptions regarding each of the various assets, including the degree to which losses or defaults on these assets would be correlated with each other.

549. The Credit Rating Agencies in this case knowingly made unreasonable assumptions about how frequently defaults on the assets would be correlated with each other. *See supra* § V.E.3. And, unlike the assumptions the Credit Rating Agencies use for rating other instruments, such as corporate bonds, the correlation assumptions used to rate the PLMBS in this case were based on dramatically incomplete historical data or on pure speculation.

550. In short, the Credit Rating Agencies knowingly misrepresented that their PLMBS ratings were as accurate as their ratings of other instruments.

5. Subsequent Downgrades Confirm that the Investment-Grade Ratings Reported in the Offering Documents Were Unjustifiably High and Misstated the True Credit Risk of the PLMBS Purchased by the Bank.

551. "Investment-grade" products are understood in the marketplace to be stable, secure and safe. Using S&P's scale, "investment-grade" ratings are AAA, AA, A and BBB, and represent, respectively, extremely strong credit quality, very strong credit quality, strong credit quality, and adequate credit quality. Any instrument rated below BBB is considered below investment-grade or "junk bond."

552. The Defendants' Offering Documents stated that the issuance of the PLMBS was conditioned on the assignment of particular, investment-grade ratings, and listed the ratings in a chart.

553. As noted, the Bank purchased only triple-A-rated tranches of PLMBS. However, the triple-A ratings of the PLMBS misstated the credit quality of the underlying loans. The triple-A rating denotes extremely strong credit quality and is the same rating as those typically assigned to bonds backed by the full faith and credit of the United States Government, such as Treasury Bills.

554. On or about July 10, 2007, S&P publicly announced it was revising the methodologies used to rate numerous mortgage-backed securities because the performance of the underlying collateral "called into question" the accuracy of the loan data. S&P announced it was revising its methodology assumption to require increased "credit protection" for rated transactions. S&P reiterated that it would seek in the future to review and minimize the incidence of potential underwriting abuse given "the level of loosened underwriting at the time

of loan origination, misrepresentation and speculative borrower behavior reported for the 2006 vintage" of mortgage-backed securities.

555. One day later, on July 11, 2007, Moody's announced it was also revising its methodology used to rate PLMBS, and anticipated downgrades of PLMBS. Moody's did in fact significantly downgrade many PLMBS, noting "aggressive underwriting" used in the origination of the collateral.

556. At the time these statements were made in July 2007, all of the PLMBS retained their investment-grade ratings.

557. Historically, investments with triple-A ratings had a very low expected default rate. The default rate on investment-grade corporate bonds from 1981 to 2008, for example, averaged about 0.08%, with no year's default rate higher than 0.51%.

558. Beginning in the fall of 2008, the PLMBS purchased by the Bank were downgraded. Twenty-six of the thirty triple-A rated Certificates (originally valued at over $2.7 billion) now have been downgraded to non-investment-grade ratings, *i.e.* junk status. *See infra* ¶ 651.

559. The en masse downgrade of triple-A rated PLMBS indicates that the ratings set forth in the Offering Documents were false, unreliable and inflated. As the SEC has noted, "[a]s the performance of these securities continued to deteriorate, the three rating agencies most active in rating these instruments downgraded a significant number of their ratings. The rating agencies['] performance in rating these structured finance products raised questions about the accuracy of their credit ratings generally as well as the integrity of the ratings process as a whole." *Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies by the Staff of the Securities and Exchange Commission* at 2 (July 2008).

The Defendants should have known the Offering Documents' statements with respect to these ratings were misleading because of their direct involvement in and manipulation of the rating process, and awareness of the poor credit quality of the underlying loan collateral.

6. The Bank Reasonably Relied on the Credit Ratings Reported in the Prospectuses.

560. The market—including both sophisticated and unsophisticated investors—has come to rely on the Credit Rating Agencies for accurate and unbiased assessments of credit quality.

561. Fitch; Moody's Investors Service, Inc.; and Standard & Poor's Ratings Services are "Nationally Recognized Statistical Rating Organizations," or NRSROs—a special status that the SEC created in 1975 to distinguish the most credible and reliable rating agencies and to ensure the integrity of the ratings process. According to the SEC, the "single most important criterion" in their granting of NRSRO status is that "the rating organization is recognized in the United States as an issuer of credible and reliable ratings by the predominant users of securities ratings." Further, in grating NRSRO status, the SEC determines that the rating organization is independent from the firms whose issuances it rates.

562. It was thus reasonable for the Bank to rely on the Credit Rating Agencies' ratings of the PLMBS.

563. The Bank did not know, and reasonably could not have known, that the credit ratings were flawed. The Bank did not know that the credit ratings were impaired by conflicts of interest and were susceptible to manipulation. Moreover, the Bank did not know that the ratings did not in fact address the risk of the Certificates and the likelihood of payment by borrowers on the underlying mortgage loans. Indeed, no disclosure informed the Bank that the rating was the

unreliable result of inaccurate information and deficient modeling, as opposed to a legitimate evaluation of credit risk.

564. The Credit Rating Agencies continued to assure the market of the integrity of their ratings of mortgage-backed securities long after the PLMBS were purchased by the Bank. In a letter to the editor of The Wall Street Journal dated September 17, 2007, Vickie Tillman, then Executive Vice President of Credit Market Services at S&P, stated: "We have numerous safeguards in place that have helped us effectively manage" potential conflicts of interest. "Our credit ratings provide objective, impartial opinions on the credit quality of bonds." Tillman likewise testified before the Senate Committee on Banking, Housing and Urban Affairs on September 26, 2007:

> S&P maintains rigorous policies and procedures designed to ensure the integrity of our analytical processes. For example, analysts are not compensated based upon the amount of revenue they generate. Nor are analysts involved in negotiating fees. Similarly, individuals responsible for our commercial relationships with issuers are not allowed to vote at rating committees. These policies, and others, have helped ensure our long-standing track record of excellence.

565. The Credit Rating Agencies also assured the market that the ratings assigned to PLMBS were just as reliable as ratings assigned to corporate bonds. *See supra* ¶¶ 546-547.

566. At the time these statements were made in September 2007, all of the PLMBS retained their investment-grade ratings.

F. The Proper Steps Were Not Taken To Ensure That The Mortgages Underlying The Trusts Were Enforceable.

1. The Value of the PLMBS Is Impacted If the Mortgage Loans and Mortgages Have Not Been Validly Assigned and Transferred to the Issuing Trust Such That They Are Enforceable

567. For PLMBS certificates to maintain value, the issuing trust must be able to enforce the mortgage notes that back the certificates. If the trust cannot enforce the loans, they are effectively worthless—and so are the certificates.

568. The mortgage originator is the entity responsible for generating the loans that are ultimately transferred to the trusts. But if the trustee is to enforce the loans—and if PLMBS certificates are to maintain value—both the promissory note executed by the borrower and the mortgage itself must be validly transferred to the trust in the securitization process.

569. The promissory notes and mortgages are not transferred directly from the loan originator to the trust. Instead, they are typically transferred to a depositor, or to a sponsor and thence to a depositor. *See supra* ¶¶ 105-111.

570. The Offering Documents for all of the PLMBS in this action represented that the mortgage notes would be validly transferred to the issuing trust in accordance with specified procedures.

571. A trust that issues PLMBS certificates must be able to enforce not only the mortgage notes that back the certificates, but also the mortgages that secure the mortgage notes. If the mortgages cannot be enforced, then the properties that secure the mortgage notes cannot be foreclosed on if the borrower defaults. If the mortgages that secure the mortgage notes are not enforceable, PLMBS are to that extent impaired.

572. Before mortgages can be enforced by the trustee, however, they must be validly assigned to the issuing trust.

573. Before a purported mortgage holder can foreclose on a mortgaged property, state law generally requires that the purported holder—if it is not the original mortgagee—prove that it is a valid assignee of the mortgage. The assignment, or chain of assignment, must trace back without gaps to the original mortgagee, it must be in writing, and it must identify the mortgage that is assigned.

574. A material number of the mortgage notes underlying the issuing trusts have not been validly transferred in accordance with the procedures outlined in the Offering Documents.

575. The best known example of this failure is *Kemp v. Countrywide Home Loans, Inc. (In re Kemp)*, No. 08-18700 (Bankr. D.N.J.), in which Linda DeMartini, whom Countrywide had employed for a decade and who testified that in her employment, she had been "involved in every aspect of the servicing," and "had to know about everything,"[10] testified—on direct examination—that failure to deliver the promissory note to the trust was normal operating procedure for Countrywide when acting as originator and servicer.[11] Among the PLMBS at issue in this action, Countrywide was an originator for Securities BSARM 2007-3 1A1, CWHL 2007-8 1A5, CWHL 2005-8R A1, CWHL 2007-13 A4, GSR 2006-2F 3A1, GSR 2006-AR1

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[10] *Kemp*, Hr'g Tr. 45:7, :9-10 (Aug. 11, 2009).

[11] As DeMartini testified:

> Q. [I]s it generally the custom . . . for [the trust] to hold the documents?
> A. No. They would stay with us as the servicer.
> . . .
> Q. So I believe you testified Countrywide was the originator of this loan?
> A. Yes.
> . . .
> Q. So the physical documents were retained within the corporate entity Countrywide or Bank of America?
> A. Correct.
> Q. . . . [W]ould you say that this is standard operating procedure in the mortgage banking business?
> A. Yes. It would be . . . the normal course of business . . . , as we're the ones that are doing all the servicing, and that would include retaining the documents.

Id. at 14:5-15:6.

2A3, GSR 2006-1F 2A2, GSR 2005-3F 2A1, GSR 2005-1F 3A1, GSR 2005-2F 2A1, and GSR 2006-6F 2A1.

576. In *Kemp*, the U.S. Bankruptcy Court for the District of New Jersey, applying New Jersey law, held that because the debtor's mortgage note had not been physically transferred to the issuing trust's trustee, or properly indorsed, it was not enforceable by either the issuing trust's trustee or the trustee's agent. *Kemp v. Countrywide Home Loans, Inc. (In re Kemp)*, 440 B.R. 624, 630-34 (Bankr. D.N.J. 2010).

577. These failures appear to be systemic in the industry. Even if they do not affect every mortgage underlying every issuing trust, the failures affect a sufficient number of the mortgages and materially impair the value of the PLMBS.

578. Multiple cases have been filed in courts across the country by homeowners challenging the right of financial institutions to foreclose. *See, e.g.*, *In re Mims*, 438 B.R. 52 (Bankr. S.D.N.Y. 2010); *Deutsche Bank Nat'l Trust Co. v. Tarantola (In re Tarantola)*, No. 09-09703, 2010 WL 3022038 (Bankr. D. Ariz. July 29, 2010); *In re Weisband*, 427 B.R. 13 (Bankr. D. Ariz. 2010); *Wells Fargo Bank, N.A. v. Marchione*, 887 N.Y.S.2d 615 (App. Div. 2009); *IndyMac Bank F.S.B. v. Garcia*, 28 Misc. 3d 1202(A) (N.Y. Sup. Ct. 2010); *Deutsche Bank Nat'l Trust Co. v. McRae*, 894 N.Y.S.2d 720 (Sup. Ct. 2010); *HSBC Bank USA, N.A. v. Miller*, 889 N.Y.S.2d 430 (Sup. Ct. 2009); *Deutsche Bank Nat'l Trust Co. v. Abbate*, 25 Misc. 3d 1216(A) (N.Y. Sup. Ct. 2009); *In re Adams*, 693 S.E.2d 705 (N.C. Ct. App. 2010); *HSBC Bank USA v. Thompson*, No. 23761, 2010 WL 3451130 (Ohio Ct. App. Sept. 3, 2010); *Bank of N.Y. v. Gindele*, No. C-090251, 2010 WL 571981 (Ohio Ct. App. Feb. 19, 2010).

579. According to the *New York Times*, the United States Trustee Program has taken the unusual step of intervening in bankruptcy proceedings to force the mortgage companies to

prove that they own, or otherwise have the standing required to enforce, the mortgages on which they are seeking to foreclose. *See* Gretchen Morgenson, *Don't Just Tell Us. Show Us That You Can Foreclose*, N.Y. TIMES , Nov. 27, 2010. The *Time's* article noted the Trustee's intervention in two Atlanta bankruptcy cases, one involving Wells Fargo and the other involving J.P. Morgan Chase.

580. The failure is also shown by the recent drop in foreclosures system-wide, which is attributable to lack of necessary documentation. *See, e.g.*, Dan Levy & John Gittelsohn, *Foreclosure Filings Hit Three-Year Low As U.S. Servicers in "Dysfunction"*, Bloomberg News, Mar. 9, 2011, *available at* http://www.bloomberg.com/news/2011-03-10/foreclosure-filings-drop-to-3-year-low-as-u-s-servicers-in-dysfunction-.html. In addition, in the Fall of 2010, major financial institutions such as Bank of America (which acquired Countrywide) and J.P. Morgan Chase, both originators of mortgages underlying the Certificates purchased by the Bank, announced they were suspending mortgage foreclosures because they had discovered significant problems in their ability to locate and document the ownership of mortgage notes.

581. The evidence of misconduct in this regard has been so severe and pervasive that the Attorneys General of all 50 states have announced an investigation into the Defendants' practices. In addition, major financial institutions have reserved hundreds of millions, if not billions, of dollars to address litigation and losses stemming from the financial crisis and foreclosure problems.

582. Also telling is a recent proposal by a group friendly to the mortgage industry to enact federal legislation to loosen the standards for foreclosure. Jason Gold & Anne Kim, Third Way, *Fixing "Foreclosure-gate"* (2011), *available at*

http://content.thirdway.org/publications/362/Third_Way_Memo_-_Fixing_Foreclosure-gate.pdf. The proposal would hardly be necessary if the industry's house were in order.

583. Most recently, *Fortune Magazine* examined a large number of foreclosures filed in Westchester and Bronx Counties in New York between 2006 and 2010. It examined 104 cases in which the loan was originated by Countrywide and 26 cases in which the loan had been securitized into a Countrywide-sponsored securitization (130 cases total). None of the 104 promissory notes documenting loans originated by Countrywide bore a Countrywide endorsement—"they included only the original borrower's signature." Of the other 26 loans, two-thirds lacked bank endorsements. The vast majority of the 130 promissory notes, then, lacked a complete chain of assignment and were unenforceable. Abigail Field, *At Bank of America, More Incomplete Mortgage Docs Raise More Questions*, Fortune Mag., June 3, 2011, *available at* http://finance.fortune.cnn.com/2011/06/03/at-bank-of-america-more-incomplete-mortgage-docs-and-more-questions (last visited June 22, 2011).

VI. DEFENDANTS' MATERIAL UNTRUE STATEMENTS AND OMISSIONS IN CONNECTION WITH THE SALE OF PLMBS TO THE BANK

584. As detailed above, the Depositor/Issuer Defendants purchased mortgage loans, deposited them into issuing trusts, and issued the securities, and the Underwriter Defendants – Wall Street banks and other large financial institutions – offered and sold the PLMBS to the Bank through the Offering Documents. With respect to each securitization, the Depositor/Issuer and Underwriter Defendants drafted the Offering Documents. In addition, each Depositor/Issuer Defendant and Underwriter Defendant was identified in these documents as the depositor/issuer or underwriter, respectively, of the securities, and approved the versions of these documents that were delivered by the Underwriter and Seller Defendants to the Bank.

585. The Offering Documents contained extensive material misstatements and omitted material facts with regard to the underwriting guidelines and practices purportedly applied by the mortgage originators whose loans backed the PLMBS purchased by the Bank, and a number of key characteristics of the mortgage pools that pertain to the risk of the securities. Specifically, the misstatements and omissions of material fact are as follows:

A. Defendants Misrepresented Underwriting Guidelines Utilized by Mortgage Lenders.

1. The Materiality of Underwriting Guidelines

586. As alleged above, the originator's underwriting standards, and the extent to which the originator departs from its standards, are key indicators of the risk of the mortgage loans made by the originator. And because the mortgage loans back the certificates that are issued to investors such as the Bank, the loan underwriting standards are also material to assessing the risk of the PLMBS certificates. For these reasons, the originator's underwriting standards as described in the Offering Documents were material to the Bank's decision to purchase the Certificates at issue here.

2. Misstatements Regarding Underwriting Guidelines

587. The Offering Documents contained material untrue or misleading statements and omitted material information regarding the underwriting guidelines allegedly employed in the origination of the mortgage loans that secure the PLMBS. Appendix III attached hereto and incorporated herein sets forth those statements and omissions and the reasons each is misleading. The following are examples of these materially misleading statements and omissions regarding mortgages originated or acquired by Countrywide Home Loans, Inc. ("Countrywide"), taken from the CHL Mortgage Pass-Through Trust 2007-8 Prospectus Supplement (incorporated herein by this reference):

- That the underwriting standards were applied "***to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral***." CWHL 2007-8 Pros. Sup. S-36-37.

- That "[f]or all mortgage loans originated or acquired by Countrywide," Countrywide:

> [O]btains a credit report relating to the applicant from a credit reporting company. The credit report typically contains information relating to such matters as credit history with local and national merchants and lenders, installment debt payments and any record of defaults, bankruptcy, dispossession, suits or judgments. ***All adverse information in the credit report is required to be explained by the prospective borrower to the satisfaction of the lending officer.***

CWHL 2007-8 Pros. Sup. S-36-37.

- That "a prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the 'debt-to-income' ratios) are within acceptable limits." CWHL 2007-8 Pros. Sup. S-36-37.

- That under its Standard Underwriting Guidelines, Countrywide:

> [G]enerally permits a debt-to-income ratio based on the borrower's monthly housing expenses of up to 33% and a debt-to-income ratio based on the borrower's total monthly debt of up to 38%.

CWHL 2007-8 Pros. Sup. S-36-37.

- That under its Standard Underwriting Guidelines:

> The maximum acceptable debt-to-income ratio, which is determined on a loan-by-loan basis, varies depending on a number of underwriting criteria, including the Loan-to-Value Ratio, loan purpose, loan amount and credit history of the borrower.

BSARM 2007-3 Pros. Sup. (page numbers omitted in original).

- That "[e]xceptions to Countrywide Home Loans' underwriting guidelines may be made *if compensating factors are demonstrated by a prospective borrower*."

CWHL 2007-8 Pros. Sup. S-36.

- That "[a]ll of the mortgage loans in the trust fund will have been originated or acquired by Countrywide Home Loans in accordance with its credit, appraisal and underwriting standards." CWHL 2007-8 Pros. Sup. S-35-36.

- The Supplement further asserts the following with regard to mortgages purchased from originators other than Countrywide:

> Periodically the data used by Countrywide Home Loans to complete the underwriting analysis may be obtained by a third party, particularly for mortgage loans originated through a loan correspondent or mortgage broker. In those instances, the initial determination as to whether a mortgage loan complies with Countrywide Home Loans' underwriting guidelines may be made by an independent company hired to perform underwriting services on behalf of Countrywide Home Loans, the loan correspondent or mortgage broker.
>
> In addition, Countrywide Home Loans may acquire mortgage loans from approved correspondent lenders under a program pursuant to which Countrywide Home Loans ***delegates to the correspondent the obligation to underwrite the mortgage loans to Countrywide Home Loans' standards.*** Under these circumstances, the underwriting of a mortgage loan may not have been reviewed by Countrywide Home Loans before acquisition of the mortgage loan and the correspondent represents that Countrywide Home Loans' underwriting standards have been met. After purchasing mortgage loans under those circumstances, ***Countrywide Home Loans conducts a quality control review of a sample of the mortgage loans***. The number of loans reviewed in the quality control process varies based on a variety of factors, including Countrywide Home Loans' prior experience with the correspondent lender and the results of the quality control review process itself.

CWHL 2007-8 Pros. Sup. S-35-36.

588. These statements were materially misleading for multiple reasons, which are described in detail on Appendix III hereto. Fundamentally, they grossly distort the underwriting process that was actually employed by indicating that it was a principled process that employed numerous safeguards. Unfortunately, as described *supra*, §§ V.B. and V.C., both Countrywide and the other originators of mortgage loans that secured the PLMBS purchased by the Bank effectively abandoned their stated underwriting standards in an effort to maximize their mortgage origination volume. "Exceptions" to standards became the rule. Reduced documentation was employed not to streamline the process where warranted, but instead to mask the borrower's disqualification. Inflated valuations were accepted, whether through appraisals performed without regard for applicable appraisal standards, or through alternative valuations processes aimed at producing the result necessary to permit the loan to be made. Requirements for verification of borrower income, assets or employment were routinely ignored. Loans were purchased in bulk from third parties without meaningful due diligence of their quality. Ratios of loan-to-value or debt-to-income were meaningless because the appraised values were unreliable and the borrowers' income assertions were unverified.

589. In addition, the statements were materially misleading because they fail to disclose that Countrywide lacked any reasonable basis upon which to base its determination of "acceptable limits" for debt-to-income ratios. Due to the industry's inexperience with lending to borrowers with increased credit risks, including the explosion in Alt-A and other untraditional lending as described *supra* § V.B.1., Countrywide lacked sufficient data regarding historical patterns of borrower behavior in relation to default experience for similar types of borrower profiles. Consequently, Countrywide's assignment of "maximum acceptable debt-to-income ratio" had no reliable connection to the actual risk of default presented by borrowers assigned to

each classification. But Countrywide, and others in the industry, continued to use this data to construct "models" to justify their ever-less rigorous underwriting programs, and continued to present these models and programs to investors as prudent, thoroughly tested and well-grounded in reliable and objective data.

590. The statements were further materially misleading because they fail to disclose that Countrywide, like the other originators of mortgages that secured the PLMBS purchased by the Bank, lacked adequate procedures and practices to monitor or evaluate its underwriters' exercise of judgment, or to provide appropriate training and education to its underwriters.

3. Evidence Demonstrating Misstatements in the Offering Documents Regarding the Originators' Underwriting Practices

a. Government investigations, actions and settlements, confidential witnesses and evidence developed in other private lawsuits demonstrate systematic and pervasive abandonment of stated underwriting practices by the originators.

591. As alleged in detail above, the failure of the mortgage originators who issued the loans backing the PLMBS purchased by the Bank to apply their stated underwriting guidelines, ensure that compensating factors justified exceptions, and obtain accurate appraisals is well documented in government investigations and lawsuits, press reports, and statements of confidential witnesses who are former employees of the mortgage originators. Additional evidence has been generated by the many other private lawsuits against many of the same Defendants in connection with the sale of MBS and related securities. This evidence – and the allegations herein based on this evidence – demonstrates that the statements in the Offering Documents regarding the mortgage originators' underwriting and appraisal practices are materially false and misleading. Contrary to the representations in the Offering Documents, the mortgage originators did not genuinely attempt to determine the borrowers' ability to pay, or the

adequacy of the collateral provided for the loans they issued, but instead, abandoned these efforts in order to issue as many loans possible.

b. Analysis of loans that backed the PLMBS purchased by the Bank demonstrate the abandonment of stated underwriting practices by the originators.

592. Analysis of the delinquency and foreclosure rates of the loans in the loan pools securing the PLMBS purchased by the Bank indicates that the description of the underwriting practices set forth in the Offering Documents were materially inaccurate. For example, for the following PLMBS purchased by the Bank, the rate of delinquent loans as of April 2011 was 9 percent or greater:

- Certificate BOAMS 2006-1 A1, 19.81%
- Certificate BSARM 2007-3 1A1, 28.54%
- Certificate CWHL 2007-8 1A5, 22.91%
- Certificate CWHL 2005-8R A1, 11.71%
- Certificate CHASE 2005-A2 1A4, 24.27%
- Certificate CWHL 2007-13 A4, 17.74%
- Certificate CSFB 2005-8 9A1, 17.04%
- Certificate GSR 2006-2F 3A1, 22.64%
- Certificate GSR 2006-AR1 2A3, 16.92%
- Certificate GSR 2006-1F 2A2, 13.09%
- Certificate GSR 2005-3F 2A1, 9.22%
- Certificate GSR 2005-1F 3A1, 9.48%
- Certificate GSR 2005-2F 2A1, 19.01%
- Certificate GSR 2006-6F 2A1, 14.90%
- Certificate RAST 2005-A11 2A1, 26.60%

- Certificate JPMMT 2005-A8 2A2, 18.18%
- Certificate MSSTR 2005-2 1A1, 9.83%
- Certificate RFMSI 2007-S4 A4, 16.87%
- Certificate RFMSI 2007-SA4 3A1, 21.14%
- Certificate RFMSI 2006-S4 A3, 14.72%
- Certificate STARM 2007-4 2A2, 13.77%
- Certificate WAMU 2005-AR14 1A2, 20.08%
- Certificate WAMU 2005-AR16 1A2, 20.13%
- Certificate WAMU 2005-AR18 1A2, 17.98%
- Certificate WAMU 2007-HY1 4A1, 30.12%
- Certificate WAMU 2007-HY2 1A1, 32.04%
- Certificate WFMBS 2007-10 1A10, 9.84%
- Certificate WFMBS 2007-4 A16, 10.55%
- Certificate WFMBS 2007-11 A2, 9.34%

593. Similarly, for the following PLMBS purchased by the Bank, the rate of foreclosure as of April 2011 was 5 percent or greater:

- Certificate BOAMS 2006-1 A1, 8.45%
- Certificate BSARM 2007-3 1A1, 8.69%
- Certificate CWHL 2007-8 1A5, 6.44%
- Certificate CHASE 2005-A2 1A4, 11.47%
- Certificate CSFB 2005-8 9A1, 8.70%
- Certificate GSR 2006-2F 3A1, 6.78%
- Certificate GSR 2006-AR1 2A3, 8.10%
- Certificate GSR 2005-2F 2A1, 8.33%

- Certificate GSR 2006-6F 2A1, 7.51%
- Certificate RAST 2005-A11 2A1, 10.78%
- Certificate JPMMT 2005-A8 2A2, 6.02%
- Certificate RFMSI 2007-S4 A4, 7.93%
- Certificate RFMSI 2007-SA4 3A1, 5.70%
- Certificate STARM 2007-4 2A2, 7.29%
- Certificate WAMU 2005-AR14 1A2, 10.32%
- Certificate WAMU 2005-AR16 1A2, 10.96%
- Certificate WAMU 2005-AR18 1A2, 10.18%
- Certificate WAMU 2007-HY1 4A1, 15.37%
- Certificate WAMU 2007-HY2 1A1, 15.14%
- Certificate WFMBS 2007-4 A16, 5.14%

594. Poor performance of the loan backing the PLMBS purchased by the Bank on these and other metrics demonstrates that the statements in (and related omissions from) the Offering Documents with regard to the mortgage originators' adherence to their underwriting guidelines were false and misleading.

595. Analysis of three key metrics with respect to individual mortgage loans provides further evidence of the abandonment of stated underwriting guidelines. The LTV, DTI and credit score ("FICO") metrics are each key indicators of the riskiness of a loan and, according to the statements in the Offering Documents, were generally fundamental components of the underwriting process. Because the underwriting process as described in the Offering Documents was ostensibly aimed at assessing the risk of default on a mortgage, the mortgages should exhibit a balancing of these key risk indicators—for example, mortgages with higher LTV or DTI ratios should tend to exhibit compensatingly higher FICO scores. But analysis of the underlying

mortgages indicates otherwise. The Bank has recently been able to obtain individual loan FICO score and LTV ratio information for all of the Certificates at issue here, and individual loan DTI ratio information for 8 of the Certificates. The Bank has analyzed these loans to see how the data are correlated—that is, the extent to which changes in one metric is associated with changes in another. The Bank has also analyzed whether the loans exhibit more than one high-risk characteristic—also known as "compounded" high-risk characteristics.

596. Mortgage underwriting of the type described in the Offering Documents, which balances negative characteristics against compensating positive ones, should result in discernible correlation among the DTI, LTV and FICO metrics (i.e., higher LTVs should correlate with higher FICO scores and lower DTIs, higher DTIs with higher FICO scores and lower DTIs, and lower FICO scores with lower LTVs and DTIs), and should result in the absence of compounded high-risk factors in individual mortgages.

597. However, the Bank's analysis of the individual loan level data indicates otherwise. For the 27 Certificates listed in the following table, there is either no correlation between higher LTVs and higher FICO scores, or the correlation is negative (i.e., higher LTVs are correlated with lower FICO scores).

BOAMS 2006-1 A1	GSR 2005-7F 3A7	STARM 2007-4 2A2
BSARM 2007-3 1A1	GSR 2006-1F 2A2	WAMU 2005-AR14 1A2
CSFB 2005-8 9A1	GSR 2006-6F 2A1	WAMU 2005-AR16 1A2
CWHL 2007-8 1A5	GSR 2006-AR1 2A3	WAMU 2005-AR18 1A2
CWHL 2007-13 A4	JPMMT 2005-A8 2A2	WFMBS 2006-10 A7
CHASE 2005-A2 1A4	RFMSI 2006-S4 A3	WFMBS 2007-4 A16
GSR 2005-2F 2A1	RFMSI 2007-S4 A4	WFMBS 2007-10 1A10

GSR 2005-3F 2A1	RFMSI 2007-SA4 3A1	WFMBS 2007-11 A2

598. In addition, for 7 of the Certificates as to which the Bank has been able to obtain FICO and DTI information for individual loans, there is no correlation between higher DTI scores and higher FICO scores, or the correlation is negative (i.e., higher DTIs are correlated with lower FICO scores). Further, for 5 of the Certificates as to which the Bank has been able to obtain LTV and DTI information for individual loans, there is either no correlation between higher LTVs and lower DTIs, or the correlation is negative (i.e., higher LTVs are correlated with higher DTIs).

599. These results are summarized on the following table:

Certificates Exhibiting No Correlation or a Negative Correlation Between Higher LTVs and Lower DTIs	**Certificates Exhibiting No Correlation or a Negative Correlation Between Higher DTIs Higher FICO Scores**
GSR 2006-2F 3A1	GSR 2006-2F 3A1
GSR 2006-6F 2A1	GSR 2006-6F 2A1
GSR 2006-AR1 2A3	GSR 2006-AR1 2A3
RFMSI 2007-S4 A4	RFMSI 2007-S4 A4
RFMSI 2007-SA4 3A1	RFMSI 2007-SA4 3A1
RAST 2005-A11 2A1	STARM 2007-4 2A2
STARM 2007-4 2A2	

600. The absence of correlation among these important risk measures, and the presence of inverse correlations among them, indicate that the risk factors present in a loan application were not appropriately balanced. This is contrary to the assurances in the Offering Documents. Those assurance were thus demonstrably false and materially misleading.

B. The Offering Documents Were Materially Misleading Because They Failed to Inform Investors About Compounded High-Risk Mortgages in the Loan Pools

601. The Bank has analyzed the individual loan data it has recently been able to obtain to assess the extent to which the loan pools contained loans – referred to herein as "Compounded High-Risk Mortgages" – that exhibited multiple high risks (*i.e.*, above the 75th percentile in the pool) for two or more of the LTV, DTI or FICO metrics (the key quantitative metrics generally employed in the underwriting process), but which did not exhibit compensating low risk for the remaining metric. If risk balancing underwriting of the type described in the Offering Documents (*i.e.*, requiring that high risk factors in one or more areas be compensated for by low risk in one or more other areas) had been employed, the loan pools would be expected to contain few, if any, Compounded High-Risk Mortgages.

602. The Bank's analysis indicates that for the vast majority of the loan pools, the incidence of Compounded High-Risk Mortgages was much higher than what would be expected if risk balancing underwriting of the type described in the Offering Documents had been employed. For example, for *all* of the Certificates at issue here, the incidence of Compounded High-Risk Mortgages is greater than 80% of the rate that would be expected if the LTV, DTI and FICO metrics were independent measures. Risk balancing underwriting of the type described in the Offering Documents should produce an incidence much lower than 80% of the independent rate, however.

603. Further, the Bank's analysis indicates that for 28 of the Certificates the incidence of Compounded High-Risk mortgages in the pool was above 100% of the rate that would be expected if the metrics were independent. This data indicates for these pools that not only was risk balancing underwriting of the type described in the Offering Documents not employed, but also that the underwriting process that was employed was so deeply flawed that it produced more

mortgages at extremely high risk of failure than would have resulted from a random process. For these pools, not only were the statements in the Offering Documents regarding the underwriting process misleading, but the failure to disclose the incidence of Compounded High-Risk Mortgages was itself a materially misleading omission. The following table lists the Certificates for which the incidence of Compounded High-Risk mortgages in the pool was above 100% of the rate that would be expected if the metrics were independent, and lists the actual incidence of Compounded High-Risk Mortgages in the pool as a percentage of the rate that would be expected from a random distribution:

Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence	Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence
BOAMS 2006-1 A1	137%	JPMMT 2005-A8 2A2	126%
BSARM 2007-3 1A1	251%	RFMSI 2006-S4 A3	228%
CSFB 2005-8 9A1	119%	RFMSI 2007-S4 A4	129%
CWHL 2007-8 1A5	201%	RFMSI 2007-SA4 3A1	126%
CWHL 2007-13 A4	140%	STARM 2007-4 2A2	132%
CHASE 2005-A2 1A4	109%	WAMU 2005-AR16 1A2	112%
GSR 2005-2F 2A1	126%	WAMU 2005-AR18 1A2	120%
GSR 2005-3F 2A1	190%	WAMU 2007-HY1 4A1	134%

Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence	Certificate	Actual Incidence of Compounded High Risk Loans as a Percentage of Independent Compounded High-Risk Incidence
GSR 2005-7F 3A7	102%	WAMU 2007-HY2 1A1	410%
GSR 2006-1F 2A2	168%	WFMBS 2006-10 A7	196%
GSR 2006-2F 3A1	163%	WFMBS 2007-4 A16	192%
GSR 2006-6F 2A1	170%	WFMBS 2007-10 1A10	169%
GSR 2006-AR1 2A3	127%	WFMBS 2007-11 A2	215%

604. As the foregoing tables indicate, the risk profiles of the loans backing a substantial majority of the Certificates were seriously affected by the presence of compounded high-risk mortgage loans. The number of compounded high-risk loans not only indicates that the statements in the Offering Documents regarding mortgage underwriting were materially misleading, but also indicates that the risk of default in the loan pools was materially higher than was indicated by the averages and other pool-level data provided in the Offering Documents. Failing to disclose information with respect to the presence and extent of compounded high-risk mortgages caused the Offering Documents to be materially misleading.

C. Defendants Misrepresented the Appraisal Process and Loan-to-Value Ratios ("LTV") That Were Based Upon Those "Appraisals."

1. The Materiality of Representations Regarding Appraisals and LTVs

605. The LTV of a mortgage loan is the ratio of the amount of the mortgage loan to the value of the mortgaged property when the loan is made. For example, a loan of $200,000

secured by property valued at $500,000 has an LTV of 40%; a loan of $450,000 on the same property has an LTV of 90%. The LTV is one of the most important measures of the risk of a mortgage loan because it is a primary determinant of the likelihood of default. The lower the LTV, the greater the borrower's equity relative to the value of the house. Thus, when an LTV is low, it is less likely that a decline in the property's value will wipe out the owner's equity and give the owner an incentive to stop making mortgage payments and abandon the property (a "strategic default"). Additionally, lower LTVs indicate that the losses on loans that do default will be less severe—*i.e.*, loans with lower LTVs provide a greater equity "cushion" because there is an increased likelihood that the proceeds of foreclosure will cover the unpaid balance on the mortgage loan.

606. Because the numerator (the amount of the loan) is predetermined, the key to an accurate LTV is an accurate denominator (the value of the property). The key to an accurate denominator, in turn, is an accurate appraisal of the property. In a purchase of a property, the denominator in the LTV is usually determined by choosing the lower of the purchase price or the appraised value. In a refinancing or home equity loan, the denominator is always an appraised value because there is no purchase price. Accordingly, an inflated appraisal will inflate the denominator of the LTV. Here, as explained below, *see infra* ¶¶ 615-622, what the Offering Documents refer to as "appraisals" are in fact not appraisals at all because they fail to satisfy the definition of an appraisal as set forth in controlling regulations. For example, it is not an "appraisal" as that term is defined in the regulations to conclude based on pressure from the mortgage originator that a home's value is equal to its purchase price. The originators accepted inflated valuations, whether based on appraisals performed without regard for applicable

appraisal standards, or through alternative valuation processes aimed at producing the result necessary to permit the loan to be made.

607. A denominator that is too high will understate, sometimes greatly, the risk of a loan. In the example above, if the property's actual value is $500,000, but is valued incorrectly at $550,000, then the LTV of the $200,000 loan falls from 40% to 36.4%, and the LTV of the $450,000 loan falls from 90% to 81.8%. In either case, an LTV that is based upon an improperly inflated appraisal value understates the risk of the loan.

608. Additionally, it is important to note that at higher LTVs or higher loan amounts, even minor inflations in a property's value can translate into significantly riskier loans. In the example above, although the risk of a loan with an LTV of 40% is greater than the risk of one with an LTV of 36.4%, both imply a relatively safe loan because of the large equity cushions. By contrast, a loan with an LTV of 90% is much riskier than one with an LTV of 81.8%. In the case of a loan with an LTV of 81.8%, there is an equity cushion of 18.2% of the value of the property, while in the case of the 90% LTV loan, the equity cushion is only 10%—just over half as much. Thus, in the example in the preceding paragraph, the $50,000 overstatement in the appraisal has a far more dramatic effect on the risk profile of the $450,000 loan than on the $200,000 loan.

609. Because the riskiness of the underlying loans in the asset pool (including the risk of default and the severity of the losses on default) impacts the risk of the associated PLMBS, aggregate LTV metrics are material to an investor's decision to purchase PLMBS, and specifically, were material to the Bank. The sole source of payment on the Certificates is the cash flow from the mortgage loans that back them. If borrowers fail to make their payments, there is less cash to pay the investors in the Certificates. The safety of the Certificates

consequently depends upon the quality of the loans, and a key indicator of loan quality is an LTV resulting from an appraisal conducted in accordance with governing standards. If the LTVs of the mortgage loans in the asset pool of the securitization are not based on appraisals conducted in accordance with governing standards, as the Bank alleges here, *see infra* ¶¶ 615-626, the ratings of the certificates sold in that securitization will also be incorrect. Investors will therefore be misled about the risk of investing in a particular PLMBS.

610. LTVs also serve as indicators of prepayment patterns—that is, the number of borrowers who pay off their mortgage loans before maturity. LTVs thus predict the expected lives of the loans and the associated PLMBS that are backed by the loans. Prepayment patterns affect many aspects of the PLMBS that are material to the investors purchasing them, such as the life of the certificate and the timing and amount of cash that the investor will receive during that life.

611. Even seemingly minor differences in the aggregate LTV metrics had a significant effect on both the risk and rating of each certificate sold in the securitization. For example, assume the Offering Documents assert that the loan pool had a weighted average LTV (*i.e.*, the average of the LTVs for the mortgages in the pool, weighted by each mortgage's principal amount) of 80%. If that true weighted average LTV (after correcting flawed procedures in "appraisals" that overstated the value of the properties securing the mortgages) were 82%, the Offering Documents' assertion would constitute a material misstatement of the risk profile of the mortgage pool—and the PLMBS it secured—because the equity cushion (and the borrowers' equity interest in the properties) would be eroded by 10 percent.

612. Finally, because an LTV is only as reliable as the appraisal used to determine the value of the collateral, individual and aggregate LTVs are meaningless to PLMBS investors

unless the appraisals underlying the LTVs are done in accordance with governing standards. Thus statements regarding the valuation of collateral—including that "appraisals" were conducted in calculating the LTVs and that such appraisals conformed to uniform standards—are material to an investor's decision to purchase PLMBS, and specifically, were material to the Bank:

> Mortgage bankers and investors consider the property appraisal one of the most important documents contained in the loan file since it establishes the value of the property securing the mortgage loan. In fact, investors put review of the appraisal on the same level as the review of credit. The appraisal assists the mortgage banker in assessing the collateral risk . . . . Obviously, the ultimate investor wants to mitigate such risk and relies on the appraisal to ensure that the property falls within the investor's valuation parameters.

Handbook of Mortgage Lending 165 (Mortgage Bankers Ass'n of Am. 2003).

613. Furthermore, assertions that appraisals conformed to the applicable standards are material to PLMBS investors like the Bank because investors like the Bank have no reasonable means of verifying the LTVs asserted in the Offering Documents at the time of sale. When conducted in accordance with governing standards, appraisals and their resulting LTVs are based on knowledge of particular facts that are not available to investors in mortgage-backed securities—an investor simply does not have access to the data, let alone the time and resources, necessary to conduct an independent valuation of each piece of collateral underlying each certificate.

614. Statements regarding appraiser independence and impartiality are important as they provide assurance that the LTVs were not artificially inflated due to mortgage originator manipulation. Likewise, statements in the Offering Documents that the appraisals conformed to USPAP or Fannie Mae and Freddie Mac standards, including requirements that appraisals be independently and impartially conducted, indicate that the appraisals and the aggregate data

included in the Offering Documents based on the appraisals properly assess the value of the collateral, and provide a reliable measure of the risk of the loan pools.

2. Misstatements Regarding Appraisals and LTVs

a. The Offering Documents falsely state that the LTVs were based upon appraisals

615. The Offering Documents contained numerous material untrue or misleading statements regarding the valuation of collateral and the "appraisal" process conducted upon the origination of the mortgages underlying the PLMBS. The Prospectus or Prospectus Supplement for each Certificate states that the LTV represents a "ratio" or "fraction," the numerator of which is the "principal balance" or "principal amount" of the mortgage loan, and the denominator of which is the "lesser" or "least" of (1) the "sales price" or "purchase price" or "selling price" of the mortgaged property and (2) the "appraised value" or "appraisal" or "the appraised value determined in an appraisal" or "the appraised value . . . as established by an appraisal." *See* Appendix VI.

616. These are false statements of material fact because, contrary to the Defendants' representations that the LTVs were based on "appraisals" or "appraised values," in reality the biased and coerced valuations of collateral that the Defendants labeled as "appraisals" failed to meet the federally required definition of "appraisal" applicable to entities that are regulated by the Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), or the Board of Governors of the Federal Reserve System (FRB) (collectively the "Bank Regulators"). Thus, the LTVs were not based on appraisals at all as that term is used and understood in the industry.

617. The following originators of the mortgages underlying the PLMBS were regulated by the Bank Regulators:

- Bank of America, National Association and Wells Fargo Bank, National Association, are "national banking associations" chartered with the OCC pursuant to 12 U.S.C. § 21. Therefore, under U.S.C. § 1813(q)(1), the OCC is the "appropriate Federal banking agency" with jurisdiction to regulate these banks.

- IndyMac Bank, F.S.B., and Washington Mutual Bank are "federal savings associations" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(5). Pursuant to 12 U.S.C. § 1813(q)(4), the OTS is the "appropriate Federal banking agency" with jurisdiction to regulate these originators.

- GreenPoint Mortgage Funding, Inc., was a subsidiary of North Fork Bank, which was a "state nonmember bank" within the meaning of 12 U.S.C. § 1813(e). Any subsidiary of such a "state nonmember bank" is regulated by the FDIC. *See* 12 U.S.C. § 1831a(d)(1); 12 C.F.R. § 362.4(a).

- A subsidiary of a "bank holding company" is regulated by the FRB pursuant to 12 U.S.C. §§ 1813(q), 1841(n). *See also* 12 C.F.R. §§ 225.21-225.28. Countrywide Home Loans, Inc., is a nonbank subsidiary of Countrywide Financial Corporation,[12] a "bank holding company" within the meaning of 12 U.S.C. §§ 1841 and 1843, and thus was regulated by the FRB.

618. SunTrust Mortgage, Inc. is a subsidiary of SunTrust Bank, which is a "state member bank" within the meaning of 12 U.S.C. § 1813(d). Any subsidiary of a "state member bank" is regulated by the FRB. *See* 12 U.S.C. § 330; 12 U.S.C. § 1831a(d)(1); 12 C.F.R. § 362.4(a).

619. Subsidiaries of "national banking associations" are regulated by the OCC pursuant to 12 U.S.C. § 24a and 12 C.F.R. §§ 5.34, 5.39. Chase Home Finance LLC and National City Mortgage Co., were subsidiaries of the following "national banking associations," and hence were regulated by the OCC:

Originator	**Controlling "National Banking Association"**
Chase Home Finance LLC	JPMorgan Chase Bank, National Association
National City Mortgage Co.	National City Bank[13]

[12] Countrywide Financial Corporation was a "bank holding company" until March 12, 2007.

[13] National City Bank was a national bank until it was acquired by PNC Bank, N.A., on November 11, 2009.

620. Each of the Bank Regulators has issued regulations pursuant to Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989, 12 U.S.C. § 1339, that govern the appraisal practices of the institutions they regulate. These regulations define an "appraisal" as a "written statement *independently and impartially prepared* by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s)." 12 C.F.R. § 564.2 (OTS); 12 C.F.R. § 34.42 (OCC); 12 C.F.R. § 323.2 (FDIC); 12 C.F.R. § 225.62 (FRB) (emphasis added). Therefore, by representing that the LTVs were based on "appraisals" of the collateral, the Defendants represented that the LTVs were based on independent and impartial valuations of the collateral.

621. The Bank Regulators define appraiser independence as follows:

> (a) Staff appraisers. If an appraisal is prepared by a staff appraiser, that *appraiser must be independent of the lending, investment, and collection functions* and not involved, except as an appraiser, in the federally related transaction, and *have no direct or indirect interest, financial or otherwise, in the property . . . .*
>
> (b) Fee appraisers. (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and *have no direct or indirect interest, financial or otherwise, in the property or the transaction . . . .*

12 C.F.R. § 564.5 (OTS); 12 C.F.R. § 34.45 (OCC); 12 C.F.R. § 323.5 (FDIC); 12 C.F.R. § 225.65 (FRB) (emphasis added). In 2005 the Bank Regulators further elaborated on the standards for appraiser independence, stating that "[l]oan production staff should not select appraisers." Additionally, the Bank Regulators specified that although loan production staff may use a "revolving, board approved list to select a residential appraiser," the "[s]taff responsible for the development and maintenance of the list should be independent of the loan production process." *See "Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions."* (Questions 3, 5).

622. The Defendants' statements in the Offering Documents are materially misleading because the LTVs were not based on impartial and independent appraisals, but rather were the result of manipulation and coercion by loan production staff. As described above in sections V.B and V.C, the originators' loan production staff pressured and coerced appraisers to inflate values, demanded and obtained the ability to have "business managers" overrule staff and third party appraisers, and routinely fed improper information to appraisers in an effort to manipulate their valuations, all of which served to undermine the independence of the appraisal process. Contrary to the interagency guidance, the originators' lending departments constantly pressured appraisers to increase their valuations, made clear that their continued access to work from these originators depended upon the appraisers coming in "at value," and in some cases simply overruled appraisers that refused to cooperate. The originators ultimately resorted to using lists of approved appraisers that excluded appraisers whose appraisals in the past had come in "too low" and who were unwilling to increase their appraisals to satisfy the lending departments. All of this resulted in appraisers having an indirect financial interest in each property they appraised, since their ability to obtain future work was impacted by their willingness to come in "at value" for each property they appraised. Simply put, as a result of this coercion, appraisers provided appraisals that they did not believe accurately reflected the value of the appraised property, but nevertheless was sufficiently high—i.e., "at value"—to enable the deal to close. Because these valuations were not "independently and impartially prepared" as required by the federal definition of "appraisal," the Defendants made false statements of material fact in the Offering Documents by stating that the LTVs were based on "appraisals" or "appraised values."

b. Misstatements regarding the standards to which the purported "appraisals" conformed

623. In addition, the Offering Documents contained materially untrue or misleading statements and omissions regarding the standards to which the purported "appraisals" conformed. The underwriting guidelines for each of the following originators—as stated in the Offering Documents—state that the appraisals are required to conform to USPAP: American Home Mortgage Corp; GreenPoint Mortgage Funding, Inc.; IndyMac Bank, F.S.B.; National City Mortgage Co.; and Washington Mutual Mortgage Securities Corp. *See* Appendix III.

624. Additionally, the underwriting guidelines for Countywide and PHH Mortgage Corporation—as stated in the Offering Documents—state that the appraisals conformed to Fannie Mae and Freddie Mac appraisal standards. *See* Appendix III. The Fannie Mae and Freddie Mac appraisal standards require that appraisals be conducted in accordance with USPAP. *See* 2006 Single Family Selling Guide, Part XI, 102.02.

625. These statements in the Offering Documents were materially misleading because the mortgage originators routinely accepted—and in fact overtly sought—valuations of collateral that were conducted in violation of the appraisal standards of USPAP, Fannie Mae and Freddie Mac. For example, as detailed above, the USPAP requires that an appraiser "perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests." Similarly, the Fannie Mae appraisal standards provide that "it is essential that a lender obtain an independent, disinterested examination." As alleged in paragraph 622 and further described in sections V.B and V.C, the appraisals used by the mortgage originators were the product of manipulation and coercion and thus were not impartial, objective, and independent as required by USPAP.

626. Additionally, USPAP precludes acceptance of an appraisal assignment where compensation is contingent upon "reporting a predetermined result" or "a direction in assignment results that favors the cause of a client." Similarly, it is an "unacceptable appraisal practice" under Fannie Mae standards to develop and report an appraisal "that favors either the cause of the client . . . [or] the attainment of a specific result . . . in order to receive compensation . . . and/or in anticipation of receiving future assignments." However, these are precisely the conditions that loan production staff for the mortgage originators forced upon appraisers when they repeatedly pressured appraisers to increase their valuations, implicitly or explicitly linked the receipt of continued work to "at value" appraisals, and even threatened to place appraisers on a blacklist if they did not "come back at value."

c. Misstatements regarding aggregate LTVs

627. Because the LTVs were not based on "appraisals" conducted in conformance with applicable appraisal standards, the statements in the Offering Documents regarding the aggregate LTVs of the mortgage pools were materially untrue and misleading. These statements concern the extent to which loans in the pools underlying each Certificate had LTVs in excess of 100%, 90% or 80%, and the weighted average LTV of the pools. Section VI.C.3 below sets forth those materially untrue and misleading statements as well as the reasons each is misleading.

3. Evidence Demonstrating Misstatements about Appraisals and LTVs in the Offering Documents

a. Analysis of loans that backed the PMLBS purchased by the Bank demonstrate that appraisals were materially inflated and the LTV ratios were materially understated.

628. As part of its investigation of the claims asserted herein, the Bank has analyzed the LTV ratios of mortgage loans that secure each of the PLMBS that it purchased. The Bank has tested the LTV ratios as represented in the Offering Documents against the LTV ratios that

would have been calculated had the properties been valued at the time of loan origination in accordance with accepted and reliable appraisal practices (as was represented in the Offering Documents). To perform this analysis, the Bank has employed an industry-standard automated valuation model ("AVM") that reliably calculates the values of the subject properties as of the date of mortgage loan origination. The AVM draws upon a database of 500 million sales covering ZIP codes that represent 98.7% of the homes, occupied by 99.8% of the population, in the United States. Based on that database, the AVM calculates a valuation based on criteria including the type, condition, and location of the property, as well as the actual sale prices of comparable properties in the same locale shortly before the specified date. The extensive independent testing of the AVM confirms that the AVM is a reliable and accurate means of determining the value that would have been determined for a property as of a historical date had that property been valued in accordance with accepted and reliable appraisal practices.

629. This analysis demonstrates stark misstatements in the LTV ratios information as represented in the Offering Documents. Because the LTV calculation is simply a ratio of loan amount to value, and because the loan amounts are unquestioned, the reason for the discrepancies is inescapable: the LTV ratios represented in the Offering Documents were the result of inflated and unreliable collateral valuations that were misleadingly labeled as "appraisals." Had the collateral valuation practices comported with the OTS definition of "appraisal" and with the USPAP and Fannie Mae/ Freddie Mac standards as represented in the Offering Documents, the resulting aggregate LTV ratios would have been materially different from those represented in the Offering Documents.

630. The aggregate LTV ratio representations in the Offering Documents were key metrics in the Bank's decision to purchase the PLMBS, and the Bank was materially misled by

the inaccurate information reported in the Offering Documents. Moreover, as a result of the manipulation of the appraisal process by loan originators, appraisers were coerced into providing inflated appraisals that they knew were inaccurate. *See supra* §§ V.B. As a result, the statements made in the Offering Documents based in whole or in part on the collateral values, including statements regarding LTV ratios, were false and misleading.

631. The following tables summarize four types of material LTV ratio understatements contained in the Offering Documents: the percentage of loans with over 100% LTV; the percentage of loans with over 90% LTV; the percentage of loans with over 80% LTV; and the weighted average LTV ratio for the mortgage pool. Each is a distinct and significant misrepresentation in the Offering Documents.

632. The 100% LTV representation is obviously significant because loans with over 100% LTV afford the lender no equity cushion and leave the lender with inadequate collateral from the outset of the loan. The Offering Documents consistently assured the Bank that there were no such loans in the mortgage pools. Unfortunately, as the following table indicates, the recalculated LTV ratios (which, based on the AVM, indicate what the reported LTV would have been had proper appraisal methods been employed) indicate that there were a material number of mortgage loans with LTV ratios in excess of 100%:

Security (Certificate)	**% of Loans with Greater than 100% LTV per the Prospectus**	**Recalculated % of Loans with Greater than 100% LTV**	**Prospectus Understatement**
BAMSI 2006-1 (BOAMS 2006-1 A1)	0.00%	14.63%	14.63%
BearStearnARM07-3-1 (BSARM 2007-3 1A1)	0.00%	14.75%	14.75%
CWMBS 2007-08 (CWHL 2007-8 1A5)	0.00%	23.08%	23.08%
Chase 2005-A02-1 (CHASE 2005-A2 1A4)	0.00%	12.96%	12.96%

Security (Certificate)	% of Loans with Greater than 100% LTV per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Prospectus Understatement
CWMBS 2007-13 (CWHL 2007-13 A4)	0.00%	17.24%	17.24%
CSFB 2005-08-9 (CSFB 2005-8 9A1)	0.00%	22.22%	22.22%
GSR 2006-02F (GSR 2006-2F 3A1)	0.00%	6.45%	6.45%
GSR 2006-AR1-2 (GSR 2006-AR1 2A3)	0.00%	11.32%	11.32%
GSR 2005-07F (GSR 2005-7F 3A7)	0.00%	17.39%	17.39%
GSR-2005-1F (GSR 2005-1F 3A1)	0.00%	12.50%	12.50%
GSR-2005-2F (GSR 2005-2F 2A1)	0.11%	9.38%	9.27%
GSR 2006-06F (GSR 2006-6F 2A1)	0.00%	10.87%	10.87%
ResAstSecTr05-A11-2 (RAST 2005-A11 2A1)	0.00%	10.65%	10.65%
JPMorgan 05-A8-2 (JPMMT 2005-A8 2A2)	0.00%	12.20%	12.20%
RFC 2007-S04 (RFMSI 2007-S4 A4)	0.00%	17.31%	17.31%
RFC 2007-SA04-3 (RFMSI 2007-SA4 3A1)	0.00%	29.17%	29.17%
RFC 2006-S04 (RFMSI 2006-S4 A3)	0.00%	8.89%	8.89%
STARM 07-04-2 (STARM 2007-4 2A2)	0.00%	14.86%	14.86%
WA Mutl 2005-AR14 (WAMU 2005-AR14 1A2)	0.00%	5.24%	5.24%
WA Mutl 2005-AR16-1 (WAMU 2005-AR16 1A2)	0.00%	8.10%	8.10%
WA Mutl 2005-AR18-1 (WAMU 2005-AR18 1A2)	0.00%	9.52%	9.52%
WA Mutl 2007-HY01-4 (WAMU 2007-HY1 4A1)	0.00%	4.67%	4.67%
WA Mutl 2007-HY02-1 (WAMU 2007-HY2 1A1)	0.00%	6.64%	6.64%
WFMBS 2007-10 (WFMBS 2007-10 1A10)	0.00%	14.29%	14.29%

Security (Certificate)	% of Loans with Greater than 100% LTV per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Prospectus Understatement
WFMBS 2006-10 (WFMBS 2006-10 A7)	0.00%	9.02%	9.02%
WFMBS 2007-4 (WFMBS 2007-4 A16)	0.00%	8.33%	8.33%
WFMBS 2007-11 (WFMBS 2007-11 A2)	0.00%	17.39%	17.39%

633. The following table lists the Certificates purchased by the Bank in which the LTV calculated using the AVM exceeds 90%, and lists the representation in the associated Offering Documents with respect to the percentage of the mortgages in the subject pool with LTVs greater than 90%. An LTV in excess of 90% represents an extremely risky mortgage for the investor, as the borrower has little equity in the property and there is a significant risk that upon foreclosure the collateral will be inadequate to pay the debt. Accordingly, for each of the Certificates listed in the following table, the statement regarding the mortgages in the subject pool with LTVs in excess of 90% was materially misleading.

Security (Certificate)	% of Loans with Greater than 90% LTV per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
BAMSI 2006-1 (BOAMS 2006-1 A1)	0.00%	34.96%	34.96%
BearStearnARM07-3-1 (BSARM 2007-3 1A1)	0.20%	28.69%	28.49%
CWMBS 2007-08 (CWHL 2007-8 1A5)	0.71%	34.62%	33.91%
Chase 2005-A02-1 (CHASE 2005-A2 1A4)	3.88%	22.22%	18.34%
CWMBS 2007-13 (CWHL 2007-13 A4)	1.09%	37.93%	36.84%
CSFB 2005-08-9 (CSFB 2005-8 9A1)	0.86%	29.63%	28.77%
GSR 2006-02F (GSR 2006-2F 3A1)	1.68%	22.22%	20.54%

Security (Certificate)	% of Loans with Greater than 90% LTV per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
GSR 2006-AR1-2 (GSR 2006-AR1 2A3)	0.23%	19.05%	18.82%
GSR 2006-01F (GSR 2006-1F 2A2)	0.65%	14.81%	14.61%
GSR 2005-07F (GSR 2005-7F 3A7)	0.57%	21.74%	21.17%
GSR 2005-03F (GSR 2005-3F 2A1)	0.93%	17.86%	16.93%
GSR-2005-1F (GSR 2005-1F 3A1)	1.22%	9.20%	7.98%
GSR 2005-02F (GSR 2005-2F 2A1)	3.08%	25.00%	21.92%
GSR 2006-06F (GSR 2006-6F 2A1)	0.37%	21.74%	21.37%
ResAstSecTr05-A11-2 (RAST 2005-A11 2A1)	3.68%	26.62%	22.94%
JPMorgan 05-A8-2 (JPMMT 2005-A8 2A2)	3.58%	21.95%	18.37%
RFC 2007-S04 (RFMSI 2007-S4 A4)	0.16%	32.69%	32.54%
RFC 2007-SA04-3 (RFMSI 2007-SA4 3A1)	0.81%	47.22%	46.41%
RFC 2006-S04 (RFMSI 2006-S4 A3)	0.89%	20.00%	19.11%
STARM 07-04-2 (STARM 2007-4 2A2)	0.32%	36.49%	36.17%
WA Mutl 2005-AR14-1 (WAMU 2005-AR14 1A2)	0.05%	12.57%	12.52%
WA Mutl 2005-AR16-1 (WAMU 2005-AR16 1A2)	0.00%	15.79%	15.79%
WA Mutl 2005-AR18-1 (WAMU 2005-AR18 1A2)	0.00%	15.79%	15.79%
WA Mutl 2007-HY01-4 (WAMU 2007-HY1 4A1)	0.00%	17.58%	17.58%
WA Mutl 2007-HY02-1 (WAMU 2007-HY2 1A1)	0.00%	18.25%	18.25%
WFMBS 2007-10-1 (WFMBS 2007-10 1A10)	1.15%	31.43%	30.28%
WFMBS 2006-10 (WFMBS 2006-10 A7)	0.50%	20.49%	20.00%
WFMBS 2007-04 (WFMBS 2007-4 A16)	0.70%	26.67%	25.97%

Security (Certificate)	% of Loans with Greater than 90% LTV per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
WFMBS 2007-11 (WFMBS 2007-11 A2)	1.26%	23.91%	22.65%

634. The following table lists the Certificates purchased by the Bank in which the LTV calculated using the AVM exceeds 80%, and lists the representation in the associated Offering Documents with respect to the percentage of the mortgages in the subject pool with LTVs greater than 80%. The 80% LTV metric is very significant to a PLMBS investor such as the Bank, because in traditional mortgage underwriting an LTV in excess of 80% was generally considered as affording the lender little value cushion to protect against borrower default and loss upon foreclosure. Accordingly, for each of the Certificates listed in the following table, the statement regarding the percentage of mortgages in the subject pool with LTVs in excess of 80% was materially misleading.

Security (Certificate)	% of Loans with Greater than 80% LTV per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
BAMSI 2006-1 (BOAMS 2006-1 A1)	2.51%	52.03%	49.52%
BearStearnARM07-3-1 (BSARM 2007-3 1A1)	1.29%	64.75%	63.46%
CWMBS 2007-08 (CWHL 2007-8 1A5)	2.36%	75.00%	72.64%
Chase 2005-A02-1 (CHASE 2005-A2 1A4)	5.87%	62.96%	57.09%
CWMBS 2007-13 (CWHL 2007-13 A4)	2.83%	75.86%	73.04%
CSFB 2005-08-9 (CSFB 2005-8 9A1)	2.29%	48.15%	45.86%
GSR 2006-02F-1 (GSR 2006-2F 3A1)	3.47%	39.06%	35.59%

Security (Certificate)	% of Loans with Greater than 80% LTV per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
GSR 2006-AR1-2 (GSR 2006-AR1 2A3)	1.37%	64.15%	62.78%
GSR 2006-01F-1 (GSR 2006-1F 2A2)	1.79%	51.85%	50.06%
GSR 2005-07F (GSR 2005-7F 3A7)	2.29%	34.78%	32.49%
GSR 2005-03F (GSR 2005-3F 2A1)	2.79%	46.43%	43.64%
GSR 2005-01F-2 (GSR 2005-1F 3A1)	6.08%	59.38%	53.30%
GSR 2005-02F (GSR 2005-2F 2A1)	6.35%	55.00%	48.65%
GSR 2006-06F-2 (GSR 2006-6F 2A1)	2.06%	46.94%	44.88%
ResAstSecTr05-A11-2 (RAST 2005-A11 2A1)	6.62%	51.33%	44.71%
JPMorgan 05-A8-2 (JPMMT 2005-A8 2A2)	5.40%	62.50%	57.10%
RFC 2007-S04 (RFMSI 2007-S4 A4)	3.58%	65.38%	61.80%
RFC 2007-SA04-3 (RFMSI 2007-SA4 3A1	3.25%	72.22%	68.97%
RFC 2006-S04 (RFMSI 2006-S4 A3)	5.78%	43.48%	37.70%
STARM 07-04-2 (STARM 2007-4 2A2)	0.96%	72.97%	72.01%
WA Mutl 2005-AR14-1 (WAMU 2005-AR14 1A2)	0.31%	37.70%	37.39%
WA Mutl 2005-AR16-1 (WAMU 2005-AR16 1A2)	0.09%	40.89%	40.80%
WA Mutl 2005-AR18-1 (WAMU 2005-AR18 1A2)	0.09%	37.57%	37.48%
WA Mutl 2007-HY01-4 (WAMU 2007-HY1 4A1)	0.59%	54.12%	53.53%
WA Mutl 2007-HY02-1 (WAMU 2007-HY2 1A1)	0.06%	55.35%	55.29%
WFMBS 2007-10-1 (WFMBS 2007-10 1A10)	3.56%	70.00%	66.44%
WFMBS 2006-10 (WFMBS 2006-10 A7)	1.84%	53.28%	51.44%

Security (Certificate)	% of Loans with Greater than 80% LTV per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
WFMBS 2007-04 (WFMBS 2007-4 A16)	2.40%	60.00%	57.60%
WFMBS 2007-11 (WFMBS 2007-11 A2)	3.42%	56.52%	53.10%

635. The following table lists mortgage pools securing the PLMBS purchased by the Bank in which the representation contained in the related Offering Documents with respect to the weighted average LTV of the mortgage pool securing those PLMBS was materially understated. The weighted average LTV representation is significant because it provides the investor with an important gauge as to the overall riskiness of the mortgage pool.

Security (Certificate)	Weighted Average LTV As Stated in Prospectus	Re-calculated Weighted Average LTV	Prospectus Understatement
BAMSI 2006-1 (BOAMS 2006-1 A1)	70.95%	79.32%	8.37%
BearStearnARM07-3-1 (BSARM 2007-3 1A1)	73.69%	81.77%	8.08%
CWMBS 2007-08 (CWHL 2007-8 1A5)	73.12%	76.99%	3.87%
Chase 2005-A02-1 (CHASE 2005-A2 1A4)	71.15%	88.09%	16.94%
CWMBS 2007-13 (CWHL 2007-13 A4)	72.39%	81.69%	9.30%
CSFB 2005-08-9 (CSFB 2005-8 9A1)	68.03%	78.38%	10.35%
GSR 2006-02F (GSR 2006-2F 3A1)	74.17%	79.91%	5.74%
GSR 2006-AR1-2 (GSR 2006-AR1 2A3)	72.04%	76.88%	4.84%
GSR 2006-01F GSR 2006-1F 2A2)	71.33%	75.66%	4.33%
GSR 2005-07F (GSR 2005-7F 3A7)	70.32%	75.16%	4.84%

Security (Certificate)	Weighted Average LTV As Stated in Prospectus	Re-calculated Weighted Average LTV	Prospectus Understatement
GSR 2005-03F (GSR 2005-3F 2A1	71.84%	74.93%	3.09%
GSR 2005-01F (GSR 2005-1F 3A1)	73.10%	75.78%	2.68%
GSR 2006-06F-1 (GSR 2006-6F 2A1)	70.88%	79.98%	9.10%
JPMorgan 05-A8-2 (JPMMT 2005-A8 2A2)	71.13%	74.48%	3.35%
RFC 2007-S04 (RFMSI 2007-S4 A4)	70.84%	79.10%	8.26%
RFC 2007-SA04-3 (RFMSI 2007-SA4 3A1)	71.40%	86.02%	14.62%
RFC 2006-S04 (RFMSI 2006-S4 A3)	69.82%	72.06%	2.24%
STARM 07-04-2 (STARM 2007-4 2A2)	73.07%	84.47%	11.40%
WA Mutl 2005-AR14-1 (WAMU 2005-AR14 1A2)	67.00%	72.30%	5.30%
WA Mutl 2005-AR16-1 (WAMU 2005-AR16 1A2)	64.00%	71.35%	7.35%
WA Mutl 2005-AR18-1 (WAMU 2005-AR18 1A2)	65.60%	73.44%	7.84%
WA Mutl 2007-HY01-4 (WAMU 2007-HY1 4A1)	71.80%	79.39%	7.59%
WA Mutl 2007-HY02-1 (WAMU 2007-HY2 1A1)	73.20%	79.11%	5.91%
WFMBS 2007-10-1 (WFMBS 2007-10 1A10)	72.92%	83.48%	10.56%
WFMBS 2006-10 (WFMBS 2006-10 A7)	71.38%	77.31%	5.93%
WFMBS 2007-4 (WFMBS 2007-4 A16)	72.38%	81.15%	8.77%
WFMBS 2007-11 (WFMBS 2007-11 A2)	73.15%	82.66%	9.51%

D. Defendants Misrepresented the Occupancy Status Rates.

1. The Materiality of Occupancy Status Rates

636. Residential real estate can be divided into the following occupancy status categories: primary residences, second homes, and investment properties. Mortgages on primary

residences are less risky because they are less likely to default than mortgages on non-owner-occupied residences. Thus, the percentage of loans in the asset pool of a securitization which are secured by mortgages on other than primary residences is a key indicator of the risk of certificates sold in the securitization. Occupancy status rates also influence prepayment patterns (which in turn affect the timing and payments on the PLMBS certificates).

637. For these reasons, the occupancy status of the collateral backing the mortgages in loan pools was material to the Bank's decision to invest in the PLMBS Certificates. The Offering Documents for each of the PLMBS the subject hereof contained specific assertions as to the occupancy status rates of the mortgages in the subject pools.

2. Evidence Demonstrating Misstatements about the Occupancy Status Rates

638. The following table lists mortgage pools securing the PLMBS purchased by the Bank, sets forth the assertion contained in the related Offering Documents with respect to the percentage of the mortgages that were on properties that were not the borrower's primary residence, and sets forth the non-primary residence occupancy status rates generated by a review of information contained in various public and private databases. The databases reviewed contain information regarding, *inter alia*, the address to which borrower's tax bills were sent, the addresses used by borrower's other creditors to send billings, whether borrowers claimed the property as a homestead under applicable law, and whether borrowers owned other properties of record and how the amount of the subject loan compared to the amounts of mortgage loans on other properties owned. As set forth in the following table, the occupancy status rates set forth in the Offering Documents for the PLMBS listed below were materially misstated, and materially misled the Bank regarding the true risk of the Certificates it purchased:

Security (Certificate)	% of Mortgage on Non-Primary Residence per Prospectus	% of Mortgages on Non-Primary Residence per Database Review	Prospectus Understatement
BearStearnARM07-3-1 (BSARM 2007-3 1A1)	6.46%	11.61%	5.15%
CWMBS 2007-08 (CWHL 2007-8 1A5)	8.49%	10.69%	2.20%
Chase 2005-A02-1 (CHASE 2005-A2 1A4)	5.75%	8.44%	2.69%
GSR 2005-07F (GSR 2005-7F 3A7)	5.94%	7.15%	1.21%
GSR 2005-03F (GSR 2005-3F 2A1)	7.32%	12.58%	5.26%
RFC 2007-S04 (RFMSI 2007-S4 A4)	4.34%	9.20%	4.86%
RFC 2006-S04 (RFMSI 2006-S4 A3)	2.80%	12.74%	9.94%
STARM 07-04-2 (STARM 2007-4 2A2)	2.24%	6.83%	4.59%
WA Mutl 2005-AR14-1 (WAMU 2005-AR14 1A2)	6.83%	9.30%	2.46%
WA Mutl 2005-AR16-1 (WAMU 2005-AR16 1A2)	7.83%	9.22%	1.39%
WA Mutl 2005-AR18-1 (WAMU 2005-AR18 1A2)	7.89%	12.12%	4.23%
WA Mutl 2007-HY02-1 (WAMU 2007-HY2 1A1)	6.39%	9.09%	2.70%
WFMBS 2006-10 (WFMBS 2006-10 A7)	9.48%	11.65%	2.17%
WFMBS 2007-04 (WFMBS 2007-4 A16)	4.60%	7.74%	3.14%
WFMBS 2007-11 (WFMBS 2007-11 A2)	5.60%	7.90%	2.30%

639. Furthermore, unbeknownst to the Bank, as described *supra* § V.C., borrower deception with respect to occupancy status was often encouraged by unscrupulous loan originators, including the originators of the mortgages that secured the PLMBS in this action, and was commonplace during the period pertaining to the Bank's purchase of these securities.

E. Defendants Misrepresented the Loan Documentation Process.

1. The Materiality of the Loan Documentation Process

640. Each set of Offering Documents contains assertions with respect to the percentages of the loans contained in the relevant pools that were originated using "full documentation" as compared to those using a more limited documentation, no documentation and/or "stated income." Because full documentation entailed a more rigorous form of underwriting, including substantiation of borrower claims as to income, assets, and employment, while the underwriting standards employed for the limited, no documentation and/or stated income were more lax, the assertion regarding the documentation process was material to the Bank in assessing the reliability of the data set forth in the Offering Documents and the riskiness of the offered PLMBS.

2. Evidence Demonstrating Misstatements about the Loan Documentation Process

641. As discussed above and confirmed by numerous Confidential Witnesses, in many instances mortgage originators manipulated the loan documentation process by encouraging or requiring applicants to utilize low or no documentation processes when information revealed through full documentation would have disqualified the borrower. In those instances, even the low or no doc designations understated the risk of the loans since the originators knew that many borrowers were unqualified. Statements in the Offering Documents regarding the documentation process were misleading because they failed to disclose the originators' manipulation of the process.

642. In addition, the data provided in the Offering Documents regarding the number of full documentation loans was misleading with respect to several of the PLMBS purchased by the Bank. The following table sets forth the percentage of full documentation loans as set forth in

the pertinent prospectuses, and the percentage determined through a review of information recently provided by loan servicers. As to each of these PLMBS, the prospectus statement with respect to full documentation was materially misleading:

Security (Certificate)	% of Mortgages Originated Using Full Documentation per the Prospectus	% of Mortgages Originated Using Full Documentation Based on Information Provided by Servicers	Prospectus Overstatement
BAMSI 2006-1 (BOAMS 2006-1 A1)	26.36%	18.41%	7.95%
BearStearnARM07-3-1 (BSARM 2007-3 1A1)	41.05%	29.17%	11.88%
CWMBS 2007-08 (CWHL 2007-8 1A5)	36.37%	18.42%	17.95%
GSR 2006-06F-2 (GSR 2006-6F 2A1)	63.65%	32.93%	30.72%
JPMorgan 05-A8-2 (JPMMT 2005-A8 2A2)	20.29%	10.59%	9.70%
RFC 2007-S04 (RFMSI 2007-S4 A4)	48.78%	30.08%	18.70%
WA Mutl 2005-AR14-1 (WAMU 2005-AR14 1A2)	28.20%	17.99%	10.21%
WA Mutl 2005-AR16-1 (WAMU 2005-AR16 1A2)	20.11%	10.66%	9.45%
WA Mutl 2005-AR18-1 (WAMU 2005-AR18 1A2	23.31%	9.57%	13.74%
WFMBS 2007-10-1 (WFMBS 2)007-10 1A10)	41.70%	25.96%	15.74%
WFMBS 2006-10 (WFMBS 2006-10 A7)	43.12%	13.11%	30.01%
WFMBS 2007-04 (WFMBS 2007-4 A16)	55.44%	24.49%	30.95%
WFMBS 2007-11 (WFMBS 2007-11 A2)	44.33%	25.97%	18.36%

F. Defendants' Statements Regarding the AAA Rating of the PLMBS Were False and Misleading.

1. The Materiality of the Credit Rating Process and Ratings

643. The Bank only was authorized to purchase investment grade, AAA-rated tranches of the Certificates. Hence, the ratings issued by the Credit Rating Agencies were manifestly material to the Bank's decision to purchase the PLMBS at issue in this case. The ratings, moreover, purported to assess the risk of the securities and the likelihood that the bank would receive the payments contemplated by the securities. Thus, the ratings provided material information for investors, including the Bank.

2. False Representations That the Certificates the Bank Purchased Would Not Be Issued Unless They Earned Triple-A Ratings

644. As alleged above, the Credit Rating Agencies knew that the ratings were unreliable and substantially understated the riskiness of the mortgage loans which underlie the PLMBS. Consequently, the Credit Rating Agencies knew that the PLMBS did not in fact possess the characteristics necessary to qualify for accurate, bona fide triple-A ratings.

645. All the Offering Documents for the PLMBS in this action stated that it was "a condition to the issuance of the offered certificates" purchased by the Bank that those Certificates received triple-A ratings. *See* Appendix IV. The representation that the Certificates the Bank purchased would not have been issued unless they had received triple-A ratings was misleading because the Certificates had not received accurate, bona fide triple-A ratings. The triple-A ratings the Certificates received were fundamentally flawed because they were based on information about the underlying assets that was factually inaccurate.

3. Misstatements about the Credit Rating Process and Ratings

646. The Offering Documents misstated and omitted material information about the ratings issued by the Credit Rating Agencies and the rating process. Each Prospectus contained

disclosures regarding the ratings process, and the purpose and bases of the ratings. Appendix IV attached hereto and incorporated herein sets forth those statements and omissions. For example, the CHL Mortgage Pass-Through Trust 2007-8 Prospectus Supplement states:

> The ratings assigned by Fitch to mortgage pass-through certificates ***address the likelihood of the receipt of all distributions on the mortgage loans by the related certificate holders under the agreements pursuant to which the certificates are issued***. Fitch's ratings take into consideration the ***credit quality of the related mortgage pool,*** including any credit support providers, structural and legal aspects associated with the certificates, ***and the extent to which the payment stream on the mortgage pool is adequate to make the payments required by the certificates***. The ratings assigned by Fitch to the notional amount certificates do not address whether investors will recoup their initial investment . . . . The rating assigned by Fitch to the Class A-R Certificates only addresses the return of its Class Certificate Balance and interest thereon at its pass-through rate.
>
> . . .
>
> The ratings assigned by S&P to mortgage pass-through certificates ***address the likelihood of the receipt of all distributions on the Mortgage Loans by the related certificateholders under the agreements pursuant to which the certificates are issued.*** S&P's ratings take into consideration the ***credit quality of the related mortgage pool,*** including any credit support providers, structural and legal aspects associated with the certificates, ***and the extent to which the payment stream on the mortgage pool is adequate to make the payments required by the certificates.*** The ratings assigned by S&P to the notional amount certificates do not address whether investors will recoup their initial investment. The rating assigned by S&P to the Class A-R Certificates only addresses the return of its Class Certificate Balance and interest thereon at its pass-through rate.
>
> The ratings of the rating agencies listed above do not address the possibility that, as a result of principal prepayments, certificateholders may receive a lower than anticipated yield.
>
> The security ratings assigned to the offered certificates should be evaluated independently from similar ratings on other types of securities. A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating agencies.

CWHL 2007-8 Pros. Sup. S-99.

647. These disclosures, however, were incomplete, inaccurate and misleading. Specifically, the Offering Documents misrepresented and omitted the following material information:

- The Offering Documents did not disclose the Credit Rating Agencies' conflicts of interests, which compromised the rating process;
- The Offering Documents did not disclose the manipulation of the credit rating process and "ratings shopping" by issuers and underwriters;
- The Offering Documents did not disclose that the credit ratings were based on false and misleading information with respect to underwriting standards, loan-to-value ratios and other matters pertaining to the mortgages that secured the PLMBS purchased by the Bank;
- The Offering Documents did not disclose the scope and limitations of the Credit Rating Agencies' rating models, including the fact that they relied on outdated data and failed to adequately protect against misinformation provided by issuers and borrowers; and
- The Offering Documents did not disclose that the investment grade ratings stated and discussed in the Offering Documents failed to reflect the true credit risk of the PLMBS purchased by the Bank.

648. In sum, the ratings provided by the Credit Rating Agencies did not in fact assess the likelihood of the receipt of all payments on the mortgage loans by the related Certificate holders under the agreements pursuant to which such Certificates are issued, the credit quality of the related mortgage pool, or the extent to which the payment stream on the mortgage pool was adequate to make the payments required by such Certificates. As a result, the statements in the Offering Documents regarding the ratings assigned by the Credit Rating Agencies and the rating process materially misled the Bank regarding the true risk of the Certificates it purchased.

4. Evidence Demonstrating Misstatements about the Ratings and Ratings Process

649. As alleged in detail above, *see supra* § V.E., the credit rating process was deeply flawed and plagued by conflicts of interest, issuer and underwriter manipulation, misinformation

and faulty and outdated models, among other problems. Furthermore, as alleged above, the Depositor/Issuers manipulated the rating process through ratings shopping, through their direct involvement in the rating process, and their knowledge that the loan pools were of far worse quality than represented. As set forth above, these allegations are all well documented in government investigations, other litigation, and press reports. This evidence – and the allegations herein based on this evidence – demonstrates that the statements in the Offering Documents regarding the ratings and the rating process are false and misleading.

650. In addition, the en masse downgrade of the PLMBS purchased by the Bank from triple-A to junk status indicates that the initial ratings were incorrect and without any legitimate basis. Likewise, delinquency and foreclosure rates indicate that the PLMBS were far riskier and more prone to loss than the initial ratings indicated. As explained above, the Defendants, by virtue of their access to information held by their corporate affiliates and their involvement in the securitization and due diligence process, *see supra* § V.D, had access to information about the quality of the loan pools and should have known that the bundled Certificates, even though tranched and credit-enhanced, did not possess the characteristics of a triple-A-rated investment; and that the rating resulted from inaccurate information about the underwriting standards actually used in originating the mortgages backing the PLMBS. No Defendant informed the Bank that the ratings were unreliable as a result of the Credit Rating Agencies' failure to take into account the actual underwriting standards being used by mortgage originators, that the models used to produce the credit ratings were inaccurate and outdated, that the ratings were the product of reverse-engineering and conflicts of interest, and that the ratings were not anywhere near as reliable as the ratings given to other financial instruments such as corporate bonds. As a result, the rating misrepresented the risk of the PLMBS purchased by the Bank.

651. The following table sets forth the original face amounts and ratings of the securities that are the subject of this action, and the first date on which such securities' ratings were downgraded to below investment grade:

Ticker	Original Face Amount	Moody's Original Rating	S&P Original Rating	Fitch Original Rating	Date First Downgrade to Below Investment Grade
BOAMS 2006-1 A1	$70,000,000	Aaa	n/a	AAA	12/9/08
BSARM 2007-3 1A1	$96,221,210	n/a	AAA	AAA	4/8/09
CWHL 2007-8 1A5	$100,306,000	n/a	AAA	AAA	9/15/08
CWHL 2005-8R A1	$100,000,000	Aaa	n/a	AAA	
CHASE 2005-A2 1A4	$42,330,700	n/a	AAA	AAA	7/1/09
CWHL 2007-13 A4	$54,755,000	NR	AAA	AAA	6/22/09
CSFB 2005-8 9A1	$64,454,000	Aaa	AAA	n/a	2/25/09
GSR 2006-2F 3A1	$86,000,000	n/a	AAA	AAA	7/1/09
GSR 2006-AR1 2A3	$56,658,000	n/a	AAA	AAA	7/21/09
GSR 2006-1F 2A2	$100,000,000	NR	AAA	AAA	9/10/09
GSR 2005-7F 3A7	$105,000,000	Aaa	AAA	n/a	
GSR 2005-3F 2A1	$53,899,000	Aaa	n/a	AAA	4/27/10
GSR 2005-1F 3A1	$143,000,000	n/a	AAA	AAA	
GSR 2005-2F 2A1	$105,000,000	n/a	AAA	AAA	
GSR 2006-6F 2A1	$103,000,000	Aaa	n/a	AAA	7/1/09
RAST 2005-A11 2A1	$82,019,000	Aaa	AAA	n/a	2/11/09
JPMMT 2005-A8 2A2	$54,125,700	Aaa	AAA	n/a	5/21/09
RFMSI 2007-S4 A4	$90,360,000	Aaa	AAA	AAA	12/5/08
RFMSI 2007-SA4 3A1	$99,160,206	n/a	AAA	AAA	2/23/09
RFMSI 2006-S4 A3	$94,464,000	n/a	AAA	AAA	6/22/09
STARM 2007-4 2A2	$95,418,000	Aaa	AAA	AAA	1/29/09
WAMU 2005-AR14 1A2	$143,860,000	n/a	AAA	AAA	8/7/09
WAMU 2005-AR16 1A2	$93,831,000	n/a	AAA	AAA	7/8/09
WAMU 2005-AR18 1A2	$106,000,000	n/a	AAA	AAA	9/10/09
WAMU 2007-HY1 4A1	$59,874,246	n/a	AAA	AAA	4/8/09
WAMU 2007-HY2 1A1	$112,889,185	n/a	AAA	AAA	3/19/09
WFMBS 2007-10 1A10	$100,000,000	Aaa	n/a	AAA	12/16/08
WFMBS 2006-10 A7	$165,000,000	Aaa	n/a	AAA	4/12/10
WFMBS 2007-4 A16	$59,618,990	Aaa	n/a	AAA	12/16/08
WFMBS 2007-11 A2	$100,000,000	Aaa	n/a	AAA	4/23/09

G. Defendants Misrepresented the Due Diligence Performed on the Mortgage Pools that Backed the PLMBS Purchased by the Bank.

1. The Materiality of Due Diligence on the Mortgage Pools

652. As alleged in detail above, the Bank did not have access to the loan file information generated at the time the loans were issued; only the Defendants had access to this information. Consequently, the Bank was dependent on representations made by the Defendants regarding the quality of the mortgage loans backing the PLMBS it purchased.

653. Defendants made two types of representations regarding the acquisition of mortgages that were originated by third-party originators. First, the Defendants represented that certain of the originators that are identified in the Offering Documents conducted post-purchase due diligence reviews of a sampling of mortgages they acquired from third-party originators. Second, with respect to certain PLMBS backed by mortgages acquired by sponsors from unaffiliated originators, the Defendants represented that the sponsors conducted due diligence reviews of the mortgages prior to their acquisition and securitization. In both cases, these due diligence reviews allegedly were undertaken to ensure that the mortgages were of adequate credit quality and that they were underwritten in compliance with applicable underwriting standards.

654. The representations regarding the underwriting standards employed by the originators and those regarding the sponsor's due diligence reviews of the mortgage loans provided the Bank with critical reassurances that the overall credit quality of the mortgage pools securing the PLMBS it purchased were as represented in the Offering Documents. The Bank relied on these representations in making its decisions to purchase these Certificates.

2. Misstatements about Due Diligence

655. The Offering Documents provided to the Bank contained material untrue or misleading statements and omitted material information regarding the due diligence purportedly

conducted by the sponsors and originators when they acquired mortgages from third-party originators. For example, Wells Fargo Mortgage Backed Securities 2007-10 Trust Prospectus provides the following with respect to mortgages acquired by Wells Fargo from third parties:

> The contractual arrangements with Correspondents may . . . involve the delegation of all underwriting functions to . . . Correspondents, which will result in Wells Fargo Bank not performing any underwriting functions prior to acquisition of the loan but instead relying on . . . , in the case of bulk purchase acquisitions from such Correspondents, ***Wells Fargo Bank's post-purchase reviews of samplings of mortgage loans acquired from such Correspondents regarding the Correspondents' compliance with Wells Fargo Bank's underwriting standards.*** In all instances, however, acceptance by Wells Fargo Bank is contingent upon the loans being found to satisfy Wells Fargo Bank's program standards or the standards of a pool insurer.

WFMBS 2007-10 Pros. 32. Substantively similar provisions regarding a mortgage Originator's due diligence reviews of acquired mortgages were included in the Prospectuses for many of the PLMBS purchased by the Bank. Appendix V attached hereto and incorporated herein sets forth those statements.

656. Additionally, as an example of the representations made regarding a sponsor's due diligence reviews of acquired mortgages, the GSR Mortgage Loan Trust 2006-2F Prospectus Supplement provides:

> Prior to acquiring any mortgage loans, GSMC will conduct a review of the related mortgage loan seller. GSMC's review process consists of reviewing select financial information for credit and risk assessment and underwriting guideline review, senior level management discussion and background checks. The scope of the loan due diligence will depend on the credit quality of the mortgage loans.

GSR 2006-2F Pros. Sup. S-72.

657. Substantively similar provisions were included in the Prospectuses for many of the PLMBS purchased by the Bank. Appendix V attached hereto and incorporated herein sets forth those statements. These statements were materially misleading because they omit to state the following information:

- The sponsors and originators routinely manipulated the due diligence process by determining the type and scope of review performed and pressuring the third-party due diligence firms to ignore deviations from the applicable underwriting criteria without regard to whether "compensating factors" were present;

- The sponsors and originators instructed the third-party originators to review fewer loans in loan pools as the securitization market grew, with the percentage of loans reviewed falling from between 25 and 40% early in the decade to between 5 and 10% by 2006;

- The level of due diligence performed by sponsors and originators of mortgages backing PLMBS deviated substantially from the level of due diligence performed by purchasers of mortgages who retained those mortgages as investments;

- The sponsors did not undertake any legitimate effort to determine whether the originators had satisfied their stated underwriting guidelines or the sponsor's purported standards; and instead allowed defective loans to be included in the loan pools for securitization;

- Due diligence review conducted by third-party underwriters often overlooked questionable claims by borrowers in stated income and other reduced documentation loans;

- The third-party underwriters informed the sponsors and originators that a substantial percentage of loans in the loans pools backing PLMBS were defective;

- The sponsors and originators nonetheless waived the defects as to a substantial percentage of these loans;

- In many cases, these reportedly defective loans were not removed from PLMBS deals, but rather were used by the sponsors to negotiate lower prices for the pools of mortgages (or individual mortgages) they acquired and subsequently securitized; and

- Where defective loans in the sample were removed from the pool, no further review was conducted to ensure that none of the remaining 90% of the mortgages was plagued by similar defects as those in the sample.

3. Evidence of Misstatements about Due Diligence

658. As alleged in detail above, *see supra* §§ V.D.4 and V.D.5, the manipulation and disregard of the third-party due diligence process by sponsors and originators of mortgages backing PLMBS, including those PLMBS purchased by the Bank, is documented in public testimony and press reports, as well as confidential witness statements discussed above. This

evidence – and the allegations herein based on this evidence – demonstrates that the statements in and omissions from the Offering Documents regarding the due diligence review process were materially false and misleading.

H. Defendants Misrepresented That Mortgages and Mortgage Loans Were Validly Assigned and Transferred to the Issuing Trusts.

1. The Materiality of Valid Assignment and Transfer

659. PLMBS have value because they are backed by income streams from loans and by the collateral that secure the loans. If mortgage notes and mortgages are not enforceable by the trust that issues the PLMBS, then the PLMBS are impaired. For that reason, the valid assignment and transfer of mortgage notes and mortgages in accordance with the procedures laid out in the Offering Documents was material to the Bank's decision to purchase the PLMBS Certificates at issue here.

2. Misstatements Regarding Procedures for Valid Assignment and Transfer

660. The Offering Documents misrepresented that all promissory notes had been or would be validly transferred to the trusts that issued the PLMBS Certificates.

661. By way of example, the Offering Documents for CWHL 2007-13 A4 state:

> [T]he depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to all other assets included in Alternative Loan Trust 2005-86CB, including all principal and interest received on or with respect to the Closing Date Mortgage Loans . . . .
>
> In connection with the transfer and assignment of a mortgage loan, the depositor will deliver or cause to be delivered to the trustee, or a custodian for the trustee, . . . the original mortgage note . . . endorsed in blank without recourse . . . .
>
> The trustee will review each mortgage file relating to the Closing Date Mortgage Loans within 90 days of the closing date . . . , and if any document in a mortgage file is found to be missing or defective in a material respect and [the defect is not cured within 90 days of notice, the defective mortgage loan must be repurchased].
>
> . . . .

> At the time of issuance of the certificates of a series, the depositor will cause the mortgage loans comprising the related trust fund to be assigned to the trustee, together with all principal and interest received by or on behalf of the depositor on or with respect to the mortgage loans after the cut-off date, other than principal and interest due on or before the cut-off date and other than any retained interest specified in the related prospectus supplement. . . . In addition, the depositor will deliver or cause to be delivered to the trustee (or to the custodian) for each mortgage loan the mortgage note endorsed without recourse in blank or to the order of the trustee, except that the depositor may deliver or cause to be delivered a lost note affidavit in lieu of any original mortgage note that has been lost . . . .
>
> . . . .
>
> The trustee (or the custodian) will review the mortgage loan documents within [90 days] . . . . Generally, if the document is found to be missing or defective in any material respect, the trustee (or the custodian) will notify the master servicer and the depositor, and the master servicer will notify the related seller. If the seller cannot cure the omission or defect within [90 days], the seller will be obligated to purchase the related mortgage loan from the trustee at the purchase price or, if so specified in the related prospectus supplement, replace the mortgage loan with another mortgage loan that meets specified requirements.

CWHL 2007-13 A4 Pros. Sup. S-28-29; CWHL 2007-13 A4 Pros. 54-55.

662. As *Kemp* and other cases show, the procedure specified in the Offering Documents was not followed. Mortgage notes were not properly endorsed by the originators, such that the depositor could in turn properly endorse the note. Possession of the notes was not transferred to the trustee, custodian, or agent of the trustee.

663. Further, where the procedure was not followed, the defective loans have not been repurchased or substituted, as represented in the Offering Documents.

3. A Material Number of Mortgages and Mortgage Notes Were Not Validly Transferred or Assigned to the Issuing Trusts in Accordance with the Offering Documents

664. As alleged above, *see supra* § V.F, a material number of the promissory notes backing the PLMBS were not validly transferred to the trust in accordance with the procedures outlined in the Offering Documents, as is necessary before those notes can be enforced under

applicable state law. Where those procedures were not followed, the defective loan was not repurchased or substituted, as represented in the Offering Documents.

665. As alleged above, *see supra* § V.F, a material number of the mortgages backing the PLMBS were not validly assigned to the trust in accordance with the procedures outlined in the Offering Documents, as is necessary before those mortgages may be enforced under applicable state law. Where those procedures were not followed, the defective loan was not repurchased or substituted, as represented in the Offering Documents.

666. Thus, statements in relevant Offering Documents that mortgages and mortgage notes were validly assigned and transferred to the issuing trust in accordance with specified procedures—and that loans that were defective in this respect would be repurchased or substituted—were false and misleading.

VII. COUNTS

FIRST CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS IN THE SALE OF SECURITIES

(Indiana Uniform Securities Act, IC § 23-19-5-1(2) and IC § 23-19-5-9)

667. This cause of action is alleged jointly and severally against the following Defendants in connection with the sale of the following securities:

Security	Defendant	As
BOAMS 2006-1 A1	Banc of America Securities LLC	Underwriter/Seller
	Bank of America Corporation	Controlling Person
BSARM 2007-3 1A1	Banc of America Securities LLC	Seller
	Bank of America Corporation	Controlling Person
CWHL 2007-8 1A5	Credit Suisse Securities (USA) LLC	Underwriter/Seller
	Credit Suisse (USA), Inc.	Controlling Person
	Credit Suisse Holdings (USA), Inc.	Controlling Person

Security	Defendant	As
CWHL 2005-8R A1	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
CHASE 2005-A2 1A4	J.P. Morgan Securities Inc.	Underwriter/Seller
	JPMorgan Chase & Co.	Controlling Person
	JPMorgan Securities Holdings LLC	Controlling Person
CWHL 2007-13 A4	Bear, Stearns & Co. Inc.	Underwriter/Seller
CSFB 2005-8 9A1	Credit Suisse First Boston LLC	Underwriter/Seller
	Credit Suisse (USA), Inc.	Controlling Person
	Credit Suisse Holdings (USA), Inc.	Controlling Person
GSR 2006-2F 3A1	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
GSR 2006-AR1 2A3	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
GSR 2006-1F 2A2	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
GSR 2005-7F 3A7	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
GSR 2005-3F 2A1	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
GSR 2005-1F 3A1	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
GSR 2005-2F 2A1	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person

Security	Defendant	As
GSR 2006-6F 2A1	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
RAST 2005-A11 2A1	UBS Securities LLC	Underwriter/Seller
JPMMT 2005-A8 2A2	J.P. Morgan Securities Inc.	Underwriter/Seller
	JPMorgan Chase & Co.	Controlling Person
	JPMorgan Securities Holdings LLC	Controlling Person
RFMSI 2007-S4 A4	Greenwich Capital Markets, Inc.	Underwriter/Seller
RFMSI 2007-SA4 3A1	Credit Suisse Securities (USA) LLC	Seller
	Credit Suisse (USA), Inc.	Controlling Person
	Credit Suisse Holdings (USA), Inc.	Controlling Person
RFMSI 2006-S4 A3	Greenwich Capital Markets, Inc.	Underwriter/Seller
STARM 2007-4 2A2	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
WAMU 2005-AR16 1A2	JP Morgan Securities, Inc.	Underwriter/Seller
	JPMorgan Chase & Co.	Controlling Person
	JPMorgan Securities Holdings LLC	Controlling Person
WAMU 2005-AR18 1A2	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person
WAMU 2007-HY1 4A1	Credit Suisse Securities (USA) LLC	Seller
	Credit Suisse (USA), Inc.	Controlling Person
	Credit Suisse Holdings (USA), Inc.	Controlling Person

Security	Defendant	As
WAMU 2007-HY2 1A1	Banc of America Securities LLC	Seller
	Bank of America Corporation	Controlling Person
WFMBS 2007-10 1A10	UBS Securities LLC	Underwriter/Seller
WFMBS 2006-10 A7	Credit Suisse Securities (USA) LLC	Underwriter/Seller
	Credit Suisse (USA), Inc.	Controlling Person
	Credit Suisse Holdings (USA), Inc.	Controlling Person
WFMBS 2007-4 A16	Greenwich Capital Markets, Inc.	Underwriter/Seller
WFMBS 2007-11 A2	Goldman, Sachs & Co.	Underwriter/Seller
	The Goldman Sachs Group Inc.	Controlling Person

668. The Bank hereby incorporates by reference, as though fully set forth herein, all Paragraphs above.

669. The Defendants listed above either directly sold, or materially aided in the direct sale of, the Certificates for these securities to the Bank.

670. In doing the acts alleged in selling to the Bank the Certificates in the securitizations referred to above, the Underwriters, Sellers, and Issuer/Depositor Defendants violated IC § 23-19-5-1(2) by making untrue statements of material facts or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

671. In doing the acts alleged in selling to the Bank the Certificates in the securitizations referred to above, the Underwriters, Sellers, and Issuer/Depositor Defendants

violated IC § 23-19-5-1(3) by engaging in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon the Bank as the purchaser of these securities.

672. The Controlling Person Defendants directly or indirectly control the Issuer/Depositor Defendants and/or Underwriter Defendants as set forth above and are therefore liable jointly and severally with and to the same extent as the Issuer/Depositor Defendants and Underwriter Defendants.

673. Defendants solicited the sale of these securities in Indiana, the Bank accepted the offers of sale for these securities in Indiana, and the purchase and sale of these securities was made in Indiana.

674. Upon their purchase, the Bank received these securities in Indiana.

675. In connection with their offer and sale of these securities to the Bank, Defendants sent numerous documents to the Bank at its office in Marion County. These documents included the prospectus and prospectus supplement filed with the SEC for each securitization, registration statements, summary term sheets, and other documents. In these documents, Defendants made statements of material fact about the Certificates they offered and sold to the Bank.

676. In purchasing the Certificates that are the subject of this cause of action, the Bank did not know that the material misstatements incorporated in and material information omitted from the documents provided by Defendants to the Bank were untrue.

677. Defendants' misstatements and omissions alleged herein were material and were central to the Bank's decision to purchase these Certificates. If Defendants had not engaged in these material misstatements or material omissions, and had instead provided full and accurate disclosures, the Bank would not have purchased the Certificates at issue.

678. The Bank has suffered a loss on each of these Certificates.

679. The Bank has identified litigation that provides for tolling of the statute of limitations on this claim for securities BSARM 2007-3 1A1, CWHL 2007-8 1A5, CWHL 2007-13 A4, STARM 2007-4 2A2, WAMU 2007-HY1 4A1, WAMU 2007-HY2 1A1, WFMBS 2007-10 1A10, WFMBS 2006-10 A7, WFMBS 2007-4 A16, and WFMBS 2007-11 A2. The Bank will amend this complaint as appropriate as it identifies additional actions that provide for tolling of the statute for additional securities purchased by the Bank.

680. This action is brought within three years after the Bank's discovery of the violations alleged in this Cause of Action, or within any applicable period as tolled by the pendency of other actions. *See* ¶ 709. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements or omissions in the prospectus supplements and other documents and the other violations of the Indiana Uniform Securities Act alleged in this Count.

681. Despite being armed with subpoena power, it took the Senate Permanent Subcommittee on Investigations two years, and the Financial Crisis Inquiry Commission a year and a half, to complete their investigations into the mortgage crisis. The FCIC reviewed millions of pages of documents, interviewed over 700 different witnesses, conducted 19 days of public hearings, and released its 662-page report in January 2011. The Senate Subcommittee conducted 150 interviews and depositions, accumulated and reviewed tens of millions of pages of documents, held multiple public hearings, and on April 13, 2011, published its 646-page report detailing the origins of the financial crisis.

682. The vast majority of information upon which the Bank's claims are based, including internal documents revealed through government investigations, an analysis of the characteristics and performance of the loan pools conducted by an outside consultant, and the

confidential witness statements by former employees of originators, was not available before October 15, 2008.

683. Furthermore, the Defendants and their affiliates have denied and disputed, and continue to deny and dispute, the conduct alleged in the Complaint, including, but not limited to, that the mortgage originators who issued the loans backing the PLMBS sold, sponsored, issued, or underwritten by the Defendants had abandoned their stated underwriting guidelines when issuing loans for securitization. The Defendants and their affiliates also controlled access to and refused to provide to investors the mortgage loan origination files that were generated by the mortgage originators when the loans backing the PLMBS were issued. The loan files are key evidence of the abandonment of underwriting guidelines, and in their absence, the Bank, like other investors, must assemble information from disparate sources in order to obtain sufficient information to substantiate its claims. The Bank has diligently and timely pursued this investigation, and the filing of its Complaint.

684. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct. This cause of action is based solely on claims of strict liability or negligence under the Indiana Uniform Securities Act.

685. Under IC § 23-19-5-9, the Bank is entitled to void the transaction and have Defendants pay the Bank, jointly and severally, the consideration paid for each security, less the amount of any income received on the security, plus interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the purchase, plus costs and reasonable attorneys' fees, upon the tender of the security. If the Bank has sold any Certificate, the Bank is entitled to actual damages, plus interest at the greater of eight percent (8%) per

annum or the rate provided for in the security from the date of the purchase, plus costs and reasonable attorneys' fees.

SECOND CAUSE OF ACTION

NEGLIGENCE UNDER THE COMMON LAW

686. This cause of action is alleged against the following Defendants in connection with the sale of the following securities:

Against Defendant:	As	In connection with Security:
Banc of America Mortgage Securities, Inc.	Depositor	BOAMS 2006-1 A1
Chase Mortgage Finance Corporation	Depositor	CHASE 2005-A2 1A4
Credit Suisse First Boston Mortgage Securities Corp.	Depositor	CSFB 2005-8 9A1
CWMBS, Inc.	Depositor	CWHL 2007-8 1A5 CWHL 2005-8R A1 CWHL 2007-13 A4
GS Mortgage Securities Corp.	Depositor	GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-1F 2A2 GSR 2005-7F 3A7 GSR 2005-3F 2A1 GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2006-6F 2A1 STARM 2007-4 2A2
IndyMac MBS, Inc.	Depositor	RAST 2005-A11 2A1
J.P. Morgan Acceptance Corporation I	Depositor	JPMMT 2005-A8 2A2
Residential Funding Mortgage Securities I, Inc.	Depositor	RFMSI 2007-S4 A4 RFMSI 2007-SA4 3A1 RFMSI 2006-S4 A3
Structured Asset Mortgage Investments II Inc.	Depositor	BSARM 2007-3 1A1
WaMu Asset Acceptance Corp.	Depositor	WAMU 2005-AR14 1A2 WAMU 2005-AR16 1A2 WAMU 2005-AR18 1A2 WAMU 2007-HY1 4A1 WAMU 2007-HY2 1A1
Wells Fargo Asset Securities Corporation	Depositor	WFMBS 2007-10 1A10 WFMBS 2006-10 A7 WFMBS 2007-4 A16 WFMBS 2007-11 A2

Against Defendant:	As	In connection with Security:
Banc of America Securities LLC	Underwriter and/or Seller	BOAMS 2006-1 A1 BSARM 2007-3 1A1 WAMU 2007-HY2 1A1
Bear, Stearns & Co. Inc.	Underwriter and/or Seller	BSARM 2007-3 1A1 CWHL 2007-13 A4
Credit Suisse First Boston LLC	Underwriter and/or Seller	CWHL 2007-8 1A5 CSFB 2005-8 9A1 RFMSI 2007-SA4 3A1 WAMU 2007-HY1 4A1 WFMBS 2006-10 A7
Goldman, Sachs & Co.	Underwriter and/or Seller	CWHL 2005-8R A1 GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-1F 2A2 GSR 2005-7F 3A7 GSR 2005-3F 2A1 GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2006-6F 2A1 STARM 2007-4 2A2 WAMU 2005-AR18 1A2 WFMBS 2007-11 A2
Greenwich Capital Markets, Inc.	Underwriter and/or Seller	RFMSI 2007-S4 A4 RFMSI 2006-S4 A3 WFMBS 2007-4 A16
J.P. Morgan Securities Inc.	Underwriter and/or Seller	CHASE 2005-A2 1A4 JPMMT 2005-A8 2A2 WAMU 2005-AR16 1A2
Residential Funding Securities, LLC	Underwriter	RFMSI 2007-SA4 3A1
UBS Securities LLC	Underwriter and/or Seller	RAST 2005-A11 2A1 WFMBS 2007-10 1A10
WaMu Capital Corp.	Underwriter	WAMU 2005-AR14 1A2 WAMU 2005-AR16 1A2 WAMU 2005-AR18 1A2 WAMU 2007-HY1 4A1 WAMU 2007-HY2 1A1
Bank of America Corporation	Controlling Person	BOAMS 2006-1 A1 BSARM 2007-3 1A1 WAMU 2007-HY2 1A1
Countrywide Financial Corporation	Controlling Person	CWHL 2007-8 1A5 CWHL 2005-8R A1 CWHL 2007-13 A4

Against Defendant:	As	In connection with Security:
Credit Suisse (USA), Inc.	Controlling Person	CWHL 2007-8 1A5 CSFB 2005-8 9A1 RFMSI 2007-SA4 3A1 WAMU 2007-HY1 4A1 WFMBS 2006-10 A7
Credit Suisse Holdings (USA), Inc.	Controlling Person	CWHL 2007-8 1A5 CSFB 2005-8 9A1 RFMSI 2007-SA4 3A1 WAMU 2007-HY1 4A1 WFMBS 2006-10 A7
GMAC Inc.	Controlling Person	RFMSI 2007-S4 A4 RFMSI 2007-SA4 3A1 RFMSI 2006-S4 A3
GMAC Mortgage Group, Inc.	Controlling Person	RFMSI 2007-S4 A4 RFMSI 2007-SA4 3A1 RFMSI 2006-S4 A3
Goldman Sachs Mortgage Company	Controlling Person	GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-1F 2A2 GSR 2005-7F 3A7 GSR 2005-3F 2A1 GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2006-6F 2A1
JPMorgan Chase & Co.	Controlling Person	CHASE 2005-A2 1A4 JPMMT 2005-A8 2A2 WAMU 2005-AR16 1A2
JPMorgan Securities Holdings LLC	Controlling Person	CHASE 2005-A2 1A4 JPMMT 2005-A8 2A2 WAMU 2005-AR16 1A2
The Bear Stearns Companies Inc.	Controlling Person	BSARM 2007-3 1A1 CWHL 2007-13 A4
The Goldman Sachs Group Inc.	Controlling Person	CWHL 2005-8R A1 GSR 2006-2F 3A1 GSR 2006-AR1 2A3 GSR 2006-1F 2A2 GSR 2005-7F 3A7 GSR 2005-3F 2A1 GSR 2005-1F 3A1 GSR 2005-2F 2A1 GSR 2006-6F 2A1 STARM 2007-4 2A2 WAMU 2005-AR18 1A2 WFMBS 2007-11 A2

Against Defendant:	As	In connection with Security:
Wells Fargo & Company	Controlling Person	WFMBS 2007-10 1A10 WFMBS 2006-10 A7 WFMBS 2007-4 A16 WFMBS 2007-11 A2
Wells Fargo Bank, National Association	Controlling Person	WFMBS 2007-10 1A10 WFMBS 2006-10 A7 WFMBS 2007-4 A16 WFMBS 2007-11 A2

687. The Bank hereby incorporates by reference, as though fully set forth herein, all Paragraphs above.

688. In carrying out the acts and omissions alleged herein in offering and selling to the Bank the Certificates in the securitizations referred to above, the Underwriter, Seller, and Issuer/Depositor Defendants were acting as professionals who, by virtue of the nature of their business, were making representations to the Bank in the course of soliciting the sale of securities or performing a contract.

689. These Defendants made negligent misrepresentations and omissions to the Bank of material facts regarding the true nature of the securities they sold to the Bank. Defendants failed to disclose all material facts within their knowledge, or that should have been within their knowledge, that were material to the sale of the securities they offered to the Bank.

690. As alleged above and incorporated herein, the Defendants breached this duty by making untrue or misleading statements of material facts in or omitting material facts from the Offering Documents. These material misrepresentations or omissions pertain to: (1) adherence to the originators' stated underwriting guidelines, and related matters; (2) the LTVs of the mortgage loans in the collateral pools of these securitizations; (3) the occupancy status rates of properties that secured the mortgage loans in these securitizations; (4) the extent to which the loans were originated based on full documentation; (5) the ratings and the ratings process by

which AAA-ratings were assigned; (6) due diligence purportedly conducted on the loan pools; (7) the enforceability of the mortgages; and (8) the compounded high-risk nature of the mortgage loans in the mortgage pools underlying the Certificates.

691. The Bank is informed and believes, and based thereon alleges, that Defendants had access to the loan files on the mortgage loans in the collateral pools for these securitizations, and, had the Defendants inspected those files, they would have learned that the information they gave the Bank contained untrue or misleading statements. In addition, Defendants were aware or should have been aware but for their negligence that the "due diligence" review of the loans that were being securitized and sold to the Bank identified serious concerns and that a significant percentage of these loans were identified as defective but were nonetheless bundled and sold to the Bank as part of the securitizations. Thus, the Bank is informed and believes, and based thereon alleges, that Defendants had access to information that either did or should have made the Defendants aware, had they heeded that information, that the representations they made to the Bank contained material untrue or misleading statements about the mortgage loans in the collateral pools and the originators' adherence to their stated underwriting guidelines. The Defendants were careless or negligent in ascertaining the truth of their statements.

692. Defendants were either in privity of contract with the Bank with respect to the securities that are the subject of this cause of action, or Defendants knew or should have known that the information they made available or omitted to disclose would be used and relied on by members of the investing public, including the Bank, to purchase the securities.

693. The Bank did not know when it purchased these Certificates that the statements in the prospectus supplements and other written Offering Documents and communications that the dealers sent the Bank, were untrue or misleading.

694. The Bank justifiably relied on Defendants' negligent misrepresentations and omissions alleged herein and these misrepresentations and omissions formed the basis of the Bank's decision to purchase these Certificates. If Defendants had not made these negligent misrepresentations and omissions, and had instead provided full and accurate disclosures, the Bank would not have purchased the Certificates at issue.

695. Defendants owed a duty of care to the Bank to convey accurate information in connection with the transactions alleged herein. Defendants failed to exercise the care and competence in obtaining and communicating the information that the Bank was justified in expecting, and accordingly, Defendants breached their duties to the Bank.

696. As a direct and proximate result of Defendants' negligence, the Bank was damaged in an amount to be proven at trial.

697. This action is brought within two years after the Bank knew, or in the exercise of ordinary diligence could have discovered, that it was damaged as a result of Defendants' negligence, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier Defendants' negligence alleged in this Count.

698. Despite being armed with subpoena power, it took the Senate Permanent Subcommittee on Investigations two years, and the Financial Crisis Inquiry Commission a year and a half, to complete their investigations into the mortgage crisis. The FCIC reviewed millions of pages of documents, interviewed over 700 different witnesses, conducted 19 days of public hearings, and released its 662-page report in January 2011. The Senate Subcommittee conducted 150 interviews and depositions, accumulated and reviewed tens of millions of pages of

documents, held multiple public hearings, and on April 13, 2011, published its 646-page report detailing the origins of the financial crisis.

699. The vast majority of information upon which the Bank's claims are based, including internal documents revealed through government investigations, an analysis of the characteristics and performance of the loan pools conducted by an outside consultant, and the confidential witness statements by former employees of originators, was not available before October 15, 2008.

700. Furthermore, the Defendants and their affiliates denied and disputed the conduct alleged in the Complaint, including, but not limited to, that the mortgage originators who issued the loans backing the PLMBS sold, sponsored, issued, or underwritten by the Defendants had abandoned their stated underwriting guidelines when issuing loans for securitization. The Defendants and their affiliates also controlled access to and refused to provide to investors the mortgage loan origination files that were generated by the mortgage originators when the loans backing the PLMBS were issued. The loan files are key evidence of the abandonment of underwriting guidelines, and in their absence, the Bank, like other investors, must assemble information from disparate sources in order to obtain sufficient information to substantiate its claims. The Bank has diligently and timely pursued this investigation, and the filing of its Complaint.

THIRD CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS IN REGISTRATION STATEMENTS

(Section 11 of the Securities Act of 1933)

701. This cause of action is alleged jointly and severally against the following Defendants in connection with the sale of the following securities:

Security	Defendant	As
BSARM 2007-3 1A1	Bear, Stearns & Co. Inc.	Underwriter
	Structured Asset Mortgage Investments II Inc.	Depositor
CWHL 2007-8 1A5	Credit Suisse First Boston LLC	Underwriter
	CWMBS, Inc.	Depositor
CWHL 2007-13 A4	Bear, Stearns & Co. Inc.	Underwriter
	CWMBS, Inc.	Depositor
STARM 2007-4 2A2	Goldman Sachs	Depositor
	Goldman, Sachs & Co.	Underwriter
WAMU 2007-HY1 4A1	WaMu Asset Acceptance Corp.	Depositor
	WaMu Capital Corp.	Underwriter
WAMU 2007-HY2 1A1	WaMu Asset Acceptance Corp.	Depositor
	WaMu Capital Corp.	Underwriter
WFMBS 2007-10 1A10	UBS Securities LLC	Underwriter
	Wells Fargo Asset Securities Corporation	Depositor
WFMBS 2006-10 A7	Credit Suisse First Boston LLC	Underwriter
	Wells Fargo Asset Securities Corporation	Depositor
WFMBS 2007-4 A16	Greenwich Capital Markets, Inc.	Underwriter
	Wells Fargo Asset Securities Corporation	Depositor
WFMBS 2007-11 A2	Goldman, Sachs & Co.	Underwriter
	Wells Fargo Asset Securities Corporation	Depositor

702. The Bank hereby incorporates by reference, as though fully set forth herein, all Paragraphs above.

703. In doing the acts alleged, the Defendants named above violated Section 11 of the 33 Act in connection with the sale to the Bank of the Certificates in the securitizations referred to above.

704. The Certificates in these securitizations were issued pursuant to or traceable to the registration statements for each Certificate, which were deficient for the reasons set forth herein in detail.

705. The entities listed as Depositors of the securitizations in Paragraph 701 above are also the issuers of the Certificates in those securitizations.

706. The entities listed as Underwriters of the securitizations in Paragraph 701 above directly or indirectly sold the Certificates to the Bank.

707. The Certificates at issue in this count were issued pursuant to or traceable to a public offering in which registration statements for these Certificates were filed.

708. With respect to securities BSARM 2007-3 1A1, WAMU 2007-HY1 4A1, and WAMU 2007-HY2 1A1, the Bank purchased the security in reliance upon the material untrue statements or omissions in the registration statement as alleged herein, and did not know of the omissions or untrue statements when it purchased the securities.

709. The Bank has identified litigation that provides for tolling of the statute of limitations and/or statute of repose on this claim for Certificates WAMU 2007-HY1 4A1 (bona fide public offering date ("offering date") of January 22, 2007), WAMU 2007-HY2 1A1 (offering date February 13, 2007), BSARM 2007-3 1A1 (offering date April 26, 2007), CWHL 2007-13 A4 (offering date June 27, 2007), CWHL 2007-8 1A5 (offering date May 29, 2007), WFMBS 2006-10 A7 (offering date July 27, 2006), WFMBS 2007-10 1A10 (offering date June 28, 2007), WFMBS 2007-11 A2 (offering date July 26, 2007), WFMBS 2007-4 A16 (offering date March 26, 2007), STARM 2007-4 2A2 (offering date September 21, 2007). Within two years of the bona fide public offering of these securities and the sale of these securities to the Bank, but before the Certificates had been downgraded or before the Bank had discovered, or

with reasonable diligence could have discovered, Defendants' materials misstatements and omissions with respect to these Certificates, actions related to these securities were filed and tolled the applicable statute of limitations. These actions include, but are not limited to, the following cases and related actions:

A. WAMU 2007-HY1 4A1 & WAMU 2007-HY2 1A1: *New Orleans Employees' Ret. Sys. & MARTA/ATU Local 732 v. Washington Mutual Inc., et al.*, No. 08-2-26210-3 (Wa. Sup. Ct.); *Boilermakers National Annuity Fund v. WaMu Mortgage Pass-Through Certificates* (*aka Doral Bank P.R. v. WaMu Asset Acceptance Corporation*), 09-0037 (W.D. Wash.).

B. BSARM 2007-3 1A1: *In Re Bear Stearns Mortgage Pass-Through Certificates Litigation*, 08-8093 (S.D.N.Y.).

C. CWHL 2007-13 A4 & CWHL 2007-8 1A5: *Maine State Retirement System v. Countrywide Financial Corporation*, 10-0302 (C.D. Cal.); *WA State Plumbing & Pipefitting Pension Trust v. Countrywide*, BC392571 (CA Sup Ct. Los Angeles).

D. WFMBS 2006-10 A7, WFMBS 2007-10 1A10, WFMBS 2007-11 A2, & WFMBS 2007-4 A16: *Boilermaker-Blacksmith National Pension Trust v. Wells Fargo Mortgage Backed Securities 2006-AR1* Trust, No. 09-00833 (S.D.N.Y.); *General Retirement System of the City of Detroit v. Wells Fargo Mortgage Backed Securities*, 09-1376 (N.D. Cal.); *New Orleans Employees' Ret. Sys. v. Wells Fargo Asset Sec. Corp.*, No. 09-1620 (N.D.Cal.); *In re Wells Fargo Mortgage Backed Certificates Litig.*, No. 09-01376 (N.D. Cal.).

E. STARM 2007-4 2A2: *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, 8-10783 (S.D.N.Y.)

Accordingly, the Bank's section 11 and 12 claims for the Certificates listed above were either still tolled when the Bank filed its original complaint on October 15, 2010, or were within the applicable statutes of limitation or repose as set forth in section 13 of the 33 Act. The Bank's claims under the Indiana Uniform Securities Act have been similarly tolled. The Bank will seek leave to amend this complaint as appropriate as it identifies additional actions that provide for tolling of the statute of limitations or repose for these or additional Certificates.

710. This action is brought within one year after the discovery of the untrue and misleading statements in the registration statements, as amended by the prospectus supplements,

and within three years of these Certificates having been sold to the public, or within any applicable period as tolled by the pendency of other actions, as detailed above. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements or omissions in the registration statement, as amended by the prospectus supplements.

711. The registration statements, as amended by the prospectus supplements, contained untrue statements of material fact and omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. These untrue and misleading statements included all of the untrue and misleading statements described in this complaint and its appendices which are incorporated herein by this reference.

712. The Bank did not know when it purchased these Certificates that the statements in the registration statements, as amended by the prospectus supplements, were untrue or misleading.

713. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct. This cause of action is based solely on claims of strict liability or negligence under the 33 Act.

714. The Bank has suffered a loss on each of these Certificates. The Bank has had to impair the value of these assets, which has caused the Bank's earnings performance to decline.

715. The Bank is entitled to recover damages as described in 15 U.S.C. § 77k(e).

FOURTH CAUSE OF ACTION

UNTRUE OR MISLEADING STATEMENTS IN THE SALE OF SECURITIES

(Section 12(a)(2) of the Securities Act of 1933)

716. This cause of action is alleged jointly and severally against the following Defendants in connection with the sale of the following securities:

Securities	Settlement Date	Defendant	As
CWHL 2007-8 1A5	5/31/2007	CWMBS, Inc.	Depositor
		Credit Suisse First Boston LLC	Underwriter/Seller
CWHL 2007-13 A4	6/29/2007	CWMBS, Inc.	Depositor
		Bear, Stearns & Co. Inc.	Underwriter/Seller
STARM 2007-4 2A2	9/24/2007	GS Mortgage Securities Corp.	Depositor
		Goldman, Sachs & Co.	Underwriter/Seller
WFMBS 2007-10 1A10	6/29/2007	Wells Fargo Asset Securities Corporation	Depositor
		UBS Securities LLC	Underwriter/Seller
WFMBS 2006-10 A7	7/31/2006	Wells Fargo Asset Securities Corporation	Depositor
		Credit Suisse First Boston LLC	Underwriter/Seller
WFMBS 2007-4 A16	4/17/2007	Wells Fargo Asset Securities Corporation	Depositor
		Greenwich Capital Markets, Inc.	Underwriter/Seller
WFMBS 2007-11 A2	7/30/2007	Wells Fargo Asset Securities Corporation	Depositor
		Goldman, Sachs & Co.	Underwriter/Seller

717. The Bank hereby incorporates by reference all Paragraphs above as though fully set forth herein.

718. The entities listed in Paragraph 716 above as Depositors of the securitizations are also Issuers of the Certificates in those securitizations. In such capacity, the entities listed in

Paragraph 716 offered and/or sold these Certificates to Plaintiff in registered, primary offerings pursuant to a registration statement containing prospectuses that they had prepared and filed, or by means of other communications that constituted offers made by, on behalf of, used, or referred to by the Depositors/Issuers. The Depositors/Issuers or their agents authorized or approved the information or communications regarding these Certificates before they were provided or used.

719. The entities listed in Paragraph 716 above as Underwriters of the securitizations acted as the underwriters of the Certificates listed above and sold the Certificates directly to the Bank in the initial public offering/primary offering of the security.

720. In doing the acts alleged, the Defendants named above violated Section 12(a)(2) of the 33 Act in connection with the sale to the Bank of the Certificates in the securitizations referred to above.

721. The Defendants named in Paragraph 716 above solicited the Bank to purchase these Certificates, and sold the Certificates to the Bank, by means of the prospectus supplements and other written Offering Documents and communications. The Defendants named in Paragraph 716 passed title to the security to Plaintiff, or solicited the sale of the security to serve their own financial interests or the financial interests of the security's owner. The Bank purchased the Certificates in the initial distributions of such Certificates. The settlement dates for these transactions are listed in Paragraph 716 above.

722. The prospectus supplements and other written Offering Documents and communications that the dealers sent to the Bank contained untrue statements of material fact and omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. These untrue and misleading

statements included all of the untrue and misleading statements described in this complaint and its appendices, which are incorporated herein by this reference.

723. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct. This cause of action is based solely on claims of strict liability or negligence under the 33 Act.

724. The Bank did not know when it purchased these Certificates that the statements in the prospectus supplements and other written Offering Documents and communications that the dealers directed at the Bank, were untrue or misleading.

725. The Bank has suffered a loss on each of these Certificates. The Bank has had to impair the value of these assets, which has caused the Bank's earnings performance to decline.

726. This action is brought within one year after the discovery of the untrue and misleading statements in the prospectus supplements and other written Offering Documents and communications that the dealers directed at the Bank, and within three years of these Certificates having been sold to the public, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements in these Offering Documents.

727. The Bank has identified litigation that provides for tolling of the statute of limitations and/or statute of repose on this claim as set forth in detail above, *see* ¶ 709. The Bank will seek leave to amend this complaint as appropriate as it identifies additional actions that provide for tolling of the statute of limitations or repose for these or additional Certificates.

728. The Bank is entitled to recover the consideration it paid for each of these Certificates, plus interest at the legal rate from the date of purchase to the date on which it

recovers the purchase price, minus the amount of income it has received on each Certificate, or actual damages. Pursuant to Section 12(a)(2) and in anticipation of the remedies thereunder, the Bank hereby offers to tender each Certificate set forth in this Cause of Action for which it seeks rescission.

FIFTH CAUSE OF ACTION

LIABILITY OF CONTROLLING PERSON

(Section 15 of the Securities Act of 1933)

729. This cause of action is alleged jointly and severally against the following Controlling Person Defendants and the Defendants they controlled in connection with the sale of each of the following securities:

Security	Defendant	As
BSARM 2007-3 1A1	Bank of America Corporation	Controlling Person
	The Bear Stearns Companies Inc.	Controlling Person
CWHL 2007-8 1A5	Countrywide Financial Corporation	Controlling Person
	Credit Suisse Holdings (USA), Inc.	Controlling Person
	Credit Suisse (USA), Inc.	Controlling Person
CWHL 2007-13 A4	Countrywide Financial Corporation	Controlling Person
	The Bear Stearns Companies Inc.	Controlling Person
STARM 2007-4 2A2	The Goldman Sachs Group Inc.	Controlling Person
WAMU 2007-HY1 4A1	Credit Suisse Holdings (USA), Inc.	Controlling Person
	Credit Suisse (USA), Inc.	Controlling Person
WAMU 2007-HY2 1A1	Bank of America Corporation	Controlling Person

Security	Defendant	As
WFMBS 2007-10 1A10	Wells Fargo Bank, National Association	Controlling Person
	Wells Fargo & Company	Controlling Person
WFMBS 2006-10 A7	Credit Suisse Holdings (USA), Inc.	Controlling Person
	Credit Suisse (USA), Inc.	Controlling Person
	Wells Fargo Bank, National Association	Controlling Person
	Wells Fargo & Company	Controlling Person
WFMBS 2007-4 A16	Wells Fargo Bank, National Association	Controlling Person
	Wells Fargo & Company	Controlling Person
WFMBS 2007-11 A2	Wells Fargo Bank, National Association	Controlling Person
	Wells Fargo & Company	Controlling Person
	The Goldman Sachs Group Inc.	Controlling Person

730. By or through stock ownership, agency, or otherwise, the Controlling Defendants listed below controlled the following controlled entities within the meaning of Section 15 of the 33 Act:

Controlling Person	Controls	Defendant
Bank of America Corporation	Banc of America Securities LLC	Seller
Countrywide Financial Corporation	CWMBS, Inc.	Depositor
Credit Suisse (USA), Inc.	Credit Suisse First Boston LLC	Underwriter and/or Seller
Credit Suisse Holdings (USA), Inc.	Credit Suisse First Boston LLC	Underwriter and/or Seller
The Goldman Sachs Group Inc.	Goldman, Sachs & Co.	Underwriter /Seller
Wells Fargo & Company	Wells Fargo Asset Securities Corporation	Depositor
Wells Fargo Bank, National Association	Wells Fargo Asset Securities Corporation	Depositor

731. The Bank hereby incorporates by reference all Paragraphs above as though fully set forth herein.

732. The Bank expressly excludes from this cause of action any allegation that could be construed as alleging fraud or intentional reckless conduct. This cause of action is based solely on claims of strict liability or negligence under the 33 Act.

733. The Controlling Person Defendants named above are liable because, in doing the acts alleged, the Controlled Defendants violated Sections 11 and 12(a)(2) of the 33 Act in connection with the offer and sale to the Bank of the Certificates in the securitizations referred to above and as set forth in the Third and Fourth Causes of Action.

734. The Controlling Person Defendants controlled, influenced, or participated in essentially all material aspects relating to the acquisition, structure and sale of the Certificates purchased by the Bank identified herein.

735. The Controlling Person Defendants' control, position and influence over the Controlled Defendants made them privy to, and provided them with actual knowledge of, the material facts and omissions concealed from the Bank.

736. Each of the Controlling Person Defendants, by virtue of its ownership, control, including as a parent corporation, involvement with, influence and domination over, and participation and involvement in, the management and operations of the respective Controlled Defendants (a) exercised control over the operations of the Controlled Defendants; and (b) had the power to influence and control, and exercised that power, influence and control, to cause the Controlled Defendants to engage in violations of the 33 Act, as described above.

737. Each of the Controlling Person Defendants, by virtue of its ownership, control, including as a parent corporation, involvement with, influence and domination over, and participation and involvement in, the management and operations of the respective Controlled

Defendants was, at the time of the wrongs alleged herein, a controlling person of the Controlled Defendants within the meaning of Section 15 of the 33 Act.

738. Each Defendant named above is therefore jointly and severally liable with and to the same extent as the person it controlled.

739. This action is brought within the applicable statutes of limitation and repose. This action is brought within one year after the discovery of the untrue and misleading statements in the prospectus supplements and other written Offering Documents and communications that the dealers directed at the Bank, and within three years of these Certificates having been sold to the public, or within any applicable period as tolled by the pendency of other actions. Despite having exercised reasonable diligence, the Bank did not and could not reasonably have discovered earlier the untrue and misleading statements in these Offering Documents.

740. The Bank has identified litigation that provides for tolling of the statute of limitations and/or statute of repose on this claim as set forth in detail above, *see* ¶ 709. The Bank will seek leave to amend this complaint as appropriate as it identifies additional actions that provide for tolling of the statute of limitations or repose for these or additional Certificates.

VIII. PRAYER FOR RELIEF

WHEREFORE, the Bank respectfully demands judgment as follows:

A. On the first cause of action, an order voiding the transactions at issue and ordering Defendants to pay the Bank, jointly and severally, the consideration paid for each security, less the amount of any income received on the security, or actual damages, plus interest at the greater of eight percent (8%) per annum or the rate provided for in the security from the date of the purchase;

B. On the second cause of action, damages in an amount to be determined at trial, plus pre- and post-judgment interest at the highest allowable rate;

D. On third cause of action, damages in an amount to be determined at trial;

E. On the fourth and fifth causes of action, the consideration the Bank paid for each Certificate with interest thereon, less the amount of any income that the Bank has received thereon, upon the Bank's tender of the Certificate, or actual damages;

F. Reasonable attorneys' fees and expenses or costs of suit, including expert witness fees; and

G. Such other and further relief as permitted by law or equity or as the Court may deem just.

IX. JURY DEMAND

The Bank demands a jury on all issues so triable.

RESPECTFULLY SUBMITTED this 14th day of July, 2011.

KELLER ROHRBACK L.L.P.

Lynn Lincoln Sarko, # 2730-95 TA
lsarko@kellerrohrback.com
Derek W. Loeser, #2727-95 TA
dloeser@kellerrohrback.com
Amy Williams-Derry, #2729-95 TA
awilliams-derry@kellerrohrback.com
Elizabeth A. Leland, #2731-95 TA
bleland@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900, Fax (206) 623-3384

KELLER ROHRBACK P.L.C.
Gary A. Gotto, #2728-95 TA
ggotto@kellerrohrback.com
3101 North Central Avenue, Suite 1400
Phoenix, Arizona 85012
(602) 248-0088, Fax (602) 248-2822

CANTRELL, STRENSKI & MEHRINGER, LLP
James P. Strenski, #18186-53
Anna M. Mallon, #23693-49A
2400 Market Tower
10 West Market Street
Indianapolis, IN 46204
(317) 352-3500
Fax: (317) 352.3501
jstrenski@csmlawfirm.com
amallon@csmlawfirm.com

Attorneys for Plaintiff Federal Home Loan Bank of Indianapolis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of July, 2011, pursuant to the agreement of counsel, the Amended Complaint for Rescission and Damages and its Appendices will be emailed to counsel for all Defendants at the following group email address:

Defense Counsel: fhlb.indianapolis@Sullcrom.com

Anna M. Mallon

Anna M. Mallon

Exhibit 8

FILED PSL
11 OCT 10 PM 1:23
HENN CO. DISTRICT COURT DEPUTY ADMINISTRATOR

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

HUNTINGTON BANCSHARES INC.,

Plaintiff,

v.

ALLY FINANCIAL INC. f/k/a GMAC, LLC, GMAC MORTGAGE CORPORATION, a/k/a/ GMAC MORTGAGE LLC., RESIDENTIAL ACCREDIT LOANS, INC., RESIDENTIAL CAPITAL LLC f/k/a RESIDENTIAL CAPITAL CORPORATION, GMAC-RFC HOLDING COMPANY, LLC d/b/a GMAC RESIDENTIAL FUNDING CORPORATION, RESIDENTIAL FUNDING COMPANY, LLC f/k/a RESIDENTIAL FUNDING CORPORATION, ALLY SECURITIES, LLC f/k/a RESIDENTIAL FUNDING SECURITIES, LLC d/b/a GMAC RFC SECURITIES and f/k/a RESIDENTIAL FUNDING SECURITIES CORPORATION, BRUCE J. PARADIS, KENNETH M. DUNCAN, DAVEE L. OLSON, RALPH T. FLEES, LISA R. LUNDSTEN, DAVID C. WALKER, JACK R. KATZMARK, JULIE STEINHAGEN

Defendants.

Court File No.

COMPLAINT

JURY TRIAL DEMANDED

GRANT & EISENHOFER P.A.
485 Lexington Avenue, 29th Floor
New York, New York 10017
Jay W. Eisenhofer, Esq.
Geoffrey C. Jarvis, Esq.
Deborah A. Elman, Esq.
Robert D. Gerson, Esq.
Telephone: (646) 722-8500
Facsimile: (646) 722-8501

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Plaintiff Huntington Bancshares Inc. ("Huntington") makes the allegations in this Complaint based upon personal knowledge as to matters concerning Plaintiff and its own acts, and upon information and belief as to all other matters. This information is derived from the investigation by Plaintiff's counsel, which has included a review and analysis of annual reports and publicly filed documents, reports of governmental investigations by the United States Securities and Exchange Commission (the "SEC"), the Financial Crisis Inquiry Commission (the "FCIC"), the United States Department of Justice (the "DOJ"), the United States Senate Permanent Subcommittee on Investigations, and numerous investigations by other federal and state governmental units, as well as press releases, news articles, analysts' statements, conference call transcripts and presentations, and transcripts from speeches and remarks given by Defendants. In addition, Plaintiff's counsel conferred with counsel for other plaintiffs who have filed other complaints against these Defendants based on the same or similar activities. Based on the foregoing, Plaintiff believes that substantial additional evidentiary support exists for the allegations herein, which Plaintiff will find after a reasonable opportunity for discovery.

NATURE OF ACTION

1. This is an action by Plaintiff Huntington against Defendants for fraud, aiding and abetting fraud, negligent misrepresentation, and violation of the Minnesota Securities Act.

2. This action arises out of Huntington's purchase of certain residential mortgage-backed securities ("RMBS"), as evidenced in the form of "Certificates," in reliance on the false and misleading statements that were made by Defendants. Based on these material misrepresentations and omissions, Plaintiff purchased securities that were far riskier than had been represented, and were backed by mortgage loans worth significantly less than had been represented, which loans had been made to borrowers who were much less creditworthy than had been represented.

3. The securities purchased by Plaintiff were collateralized against mortgages originated and/or acquired by GMAC (as defined in ¶ 109, *infra*). GMAC did not, however, hold the mortgage loans it originated and/or acquired. Rather, taking advantage of an unprecedented boom in the securitization industry, it deposited the loans into special purpose entities or "trusts" and then repackaged the loans for sale to investors in the form of RMBS. Defendant Ally Securities, LLC, among other underwriters, then sold the RMBS to investors such as Plaintiff.

4. The Certificates entitled investors to receive monthly distributions of interest and principal on cash flows from the mortgages held by the trusts. The Certificates issued by each trust were divided into several classes (or "tranches") that had different seniority, priorities of payment, exposure to default, and interest payment provisions. Rating agencies, such as Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Corporation ("S&P"), DBRS, Inc. ("DBRS") and/or Fitch, Inc. ("Fitch"),[1] rated the investment quality of all tranches of Certificates based upon information provided by the Defendants about the quality of the mortgages in each mortgage pool and the seniority of the Certificate among the various Certificates issued by each trust. These ratings, in significant part, determined the price at which these Certificates were offered to investors.

5. In selling the Certificates, the Defendants prepared and filed with the Securities and Exchange Commission ("SEC") certain registration statements (the "Registration Statements"), prospectuses (the "Prospectuses") and prospectus supplements (the "Prospectus Supplements", and together with the Registration Statements and Prospectuses, the "Offering

[1] Moody's, S&P, DBRS and Fitch are approved by the Securities and Exchange Commission as "Nationally Recognized Statistical Rating Organizations" and provide credit ratings that are used to distinguish among grades of creditworthiness of various securities under the federal securities laws.

Documents"). In these Offering Documents, Defendants repeatedly touted the strength of their underwriting guidelines and standards and those of the relevant third party originators, claimed that the underwriting guidelines and standards were designed to ensure the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral, and represented that the mortgages underlying the Certificates were originated in accordance with those stated underwriting guidelines and standards. Where Defendants had not originated the mortgage loans underlying the Certificates, they emphasized their quality control procedures, such as reviewing underwriting information provided by the originators.

6. In addition, in the Offering Documents Defendants repeatedly assured investors as to the soundness of the appraisals used to arrive at the value of the underlying properties and, specifically, that the real estate collateralizing the loans had been subjected to objective real estate appraisals performed in accordance with stated guidelines. Defendants made numerous other representations regarding the quality of the loan pools, including clean transfer of title, high owner-occupancy rates, loan-to-value and combined loan-to-value ratios, debt-to-income ratios, credit ratings, and credit enhancements.

7. Plaintiff and other investors did not have access to the underlying mortgage loan files. Instead, the Defendants were responsible for gathering and verifying information about the credit quality and characteristics of the loans that were deposited into each trust and presenting this information in the Registration Statements, Prospectuses, and Prospectus Supplements prepared for potential investors. This due diligence process is a critical safeguard for investors who rely on this information in making their investment decisions, and is a fundamental legal obligation of the Defendants.

8. As set forth below, the Offering Documents contained material misstatements and omitted material information. Contrary to Defendants' assurances, the originators of the underlying loans had not followed their touted underwriting guidelines and standards when originating and/or acquiring the mortgage loans, and Defendants had neither maintained nor conducted quality control procedures.

9. Specifically, as set forth below, Defendants knew of the wholesale and systematic abandonment of underwriting guidelines by both GMAC's own affiliated originators as well as various third party originators. Because GMAC's affiliated lenders, Defendants GMAC Mortgage Group, Inc. and Homecomings Financial, operated primarily to generate loans for GMAC's RMBS operations, they intentionally granted mortgage loans to borrowers whom they knew did not satisfy the eligibility criteria as described in the Offering Documents. Faced with GMAC's demands for as many loans as possible, the third party originators did likewise, knowing that GMAC would purchase and securitize even risky, low-quality loans. In many cases, GMAC purchased and securitized loans on a wholesale basis without reviewing their loan files or having any reason to believe that they complied with their purported underwriting standards. Furthermore, when deciding whether to originate or purchase loans, GMAC and its affiliated lenders made use of proprietary underwriting software that did not apply GMAC's purported underwriting standards or require basic documentation.

10. In addition, Defendants knew that the mortgages underlying the Certificates had been extended based on inflated collateral appraisals, such that the value of the underlying properties and the amount of credit enhancements built into the Certificates were overstated, thereby exposing investors such as Plaintiff to additional losses in the event of foreclosure. In many cases, Defendants also failed to deliver good title to the Issuing Trusts in a timely manner,

severely undermining the Issuing Trusts' capacity to manage the assets that were supposed to be underlying the Certificates and contributing to massive foreclosure backlogs and moratoriums. Defendants did not apply the rigorous quality control procedures they touted in the Offering Documents to uncover lapses, and where Defendants did discover problems in the loan pools, they deliberately overlooked them.

11. Examination of the individual mortgage files underlying GMAC's RMBS has revealed just how thoroughly and blatantly GMAC misrepresented the trust assets to investors. A review of the loans underlying several GMAC RMBS comparable to those purchased by Plaintiff revealed that at least 89% of the delinquent and charged-off loans breached one or more of GMAC's representations and warranties. Common defects included unacceptably high loan-to-value and debt-to-income ratios, implausible and unverified borrower incomes, missing documentation, and violation of predatory lending laws, all basic matters readily ascertainable in the exercise of rudimentary due diligence. The sheer volume of the violations, the fact that they went to the most basic characteristics of the pooled loans, and the ease with which Defendants could have discovered the truth all foreclose the possibility that the misrepresentations in the Offering Documents were the product of anything other than intentional wrongdoing.

12. The practices of financial institutions such as GMAC and their role in inflating the housing bubble have been and continue to be the subject of intense regulatory scrutiny. In June 2011, GMAC acknowledged receipt of subpoenas from both the U.S. Department of Justice and the SEC. The subpoena received from the SEC requests documentation relating to mortgage loans placed in securitization trusts, and the subpoena received from the Department of Justice requests documentation and information in connection with the investigation of potential fraud related to the origination and/or underwriting of mortgage loans. GMAC has also been forced to

reimburse the government-sponsored entities Fannie Mae and Freddie Mac hundreds of millions of dollars for mortgages that were not underwritten as represented, and is currently being sued for securities fraud in connection with its RMBS sales by the Federal Housing Finance Agency ("FHFA").

13. As a result of the untrue statements and omissions in the Offering Documents, Plaintiff purchased Certificates that were far riskier than represented and that were not equivalent to other investments with the same credit ratings. The rating agencies significantly downgraded the Certificates purchased by Plaintiff, all of which were represented in the Offering Documents to be AAA/Aaa instruments at the time of purchase. The Certificates all were sold by Plaintiff at a loss. As a consequence, Plaintiff has suffered losses on its purchases of the Certificates.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over each of the non-domiciliary Defendants pursuant to MINN. STAT. § 543.19, subdiv. (1)(2) because each of them has transacted business within the state of Minnesota, and pursuant to MINN. STAT. § 543.19, subdiv. (1)(3) because each of them has committed tortious acts within the state of Minnesota causing property damage. Many of the acts and transactions alleged herein, including the negotiation, preparation and dissemination of many of the material misstatements and omissions contained in the Registration Statements, Prospectuses and Prospectus Supplements, occurred in substantial part in this state. Additionally, the Certificates were actively marketed and sold in this state.

15. Venue is proper in this Court pursuant to MINN. STAT. § 542.09, because Defendants Residential Capital Corporation and GMAC Residential Funding Corporation both maintain offices in Hennepin County.

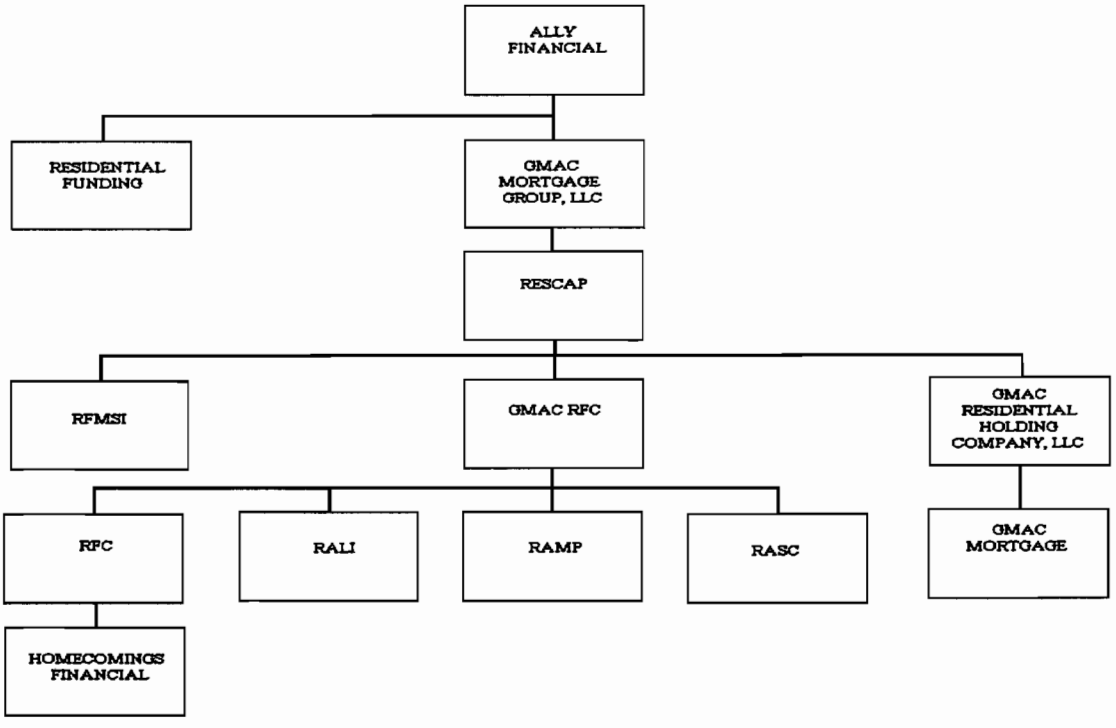
PARTIES

A. PLAINTIFF

16. Plaintiff Huntington is headquartered in Columbus, Ohio. Huntington provides retail and commercial banking and financial products and services in multiple states, including Ohio, Michigan, Pennsylvania, and Indiana, among others. The Huntington Bank provides full service consumer and commercial banking services, mortgage banking services, equipment leasing, automobile leasing, trust services, investment management, brokerage services, reinsurance of credit life and disability insurance, reinsurance of private mortgage insurance, retail and commercial insurance agency services, and other financial products and services.

B. GMAC DEFENDANTS

17. Defendant Ally Financial Inc. ("Ally Financial") is a bank holding company headquartered in Detroit, Michigan. Until May 2010, Ally Financial was known as GMAC Financial Services. Ally Financial was founded to provide financing to automobile purchasers, but expanded over time into areas including mortgage securitization, commercial finance and online banking. Ally Financial is the direct or indirect owner of Defendants Residential Capital LLC; GMAC Mortgage, LLC; GMAC Residential Funding Corporation; Homecomings Financial, LLC; Residential Accredit Loans, Inc.; Residential Funding Mortgage Securities I, Inc.; Residential Asset Securities Corporation; Residential Asset Mortgage Products, Inc.; Residential Funding Company, LLC; and Ally Securities, LLC (together with Ally Financial, collectively referred to hereinafter as "GMAC."). The diagram below depicts the relationships of the GMAC corporate entities.



18. Defendant Residential Capital LLC, f/k/a Residential Capital Corporation ("ResCap") is a wholly-owned subsidiary of GMAC Mortgage Group LLC and an indirectly-owned subsidiary of Ally Financial, with its principal place of business in Minneapolis, Minnesota. ResCap originates, securitizes and services mortgage loans through its subsidiaries.

19. Defendant GMAC Mortgage, LLC, a/k/a GMAC Mortgage Corporation ("GMAC Mortgage") is an indirectly-owned subsidiary of ResCap and therefore an indirectly-owned subsidiary of Ally Financial, with its principal place of business in Fort Washington, Pennsylvania. GMAC Mortgage originates residential mortgage loans through a network of retail offices and Internet sites. GMAC Mortgage originated mortgage loans that were pooled in securitizations and purchased by Plaintiff.

20. Defendant GMAC Residential Funding Corporation, a/k/a GMAC-RFC Holding Company, LLC ("GMAC RFC") is a wholly-owned subsidiary of ResCap and therefore an

indirectly-owned subsidiary of Ally Financial, with its principal place of business in Minneapolis, Minnesota. GMAC RFC operates as a private issuer of mortgage-backed securities.

21. Defendant Homecomings Financial, LLC, f/k/a Homecomings Financial Network, Inc. ("Homecomings Financial") is an indirectly-owned subsidiary of ResCap and therefore an indirect subsidiary of Ally Financial. Homecomings Financial is a mortgage servicing and origination company. Homecomings Financial originated loans that were pooled into every securitization at issue in this case.

22. Residential Accredit Loans, Inc. ("RALI") is a wholly-owned, limited-purpose subsidiary of GMAC RFC. Like all the other depositors, RALI was created specifically as a conduit for the securitization and sale of loans. RALI was the depositor for several of the securitizations at issue.

23. Residential Funding Mortgage Securities I, Inc. ("RFMSI") is a wholly-owned, limited-purpose subsidiary of ResCap. Like all the other depositors, RFMSI was created specifically as a conduit for the securitization and sale of loans. RFMSI was the depositor for (1) RFMSI Series 2005-SA3 Trust; and (2) RFMSI Series 2006-S1 Trust.

24. Defendants RALI and RFMSI are referred to collectively hereinafter as the "Depositor Defendants."

25. Residential Funding Company, LLC ("RFC") is a Delaware corporation and a wholly-owned subsidiary of GMAC RFC. Until October 2006, RFC LLC was known as "Residential Funding Corporation." RFC was created by GMAC RFC specifically as a conduit for the securitization and sale of loans. RFC was the sponsor for all of the securitizations at issue

in this litigation. RFC is also the parent company of Homecomings Financial, an originator of mortgage loans underlying the RMBS purchased by Plaintiff.

26. Defendant RFC is referred to hereinafter as the "Sponsor Defendant."

27. Ally Securities, LLC, f/k/a Residential Funding Securities, LLC, d/b/a GMAC RFC Securities, f/k/a Residential Funding Securities Corporation ("Residential Funding"), is an SEC registered broker-dealer with its principal place of business in Minneapolis, Minnesota. Residential Funding was an underwriter of Certificates purchased by Plaintiff..

C. **INDIVIDUAL DEFENDANTS**

28. Kenneth M. Duncan ("Duncan") was, at relevant times, the Acting Chief Financial Officer of Defendant RALI. Duncan was also the Executive Vice President, Acting Chief Financial Officer and a Director of Defendant RFMSI.

29. Ralph T. Flees ("Flees") was, at relevant times, the Controller of Defendants RALI and RFMSI.

30. Jack R. Katzmark ("Katzmark") was, at relevant times, a Controller of Defendant RFMSI.

31. Lisa R. Lundsten ("Lundsten") was an Attorney-in-Fact of Defendants RALI and RFMSI.

32. Davee L. Olson ("Olson") was, at relevant times, the Executive Vice President, Chief Financial Officer, and a Director of Defendant RFMSI. Olson was also a Director of Defendant RALI.

33. Bruce J. Paradis ("Paradis") was the President and Chief Executive Officer of GMAC RFC from 1994 to 2005, and was the Chief Executive Officer of ResCap from 2005 to 2007. Paradis was also, at relevant times, the President, Chief Executive Officer, and a Director of the Depositor Defendants RALI and RFMSI.

34. Julie Steinhagen ("Steinhagen") was an Attorney-in-Fact of Defendant RFMSI.

35. David C. Walker ("Walker") was, at relevant times, a Director of Defendant RFMSI.

36. Defendants Duncan, Flees, Katzmark, Lundsten, Olson, Paradis, Steinhagen and Walker are referred to collectively hereinafter as the "Individual Defendants." The Individual Defendants signed the Registration Statements listed in the table below.

Issuing Trust(s)	Document Date	Registration/ File No.	Signatories
RFMSI 2005-SA3	July 11, 2003	333-106093	Bruce J. Paradis Davee L. Olson David C. Walker Jack R. Katzmark Julie Steinhagen (attorney-in-fact)
RFMSI 2006-S1	August 3, 2005	333-126745	Bruce J. Paradis Kenneth M. Duncan David C. Walker Ralph T. Flees Lisa R. Lundsten (attorney-in-fact)
RALI 2006-QS5 RALI 2006-QS11 RALI 2006-QS13	March 3, 2006	333-131213	Bruce J. Paradis Kenneth M. Duncan Davee L. Olson Ralph T. Flees Lisa R. Lundsten (attorney-in-fact)

D. OTHER RELEVANT NON-PARTIES

37. Non-parties, the "Issuing Trusts", are common law trusts. The Issuing Trusts were created and structured by Defendants and their affiliated entities to issue billions of dollars worth of RMBS. The Issuing Trusts issued the Certificates purchased by Plaintiff. The non-party Issuing Trusts are:

(i) RFMSI Series 2005-SA3 Trust

(ii) RALI Series 2006-QS5 Trust

(iii) RALI Series 2006-QS11 Trust

(iv) RALI Series 2006-QS13 Trust

(v) RFMSI Series 2006-S1 Trust

SUBSTANTIVE ALLEGATIONS

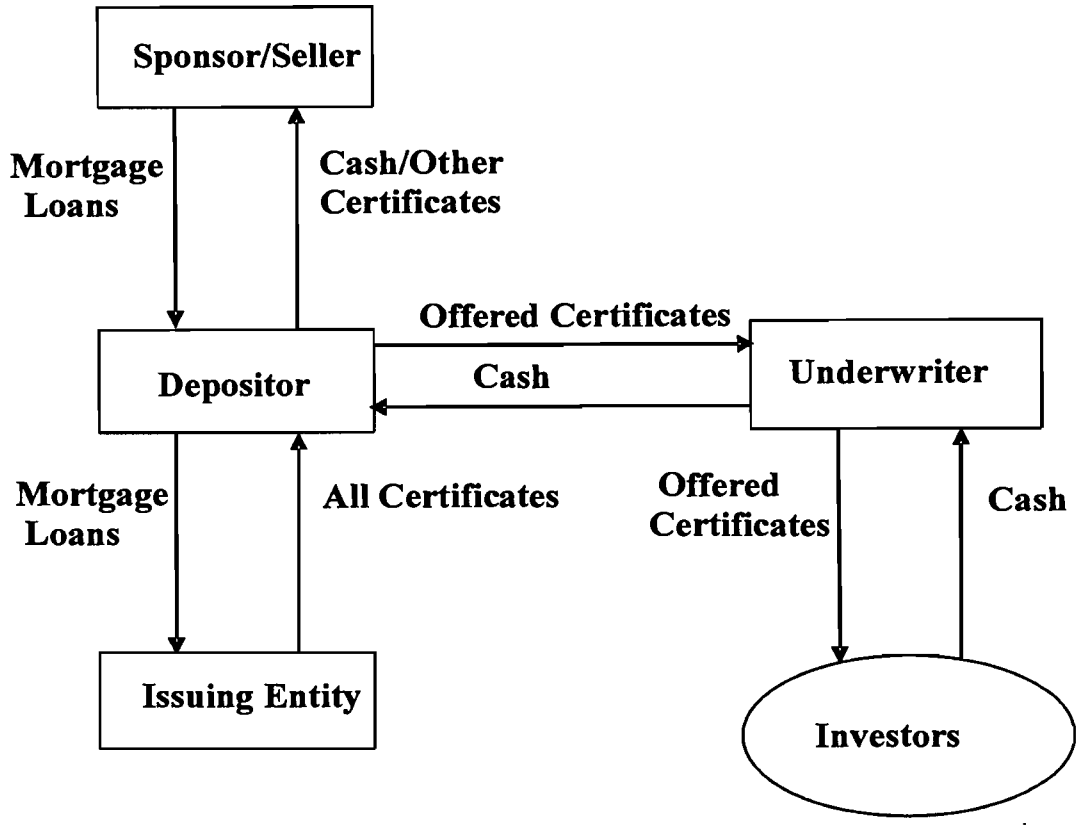
I. THE SECURITIZATION PROCESS GENERALLY

38. Traditionally, the process for extending mortgage loans to borrowers involved a lending institution (the loan originator) making a loan to a home buyer in exchange for a promise by the home buyer, documented in the form of a promissory note, to repay the principal and interest on the loan. The loan originator obtained a lien against the home as collateral in the event the home buyer defaulted on its obligation. Under this simple model, the loan originator held the promissory note until it matured, and was exposed to the risk that the borrower might fail to repay the loan. As such, the loan originator had a financial incentive to ensure that the borrower had the financial wherewithal to repay the loan and that the underlying property had sufficient value to enable the originator to recover its principal and interest in the event that the borrower defaulted.

39. Beginning in the 1990s, however, banks and other mortgage lending institutions increasingly used securitizations to finance the extension of mortgage loans to borrowers. Under the securitization process, after a loan originator issues a mortgage to a borrower, the loan originator sells the mortgage to a third-party financial institution. By selling the mortgage, the loan originator not only obtains fees, but receives the proceeds from the sale of the mortgage up-front, and thereby has new capital to issue more mortgages. The financial institutions which purchase the mortgages then pool the mortgages together and securitize the mortgages into what are commonly referred to as residential mortgage-backed securities or RMBS. In this manner, unlike the traditional process for extending mortgage loans, the loan originator is no longer

subject to the risk that the borrower may default; that risk is transferred with the mortgages to investors who purchase the RMBS.

40. The securitization of residential mortgage loans, and the creation of RMBS collateralized against these loans, typically follows the same structure and pattern in each transaction. First, a loan originator, such as a mortgage lender or bank, originates the underlying residential mortgage loans. After a loan has been made, a "sponsor" or "seller" (who either originated the loans itself or acquired the loans from other loan originators) sells the mortgage loans to a "depositor." The depositor pools these loans and deposits them into a special purpose entity or trust created by the depositor. One trust is established to hold the pool of mortgages for each proposed offering. In order to facilitate multiple offerings of RMBS, a depositor sets up multiple trusts to hold the different pools of mortgages that are to be securitized. With respect to each offering, in return for the pool of mortgages acquired from the depositor, the trust issues and distributes RMBS certificates to the depositor. The depositor then works with an underwriter to price and sell the certificates to investors. Thereafter, a servicer is appointed to service the mortgage loans held by the trust, *i.e.*, to collect the mortgage payments from the borrower in the form of principal and interest, and to remit them to the trust for administration and distribution to the RMBS investors. A trustee then determines whether the mortgage loan documents were properly documented and valid. The diagram below illustrates the typical structure of a securitization:



41. In selling the certificates to investors, the depositor and underwriters disseminate to investors various disclosure or offering documents describing the certificates being sold. The offering documents are comprised of: (1) a "shelf" registration statement (under SEC Rule 415, an issuer may file one registration statement covering several offerings of securities made during a period of up to three years after the filing of the registration statement); (2) a "base" prospectus; and (3) a "prospectus supplement." Because a depositor will create a different trust for each offering of RMBS (as described above), the depositor files one shelf registration statement and one base prospectus that apply to multiple trusts that the depositor proposes to establish. With respect to each specific trust, however, the depositor also files a prospectus supplement that applies only to that particular trust. Thus, for any given offering of securities, the relevant offering documents will typically be a shared registration statement and shared base prospectus, as well as an individual, trust-specific prospectus supplement.

42. Each investor who purchases an RMBS certificate is entitled to receive monthly payments of principal and interest from the trust. The order of priority of payment to each investor, the interest rate to be paid to each investor, and other payment rights accorded to each investor depend on which class or tranche of certificates the investor purchases.

43. The highest or senior tranche is the first to receive its share of the mortgage payments and is also the last to absorb any losses should mortgage borrowers become delinquent or default on their mortgages. Accordingly, these senior tranches receive the highest investment rating by the rating agencies, usually AAA. After the senior tranche, the middle tranches (referred to as mezzanine tranches) next receive their share of the proceeds. These mezzanine tranches are generally rated from AA to BB by the rating agencies. The process of distributing the mortgage proceeds continues down the tranches through to the bottom tranches, referred to as equity tranches. This process is repeated each month and all investors receive the payments owed to them so long as the mortgage borrowers are current on their mortgages.

II. THE SECURITIZATIONS ASSOCIATED WITH PLAINTIFF'S CERTIFICATES AND ITS INVESTMENTS IN THE CERTIFICATES

44. In this case, the five Issuing Trusts and the six Certificates purchased by Plaintiff were structured and sold by GMAC and its affiliated entities. As such, the transactions between the sponsor/sellers, depositors, underwriters, and the Issuing Trusts were not arm's length transactions, as GMAC controlled nearly all the entities.

45. Depositor Defendant RFMSI, a GMAC entity, created the Issuing Trusts RFMSI Series 2006-S1 Trust and RFMSI Series 2005-SA3 Trust. RFMSI then purchased mortgage loans from another GMAC entity, the Sponsor Defendant RFC, to place into the trusts. In addition, the Certificates issued by the RFMSI Series 2006-S1 Trust were underwritten by another GMAC entity, Defendant Residential Funding.

46. Depositor Defendant RALI, a GMAC entity, created the Issuing Trusts RALI Series 2006-QS5 Trust, RALI Series 2006-QS11 Trust, and RALI Series 2006-QS13 Trust. RALI then purchased mortgage loans from another GMAC entity, the Sponsor Defendant RFC, to place into the trusts. In addition, the Certificates issued by the RALI Series 2006-QS13 Trust were underwritten by another GMAC entity, Defendant Residential Funding.

47. In connection with their role as the depositors for the Issuing Trusts that are the subject of this action, Defendants RALI, and RFMSI prepared and filed with the SEC the following shelf registration statements, to which the Certificates purchased by Plaintiff are traceable:

Registration Statement/ File No.	**Date Filed**	**Registrant**	**Amount Registered**
333-106093	July 11, 2003	RFMSI	$20,000,000,000
333-126745	August 3, 2005	RFMSI	$15,000,000,000
333-131213	March 3, 2006	RALI	$34,723,478,970

48. At the time of filing, each Registration Statement contained an illustrative form of a prospectus supplement that would be used in the various offerings of Certificates. At the effective date of a particular offering of Certificates, one or more of the underwriters prepared and filed a final Prospectus Supplement with the SEC, which contained a description of the mortgage pool for that particular offering of Certificates and a description of the underwriting standards by which the mortgages were originated. One or more of the underwriters or Defendants then marketed and sold the Certificates pursuant to these Prospectus Supplements.

49. The following chart summarizes and identifies (1) each Issuing Trust that issued and sold the Certificates purchased by Plaintiff; (2) the dates of the Registration Statements and

Prospectus Supplements pursuant to which the Certificates were issued and sold; and (3) the identities of the depositor, the issuer, and the sponsor/seller for each offering.

Amended Registration File No. and Date	Issuing Trust	Prospectus Supplement Date	Depositor	Sponsor/ Seller
333-106093 (7/11/2003)	RFMSI Series 2005-SA3 Trust	7/27/2005	RFMSI	RFC
333-126745 (8/3/2005)	RFMSI Series 2006-S1 Trust	1/27/2006	RFMSI	RFC
333-131213 (3/3/2006)	RALI Series 2006-QS5 Trust	5/30/2006	RALI	RFC
	RALI Series 2006-QS11 Trust	8/29/2006	RALI	RFC
	RALI Series 2006-QS13 Trust	9/29/2006	RALI	RFC

III. IMPORTANT FACTORS IN THE DECISION OF INVESTORS SUCH AS PLAINTIFF TO INVEST IN THE CERTIFICATES

50. In purchasing the Certificates, Plaintiff, like other investors, attached critical importance to: (a) the underwriting standards used to originate the loans underlying the Certificates; (b) the value of the properties securing the underlying mortgage loans and the appraisal methods used to determine this; (c) the ratings assigned to the Certificates; (d) the level of credit enhancement applicable to the Certificates; and (e) the ability of the Issuing Trusts to establish legal title to the underlying loans.

51. Sound underwriting was critically important to Plaintiff because the ability of borrowers to repay principal and interest was the fundamental basis upon which the investments in the Certificates were valued.

52. Real estate appraisals are governed by USPAP, which are the generally accepted standards for professional appraisal practice in North America promulgated by the Appraisal Standards Board of the Appraisal Foundation, as authorized by Congress. With respect to real estate appraisals, USPAP requires the following:

> ***An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. In appraisal practice, an appraiser must not perform as an advocate for any party or issue. An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.***
>
> * * * * *
>
> ***It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:***
>
> 1. ***the reporting of a predetermined result (e.g., opinion of value);***
> 2. ***a direction in assignment results that favors the cause of the client;***
> 3. ***the amount of a value opinion;***
> 4. ***the attainment of a stipulated result; or***
> 5. ***the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.***

53. Reflecting the importance of the underwriting standards, the Offering Documents contained representations concerning the standards purportedly used to originate the mortgages held by the Issuing Trusts.

54. For example, the Registration Statement filed by RALI, dated March 3, 2006, stated that:

> The depositor expects that the originator of each of the mortgage loans will have applied, consistent with applicable federal and state laws and regulations, ***underwriting procedures intended to***

> ***evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.***[2]

55. Similarly, the Prospectus Supplements indicated that the underwriting guidelines were primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan.

56. With respect to loans acquired from third-party originators, the Prospectus Supplements represented that stated underwriting guidelines required them to consider, among other things, the mortgagor's credit history, repayment ability, and debt-to-income ratio, as well as the type and use of the mortgaged property. In addition, the Prospectus Supplements represented that in order to submit loan packages, the loans must have been made in compliance with the terms of a signed mortgage loan purchase agreement.

57. Independent and accurate real estate appraisals were also critically important to investors such as Plaintiff because they ensured that the mortgage loans underlying the Certificates were not under-collateralized, thereby protecting RMBS investors in the event a borrower defaulted on a loan. As such, by allowing RMBS investors to assess the degree to which a mortgage loan was adequately collateralized, accurate appraisals provided investors such as Plaintiff with a basis for assessing the price and risk of the Certificates.

58. One measure that uses the appraisal value to assess whether mortgage loans are under-collateralized is the loan-to-value ("LTV") ratio. The LTV ratio is a mathematical calculation that expresses the amount of a mortgage as a percentage of the total value of the property, as obtained from the appraisal. For example, if a borrower seeks to borrow $900,000 to purchase a house worth $1,000,000, the LTV ratio is $900,000/$1,000,000, or 90%. If,

[2] Unless otherwise noted, all emphases are added and internal citations are omitted.

however, the appraised value of the house is artificially increased to $1,200,000, the LTV ratio drops to just 75% ($900,000/$1,200,000).

59. From the perspective of lenders and investors, the higher the LTV ratio, the riskier the loan because it indicates the borrower has a lower equity stake, and a borrower with a lower equity position has less to lose if s/he defaults on the loan. The LTV ratio is a significant measure of credit risk, because both the likelihood of default and the severity of loss are higher when borrowers have less equity to protect in the event of foreclosure. Worse, particularly in an era of falling housing prices, a high LTV ratio creates the heightened risk that, should the borrower default, the amount of the outstanding loan may ***exceed*** the value of the property.

60. Reflecting the importance of independent and accurate real estate appraisals to investors such as Plaintiff, the Offering Documents contained extensive disclosures concerning the value of the collateral underlying the mortgages pooled in the Issuing Trusts and the appraisal methods by which such values were obtained.

61. For example, the Prospectus Supplements represented that the property securing the mortgages was to be appraised by a qualified, independent appraiser. In addition, the Prospectus Supplements represented that the appraisal procedure guidelines used by the loan originators required an appraisal report that included market data analysis based on recent sales of comparable homes in the area. If appropriate, the guidelines required a review appraisal, consisting of an enhanced desk, field review or automated valuation report confirming or supporting the original appraisal value of the mortgaged property.

62. The rating assigned to each of the Certificates was another important factor in Plaintiff's decisions to purchase the Certificates. Plaintiff and other investors relied on the ratings as an indicator of the safety and likelihood of default of the mortgage loans underlying a

particular Certificate. Consistent with their conservative corporate investment guidelines, Plaintiff purchased the Certificates because they all were rated AAA.

63. In purchasing the Certificates, Plaintiff relied on the ability of each of the Issuing Trusts to be able to show that it in fact had legal title to the underlying mortgage loans. Plaintiff would never have purchased any of the Certificates from Defendants if there was any doubt as to whether the Issuing Trusts had legal title to any of the mortgage loans that were pooled for each offering.

64. Finally, the Prospectus Supplements represented the level of credit enhancement, or loss protection, associated with the Certificates. Credit enhancements impact the overall credit rating that a Certificate receives. The amount of credit enhancements built into the Certificates was overstated, which exposed Plaintiff to additional losses. These levels of credit enhancement were material to Plaintiff.

IV. DEFENDANTS KNEW THAT A LARGE PERCENTAGE OF THE MORTGAGE LOANS UNDERLYING PLAINTIFF'S CERTIFICATES WERE MADE AS A RESULT OF THE SYSTEMATIC ABANDONMENT OF PRUDENT UNDERWRITING GUIDELINES AND APPRAISAL STANDARDS

65. Prior to underwriting and selling the Certificates to investors like Plaintiff, Defendants had identified but failed to disclose the widespread underwriting and appraisal deficiencies by the mortgage originators described below. This was in direct contrast to the representations in the Offering Documents accompanying the Certificates sold to Plaintiff.

66. As has now come to light, contrary to the representations in the Offering Documents, Defendants GMAC Mortgage, Homecomings Financial, and the third-party originators that originated the mortgages underlying the Certificates, knowingly departed from the underwriting and appraisal standards that were represented in the Offering Documents.

67. In the early 2000s an unprecedented boom in the housing market began to unfold. Between 1994 and 2004, the housing market experienced a dramatic rise in home ownership, as 12 million more Americans became homeowners. Likewise, the subprime market grew dramatically, enabling more and more borrowers to obtain credit who traditionally would have been unable to access it. According to INSIDE MORTGAGE FINANCE, from 1994 to 2006, subprime lending increased from an estimated $35 billion, or 4.5% of all one-to-four family mortgage originations, to $600 billion, or 20% of originations.

68. To ride this housing boom, financial firms aggressively pushed into the complex, high-margin business of securitization, *i.e.*, packaging mortgages and selling them to investors as RMBS. This aggressive push created a boom for the mortgage lending industry. Mortgage originators generated profits primarily through the sale of their loans to financial firms like GMAC, and the originators were therefore driven to originate and sell as many loans as possible. This high-volume business model, and the awareness of originators and RMBS issuers that RMBS investors such as Plaintiff would ultimately take the losses from defaulting loans, led to an overall decline in lending standards and tolerance of mortgage fraud. Indeed, according to the FBI, a fraud analytics company analyzed more than 3 million loans and found that between 30 and 70 percent of early payment defaults were linked to significant misrepresentations in the original loan applications.

69. Some appraisers were openly instructed to alter their valuations for the benefit of the mortgage lenders. According to the June 26, 2007 testimony of Alan Hummel, the chair of the Appraisal Institute's Government Relations Committee, before the House Committee on Financial Services on 'Legislative Proposals on Reforming Mortgage Practices,' "Unfortunately, these parties with a vested interest in the transaction are often the same people managing the

appraisal process within many financial institutions, and therein is a terrible conflict of interest. . . . [I]t is common for a client to ask an appraiser to remove details about the material condition of the property to avoid problems in the underwriting process." A 2007 study conducted by the October Research Corporation reported that 90% of appraisers had been pressured to raise property valuations so that deals could go through, and that 75% of appraisers reported "negative ramifications" if they did not alter their appraisals accordingly.

70. Even absent explicit coercion or collusion, mortgage originators could inflate apparent home values simply by offering work to only complaint appraisers. According to the April 7, 2010 testimony of Richard Bitner ("Bitner"), a former executive of a subprime mortgage originator, before the FCIC, "[B]rokers didn't need to exert direct influence. Instead they picked another appraiser until someone consistently delivered the results they needed."

71. Widespread and systematic overvaluations by mortgage originators set into motion a snowball effect that inflated housing prices all across the country and further distorted the RMBS market. As Bitner testified, "If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals. The process then repeats itself. We saw it on several occasions. We'd close a loan in January and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. . . . In the end, the subprime industry's willingness to consistently accept overvalued appraisals significantly contributed to the run-up in property values experienced throughout the country."

72. In the instant action, the players that structured the Certificates purchased by Plaintiff were GMAC and its affiliated entities. GMAC embarked on a scheme to profit from the

housing boom by acquiring or partnering with subprime lenders, such as the third-party originators described in ¶¶ 105-134 below, and then directing or encouraging these lenders to originate and purchase large numbers of mortgage loans, regardless of the borrower's ability to pay, so that the loans could then be quickly flipped at a profit on to an unsuspecting secondary market (that is, RMBS investors such as Plaintiff).

73. GMAC reaped billions of dollars in profits from its activities in the RMBS space during the U.S. housing boom. GMAC's ResCap operation was a vertically integrated business with a hand in nearly every stage of the mortgage securitization business, including originating, purchasing and selling residential mortgage loans, bundling mortgages into RMBS and selling them to investors, and servicing the loans it had securitized. At nearly every stage in the mortgage securitization process, GMAC garnered enormous profits. GMAC pocketed the difference between what it paid to originate or purchase a pool of mortgage loans and what it received from selling those loans into a securitization. GMAC obtained underwriting fees and commissions from selling the RMBS it had securitized to investors. GMAC also collected fees for servicing pooled mortgages. According to *Inside Mortgage Finance,* from 2004 to 2007 GMAC issued a total of approximately $197.85 billion in non-agency RMBS (which is to say, RMBS not associated with a government agency or government-sponsored enterprise such as Fannie Mae or Freddie Mac). According to Ally Financial's Form 10-K filings, GMAC's ResCap operations produced approximately ***$12.76 billion*** in net revenue over that same time period.

74. GMAC was totally dependent upon a steady supply of mortgage loans – the raw materials of securitization – to keep its lucrative RMBS business in operation. Without such loans, GMAC would not have been able to issue and sell new RMBS. Thus, GMAC was far

more interested in originating and purchasing a high volume of loans than it was in ensuring that those loans were of high quality. As a former RFC trader quoted in a separate complaint against GMAC stated, GMAC "needed to continue to purchase more loans for the securitizations, or they would have been out of business." According to this employee, who worked at RFC from 1998 to March 2007, beginning in 2005 RFC began to purchase higher risk loans and allow more frequent exceptions to underwriting guidelines, especially if the third party originators selling the loans were good clients. At about that time the third party originators that RFC dealt with began restricting RFC's reviews of the loans it acquired in bulk. This employee also stated that RFC's sales force was paid commissions based on the volume of the loans acquired and not the creditworthiness of those loans.

75. According to another former RFC analyst quoted in the *West Virginia Investment* complaint, Defendant Paradis, the President and CEO of RFC, would directly intervene with traders who balked at buying low-quality mortgages, especially when the sellers were favored vendors. The analyst stated that, "it was not uncommon for Paradis to go down to the desk, put his arm around the trader, and say, 'come on, why not.'"

76. As represented in the Offering Documents, the originators made loans pursuant to underwriting guidelines primarily intended to assess the ability and willingness of the borrower to repay the mortgage loan, apart from the adequacy of the mortgaged property as collateral for the loan. Accordingly, the underwriting guidelines required the consideration of, among other things, the borrower's assets, liabilities, income, employment history and credit history.

77. Notwithstanding these explicit requirements in their underwriting guidelines, the originators extended numerous loans even though the borrower's financial and employment information was not provided, or even if it was, that information was patently false and the

originators knew that the borrower was misrepresenting her or his income, occupation and other information, and was engaged in outright mortgage fraud.

78. In their respective capacities as sponsor/sellers, depositors and underwriters of the Certificates purchased by Plaintiff, Defendants had an obligation to conduct due diligence regarding the accuracy and completeness of the Offering Documents prior to their dissemination to investors such as Plaintiff. In connection with that due diligence process, Defendants had access to information which should have alerted them to the various originators' systematic and widespread abandonment of stated underwriting guidelines and appraisal methods. Defendants were supposed to play a "gatekeeper" role for public investors like Plaintiff, who did not have access to non-public information through which to test the assertions in the Offering Documents.

79. Defendants did not fulfill their obligation to ensure that investors, like Plaintiff, were provided with Offering Documents containing accurate and complete information. In connection with a lawsuit, another company, MBIA Insurance Corporation ("MBIA") has conducted loan-level analyses of three (3) GMAC RMBS with a total original principal balance of more than $4 billion.

80. MBIA agreed to insure the payments of these RMBS in the event that the cash flows to the trusts were impaired. When the loans underlying the RMBS began to default at a much higher rate than had been expected, MBIA investigated the individual loan files and documentation to determine the reasons for its losses. This forensic analysis covered 4,104 delinquent and charged-off mortgage loans underlying the GMAC RMBS.

81. MBIA discovered that GMAC had flagrantly disregarded its lending and underwriting standards. At least ***89%*** of the delinquent and charged-off loans it reviewed were in breach of one or more of GMAC's representations and warranties, with most containing

multiple breaches. A significant number of mortgage loans were made on the basis of stated incomes that were "grossly unreasonable" or were approved despite debt-to-income or loan-to-value ratios in excess of those stated in GMAC's mortgage underwriting guidelines or the prospectus supplements. Furthermore, the vast majority of the loan files MBIA examined were missing basic and necessary documentation, such as disclosures establishing the chain of title.

82. On information and belief, the mortgage loans underlying the Certificates purchased by Plaintiff suffer from similar deficiencies as the mortgage loans underlying the Certificates insured by MBIA. From the sheer volume of nonconforming loans, it is apparent that Defendants either knew or acted with reckless disregard with respect to the risk that a substantial number of the loans that were included in the securitizations purchased by Plaintiff were not underwritten in compliance with the stated underwriting guidelines.

83. GMAC's fraudulent origination and purchasing practices are further evidenced by information obtained from the government sponsored entities Fannie Mae and Freddie Mac (the "GSEs"). Both of the GSEs purchase mortgage loans from financial institutions including GMAC. The mortgages that GMAC sold to the GSEs were originated through substantially the same channels and methods as the mortgages underlying Plaintiff's Certificates, but unlike the loans underlying the Certificates, not all of the mortgages sold to the GSEs were securitized. Because the GSEs purchased individual mortgages directly, rather than receiving Certificates from an Issuing Trust, the GSEs were in a better position than Plaintiff to determine whether the mortgages GMAC sold them had been originated in conformance with GMAC's stated underwriting and documentation standards. If any purchased loans did not comply with GMAC's representations, the GSEs possessed the right to demand that GMAC repurchase them.

84. According to documents provided to the Financial Crisis Inquiry Commission, as of September 10, 2010, Fannie Mae has required GMAC to repurchase 3,457 loans originated by Ally Bank, GMAC Mortgage and Residential Funding, with an unpaid principal balance of $679 million, and had requested that GMAC also repurchase an additional 776 loans with an outstanding principal balance of $159 million. In December 2010, ResCap agreed to pay Fannie Mae approximately $462 million to settle claims regarding ResCap's obligations to repurchase defective loans.

85. Freddie Mac also purchased RMBS from GMAC. On September 2, 2011, the FHFA, acting as conservator for Freddie Mac, sued GMAC in New York state court, alleging, as Plaintiff does, that the offering documents "falsely represented that the mortgage loans underlying the RMBS complied with certain underwriting guidelines and standards, and presented a false picture of the characteristics and riskiness of those loans."

86. For each of the RMBS named in its lawsuit, Freddie Mac reviewed either a random sample of 1,000 of the underlying loans, or all of the underlying loans if there were less than 1,000 in the pool. This review confirmed, on a statistically significant basis, that GMAC's representations regarding owner-occupancy rates, LTV ratios, and underwriting standards had all been materially false. In 2008, 2009 and 2010, Freddie Mac required GMAC Mortgage to repurchase 2,375 defective loans with an unpaid principal balance of $509 million.

87. GMAC had direct insight into the true quality of the loans underlying the Certificates it issued to Plaintiff. This is evidenced by GMAC's extensive relationships with the third party originators, as well as by the origination of equally defective loans through its own mortgage origination affiliates, Defendants GMAC Mortgage and Homecomings Financial. Additionally, when originating and purchasing loans, GMAC made widespread use of

proprietary underwriting software despite its awareness that the software did not apply its stated underwriting standards and would approve non-compliant loans.

A. DEFENDANTS GMAC MORTGAGE AND HOMECOMINGS FINANCIAL ABANDONED THEIR UNDERWRITING GUIDELINES AND APPRAISAL STANDARDS

1. GMAC Mortgage

88. GMAC Mortgage originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RALI Series 2006-QS13 Trust and RFMSI 2006-S1 Trust. Interviews with former GMAC Mortgage employees conducted in connection with a separate lawsuit have confirmed that GMAC Mortgage abandoned its stated underwriting and appraisal standards so as to generate increased volume. One confidential witness, a senior mortgage underwriter for GMAC Mortgage between 2003 and 2005, said that GMAC Mortgage's underwriting procedures were "pretty loose" and were referred to as "creative underwriting." Because corporate personnel wanted more loans approved, the witness said that approving loans was a way of "scratching peoples' backs."

89. Another confidential witness, a senior wholesale writer for GMAC between 1997 and 2007, said that her supervisors overrode her underwriting decisions to approve "loans they knew were bad," so as to increase their bonuses. "A lot of times the sales director would raise holy commotion with the supervisor and directors, and under pressure, they'd approve bad loans." She said that GMAC Mortgage approved many loans without verifying the borrowers' income or assets, which were called "liar loans, because we knew damn well they were lying. You can't tell me a manicurist in L.A. was making $12,000 a month." The witness also said that fraudulent appraisals that "you knew damn well did not support the value" were accepted by management. She said that she did not even trust the loan documentation, because she had heard of underwriters placing false information in loan files at management's behest.

90. This witness traced GMAC's underwriting practices to the "originate-to-securitize" model, noting that the underwriters would receive emails from the trading department instructing them that they needed additional loans to fill pools. She knew of one person who worked as a liaison between trading and underwriting, who was permitted to approve loans despite no underwriting experience. Another employee in charge of bulk loan files would approve multiple loans at once without taking into account whether they had been approved, declined or pended by the underwriters. When the witness complained to management, she was told that "everybody knew" about this conduct and that there was no problem with it.

91. In addition to adopting skewed incentive structures and tolerating mortgage fraud, GMAC Mortgage also weakened its underwriting standards by utilizing badly flawed underwriting software. In late 2004, GMAC introduced an automated loan decisionmaking engine called Assetwise to streamline loan acquisition and origination. Loan personnel could enter data regarding a proposed loan into Assetwise and receive immediate guidance as to whether that loan would be eligible for purchase by GMAC. GMAC Mortgage made extensive use of this software, and it was also provided to select third party originators to facilitate sales. As General Motors Acceptance Corporation stated in an 8-K filing, filed on June 9, 2005:

> To help ensure consistency and efficiency in its production of residential mortgage loans, much of the Residential Capital Group's underwriting analysis is conducted through the use of its proprietary underwriting technology, Assetwise Direct. This proprietary technology implements automated decision, pricing and integration tools that extend mortgage products and risk management and pricing strategies to points of origination, and facilitates secondary market acquisition of mortgage loans.

92. However, according to a lawsuit filed by MBIA, Assetwise was programmed with looser standards than GMAC's stated underwriting guidelines. As a result, Assetwise approved loans that should never have been made, which were consequently bundled into RMBS and sold

to investors such as Plaintiff. Rather than ensuring "consistency and efficiency," Assetwise created inconsistency, masked the true underwriting standards that were being applied, and permitted loan personnel to easily circumvent prudent and necessary safeguards.

93. GMAC Mortgage also made use of another underwriting program, Desktop Underwriter, which similarly failed to apply GMAC's stated underwriting standards. Former GMAC employees quoted in a complaint brought by Thrivent Financial for Lutherans have discussed the failings of Desktop Underwriter. One witness, a senior underwriter at GMAC Mortgage from 1986 to 2008, said that GMAC Mortgage used human underwriters only to approve loans that could not be processed through its software, and that the software did not require verification of income or assets. Thus, GMAC effectively abdicated its responsibility to substantiate borrower claims for any loans that its software would accept. The witness further said that, "If the application indicates it and the borrower says it, [Desktop Underwriter treated it as] truth. And we as underwriters rarely saw them." This witness also referred to GMAC Mortgage's no-documentation loans as liar loans and said that any GMAC Mortgage borrower "could say they made $8,000 a month [when] they really didn't."

94. Another witness, who was a GMAC underwriter from 1997 to 2008, stated that the Desktop Underwriter did not require documentation, had "very loose guidelines" and "rarely turned down a loan." According to this witness, when processing no-documentation loans GMAC only verified credit scores and LTV ratios. Requiring borrowers to verify their information "was just unheard of."

95. A witness who worked at GMAC as a securities trading analyst from 2006 to 2007 said that GMAC could have detected fraudulent loans had it chosen to look beyond the basic information in the computer files. However, because the underwriting was automated,

mortgage brokers could submit information based on the criteria needed to close a loan rather than the borrower's actual circumstances.

2. Homecomings Financial, LLC

96. Homecomings Financial, LLC, f/k/a Homecomings Financial Network, Inc. ("Homecomings") originated mortgage loans that were pooled into every securitization at issue in this litigation. Homecomings was founded in 1995, and was a leading originator and provider of mortgage loans.

97. Homecomings was ResCap's primary wholesale lender from 1995 until its closure in 2008. A former RFC mortgage trader quoted in the *West Virginia Investment Management Board* complaint said that RFC traders made exceptions for Homecomings loans that were higher risk and did not fit standard underwriting guidelines.

98. Homecomings has been targeted by lawsuits and come under regulatory scrutiny for offering excessively risky loans and engaging in abusive servicing practices. Tim Boyd, a former Homecomings loan officer, was quoted as saying that Homecomings' "main focus was doing Alt-A [a category of loans supposedly riskier than prime but less risky than subprime] because that's where the money was," in a March 5, 2009 PORTLAND TRIBUNE article, "Shaky Loans May Spur New Foreclosure Wave."

99. Option ARMs are an especially risky form of loan because borrowers may wind up adding to their total indebtedness by making interest-only payments. Bill Ridge, a mortgage broker quoted in the PORTLAND TRIBUNE article, noted that GMAC management was especially keen on pushing such loans, stating, "The V.P.s came down to the office beating the drums about Option ARMs. ... I had Wachovia march through there; I had GMAC." He also said that he knew of loan officers who would instruct title agents not to inform borrowers about the problematic aspects of these loans. Boyd said that while a loan officer arranging a $300,000

Option ARM loan could collect as much as $10,500 in fees, he personally did not sell such loans because it made him "sick" to see how they could get borrowers into trouble.

100. The West Virginia Attorney General's office has investigated Homecomings for predatory lending and mortgage servicing practices, including charging a wide range of excess and unlawful fees and engaging in servicing practices that made foreclosure more likely to occur. On June 9, 2005, the West Virginia Attorney General's office announced that it had reached a settlement with Homecomings and another mortgage servicing company, whereby they agreed to pay $773,000 in restitution to approximately 2,300 West Virginia consumers and cancel nearly $11 million in debt.

101. The Federal Trade Commission ("FTC") investigated Homecomings for possible violations of the Equal Credit Opportunity Act after reviewing Homecomings' mortgage loan data and discovering that African-American and Hispanic borrowers paid more for Homecomings mortgage loans than non-Hispanic whites. The FTC's investigation focused on whether the underwriting risk and credit characteristics of the borrowers justified the reported disparities in loan price. The investigation revealed that rather than applying uniform, risk-based underwriting standards to ensure that its borrowers were receiving loans that they could afford, Homecomings permitted independent brokers to tack on fees and hike interest rates on a discretionary basis, increasing the risk of default.

102. On February 7, 2008, Homecomings borrowers filed a Truth-In-Lending-Act ("TILA") class action complaint against the company, alleging that it had engaged in a "nationwide scheme of illegal, unfair, unnlawful and deceptive business practices that violate both state and federal law," including structuring account statements, "in a way that makes it extremely difficult or impossible for borrowers to determine how much they owe, or how any

mortgage payment will be allocated." The complaint further alleged that Homecomings' improper fees and collection practices increased the likelihood that borrowers would default, a matter of great concern to RMBS investors such as Plaintiff. The lawsuit settled in November 2009.

103. As discussed in ¶ 80, *supra,* the insurer MBIA has conducted loan-level analyses of several GMAC RMBS and discovered that the vast majority of the underlying mortgages in default were in violation of the representations and warranties made in the offering documents. Homecomings was one of the major originators for a number of the RMBS analyzed by MBIA.

104. On September 3, 2008, ResCap announced that it would stop offering home loans through Homecomings. According to a January 22, 2009 letter from the FTC, Homecomings has stated that it has no intention of resuming mortgage lending in the future.

B. THE THIRD PARTY ORIGINATORS OF THE MORTGAGE LOANS UNDERLYING PLAINTIFF'S CERTIFICATES ABANDONED THEIR UNDERWRITING GUIDELINES AND APPRAISAL STANDARDS

105. As discussed above, many of the underlying mortgage loans that the Defendants packaged into securities and sold to Plaintiff were originated by third-party originators and then sold *en masse* to Defendant RFC. The Offering Documents associated with each of Plaintiff's Certificates purported to describe each of the specific originators' underwriting guidelines, and represented that the underlying mortgage loans were originated in compliance with the underwriting and appraisal standards of the originators.

106. Several of the relevant originators involved in these transactions are now known to have, among other things, ignored their own underwriting guidelines and used inflated appraisals during loan generation. The questionable practices that were employed by many of these originators have led to numerous allegations and investigations into their operations. In

fact, as noted below, faulty underwriting has led to the downfall of several of the originators whose loans Defendants bundled in these offerings.

107. The Offering Documents contain material representations, relied upon by Plaintiff, that Defendants performed due diligence on the mortgage loans they acquired from third parties and undertook certain quality control measures to ensure that faulty mortgages were ***not*** included in the Certificates they underwrote and sold. *See, e.g.*, Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5) at S-48-S-49 (Sept. 29, 2006):

> ***Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in [Residential Funding's Expanded Criteria Seller Guide].***

108. Furthermore, a number of the Individual Defendants and underwriters had ownership interests and/or close business relationships with the third-party originators, providing a direct window into how the third-party originators did business and the degree to which they had abandoned prudent lending standards to profit from the securitization machine. Despite their direct knowledge that the third-party originators did not follow their stated underwriting guidelines and lent money recklessly, Defendants permitted the Issuing Trusts to purchase loans originated by them without fair disclosure.

109. The table below lists the major third party originators responsible for originating the mortgages underlying Plaintiff's Certificates.

Issuing Trust	Originators
RFMSI Series 2006-S1 Trust	Homecomings Financial
	First Savings

Issuing Trust	Originators
RFMSI Series 2005-SA3 Trust	Homecomings Financial
	National City
	First Savings
RALI Series 2006-QS5 Trust	Homecomings Financial
	National City
RALI Series 2006-QS11 Trust	Homecomings Financial
	Wachovia
	MortgageIT
RALI Series 2006-QS13 Trust	Homecomings Financial
	HSBC
	National City
	Wachovia
	GMAC Mortgage

1. First Savings Mortgage Corporation

110. First Savings Mortgage Corporation ("First Savings") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RFMSI Series 2005-SA3 Trust, and RFMSI Series 2006-S1 Trust. First Savings, a privately held Virginia corporation, is a retail mortgage lender based in Virginia and originated $3.4 billion in mortgage loans in 2005.

111. According to a complaint filed by the Federal Home Loan Bank of Indianapolis against Banc of America Mortgage Securities, Inc., First Savings, and certain other firms participating in RMBS origination and securitization, First Savings was formed and exists solely for the purpose of originating, receiving, and depositing mortgage loans into trusts for RMBS securitizations. The complaint alleges that First Savings, along with the other defendants, simply abandoned established underwriting standards. Instead of occasional, justified exceptions to underwriting standards based on other evidence of a borrower's ability to repay, variance from stated underwriting standards was the norm.

112. A lawsuit has been filed in the United States District Court for the District of Columbia alleging that First Savings engaged in a mortgage scheme to defraud consumers and that it committed TILA violations. Specifically, in connection with a loan refinance, the plaintiff alleged that First Savings failed to provide him with comparable appraisal values and instead used inflated appraisal values. Moreover, the complaint alleged that First Savings engaged in "bait and switch" tactics whereby the plaintiff ended up with a loan that he could not afford based on his income at the time of purchase.

2. HSBC Mortgage Corporation (USA)

113. HSBC Mortgage Corporation (USA) ("HSBC") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RALI Series 2006-QS13 Trust. HSBC is the mortgage banking subsidiary of HSBC Bank USA.

114. HSBC has had a history of trouble as a result of its practices of originating mortgages and targeting low-income borrowers. In 2005, HSBC began securitizing residential mortgage loans. By the end of that year, it had issued over half a billion dollars of subprime, residential mortgage-backed securities. In 2006 and 2007, HSBC issued $9.6 billion and $6.7 billion, respectively, of residential mortgage-backed securities. The financial incentive to complete as many offerings as quickly as possible was great, and this pressure contributed to the absence of controls necessary to prevent the inclusion of materially false or misleading statements in Registration Statements.

115. Clayton Holdings, Inc. ("Clayton") was retained by HSBC to analyze the loans it was considering placing in its securitizations. Clayton recommended a number of loans for exclusion, but HSBC ignored these recommendations and ***included 62 percent of the loans recommended for exclusion*** without taking adequate steps to guarantee that they had been underwritten in accordance with applicable guidelines.

116. On January 27, 2008, THE NEW YORK TIMES reported that Clayton revealed that it had entered into an agreement with the New York Attorney General ("NYAG") to help investigate whether investment banks failed to include material information in disclosures accompanying securitized loans. Clayton agreed to provide the NYAG with evidence of "significant deterioration" in lending standards and "a parallel jump in lending expectations." According to Raymond W. McDaniel Jr., the chief executive of Moody's Investors Service, "[b]oth the completeness and veracity" of Registration Statements received by his company had deteriorated.

117. In November 2008, due to extremely high delinquency rates on its mortgages, HSBC announced that it would be closing its wholesale origination operations and would stop funding all loans after January 21, 2009.

118. In addition, the SEC has also scrutinized HSBC's practices. HSBC received three subpoenas from the SEC seeking production of documents and information relating to HSBC's involvement in specified private-label residential mortgage-backed securities transactions as an issuer, sponsor, underwriter, depositor, trustee, custodian or servicer.

119. On September 2, 2011, a complaint was filed in the Southern District of New York alleging that HSBC sold to Fannie Mae and Freddie Mac certain mortgage-backed securities based on Registration Statements containing materially false or misleading statements and omissions. The complaint also alleged that HSBC falsely represented that certain mortgage loans complied with underwriting guidelines and standards.

3. MortgageIT, Inc.

120. MortgageIT, Inc. ("MortgageIT") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RALI Series 2006-QS11 Trust. The company, founded in 1988, was a residential mortgage banking company that was acquired as a

wholly-owned subsidiary of MortgageIT Holdings, a self-registered real estate investment trust, and skyrocketed to become one of the top mortgage lenders in the nation..

121. On March 13, 2006, EMC Mortgage Corp. ("EMC") filed a lawsuit in the Northern District of Texas against MortgageIT for failure to repurchase 587 loans that breached representations made by MortgageIT in its purchase agreements. EMC alleged that over $70 million in loans had defaulted during the borrowers' first three scheduled payments, triggering a duty by MortgageIT to repurchase.

122. In June 2007, MortgageIT entered into a settlement agreement with the Connecticut Department of Banking after an investigation into the company's business revealed that MortgageIT had violated Connecticut law by employing at least 48 originators without first obtaining proper registrations. As part of the settlement, MortgageIT made a $48,000 contribution to support the Nationwide Mortgage Licensing System.

123. MortgageIT was further scrutinized for its predatory lending practices, and was named as a defendant in a number of consumer lawsuits. For example, in September 2010, a TILA action was filed in the Northern District of California, claiming that the company had engaged in fraudulent mortgage lending practices. The complaint alleged, among other things, that MortgageIT participated in a scheme to obtain mortgages that "grew into a brazen plan to disregard underwriting standards and fraudulently inflate property values...." Another lawsuit, filed in October 2009 in the Central District of California, claimed that MortgageIT misrepresented mortgage terms to the borrower and extended an adjustable-rate mortgage ("ARM") to the borrower based on stated income, rather than verified income, which ultimately resulted in the borrower's default on the loan.

124. Most recently, the United States government has also honed in on MortgageIT and its questionable lending practices. On May 3, 2011, the Department of Justice announced that it had filed a civil mortgage fraud lawsuit against MortgageIT, seeking damages and penalties under the False Claims Act for allegations that MortgageIT made false compliance certifications to the Department of Housing and Urban Development ("HUD") in order to obtain approval of FHA mortgages that were not, in fact, eligible for FHA insurance under HUD rules. The complaint also claimed that MortgageIT engaged in reckless lending practices and disregarded sound underwriting guidelines by ignoring "red flags," failing to conduct due diligence and extending mortgage loans to unqualified borrowers.

4. National City Mortgage Corporation

125. National City Mortgage Corporation ("National City") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RALI Series 2006-QS5 Trust, RALI 2006-QS13 Trust, and RFMSI Series 2005-SA3 Trust. National City was a subsidiary of National City Corporation, one of the ten largest banks in America. In 1999, National City Corp. purchased First Franklin Financial Co. ("First Franklin"), an originator of subprime and non-conforming mortgages.

126. Subsequent to the First Franklin acquisition, National City increased its subprime portfolio at an alarming rate, reaping the benefits from retaining over $3.8 billion, or 60%, of First Franklin's subprime mortgage loans. In 2002, the company "express[ed] pride in the progress of its initiative to improve its net interest income" and was "continuing to bet big on its strategy of holding the majority of its subprime loans." The company soared to become the nation's sixth-largest mortgage lender, generating $130 billion in mortgages in 2003 alone.

127. National City's success, however, was the result of reckless and imprudent lending and underwriting practices, including providing high-risk mortgages to non-creditworthy

borrowers with little or no documentation regarding the borrower's ability to repay the loans. National City utilized third-party brokers across the country to originate loans, observed loose underwriting guidelines, and offered "piggyback loans" to borrowers that provided them with the luxury of no down payment but left the borrower with little or no equity in the property.

128. The company's persistently risky lending practices and the subsequent crash of the subprime market left National City facing serious financial trouble, and it eventually became the target of regulatory scrutiny. In May 2008, the Department of Justice announced that it had agreed to a settlement of $4.6 million in order to resolve charges that it brought against National City for allegations relating to mortgage fraud under the False Claims Act. The Department of Justice claimed that National City had improperly submitted 58 late endorsement loans for FHA insurance coverage that were not current, in violation of FHA regulations.

129. A month later, National City's parent corporation entered into a confidential Memorandum of Understanding with the Office of the Comptroller of the Currency, essentially placing the company on probation and signaling that regulators had "concerns" about National City regarding its capital management, risk management, asset quality and liquidity management. On August 9, 2008, the WALL STREET JOURNAL reported in the article *National City Faces Probe* that the SEC opened an informal investigation into National City and had requested "certain documents concerning its loan underwriting experience, dividends, bank regulatory matters and the sale of First Franklin Financial Corporation."

130. National City was later involved in a securities class action lawsuit, filed in the Northern District of Ohio on December 23, 2008. The complaint alleged that National City made statements regarding its underwriting standards, capitalization and liquidity and provision for loan losses that were materially false in that:

> (i) ... National City's residential real estate loan portfolio was dominated by toxic loans provided to borrowers without regard to the borrowers' creditworthiness or ability to repay the loans; (ii) an overwhelming majority of loans the Company classified as "prime" quality were made to borrowers with subprime credit scores, well below the widely-accepted industry definition of "prime" quality; (iii) National City's allowance and related provisions for loan losses were grossly deficient; (iv) the Company was not "well-capitalized" and, in reality, had insufficient liquidity to absorb the massive losses lingering in its residential real estate loan portfolio; and (v) National City's inability to absorb losses from the inherently risky loans held on its balance sheet ... subjected the Company to a debilitating financial crisis.

National City agreed to settle the class action claims in November 2010 for $22.5 million.

131. As a result of the increasing number of actions and investigations into National City's fraudulent lending practices, National City was denied bailout money by the federal government, making it the only bank out of the top twenty-five in the country not to receive such funds.

5. Wachovia Mortgage Corporation

132. Wachovia Mortgage Corporation ("Wachovia") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RALI Series 2006-QS11 Trust and RALI Series 2006-QS13 Trust. Wachovia is a wholly-owned subsidiary of Wachovia Bank, which was acquired by Wells Fargo Bank in 2008. Wachovia operates in the mortgage and home equity loan origination industry.

133. On September 2, 2011 the FHFA, as conservator for Fannie Mae and Freddie Mac, initiated action in New York State Court. The complaint alleges violations of federal securities laws arising from, *inter alia*, material false and misleading statements and omissions in the Prospectus Supplements for certain RMBS purchased by Fannie Mae and Freddie Mac, including two RMBS containing loans originated by Wachovia. The complaint alleges that Wachovia, amongst other originators, routinely ignored underwriting guidelines, and in some

cases abandoned the guidelines completely. This resulted, the suit alleges, in false and misleading statements or omissions regarding compliance with underwriting guidelines in the Prospectus Supplements for several securities purchased by Fannie Mae and Freddie Mac, in violation of federal securities laws.

134. The FHFA's examination of the loans underlying its RMBS revealed evidence that the originators, including Wachovia, had engaged in improper appraisal and underwriting practices resulting in misrepresentations of owner-occupancy data and LTV data. In particular, the Offering Documents for the two RMBS containing Wachovia loans overstated the owner-occupancy rate by 6.27% and 9.27%, respectively. The Offering Documents for these two RMBS further overstated the percentage of pooled loans with low LTV ratios (defined as LTV ratios less than or equal to 80%) by 39.47% and 36.65%, respectively, and understated the percentage of underwater loans by 10.5% and 15.2%.

V. A SIGNIFICANT NUMBER OF THE MORTGAGE LOANS WERE MADE TO BORROWERS WHO DID NOT OCCUPY THE PROPERTIES IN QUESTION

135. The Offering Documents contained information regarding the purported occupancy status of the mortgaged properties, including whether they were primary homes, investment properties, or second homes. These representations were material to investors such as Plaintiff because high owner-occupancy rates would have made the Certificates safer investments than Certificates backed by second homes or properties purchased for real estate speculation. Thus, Defendants had an incentive to overstate the owner-occupancy rates of the underlying mortgages to make them appear more secure. As noted in a January 21, 2011 article in BUSINESSWEEK, borrowers either never moved into or later vacated homes for at least ***25%*** of U.S. mortgages that were described as being for "owner occupied" properties when bundled into securities.

136. In connection with a separate lawsuit against the Sponsor Defendant RFC, the insurer Massachusetts Mutual Life Insurance Company ("Mass Mutual") conducted a forensic review of the mortgage loans underlying 18 RMBS sponsored by RFC. Part of this analysis included testing to determine if the owner-occupancy ratios given in the Offering Documents were accurate. Mass Mutual investigated whether borrowers were having tax statements and bills sent to the address of the mortgaged properties, whether the borrowers had taken tax exemptions available for owner-occupied properties, and whether property records showed that the borrowers owned multiple houses. Mass Mutual discovered that the offering documents overstated the owner-occupancy ratio by between 5.71% and 15.23% for ***each*** of the 18 RMBS that it analyzed.

137. Freddie Mac performed a similar analysis of individual loan files in connection with its lawsuit against GMAC. Its analysis covered 21 RMBS and revealed that in each case, the offering materials had overstated the owner-occupancy rates by between 8.48% and 13.10%.

138. On information and belief, the mortgage loans underlying all of the Certificates purchased by Plaintiff suffer from similar deficiencies as the mortgage loans underlying the Certificates purchased by Mass Mutual and Freddie Mac. Two separate analyses covering a total of 34 GMAC RMBS offerings[3] have uncovered material overstatements of the owner-occupancy ratio in every single offering. There is no reason to believe that the systematic and pervasive misrepresentation of owner-occupancy rates identified by Mass Mutual and Freddie Mac were confined to the RMBS they examined.

[3] The Freddie Mac analysis involved 21 RMBS and the Mass Mutual analysis involved 18 RMBS. There was some overlap between the two analyses, as five (5) RMBS were analyzed by both Freddie Mac and Mass Mutual.

VI. DEFENDANTS MISREPRESENTED THE LTV RATIOS OF THE MORTGAGE LOANS AND THE NUMBER OF PROPERTIES WORTH LESS THAN THE OUTSTANDING LOANS

139. As discussed in Section III, *supra*, the LTV ratio is one of the most important measures of the riskiness of a loan. In the Offering Documents, Defendants acknowledge that loans with high LTV ratios are more likely to default. For example, the 424B5 Prospectus Supplement (Form 4245B) for RALI Series 2006-QS11, filed on August 29, 2006, states that, "the rate of default on mortgage loans that are secured by non-owner occupied properties, mortgage loans made to borrowers whose income is not required to be provided or verified, mortgage loans made to borrowers with high debt-to-income ratios, and mortgage loans with high LTV ratios, may be higher than for other types of mortgage loans." Furthermore, if a borrower does default and the property enters foreclosure, the Issuing Trust is much more likely to recover the outstanding balance on the loan through a foreclosure sale if the LTV ratio is low.

140. Mortgage loans that are "underwater" – that is to say, those where the LTV ratio is greater than 100% because the value of the outstanding loan exceeds the value of the collateral – are extremely risky investments. In these cases, the borrower has a strong incentive to default, the possibility that the borrower will be capable of refinancing are virtually nil, and if the mortgage enters foreclosure the Issuing Trust will definitely incur a loss.

141. Appraisals that do not conform to USPAP standards can artificially lower LTV ratios by overstating the value of the mortgaged properties. In instances where LTV values have been distorted by faulty appraisals, RMBS investors may be unaware of the true value of their collateral until default and foreclosure occur. The FCIC' Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States discussed this problem.

> As the housing market expanded, another problem emerged, in subprime and prime mortgages alike: inflated appraisals. For the lender, inflated appraisals meant greater losses if a borrower defaulted. But for the borrower or for the broker or loan officer who hired the appraiser, an inflated value could make the difference between closing and losing the deal. Imagine a home selling for $200,000 that an appraiser says is actually worth only $175,000. In this case, a bank won't lend a borrower, say, $180,000 to buy the home. The deal dies. Sure enough, appraisers began feeling pressure. One 2003 survey found that 55% of appraisers had felt pressed to inflate the value of homes; by 2006, this had climbed to 90%.

142. Defendants had a responsibility to ensure that the LTV figures they presented in the Offering Documents were not the product of fraudulent appraisals. As the U.S. Senate Permanent Subcommittee on Investigations stated in its staff report, 'Wall Street and the Financial Crisis: Anatomy of a Financial Collapse,' "Whether appraisals are conducted internally by the bank or through a vendor, the bank must take responsibility for establishing a standard process to ensure accurate, unbiased home appraisal values."

143. Mass Mutual and Freddie Mac's reviews of the loans underlying 34 GMAC RMBS revealed that, in addition to consistently misrepresenting owner-occupancy rates, GMAC also consistently misrepresented the LTV ratios of the underlying mortgages and the number of properties with high LTV ratios. For each loan they examined, Mass Mutual and Freddie Mac used an industry standard automated valuation model ("AVM") to calculate the value of the mortgaged property at the time of origination. AVMs are commonly used in the real estate industry and rely upon similar data as appraisers, including county records, tax records, and data on comparable properties.

144. Freddie Mac's review of 21 GMAC RMBS revealed that in each case, the offering documents overstated the percentage of loans with low LTV ratios (defined as LTV ratios less than 80%) by between 12.24% and 49.08%. The offering documents understated the

percentage of underwater loans (loans with LTV ratios greater than 100%) by between 8.18% and 33.81%.

145. Although Mass Mutual presented its data differently than Freddie Mac did, its review also revealed significant misrepresentations of LTV data. Mass Mutual found that for 17 of the 18 GMAC RMBS it analyzed, the offering documents had understated the weighted average LTV ratio by between 4.23% and 16.77% and understated the percentage of loans with high LTV ratios (defined as LTV ratios greater than 90% or 100%) by between 4.54% and 39.08%. Only one of the RMBS examined did not misrepresent the percentage of loans with high LTV ratios.

146. On information and belief, the mortgage loans underlying all of the Certificates purchased by Plaintiff suffer from similar deficiencies as the mortgage loans underlying the Certificates purchased by Mass Mutual and Freddie Mac. The loan-level analyses demonstrate that Defendants have engaged in a systematic practice of understating LTV ratios and the number of underwater properties.

VII. THE CREDIT RATINGS ASSIGNED TO THE CERTIFICATES MATERIALLY MISREPRESENTED THE CREDIT RISK OF THE CERTIFICATES

147. The AAA credit ratings of the Certificates were an important factor in Plaintiff's decision to purchase the Certificates. Because Plaintiff is a conservative institutional investor, it purchased only investment grade Certificates, all of which were rated AAA.

148. Investment grade securities are understood by investors to be stable, secure and safe. A rating of AAA denotes high credit quality and is the same rating as those typically assigned to bonds backed by the full faith and credit of the United States Government, such as treasury bills. Historically, before 2007, investments with AAA ratings had an expected cumulative loss rate of less than 0.5 percent, with an annual loss rate of close to zero. According

to Standard and Poor's, the default rate on all investment grade corporate bonds (including AA, A and BBB) from 1981 to 2007, for example, averaged about .094% per year and was not higher than 0.41% in any year.

149. The Defendants understood (and banked on) the importance that purchasers of mortgage-backed securities attached to credit ratings. In most cases, the purchasers were institutional investors, such as Plaintiff, who did not have the knowledge or ability to independently analyze the mortgage pools underlying any particular offering to verify for themselves that the ratings were accurately determined.

150. Accordingly, Defendants featured the ratings prominently in the Offering Documents and discussed at length the ratings assigned to the Certificates and the bases for the ratings. Each Prospectus Supplement stated that the issuance of each of the Certificates was conditioned on the assignment of particular, investment-grade ratings and listed the ratings in a chart. All of the Certificates purchased by Plaintiff were AAA-rated securities, and the remainder were also investment grade.

151. Unbeknownst to Plaintiff and other investors, at all relevant times, Defendants knew that the ratings were not reliable because those ratings were bought and paid for, and were supported by, flawed information provided by Defendants to the rating agencies. In fact, Defendants manipulated the rating agencies to obtain the desired ratings for the Certificates.

152. Specifically, the ratings of the Certificates were significantly compromised by the misinformation provided by Defendants to the rating agencies. Among other matters, Defendants did not disclose to the rating agencies that the originators, including GMAC-affiliated entities, had abandoned their underwriting standards by, among other things, manipulating the assets, liabilities, income and other important information concerning

borrowers; using false metrics to qualify borrowers; and aggressively using exceptions to qualify borrowers. Defendants did not disclose their knowledge that, in obtaining appraisals to value the underlying collateral, the originators used inflated appraisals that departed from industry-approved standards. Defendants did not otherwise disclose their knowledge of the pervasive fraud that affected the mortgages underlying the Certificates.

153. Apart from supplying incomplete and false information to the rating agencies, Defendants also manipulated their relationship with the rating agencies in order to achieve the desired ratings. The rating agencies received enormous revenues from the issuers who paid them for rating their securities. Because the desired rating of a securitized product was the starting point for any securities offering, the rating agencies were actively involved in helping issuers structure their products to achieve the requested rating. As a result, the rating agencies essentially worked backwards, starting with the issuer's target rating and then working toward a structure that would yield the desired rating. Among other things, the rating agencies instructed issuers on how much "credit enhancement" to provide to each tranche of the Certificates in order to secure the desired ratings.

154. In this manner, Defendants were able to manipulate the rating agencies to achieve the inflated ratings they desired. Through repeated communications and collaboration with the rating agencies, Defendants were effectively able to reverse engineer aspects of the ratings models and then modify the structure of an offering to improve the ratings without actually improving the underlying credit quality.

155. In a 2008 report entitled "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies," the SEC confirmed that the issuers and the rating agencies worked together so that securities would receive the highest ratings:

> Typically, if the analyst concludes that the capital structure of the RMBS does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger [sponsor/issuer]. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche -- as the highest rated tranche -- pays the lowest coupon rate of the RMBS' tranches and, therefore, costs the arranger the least to fund.

156. As a result, the Certificates were not worthy of the investment-grade ratings given to them, as evidenced most clearly by the fact that many of the Certificates – all initially awarded investment grade ratings (all AAA/Aaa) – have now been downgraded to junk, a vast number of the underlying loans have been foreclosed upon, and the remaining underlying loans are suffering from crippling deficiencies and face serious risks of default. The collective steep downgrade of AAA/Aaa-rated Certificates indicates that the ratings set forth in the Offering Documents were false, unreliable and inflated.

157. According to the report, "Wall Street and the Financial Crisis," issued by the U.S. Senate Permanent Subcommittee on Investigations, former ratings agency analysts and managers said that investment banks pressured them to get their deals done quickly, to increase the size of the tranches that received AAA ratings and to reduce the credit enhancements protecting the AAA tranches from loss.

158. By including and endorsing the AAA ratings contained in the Offering Documents, Defendants falsely represented that they actually believed that the ratings were an accurate reflection of the credit quality of the Certificates.

VIII. DEFENDANTS MISREPRESENTED THE EXTENT OF CREDIT ENHANCEMENT INCLUDED IN THE CERTIFICATES

159. Defendants used a variety of credit enhancements to make the Certificates seem like more attractive and less risky investments. Credit enhancement represents the amount of "cushion" or protection from loss exhibited by a given security. This cushion is intended to improve the likelihood that holders of highly rated certificates receive the interest and principal they expect based on the Offering Documents. The level of credit enhancement offered is based on the makeup of the loans in the underlying collateral pool. Riskier pools necessarily need higher levels of credit enhancement to ensure payment to senior certificate holders. Credit enhancements for a given trust also impact the overall credit rating that a given tranche of certificates receives. The level of credit enhancement for the Certificates was material to Plaintiff because it represented the protection purportedly afforded from loss.

160. The most common form of credit enhancement in the Offering Documents was "subordination" in which the Defendants created a hierarchy of loss absorption among the tranche securities. To create that hierarchy, Defendants placed the pool's tranches in an order, with the lowest tranche required to absorb any losses first, before the next highest tranche. Losses might occur, for example, if borrowers defaulted on their mortgages and stopped making mortgage payments into the pool. Lower level tranches most at risk of having to absorb losses typically received non-investment grade ratings from the credit rating agencies, while the higher level tranches that were protected from loss typically received investment grade ratings. One key task for both Defendants and the credit rating agencies was to calculate the amount of "subordination" required to ensure that the higher tranches in a pool were protected from loss and could be given AAA or other investment grade ratings.

161. As set forth below, representations regarding the inclusion and scope of credit enhancements were made in all of the Offering Documents. These representations were false and misleading because all of the purported "enhancements" depended on or derived from inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue.

IX. DEFENDANTS FAILED TO ENSURE THAT TITLE TO THE UNDERLYING MORTGAGE LOANS WAS EFFECTIVELY TRANSFERRED

162. A fundamental aspect of the mortgage securitization process is that the issuing trust for each offering must obtain good title to the mortgage loans comprising the pool for that offering. This is necessary in order for the holders of the RMBS, such as Plaintiff, to be legally entitled to enforce the mortgage loans in the event of default. Two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process – a promissory note and a security instrument (either a mortgage or a deed of trust).

163. The rules for these transfers are governed by the law of the state where the property is located, by the terms of the pooling and servicing agreement ("PSA") for each securitization, and by the law governing the issuing trust (with respect to matters of trust law). In general, state laws and the PSAs require the promissory note and security instrument to be transferred by indorsement, in the same way that a check can be transferred by indorsement, or by sale. In addition, state laws generally require that the trustee of the issuing trust have physical possession of the original, manually signed promissory note in order for the loan to be enforceable by the trustee against the borrower in the event of the borrower's default.

164. In order to preserve the bankruptcy-remote status of the issuing trusts in RMBS transactions, the notes and security instruments are generally not directly transferred from the mortgage loan originator to the trust. Rather, the notes and security instruments are initially

transferred from the originator to the depositor, either directly or via one or more special-purpose entities. After this initial transfer to the depositor, the depositor transfers the notes and security interests to the issuing trust for the particular securitization. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

165. To ensure that the trust qualifies as a tax-free real estate mortgage investment conduit, the PSA generally requires the transfers to the trust to be completed within a strict time limit after formation of the trust. Furthermore, the applicable trust law in each state generally requires strict compliance with the trust documents, including the PSA, so that failure to comply strictly with the timeliness, indorsement, physical delivery and other requirements of the PSA with respect to the transfers of the notes and security instruments means that the transfers would be void and the trust would not have good title to the mortgage loans.

166. The Offering Documents for the Certificates represented in substance that the Issuing Trust for the respective offering had obtained good title to the mortgage loans comprising the pool underlying the offering. In fact, however, Defendants routinely and systematically failed to comply with the requirements of applicable state laws and the PSAs for valid transfers of the notes and security instruments. In an October 20, 2010 NEW YORK TIMES article on the failure of large banks to maintain full documentation, "Battle Lines Forming In Clash Over Foreclosures," Rebel A. Cole, a professor of finance and real estate at DePaul University, was quoted as saying that banks "have essentially sidestepped 400 years of property law in the United States. ... There are so many questionable aspects to this thing it's scary."

167. On October 27, 2010, Katherine Porter, then a visiting professor at Harvard Law School specializing in consumer credit, consumer protection regulation and mortgage servicing, testified before a Congressional Oversight Panel that,

> The implications of problems with transfer are serious. If the [securitization] trust does not have the loan, homeowners may have been making payments to the wrong party. If the trust does not have the note or mortgage, it may not have standing to foreclose or legal authority to negotiate a loan modification. To the extent that these transfers are being completed retroactively, it raises issues about honesty in creating and dating the assignments/transfers and about what parties can do, if anything, if an entity in the securitization chain, such as Lehman Brothers or New Century, is no longer in existence. Moreover, retroactive transfers may violate the terms of the trust, which often prohibit the addition of new assets, or may cause the trust to lose its REMIC status, a favorable treatment under the Internal Revenue Code. Chain of title problems have the potential to expose the banks to investor lawsuits and to hinder their legal authority to foreclose or even to do loss mitigation.
>
> * * * * *
>
> I want to share with the Panel that the lawyers that I have met over years of my research on mortgage servicing both creditor lawyers and debtor lawyers have nearly universally expressed that they believe a very large number (perhaps virtually all) securitized loans made in the boom period in the mid-2000s contain serious paperwork flaws, did not meet underwriting or other requirements of the trust, and have not been serviced properly as to default and foreclosure.

168. On November 18, 2010, Adam Levitin, a professor at Georgetown University Law Center, provided similar testimony about the importance of the chain of title to investors and the consequences of faulty transfers before a hearing of the House Financial Services Committee.

> Concerns about securitization chain of title also go to the standing question; if the mortgages were not properly transferred in the securitization process ..., then the party bringing the foreclosure does not in fact own the mortgage and therefore lacks standing to foreclose. If the mortgage was not properly transferred, there are profound implications too for investors, as the mortgage-backed securities they believed they had purchased would, in fact be non-mortgage-backed securities, which would almost assuredly lead investors to demand that their investment contracts be rescinded[.]
>
> * * * * *

> Securitization is the legal apotheosis of form over substance, and if securitization is to work it must adhere to its proper, prescribed form punctiliously. The rules of the game with securitization, as with real property law and secured credit are, and always have been, that dotting "i's" and crossing "t's" matter, in part to ensure the fairness of the system and avoid confusions about conflicting claims to property. Close enough doesn't do it in securitization; if you don't do it right, you cannot ensure that securitized assets are bankruptcy remote and thus you cannot get the ratings and opinion letters necessary for securitization to work. Thus, it is important not to dismiss securitization problems as merely "technical;" these issues are no more technicalities than the borrower's signature on a mortgage. Cutting corners may improve securitization's economic efficiency, but it undermines its legal viability.

169. It is now clear that GMAC did not transfer securitized loans to the Issuing Trusts in a timely fashion, if it did so at all. For example, a September 5, 2011 National Mortgage News article, "Servicers Are Now Rewriting Their History," discusses GMAC's transfer of a mortgage to a bank trust on May 18, 2011 for a bond deal ***that closed in 2005***. This failure to ensure proper transfer of mortgage documents or maintain the chain of title – tasks which GMAC received servicing fees for supposedly fulfilling – represents a flagrant breach of the representations contained in the Offering Documents.

170. GMAC's failure to maintain the chain of title for securitized mortgages as it represented it would do in the Offering Documents has led it to take unlawful shortcuts, resulting in a costly foreclosure moratorium and multiple investigations. Around September 20, 2010, GMAC was forced to temporarily halt evictions and foreclosure sales in 23 states after a GMAC employee, Jeffrey Stephan, admitted in a deposition that he routinely submitted false affidavits in foreclosure cases and that he did not review the exhibits whose accuracy he attested to. According to a September 30, 2010 article in the NEW YORK TIMES, "Foreclosures Slow As Document Flaws Emerge," shortly after the moratorium's announcement Old Republic National

Title, one of the largest title insurers in the country, sent a bulletin to agents saying that "until further notice" it would not insure title to properties foreclosed upon by GMAC Mortgage.

171. GMAC resumed foreclosures in October, but the moratorium alerted regulators to GMAC's unlawful servicing practices and the need to take action. All fifty state attorneys general have launched a coordinated investigation into the foreclosure practices of banks including GMAC. The Board of Governors of the Federal Reserve System ("Federal Reserve") also launched its own investigation. On April 13, 2011, GMAC entered into a consent decree with the Federal Reserve and the Federal Deposit Insurance Corporation requiring it to bring its loan servicing and foreclosure processes into compliance with the law. According to the Federal Reserve's accompanying press release, GMAC and other banking organizations engaged in, "a pattern of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing. These deficiencies represent significant and pervasive compliance failures and unsafe and unsound practices at these institutions."

X. DEFENDANTS' SPECIFIC MATERIAL MISSTATEMENTS AND OMISSIONS IN THE OFFERING DOCUMENTS

172. Defendants' representations regarding the mortgage loans underlying the Offerings were highly material to investors such as Plaintiff. Because the revenue paid to investors is derived from the stream of payments received from the mortgage loan borrowers, the value of an investment is necessarily tied to the perceived risk of default in the Mortgage Loan pool. In other words, the market value of a Certificate decreases as the perceived risk of the underlying pool increases. Plaintiff, therefore, closely examined the representations made by the Defendants regarding the mortgage loans underlying each of the Offerings at issue here.

173. Moreover, Defendants went above and beyond specific representations to warrant that if ***any material pool characteristic*** differed ***by 5% or more*** from the description in the Offering Documents, they would provide notice and repurchase those certificates:

> In the event mortgage loans are removed from or added to the mortgage pool after the date hereof prior to the closing and any material pool characteristics of the actual mortgage pool differ by 5% or more from the description of the mortgage pool in this prospectus supplement, a current report on Form 8-K describing the final mortgage pool will be filed with the Securities and Exchange Commission within four business days of the related closing.

The above misstatement was contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-47-48 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at S-42 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-50 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at S-41-42 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at S-72, 11 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at S-46 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 14, S-27 (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 15, 53 (Aug. 3, 2005).

174. In light of the numerous departures from underwriting guidelines and appraisal standards by GMAC Mortgage, Homecomings and the third-party originators described above, the Offering Documents (Registration Statements and Prospectus Supplements) disseminated by Defendants in the course of selling the Certificates contained numerous misstatements and omissions, as set forth below.

A. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING UNDERWRITING STANDARDS AND PRACTICES

175. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospectus Supplements formed a part, contained the following misleading statements, among others, in identical or substantially similar language, regarding the underwriting standards and practices that the Originators applied in originating the mortgage loans underlying the Certificates.

> ***The depositor expects that the originator of each of the mortgage loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.*** All of the mortgage loans constituting the mortgage pool for a series of certificates will have been acquired either directly or indirectly by the depositor through the Expanded Criteria Program, which is described below under "--The Expanded Criteria Mortgage Program."

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at 12 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at 12 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at 12 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at 13 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 13 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 12 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1) (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1) (Aug. 3, 2005).

Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the [Residential Funding's Expanded Criteria Seller Guide].

* * * * *

In accordance with the Seller Guide, the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information, which may have been supplied solely in the application, regarding its assets, liabilities, income (except as described below), credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy.

The mortgagor may also be required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts. In the case of non-owner occupied properties, income derived from the mortgaged property may be considered for underwriting purposes. For mortgaged property consisting of a vacation or second home, generally no income derived from the property is considered for underwriting purposes.

Based on the data provided in the application and certain verifications, if required, a determination is made by the original lender that the mortgagor's monthly income, if required to be stated, ***will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations.*** Generally, scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and all scheduled payments on obligations that extend beyond ten months, including those mentioned above and other fixed obligations, must equal no more than specified percentages of the prospective mortgagor's gross income.

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-44-46 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at S-40-41 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-47-48-49 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at 13 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 12 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 14, S-43-45 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 16-17 (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 11 (Aug. 3, 2005).

176. The statements quoted above were false because they represented that the Originators applied underwriting guidelines and quality control measures to assess the value of the mortgaged properties, evaluate the adequacy of such properties as collateral for the mortgage loans and assess the applicants' abilities to repay their mortgage loans, when in fact the Originators had actually abandoned these standards so that they could increase the volume of loan origination and the resulting fees that they earned. The statements also represent that Residential Funding put quality control measures into place in order to assure that the underwriting guidelines were followed. Instead, Residential Funding ignored the underwriting tactics of the Originators. For further discussion of Originators' disregard of their stated underwriting guidelines, *see* Section IVA, *supra*.

B. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING QUALITY CONTROL PROCEDURES

177. The Offering Documents represented that numerous quality control procedures were conducted with respect to the loans underlying the Certificates. For example, the Offering Documents contained, in sum or substance, the following representation:

> All of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of Residential Funding described under "--The Program" in this prospectus supplement. ***Residential Funding will review each mortgage loan for compliance with its underwriting standards prior to purchase.***

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-47 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at S-41 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-49 (Sept. 29, 2006).

178. The above statements of material facts were untrue when made because they failed to disclose that the Sponsors and Originators did not, in fact, review each loan for compliance with its underwriting standards prior to purchase..

C. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING UNDERWRITING EXCEPTIONS

179. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, using identical or substantially similar language, regarding the circumstances under which Defendants granted underwriting exceptions for loans underlying the Certificates:

> In certain instances, the LTV ratio may have been based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator. In most cases, the

> mortgage loans were either originated and underwritten in accordance with Residential Funding Company, LLC's AlterNet Program, as discussed below, or otherwise acquired from a mortgage collateral seller based on standards consistent with the following discussion on credit grades classification or substantially similar standards acceptable to Residential Funding Company, LLC. ***Exceptions to these standards are made, however, on a case by case basis if it is determined, generally based on compensating factors, that an underwriting exception is warranted. Compensating factors may include, but are not limited to, a low LTV ratio, stable employment, a relatively long period of time in the same residence, a mortgagor's cash reserves and savings and monthly residual income.***

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-47 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at S-42 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-49 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at S-41 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 12 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 14 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 16 (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 11 (Aug. 3, 2005).

180. The statements quoted above were false because they represented that Residential Funding Company and the Originators only permitted exceptions to their underwriting guidelines on a case-by-case basis and when the borrowers could show some compensating factors as justification, when in fact the Originators systematically granted exceptions to virtually every borrower who did not qualify for a mortgage loan. For further discussion of Originators' wholesale and systematic abuse of exceptions, *see* Section IV, *supra*.

D. DEFENDANTS MADE UNTRUE STATEMENTS AND OMISSIONS REGARDING LOAN-TO-VALUE RATIOS AND APPRAISALS

181. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, regarding loan-to-value ratios and appraisals of the properties securing the mortgage loans underlying the Certificates:

> The adequacy of the mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in [Residential Funding's Expanded Criteria Seller Guide]. Appraisers may be staff appraisers employed by the originator. The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

The above misstatement in identical or substantially similar language was contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-46 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at S-41 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-48 (Sept. 29, 2006); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 13 (Mar. 3, 2006).

> In determining the adequacy of the mortgaged property as collateral, an appraisal is made of each property considered for financing. The appraiser is required to verify that the property is in good condition and that construction, if new, has been completed.

> The appraisal is based on various factors, including the market value of comparable homes and the cost of replacing the improvements. Alternatively, property valuations may be made under various other methods, including automated valuation models.

The above misstatement in identical or substantially similar language was found in the following Offering Documents: Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at 14 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 13-14 (July 27, 2005); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 12 (Aug. 3, 2005); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 18 (July 11, 2003).

182. The statements quoted above were false because they represented that the properties securing the loans underlying the Certificates had been appraised based on the market values of comparable properties and replacement cost analyses, when in fact the Originators systematically pressured appraisers to overvalue properties and falsify appraisal reports. For further discussion of the corruption of the appraisal system, *see* Section IV, *supra*.

183. Furthermore, each Prospectus contained tables substantially similar to that below, purporting to provide data on the LTV ratios of the mortgage loans underlying the Certificates so that investors could reach their own conclusions about whether or not those loans were backed by sufficient collateral. Not only did the tables indicate that no original loan-to-value ratio was greater than 100% (or in some instances 95%), but also that less than ten percent of the loans had an original loan-to-value ratio greater than 80%. The statements were materially untrue and misleading, however, because the value data underlying the LTV calculations had been systematically skewed by fraudulent appraisals. Thus, these statements understated the true LTV ratios of the loans and the true risk inherent in the Certificates.

Original Mortgage Loan-to-Value Ratios of the Mortgage Loans

<TABLE>
<CAPTION>

Original Loan-to-Value Ratio (%)	Number of Mortgage Loans	Principal Balance	Percentage of Mortgage Loans	Average Principal Balance	Weighted Average Credit Score
<S>	<C>	<C>	<C>	<C>	<C>
00.01 - 50.00	69	$ 29,579,210	8.06%	$ 428,684	741
50.01 - 55.00	43	16,556,105	4.51	385,026	750
55.01 - 60.00	62	31,091,749	8.47	501,480	742
60.01 - 65.00	70	29,022,892	7.91	414,613	732
65.01 - 70.00	112	50,826,167	13.85	453,805	741
70.01 - 75.00	103	43,799,610	11.93	425,239	733
75.01 - 80.00	428	153,782,539	41.89	359,305	729
80.01 - 85.00	10	1,998,693	0.54	199,869	677
85.01 - 90.00	38	7,768,485	2.12	204,434	699
90.01 - 95.00	13	2,663,829	0.73	204,910	726
Total	948	$ 367,089,279	100.00%	$ 387,225	733

</TABLE>

The weighted average loan-to-value ratio at origination of the mortgage loans will be approximately 70.46%.

The above misstatement in identical or substantially similar language was found in the following Offering Documents: Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at III-2 (Jan. 27, 2006); Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at I-20 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at I-7 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at I-7 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at S-64 (July 27, 2005).

E. DEFENDANTS MATERIALLY MISREPRESENTED THE ACCURACY OF THE CREDIT RATINGS ASSIGNED TO THE CERTIFICATES

184. As set forth in the following paragraph, Defendants represented in the Offering Documents that it was a condition of the issuance of the Certificates that they be rated investment grade, and indeed, all of the Certificates purchased by Plaintiff were rated "AAA/Aaa," signifying that the risk of loss was virtually non-existent.

> ***Each class of certificates offered hereby and by the accompanying prospectus supplement will be rated at the date of issuance in one of the four highest rating categories by at least one rating agency.***

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at 102 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at 102 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at 102 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at 98 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 98 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 128 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 129 (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 82 (Aug. 3, 2005).

185. By touting the ratings of the Certificates, and in making the above statements in the Offering Documents, Defendants represented that they believed that the information provided to the rating agencies to support these ratings accurately reflected the guidelines and practices of Defendants GMAC Mortgage and Homecomings Financial, as well as the third party originators, and the specific qualities of the underlying loans. These representations were false because Defendants did not disclose to the rating agencies the extent of their and the third party originator's improper underwriting and appraisals and that Defendants otherwise gamed the rating agencies to ensure that they obtained the highest ratings even when those ratings were not warranted. The falsity of these representations is further evidenced by the rapid downgrades of all of the Certificates within a few years of issuance.

F. DEFENDANTS MADE UNTRUE STATEMENTS REGARDING THE CREDIT ENHANCEMENTS APPLICABLE TO THE CERTIFICATES

186. Each of the Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, in identical or substantially similar language, regarding credit enhancements.

> ***Credit enhancement*** for all of these certificates will be provided by additional classes of subordination.
>
> ...
>
> ***Allocation of Losses; Subordination***
>
> The subordination provided to the Senior Certificates by the Class B Certificates and Class M Certificates and the subordination provided to each class of Class M Certificates by the Class B Certificates and by any class of Class M Certificates subordinate thereto will cover Realized Losses on the mortgage loans that are Defaulted Mortgage Losses, Fraud Losses, Bankruptcy Losses and Special Hazard Losses. Any Realized Losses which are not Excess Special Hazard Losses, Excess Fraud Losses, Excess Bankruptcy Losses or Extraordinary Losses will be allocated as follows:
>
> o first, to the Class B Certificates;
>
> o second, to the Class M-3 Certificates;
>
> o third, to the Class M-2 Certificates; and
>
> o fourth, to the Class M-1 Certificates,
>
> in each case until the Certificate Principal Balance of that class of certificates has been reduced to zero; and thereafter, among all the remaining classes of related Senior Certificates on a pro rata basis.

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at S-1, S-86 (July 27, 2005); Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-1, S-65 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at S-1, S-58

(May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-1, S-79 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at S-1, S-63 (Jan. 27, 2006).

187. These representations were false because all of the purported "enhancements" depended on or derived from the false representations regarding the quality of the mortgage loans underlying the Certificates. Highly risky, misrepresented loans piled on top of other highly risky, misrepresented loans is not a true "enhancement."

G. DEFENDANTS MADE UNTRUE STATEMENTS REGARDING OWNER-OCCUPANCY STATISTICS

188. Each of the Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained tables substantially similar to that below, purporting to provide data on the owner occupancy rates of mortgage loans underlying the Certificates. The figures contained in these tables were materially false and misleading, however, because Defendants systematically overstated the owner occupancy rates.

Occupancy Types of the Mortgage Loans

<TABLE>
<CAPTION>

Occupancy Type	Number of Mortgage Loans	Principal Balance	Percentage of Mortgage Loans	Average Principal Balance	Weighted Average Credit Score	Weighted Average Loan-to-Value Ratio
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Primary Residence	915	$ 353,770,656	96.37%	$ 386,635	732	70.53%
Second/Vacation	33	13,318,623	3.63	403,595	769	68.72
Total	948	$ 367,089,279	100.00%	$ 387,225	733	70.46%

</TABLE>

The above misstatements in identical or substantially similar language were found in the following Offering Documents: Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at III-4 (Jan. 27, 2006); Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at S-12 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5

Trust (Form 424B5), at S-10 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at S-13 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at S-66 (July 27, 2005).

189. An analysis by Mass Mutual found that only 6,785 of the loans included in this particular mortgage pool were truly primary residences of the mortgagors, not 7,615, as represented above, and that the true owner occupancy rate was only 83.04%, not 93.94%. *See* Section V, *supra*.

190. Contrary to Defendants' representations, far fewer borrowers actually occupied the mortgaged properties than was represented to investors such as Plaintiff in the Offering Documents.

H. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING THE SUFFICIENCY OF THE BORROWERS' INCOMES

191. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, regarding the sufficiency of the borrowers' incomes to repay the loans underlying the Certificates:

> Once all applicable employment, credit and property information is received, a determination is made as to whether the prospective borrower has sufficient monthly income available to meet the borrower's monthly obligations on the proposed mortgage loan and other expenses related to the home (such as property taxes and hazard insurance) and other financial obligations and monthly living expenses.

The above misstatement in identical or substantially similar language was found in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at 15 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5),

at 15 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at 15 (Sept. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at 15 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 14 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 15 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 19 (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 13 (Aug. 3, 2005).

192. The statements quoted above were false because in fact, the Originators had willfully turned a blind eye to the creditworthiness of their borrowers, lending money without making even cursory attempts to ensure that the loans would be repaid. Indeed, the Originators extended numerous loans even though the borrower's information was not provided, or if it was, that information was patently false and the Originators knew that the borrower was misrepresenting her or his income, occupation and other information, and was engaged in outright mortgage fraud. For further discussion of the Originators' purposeful disregard for income verification, *see* Section IV, *supra*.

I. DEFENDANTS MADE UNTRUE STATEMENTS REGARDING THE TRANSFER OF TITLE TO THE ISSUING TRUSTS

193. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, regarding the transfer of title to the Issuing Trusts.

> At the time of issuance of a series of certificates, the depositor will cause the mortgage loans or mortgage securities and any other assets being included in the related trust to be assigned to the trustee or its nominee, which may be the custodian, together with,

> if specified in the accompanying prospectus supplement, all principal and interest received on the mortgage loans or mortgage securities after the cut-off date, other than principal and interest due on or before the cut-off date and any Spread. The trustee will, concurrently with that assignment, deliver a series of certificates to the depositor in exchange for the mortgage loans or mortgage securities. Each mortgage loan or mortgage security will be identified in a schedule appearing as an exhibit to the related pooling and servicing agreement. Each schedule of mortgage loans will include, among other things, information as to the principal balance of each mortgage loan as of the cut-off date, as well as information respecting the mortgage rate, the currently scheduled monthly payment of principal and interest, the maturity of the mortgage note and the LTV ratio, at origination or modification, without regard to any secondary financing.

The above misstatement, in identical or substantially similar language, was found in the following Offering Documents: Prospectus Supplement for RALI Series 2006-QS11 Trust (Form 424B5), at 26 (Aug. 29, 2006); Prospectus Supplement for RALI Series 2006-QS5 Trust (Form 424B5), at 26 (May 30, 2006); Prospectus Supplement for RALI Series 2006-QS13 Trust (Form 424B5), at 26 (Sep. 29, 2006); Prospectus Supplement for RFMSI Series 2006-S1 Trust (Form 424B5), at 26 (Jan. 27, 2006); Prospectus Supplement for RFMSI Series 2005-SA3 Trust (Form 424B5), at 24 (July 27, 2005); Registration Statement (333-131213) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 31 (Mar. 3, 2006); Registration Statement (333-106093) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 32 (July 11, 2003); Registration Statement (333-126745) filed by Residential Funding Mortgage Securities I, Inc. (Form S-3/A, Am. 1), at 21 (Aug. 3, 2005).

194. These representations were false because Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the

PSAs. The Issuing Trusts therefore did not possess good title to many of the mortgage loans and lacked legal authority to enforce many of the mortgage loans against the borrowers in the event of default.

XI. DEFENDANTS KNEW THAT THE OFFERING DOCUMENTS CONTAINED MATERIAL MISSTATEMENTS AND OMISSIONS

195. The allegations below are made in support of Plaintiff's common-law fraud, aiding and abetting claims and Minnesota Securities Act claims, and not in support of its negligent misrepresentation claim, which is based solely on negligence.

196. As set forth above, at all relevant times, Defendants knew or were reckless in not knowing that the Offering Documents contained material misstatements and omissions. Defendants' knowledge or recklessness is evidenced by, among other things, the following:

- Defendants knew or should have known, from the due diligence reports they received on the mortgage loans being pooled for securitization, their relationships with the third party originators, and their oversight of their affiliated originators GMAC Mortgage and Homecomings Financial, that there were significant and extensive defects in the mortgage loans underlying the Certificates. Defendants were aware that a significant proportion of the loans they originated or purchased had defects, including breaches of their and the third party originators' underwriting guidelines, improper appraisals and lack of documentation, or were reckless in not discovering this information. GMAC was aware that its underwriting software, including Assetwise and Desktop Underwriter, did not apply its stated underwriting standards and would not screen out non-conforming loans. Defendants nonetheless allowed large numbers of defective mortgages to be included in the mortgage pools used to collateralize the Certificates sold to Plaintiff and other investors. *See* ¶¶ 72-103.

- The Defendants also knew or were reckless in not knowing that those mortgages were being issued to borrowers that were likely to default, as evidenced by the high percentage of loans underlying the Certificates that are currently in foreclosure, as well as the percentage of loans underlying the Certificates that are currently delinquent by more than 90 days. *See infra* ¶ 223.

- Defendants knew or were reckless in not knowing that the appraisal and owner-occupancy data presented in the Offering Documents was false, as evidenced by the degree to which the Offering Documents consistently overstated owner-occupancy rates and understated LTV ratios. Defendants knew or should have known that their underwriting procedures were inadequate to verify that the

mortgaged properties had been independently appraised and that the statistical data presented in the Offering Documents was accurate. *See supra* ¶¶ 135-138; 143-146.

- Defendants knew or were reckless in not knowing that the mortgages they were acquiring from the various originators as quickly as possible and packaging into the Certificates sold to investors such as Plaintiff were not worthy of their high credit ratings. The ratings of the Certificates, which were in all cases rated AAA at the time they were sold to Plaintiff, have declined substantially to their current non-investment grade and/or junk ratings. *See supra* ¶¶ 151-154; 156; 158; 218-222.

- Defendants did not disclose the extent to which they abandoned their underwriting guidelines or used improper appraisals to solicit more favorable ratings from the rating agencies. Defendants collaborated with the rating agencies to obtain sufficient "credit enhancement" to obtain the highest ratings possible. *See supra* ¶¶ 159-161.

- Defendants had control over the loan files, promissory notes and security instruments of the underlying mortgages, and were responsible for ensuring that the documents were properly indorsed and transferred so as to accord with state law and the terms of the applicable PSAs. Defendants were aware that they routinely failed to transfer title to the Issuing Trusts, and attempted to conceal this fact through fraudulent filings when foreclosing on securitized mortgages. *See supra* ¶¶ 165-166; 169-170.

XII. PLAINTIFF JUSTIFIABLY RELIED ON DEFENDANTS' MISREPRESENTATIONS TO THEIR DETRIMENT

197. Plaintiff, through its agents, purchased senior classes of mortgage-backed securities (*i.e.*, those rated AAA/Aaa by the rating agencies Standard & Poor's and Moody's Investors Service). The Certificates were purchased to generate income and total return through safe investments. The securities were purchased with the expectation that the investments could be—and indeed some would be and were—purchased and sold on the secondary market.

198. In making the investments, Plaintiff and/or its agents relied upon Defendants' representations and assurances regarding the quality of the mortgage collateral underlying the Certificates, including the quality of the underwriting processes related to the underlying mortgage loans. Plaintiff and/or their agents received, reviewed, and relied upon the Offering

Documents, which described in detail the mortgage loans underlying each offering. Offering Documents containing the representations outlined above (or nearly identical, materially similar counterparts thereto) were obtained, reviewed, and relied upon before any purchase was made.

199. In purchasing the Certificates, Plaintiff and/or its agents justifiably relied on Defendants' false representations and omissions of material fact detailed above, including the misstatements and omissions in the Offering Documents. These representations materially altered the total mix of information upon which Plaintiff and/or its agents made their purchasing decisions.

200. But for the misrepresentations and omissions in the Offering Documents, Plaintiff and its agents would not have purchased or acquired the Certificates as they ultimately did, because those representations and omissions were material to their decisions to acquire the Certificates, as described above.

201. As discussed *supra*, Plaintiff is a conservative institutional investor that relied on Defendants' representations in the Offering Documents that the Certificates purchased by Plaintiff were safe, AAA-rated securities. Because Plaintiff did not have access to the loan files, appraisals or other supporting documentation for the loans underlying the Certificates, Plaintiff had no reasonable means or ability to conduct its own due diligence regarding the quality of the mortgage pool. As such, Plaintiff and its agents were forced to and did rely on the representations made by Defendants in the Offering Documents, and it was because of those representations that Plaintiff purchased the Certificates at issue in this Complaint.

A. THE INDIVIDUAL DEFENDANTS.

1. Duncan

202. As Acting Chief Financial Officer (Principal Financial Officer) of Defendant RALI and Director, Executive Vice President and Acting Chief Financial Officer (Principal

Financial Officer) of Defendant RFMSI, Duncan had the power to direct RALI and RFMSI policies relating to securitization. Duncan aided and abetted the fraud by permitting RALI and RFMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Duncan personally participated in the fraud by, inter alia, signing the RFMSI Registration Statement dated August 3, 2005 and the RALI Registration Statement dated March 3, 2006.

203. In addition to serving as an officer of RALI and RFMSI, according to SEC filings, Duncan was also the Acting Chief Financial Officer of Defendants RFC, GMAC RFC and Homecomings. As Homecomings' Acting Chief Financial Officer, Duncan either knew of Homecomings' abandonment of its underwriting standards, as discussed in ¶¶ 96-104, or was reckless for not knowing of these critical matters. Furthermore, Duncan was familiar with and participated in GMAC's RMBS operations through his high-ranking positions with GMAC RFC, the parent corporation of the Depositor Defendants, and RFC, the Sponsor Defendant.

2. Flees

204. As Controller (Principal Accounting Officer) of Defendants RALI and RFMSI, Flees had the power to direct RALI and RFMSI policies relating to securitization. Flees aided and abetted the fraud by permitting RALI and RFMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Flees personally participated in the fraud by, inter alia, signing the RFMSI Registration Statement dated August 3, 2005 and the RALI Registration Statement dated March 3, 2006.

205. In addition to serving as an officer of RALI and RFMSI, according to SEC filings, Flees was also the Principal Accounting Officer of Defendants RFC, GMAC RFC and Homecomings. As such, Flees either knew of Homecomings' abandonment of its underwriting standards, as discussed in ¶¶ 96-104, or was reckless for not knowing of these critical matters.

Furthermore, Flees was familiar with and participated in GMAC's RMBS operations through his high-ranking position with GMAC RFC, the parent corporation of the Depositor Defendants and Sponsor Defendant.

3. Katzmark

206. As Controller of Defendant RFMSI, Katzmark had the power to direct RFMSI policies relating to securitization. Katzmark aided and abetted the fraud by permitting RMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Katzmark personally participated in the fraud by, inter alia, signing the RFMSI Registration Statement dated July 11, 2003.

4. Lundsten

207. As Attorney-in-Fact of Defendants RALI and RFMSI, Lundsten had the power to direct RALI's and RFMSI's policies relating to securitization. Lundsten aided and abetted the fraud by permitting RALI and RFMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Lundsten personally participated in the fraud by, inter alia, signing the RFMSI Registration Statement dated August 3, 2005 and the RALI Registration Statement dated March 3, 2006.

208. Lundsten was familiar with and participated in GMAC's RMBS operations. According to a September 19, 2005 article in the ASSET SECURITIZATION REPORT, Lundsten became the Senior Vice President of Securitization Management at GMAC RFC in September 2005.

5. Olson

209. As a Director of Defendant RALI, and the Director, Executive Vice President and Chief Financial Officer (Principal Financial Officer) for Defendant RFSMI, Olson had the power to direct RALI's and RFMSI's policies relating to securitization. Olson aided and abetted the

fraud by permitting RALI and RFMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Olson personally participated in the fraud by, inter alia, signing the RFSMI Registration Statement dated July 11, 2003 and the RALI Registration Statement dated March 3, 2006.

210. In addition to serving as a director of RALI and an officer of RFMSI, according to SEC filings, Olson was also the Chief Financial Officer of ResCap, the indirect parent company of GMAC Mortgage, and a Director of GMAC RFC, RFC, and Homecomings. As such, Olson either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 96-104, or was reckless for not knowing of these critical matters. According to a September 18, 2006 article in the NATIONAL MORTGAGE NEWS, Olsen was appointed the Senior Managing Director of ResCap's warehouse lending business in May 2006, a position believed to involve significant contact with and analysis of third-party mortgage originators. Furthermore, Olson was familiar with and participated in GMAC's RMBS operations through his positions with ResCap and GMAC RFC, the indirect and direct parent corporations of the Sponsor Defendant and Depositor Defendants.

6. Paradis

211. As Director, President and Chief Executive Officer (Principal Executive Officer) of Defendants RALI and RFMSI, Paradis had the power to direct RALI and RFMSI policies relating to securitization. Paradis aided and abetted the fraud by permitting RALI and RFMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Paradis personally participated in the fraud by, inter alia, signing the RFSMI Registration Statements dated July 11, 2003 and August 3, 2005, and the RALI Registration Statement dated March 3, 2006.

212. In addition to serving as an officer of RALI and RFMSI, according to SEC filings, Paradis was also the co-Chief Executive Officer of ResCap, the indirect corporate parent of GMAC Mortgage and Homecomings Financial, and the Chief Executive Officer of GMAC RFC and RFC. As such, Paradis either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 96-104, or was reckless for not knowing of these critical matters. Furthermore, Paradis was familiar with and participated in GMAC's RMBS operations through his top-ranking positions with ResCap and GMAC RFC, the indirect and direct parents of the Sponsor Defendant and Depositor Defendants. As discussed in ¶ 75, a former GMAC employee has said that Paradis personally exhorted GMAC personnel to buy even defective loans from favored vendors so as to maintain good business relationships.

7. Steinhagen

213. As Attorney-in-Fact of Defendant RFMSI, Steinhagen had the power to direct RFMSI policies relating to securitization. Steinhagen aided and abetted the fraud by permitting RFMSI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Steinhagen personally participated in the fraud by, inter alia, signing the RFMSI Registration Statement dated July 11, 2003.

214. In addition to serving as the Attorney-in-Fact of RFMSI, according to an April 27, 2005 article in NATIONAL MORTGAGE NEWS, Steinhagen was also the Managing Director of capital market investor relations at GMAC RFC. As such, Steinhagen was familiar with and participated in GMAC's RMBS operations through her position with GMAC RFC, the parent of the Sponsor Defendant and Depositor Defendants.

8. Walker

215. As a Director of Defendant RFMSI, Walker had the power to direct RFMSI's policies relating to securitization. Walker aided and abetted the fraud by permitting RFMSI to

purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Walker personally participated in the fraud by, inter alia, signing the RFMI Registration Statement dated July 11, 2003 and August 3, 2005.

216. In addition to serving as an officer of RFMSI, according to SEC filings, Walker was also a Director of ResCap, GMAC RFC, GMAC Mortgage, RFC, and Homecomings. As such, Walker either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 96-104, or was reckless for not knowing of these critical matters. Furthermore, Walker was familiar with and participated in GMAC's RMBS operations through his positions with ResCap and GMAC RFC, the indirect and direct parents of the Sponsor Defendant and Depositor Defendants.

XIII. PLAINTIFF HAS SUFFERED LOSSES AS A RESULT OF ITS PURCHASES OF THE CERTIFICATES

217. The false and misleading statements of material facts and omissions of material facts in the Offering Documents directly caused Plaintiff damage, because the Certificates were in fact far riskier than Defendants had described them to be. As set forth below, the loans underlying the Certificates experienced default and delinquency at very high rates due to Defendants' abandonment of their purported underwriting guidelines. The resulting downgrades to the Certificates ratings made them unmarketable at anywhere near the prices Plaintiff paid, causing losses to Plaintiff when those Certificates were sold.

218. Plaintiff purchased Certificates issued by RALI Series 2006-QS5 A4, when they were rated Aaa by Moody's, but the Certificates have since been downgraded twice and are currently rated Caa3.

219. Plaintiff purchased Certificates issued by RALI Series 2006-QS5 A5, when they were rated Aaa by Moody's, but the Certificates have since been downgraded twice and are

currently rated Caa3. Plaintiff purchased Certificates issued by RALI Series 2006-QS11 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded three times and are currently rated Caa3.

220. Plaintiff purchased Certificates issued by RALI Series 2006-QS13 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded three times and are currently rated Caa3.

221. Plaintiff purchased Certificates issued by RFMSI Series 2005-SA3 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded twice and are currently rated B3.

222. Plaintiff purchased Certificates issued by RFMSI Series 2006-S1 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded three times and are currently rated Caa2.

223. As a result of the multiple and material misrepresentations contained in the Offering Documents, Plaintiff has suffered losses on its purchases of Certificates. As of the filing of this Complaint, the mortgage loans in the pools held by the Issuing Trusts and underlying Plaintiff's Certificates have suffered escalating default rates and mounting foreclosures, resulting in across-the-board ratings downgrades and other negative actions by the rating agencies, as shown in the table below.

Certificates	90 Day Delinquency Rate (%)	Foreclosure Rate (%)	Current Moody's Rating
RFMSI 2005-SA3 4A	1.53	0.84	B3
RALI 2006-QS5 A4	20.18	14.23	Caa3
RALI 2006-QS5 A5	20.18	14.23	Caa3
RALI 2006-QS11 1A8	20.35	15.23	Caa3
RALI 2006-QS13 1A10	21.97	15.63	Caa3
RFMSI 2006-S1 2A	10.46	7.17	Caa2

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Common-Law Fraud)

224. Plaintiff realleges each and every allegation contained above as if fully set forth herein.

225. This claim is brought against the Depositor Defendants, the Individual Defendants, and Residential Funding (the "Common-Law Fraud Defendants").

226. As alleged in detail above, the Offering Documents contained untrue statements of material fact regarding the present creditworthiness of the Certificates and the quality of the underlying assets, omitted to state material facts necessary to make the untrue statements not misleading, and concealed and failed to disclose material facts. The Common-Law Fraud Defendants promoted and sold the Certificates purchased by Plaintiff pursuant to the defective Offering Documents. The Common-Law Defendants possessed accurate information regarding the present creditworthiness of the Certificates and the quality of the underlying assets, which was never disclosed to Plaintiff or other investors.

227. Each of the Common-Law Fraud Defendants either knew their representations and omissions were false and/or misleading at the time they were made, or made their representations with reckless disregard for their truth or falsity.

228. Each of the Common-Law Fraud Defendants made the representations and omissions in the Prospectuses and Prospectus Supplements with the intention to induce Plaintiff and other investors to act in reliance thereon.

229. At the time of the Common-Law Fraud Defendants' false statements, misrepresentations and omissions, Plaintiff was ignorant of their falsity and believed them to be true. Plaintiff justifiably relied on the Common-Law Fraud Defendants' false and misleading

representations and omissions in purchasing the Certificates. The true facts regarding the creditworthiness of the Certificates and the quality of the underlying assets, including the Originators' abandonment of their underwriting practices, the use of improper appraisal methods to value collateral, the inaccuracy of the ratings assigned by the rating agencies, and the failure to convey to the Issuing Trusts legal title to the underlying mortgages, were peculiarly within the Common-Law Fraud Defendants' knowledge and not ascertainable by Plaintiff or other investors through ordinary channels. Had Plaintiff known about these matters, Plaintiff would not have purchased the Certificates.

230. As a direct and proximate result of Plaintiff's reliance on the Common-Law Fraud Defendants' false and misleading statements and omissions, Plaintiff has suffered pecuniary damages in connection with its purchase of the Certificates.

SECOND CAUSE OF ACTION
(Aiding & Abetting Fraud)

231. Plaintiff realleges each and every allegation contained above as if fully set forth herein.

232. This claim is brought against all Defendants (the "Aiding and Abetting Defendants") for aiding and abetting the fraudulent and reckless misrepresentations by all Defendants and/or RALI, RFMSI, and Residential Funding. Each of these Defendants aided and abetted the fraud committed by all of the other Defendants

233. As alleged in detail above, RALI, RFMSI and Residential Funding knowingly promoted and sold Certificates to Plaintiff pursuant to materially misleading Offering Documents, thereby damaging Plaintiff. The Aiding and Abetting Defendants knew of the fraud perpetrated on Plaintiff by RALI, RFMSI and Residential Funding. The Aiding and Abetting Defendants directed, supervised and otherwise knew of the abandonment of underwriting

practices and the utilization of improper appraisal methods; the inaccuracy of the ratings assigned by the rating agencies; and the failure to convey to the Issuing Trusts legal title to the underlying mortgages.

234. The Aiding and Abetting Defendants provided RALI, RFMSI and Residential Funding with substantial assistance in perpetrating the fraud. The Aiding and Abetting Defendants participated in the violation of mortgage loan underwriting and appraisal standards; made false public statements about mortgage loan underwriting and appraisal standards; provided false information about the mortgage loans underlying the Certificates to the rating agencies; provided false information for use in the Offering Documents; and/or participated in the failure to properly endorse and deliver the mortgage notes and security documents to the Issuing Trusts.

235. It was foreseeable to the Aiding and Abetting Defendants at the time they actively assisted in the commission of the fraud that Plaintiff would be harmed as a result of their assistance.

236. As a direct and natural result of the fraud committed by RALI, RFMSI and Residential Funding, and the knowing and active participation by the Aiding and Abetting Defendants, Plaintiff has suffered substantial damages.

THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

237. Plaintiff realleges each and every allegation contained above as if fully set forth herein.

238. This claim is brought against the Depositor Defendants, the Individual Defendants, and Residential Funding (the "Negligent Misrepresentation Defendants").

239. The Negligent Misrepresentation Defendants were in the business of underwriting home mortgage loans, pooling the mortgage assets for securitization, issuing RMBS, and marketing RMBS to investors. The Negligent Misrepresentation Defendants received pecuniary compensation from the sale of the Certificates.

240. In the course of selling the Certificate, the Negligent Misrepresentation Defendants drafted and distributed the Offering Documents for the guidance of investors such as Plaintiff. The Offering Documents purported to contain material information regarding the creditworthiness of the Certificates and the quality of the underlying assets, and the Negligent Misrepresentation Defendants anticipated that investors would rely on this information in deciding whether or not to purchase Certificates.

241. As an investor in the Certificates, Plaintiff is one of a limited group of persons whom the Negligent Misrepresentation Defendants intended would rely on the information in the Offering Documents.

242. The true facts regarding the creditworthiness of the Certificates and the quality of their underlying assets, including the Originators' abandonment of their underwriting practices, the use of improper appraisal methods to value collateral, the inaccuracy of the ratings assigned by the rating agencies, and the failure to convey to the Issuing Trusts legal title to the underlying mortgages, were peculiarly within the Negligent Misrepresentation Defendants' knowledge and not ascertainable by Plaintiff or other investors through ordinary channels. Because the Negligent Misrepresentation Defendants possessed special knowledge on these matters, they owed Plaintiff a duty to use reasonable care to ensure that their statements on these matters were not untrue or misleading.

243. The Negligent Misrepresentation Defendants negligently breached and violated this duty to use reasonable care. As alleged above, the Offering Documents contained untrue statements of material fact regarding the present creditworthiness of the Certificates and the quality of the underlying assets, omitted to state material facts necessary to make the untrue statements not misleading, and concealed and failed to disclose material facts. At the time the Negligent Misrepresentation Defendants provided the Offering Documents to Plaintiff, the Negligent Misrepresentation Defendants had no reasonable grounds to believe that the information contained therein regarding the creditworthiness of the Certificates and the quality of the underlying assets was true.

244. At the time of the Negligent Misrepresentation Defendants' false statements, misrepresentations and omissions, Plaintiff was ignorant of their falsity and believed them to be true. Plaintiff justifiably relied on the Negligent Misrepresentation Defendants' false and misleading representations and omissions in purchasing the Certificates. Had Plaintiff known the truth about the creditworthiness of the Certificates and the quality of the underlying assets, Plaintiff would not have purchased the Certificates.

245. As a direct and proximate result of Plaintiff's reliance on the Negligent Misrepresentation Defendants to provide accurate information regarding the Certificates and their underlying assets, and the Negligent Misrepresentation Defendants' negligent breach of that duty of care, Plaintiff has suffered pecuniary damages in connection with its purchase of the Certificates.

FOURTH CAUSE OF ACTION
(Violation of Minnesota Securities Act)

246. Plaintiff realleges each and every allegation contained above as if fully set forth herein.

247. This claim is brought under the Minnesota Securities Act against the Depositor Defendants, the Individual Defendants, and Residential Funding (the "MSA Defendants"). The MSA Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon Plaintiff, in violation of Minn. Stat §§ 80A.68 and 80A.76(b).

248. As alleged in detail above, the Offering Documents contained untrue statements of material fact regarding the present creditworthiness of the Certificates and the quality of the underlying assets, omitted to state material facts necessary to make the untrue statements not misleading, and concealed and failed to disclose material facts. The MSA Defendants promoted and sold the Certificates purchased by Plaintiff pursuant to the defective Offering Documents.

249. Each of the MSA Defendants either knew their representations and omissions were false and/or misleading at the time they were made, or made their representations with reckless disregard for their truth or falsity.

250. Each of the MSA Defendants made the representations and omissions in the Prospectuses and Prospectus Supplements with the intention to induce Plaintiff and other investors to act in reliance thereon.

251. At the time of the MSA Defendants' false statements, misrepresentations and omissions, Plaintiff was ignorant of their falsity and believed them to be true. Plaintiff justifiably relied on the MSA Defendants' false and misleading representations and omissions in purchasing the Certificates. The true facts regarding the creditworthiness of the Certificates and the quality of the underlying assets, including the Originators' abandonment of their underwriting practices, the use of improper appraisal methods to value collateral, the inaccuracy

of the ratings assigned by the rating agencies, and the failure to convey to the Issuing Trusts legal title to the underlying mortgages, were peculiarly within the MSA Defendants' knowledge and not ascertainable by Plaintiff or other investors through ordinary channels. Had Plaintiff known about these matters, Plaintiff would not have purchased the Certificates.

252. As a direct and proximate result of Plaintiff's reliance on the MSA Defendants' false and misleading statements and omissions, Plaintiff has suffered pecuniary damages in connection with its purchase of the Certificates.

253. By virtue of the foregoing, the MSA Defendants have violated Minn. Stat § 80A.68 and are liable to Plaintiff pursuant to Minn. Stat. § 80A.76(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

An award in favor of Plaintiff against Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, but including at a minimum:

(i) Plaintiff's monetary losses, including loss of market value and loss of principal and interest payments;

(ii) Rescission and recovery of the consideration paid for the Certificates, with interest thereon;

(iii) Plaintiff's costs and disbursements in this suit, including reasonable attorneys' fees and expert fees;

(iv) Prejudgment interest at the maximum legal rate; and

(v) Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: October 10, 2011

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

Richard A. Lockridge, #64117
Karen H. Riebel, #219770
Elizabeth R. Odette, #340698
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
Fax: (612) 339-0981

Jay W. Eisenhofer
Geoffrey C. Jarvis
Deborah A. Elman
Robert D. Gerson
GRANT & EISENHOFER P.A.
485 Lexington Ave., 29th Floor
New York, NY 10017
Tel: (646) 722-8500
Fax: (646) 722-8501

Counsel for Plaintiff Huntington Bancshares Inc.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. §549.211, sanctions may be imposed if the Court finds violation of this section.

Dated: October 10, 2011

Elizabeth R. Odette, #340698

Exhibit 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

Plaintiff,

v.

RESIDENTIAL FUNDING COMPANY, LLC (F/K/A RESIDENTIAL FUNDING CORPORATION); RESIDENTIAL ACCREDIT LOANS, INC.; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; RESIDENTIAL ASSET SECURITIES CORPORATION; RESIDENTIAL FUNDING SECURITIES, LLC (F/K/A RESIDENTIAL FUNDING SECURITIES CORPORATION); UBS SECURITIES LLC; BRUCE J. PARADIS; DAVEE L. OLSON; DAVID C. WALKER; KENNETH M. DUNCAN; RALPH T. FLEES; JAMES G. JONES; and DAVID M. BRICKER,

Defendants.

Civil Action No. 3:11-30035-MAP

[PROPOSED] FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Massachusetts Mutual Life Insurance Company ("MassMutual"), by and through its attorneys, brings this action against Residential Funding Company, LLC (f/k/a Residential Funding Corporation); Residential Accredit Loans, Inc.; Residential Asset Mortgage Products, Inc.; Residential Asset Securities Corporation; and Residential Funding Securities, LLC (f/k/a Residential Funding Securities Corporation) (collectively, "RFC" or the "RFC Defendants"); UBS Securities LLC (the "Underwriter Defendant"); and Bruce J. Paradis; Davee L. Olson; David C. Walker; Kenneth M. Duncan; Ralph T. Flees; James G. Jones; and David M. Bricker (collectively, the "Officer Defendants"), and alleges as follows:

NATURE OF ACTION

1. This action arises out of the sale of certain residential mortgage-backed securities (the "Certificates") to MassMutual. The Certificates were sold pursuant to public filings and offering materials that contained untrue statements and omissions of material facts, in violation of the Massachusetts Uniform Securities Act, Mass. Gen. Laws ch. 110A, § 410.

2. In 2004, General Motors Acceptance Corporation formed Residential Capital, LLC ("Residential Capital") to take advantage of the exploding market for residential mortgage-backed securities. Residential Capital's business focused on the origination, purchase, service, sale, and securitization of residential mortgage loans.

3. The RFC Defendants, all wholly owned subsidiaries of Residential Capital, originated and purchased mortgage loans that could not be sold to the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mae"). Instead, the RFC Defendants securitized these non-conforming loans for sale to investors, such as MassMutual. They earned substantial profits originating and securitizing the loans, but they did not have to bear the loss if the loans defaulted.

4. In marketing the Certificates to MassMutual, the RFC Defendants and Underwriter Defendant represented that the loans backing the securities were underwritten in accordance with prudent underwriting standards that ensured a borrower could repay the loan. The RFC Defendants and Underwriter Defendant also represented that the loans had certain characteristics, including defined loan-to-value ratios and specific owner-occupancy statistics.

5. These representations were material to MassMutual's decision to purchase Certificates because the RFC Defendants and Underwriter Defendant were the exclusive source of information regarding the loans backing the securities. Unlike the RFC Defendants and Underwriter Defendant, MassMutual did not have access to loan files. MassMutual therefore depended on the RFC Defendants and Underwriter Defendant to perform the necessary due diligence to verify that the information presented to it and other investors was true and accurate.

6. In reality, however, the loans backing the Certificates deviated substantially from what was represented to MassMutual. To generate an ever-growing volume of loans to sell to investors, the RFC Defendants abandoned their disclosed underwriting guidelines, often originating or purchasing loans issued to borrowers regardless of ability to repay. The loans were issued on the basis of overstated incomes, inflated appraisals, false verifications of employment, and exceptions to underwriting criteria that had no proper justification.

7. Just years after MassMutual purchased the Certificates, they now qualify as junk. In a majority of the 18 securitizations in which MassMutual purchased Certificates, over 40% of the loans backing the securities have now defaulted, been foreclosed upon, or are delinquent. A subsequent forensic analysis commissioned by MassMutual has demonstrated that the representations about the loans in all the securitizations were materially false. Under the

Massachusetts Uniform Securities Act, MassMutual is entitled to rescind its purchase of these securities.

PARTIES

A. Plaintiffs

8. Plaintiff Massachusetts Mutual Life Insurance Company is a Massachusetts mutual life insurance company with its principal place of business in Springfield, Massachusetts. Founded in 1851, MassMutual is a leading, diversified financial services organization providing life insurance, disability income insurance, long-term care insurance, annuities, retirement and income products, investment management, mutual funds, and trust services to individual and institutional customers.

B. RFC Defendants

9. Defendant Residential Funding Company, LLC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. Prior to approximately October 2006, Residential Funding Company, LLC operated as Residential Funding Corporation, a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Residential Funding Company, LLC and its predecessor, Residential Funding Corporation, are referred to herein as "Residential Funding." Residential Funding was the Sponsor for all securitizations at issue in this action.

10. Defendant Residential Accredit Loans, Inc. ("RALI") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RALI was the Depositor for 10 of the 18 securitizations at issue in this action.

11. Defendant Residential Asset Mortgage Products, Inc. ("RAMP") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RAMP was the Depositor for 6 of the 18 securitizations at issue in this action.

12. Defendant Residential Asset Securities Corporation ("RASC") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RASC was the Depositor for 2 of the 18 securitizations at issue in this action.

13. Defendant Residential Funding Securities, LLC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. Prior to approximately April 2006, Residential Funding Securities, LLC operated as Residential Funding Securities Corporation, a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Residential Funding Securities, LLC and Residential Funding Securities Corporation are referred to herein as "Residential Securities." Residential Securities was the Underwriter for 4 of the 18 securitizations at issue in this action.

C. Underwriter Defendant

14. Defendant UBS Securities LLC ("UBS") is a Delaware limited liability company with its principal place of business in Stamford, Connecticut. UBS was the Underwriter for 1 of the 18 securitizations at issue in this action.

D. Officer Defendants

15. Defendant Bruce J. Paradis joined Residential Funding in 1983, and served in several executive positions prior to becoming its President and Chief Executive Officer in 1994. At all relevant times, Paradis also served as President of Residential Securities. In addition, Paradis served as President, Chief Executive Officer, and a director of each of RALI, RAMP, and RASC. Paradis signed registration statements for 17 of the 18 securitizations at issue in this action.

16. Defendant Davee L. Olson served as an officer of Residential Funding for over 15 years. He served as a vice president of finance from 1987 until 1990, as a senior vice president of finance from 1990 until 1991, and as the Chief Financial Officer from 1991 to January 2005.

Olson also served as a director of RALI, as the Chief Financial Officer and a director of RAMP, and as a director of RASC. Olson signed registration statements for 14 of the 18 securitizations at issue in this action.

17. Defendant David C. Walker joined General Motors Acceptance Corporation, the parent company of Residential Funding, in 1985. He served as managing director, Chief Financial Officer, and a member of the board of directors of GMAC Mortgage Group since January 2000, and as director of U.S. funding and securitization at GMAC from September 1998 until December 1999. Walker also served as a director of each of Residential Funding, RALI, and RAMP. Walker signed registration statements for 4 of the 18 securitizations at issue in this action.

18. Defendant Kenneth M. Duncan served as Acting Chief Financial Officer of each of Residential Funding, RALI, RAMP, and RASC. Duncan signed registration statements for 16 of the 18 securitizations at issue in this action.

19. Defendant Ralph T. Flees served as Controller and Principal Accounting Officer of each of RALI, RAMP, and RASC. Flees signed registration statements for 17 of the 18 securitizations at issue in this action.

20. Defendant James G. Jones was President, Chief Financial Officer, and a director of RALI. Jones signed the registration statement for one securitization at issue in this action.

21. Defendant David M. Bricker was the Chief Financial Officer and a director of RALI. Bricker signed the registration statement for one securitization at issue in this action.

E. Relevant Non-Parties

22. The Certificates for each securitization relevant to this action were issued by a trust established by the Depositor. The 18 issuing trusts (collectively, the "Trusts") were: RALI Series 2005-QO3 Trust, RALI Series 2005-QO4 Trust, RAMP Series 2005-RZ1 Trust, RAMP

Series 2006-EFC2 Trust, RASC Series 2006-EMX6 Trust, RALI Series 2006-QA6 Trust, RALI Series 2006-QO1 Trust, RALI Series 2006-QO3 Trust, RALI Series 2006-QO4 Trust, RALI Series 2006-QO5 Trust, RALI Series 2006-QO6 Trust, RALI Series 2006-QO9 Trust, RAMP Series 2006-RS4 Trust, RAMP Series 2006-RS6 Trust, RAMP Series 2006-RZ3 Trust, RASC Series 2007-KS3 Trust, RALI Series 2007-QH6 Trust, and RAMP Series 2007-RZ1 Trust.

23. At all relevant times, the defendants committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Complaint. Any allegations about acts of corporate defendants means that those acts were committed through their officers, directors, employees, agents, and/or representatives while those individuals were acting within the actual or implied scope of their authority.

JURISDICTION AND VENUE

24. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

25. This Court has personal jurisdiction over the defendants by virtue of their securities sales in Massachusetts.

26. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391, because substantial events giving rise to this Complaint took place in Massachusetts.

SUBSTANTIVE ALLEGATIONS

27. During the time that MassMutual purchased the Certificates, the RFC Defendants were all wholly owned subsidiaries of Residential Capital, LLC, formerly Residential Capital Corporation (Residential Capital). The RFC Defendants operated collectively, as an enterprise, to structure and market the 18 securitizations at issue in this action.

28. Residential Capital was formed by General Motors Acceptance Corporation in 2004 to take advantage of the exploding market for residential mortgage-backed securities.

I. THE MARKET FOR RESIDENTIAL MORTGAGE-BACKED SECURITIES

29. In the 1980's and 1990's, mortgage originators followed a traditional model for originating mortgage loans. Under the traditional model, they either held the mortgage loans they provided to borrowers through the terms of the loans, or sold the mortgage loans to governmental agencies Fannie Mae and Freddie Mac.

30. Loans held by mortgage originators were typically conservative, first-lien loans to prime borrowers because the originator would profit if the borrower made timely interest and principal payments, but would bear the loss if the borrower defaulted and the property value was insufficient to repay the loan. As a result, the originator had economic incentives to establish the creditworthiness of the borrower and the true value of the underlying property by appraising it fairly before issuing the mortgage loan.

31. Loans sold to Fannie Mae and Freddie Mac were also conservative loans to prime borrowers because the loans had to meet specific guidelines for sale. By law, Fannie Mae and Freddie Mac can purchase only those mortgage loans that conform to certain regulatory guidelines. These loans are known in the industry as conforming loans, and are historically the most conservative loans with the lowest rates of delinquency and default. Mortgage loans that fail to meet the regulatory guidelines are known in the industry as non-conforming loans.

32. In the 1980's and 1990's, Fannie Mae and Freddie Mac securitized the loans they purchased from mortgage originators and sold the securities backed by the loans, referred to as residential mortgage-backed securities, to investors. Investors in these early mortgage-backed securities were provided protections not only because the underlying loans conformed to strict regulatory guidelines, but also because Fannie Mae and Freddie Mac guaranteed that investors

would receive timely payments of principal and interest. Because Fannie Mae and Freddie Mac were perceived as being backed by the federal government, investors viewed the guarantees as diminishing credit risk, if not removing it altogether.

33. In the early 2000's, the demand for securities backed by mortgage loans increased. Private financial institutions stepped in to meet the demand by originating an ever-growing number of non-conforming loans, such as loans based on reduced documentation, loans issued to subprime borrowers, and adjustable loans where the interest rate increases after a period of time. These loans were then securitized for sale to private investors. By 2001, $240 billion in residential mortgage-backed securities were issued through private securitizations. By 2006, that amount had increased by almost five times to $1.033 trillion.

34. Residential Capital was formed to take advantage of this exploding market. According to Inside Mortgage Finance, Residential Capital issued $42.336 billion in residential mortgage-backed securities in 2004 and $56.93 billion in 2005. In 2005, Residential Capital was the fifth-largest issuer of securities backed by non-conforming loans. In 2006, Residential Capital increased its production to $66.2 billion in residential mortgage-backed securities, and became the fourth-largest issuer of securities backed by non-conforming loans. In 2007, Residential Capital issued $6.6 billion of subprime residential mortgage-backed securities and an additional $22.2 billion of Alt-A securities.

II. THE SECURITIZATION PROCESS

35. To create residential mortgage-backed securities, such as the Certificates purchased by MassMutual, a process known as mortgage securitization is used. Mortgage loans are acquired from mortgage originators and pooled together, with securities constituting interests in the cash flow from the mortgage pools then sold to investors. The securities are also referred to as mortgage pass-through securities because the cash flow from the pool of mortgages is

passed through to the securities holders when payments are made by the underlying mortgage borrowers.

36. Each securitization involves several entities that perform distinct tasks. The first step in creating a residential mortgage-backed security, such as the Certificates, is the acquisition by the Depositor of an inventory of mortgage loans from a Sponsor (also referred to as a Seller), which either originates the loans or acquires the loans from other mortgage originators in exchange for cash. The Depositor is often a subsidiary or other affiliate of the Sponsor.

37. The Depositor then securitizes the pool of loans by forming one or more mortgage pools with the inventory of loans, and creating tranches of interests in the mortgage pools with various levels of seniority. Interests in these tranches are then issued by the Depositor (who then serves as the Issuer) through a trust in the form of bonds, or certificates.

38. Each tranche has a different level of purported risk and reward, and, often, a different credit rating. The most senior tranches often receive the highest investment grade rating (triple-A). Junior tranches, which usually have lower ratings, are more exposed to risk, but offer higher potential returns. The most senior tranches of securities will be entitled to payment in full before the junior tranches. Conversely, losses on the underlying loans in the asset pool □whether due to default, delinquency, or otherwise □are allocated first to the most subordinate or junior tranche of securities, then to the tranche above that. This hierarchy in the division of cash flows is referred to as the flow of funds or waterfall.

39. The Depositor works with one or more of the nationally recognized credit-rating agencies to ensure that each tranche of the mortgage-backed securities receives the rating desired by the Depositor (and Underwriter). Once the asset pool is securitized, the certificates are issued

to one or more Underwriters (typically Wall Street banks), who resell them to investors, such as MassMutual.

40. Because the cash flow from the loans in the mortgage pool of a securitization is the source of funds to pay the holders of the securities issued by the trust, the credit quality of the securities depends primarily on the credit quality of the loans in the mortgage pool, which often includes thousands of loans. Detailed information about the credit quality of the loans is contained in the loan files developed and maintained by the mortgage originators when making the loans. For residential mortgage loans, such as the loans that backed the Certificates purchased by MassMutual, each loan file normally contains documents including the borrower's application for the loan, verification of income, assets, and employment, references, credit reports, and an appraisal of the property that will secure the loan and provide the basis for other measures of credit quality, such as loan-to-value ratios, and occupancy status. The loan file should also include notes from the person who underwrote the loan describing the loan's purported compliance with underwriting guidelines, and documentation of compensating factors that justified any departure from those standards.

41. Investors do not have access to the loan files. Instead, the Sponsor, Depositor, and Underwriter are responsible for gathering and verifying information about the credit quality and characteristics of the loans that are deposited into the trust, and presenting this information in the registration statements, prospectuses, and prospectus supplements (collectively, the "Offering Materials") prepared for potential investors. This due diligence process is a critical safeguard for investors and a fundamental legal obligation of the Sponsor, Depositor, and Underwriter.

III. MASSMUTUAL'S PURCHASES OF RFC CERTIFICATES

42. MassMutual purchased Certificates sponsored by Residential Funding between March 2005 and June 2007. MassMutual made the following purchases of Certificates, representing a total investment of approximately $300 million, from the following defendants:

Asset	Full Name of Offering	Purchase Price	Seller Defendants
RAMP Series 2005-RZ1, Class M1 and Class M2	Residential Asset Mortgage Products, Inc. Series 2005-RZ1	9,250,000.00	Residential Funding Corporation (Sponsor) Residential Asset Mortgage Products, Inc. (Depositor)
RALI Series 2005-QO3 , Class A1	Residential Accredit Loans, Inc. Series 2005-QO3	23,544,062.50	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor) Residential Funding Securities Corporation (Underwriter)
RALI Series 2005-QO4, Class 2A1	Residential Accredit Loans, Inc. Series 2005-QO4	25,000,000.00	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor)

Asset	Full Name of Offering	Purchase Price	Seller Defendants
RALI Series 2006-QO1, Class 3A1	Residential Accredit Loans, Inc. Series 2006-QO1	50,000,000.00	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor)
RALI Series 2006-QO3, Class A1	Residential Accredit Loans, Inc. Series 2006-QO3	45,000,000.00	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor)
RALI Series 2006-QO4, Class 2A1	Residential Accredit Loans, Inc. Series 2006-QO4	40,050,000.00	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor)
RALI Series 2006-QO5, Class 2A1	Residential Accredit Loans, Inc. Series 2006-QO5	36,094,500.00	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor) UBS Securities LLC (Underwriter)
RAMP Series 2006-RS4, Class M9	Residential Asset Mortgage Products Series 2006-RS4	2,000,000.00	Residential Funding Corporation (Sponsor) Residential Asset Mortgage Products, Inc. (Depositor)

Asset	Full Name of Offering	Purchase Price	Seller Defendants
RALI Series 2006-QO6, Class A2	Residential Accredit Loans, Inc. Series 2006-QO6	6,000,000.00	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor)
RASC Series 2006-EMX6, Class M8 and Class M9	Residential Asset Securities Corp. Series 2006-EMX6 Class M9	1,750,000.00	Residential Funding Corporation (Sponsor) Residential Asset Securities Corporation (Depositor) Residential Funding Securities, LLC (Underwriter)
RALI Series 2006-QA6, Class A2 and Class A3	Residential Accredit Loans, Inc. Series 2006-QA6	27,113,752.75	Residential Funding Corporation (Sponsor) Residential Accredit Loans, Inc. (Depositor) Residential Funding Securities, LLC (Underwriter)
RAMP Series 2006-RZ3, Class M8	Residential Asset Mortgage Products Series 2006-RZ3	1,000,000.00	Residential Funding Corporation (Sponsor) Residential Asset Mortgage Products, Inc. (Depositor)

Asset	Full Name of Offering	Purchase Price	Seller Defendants
RAMP Series 2006-RS6, Class M7	Residential Asset Mortgage Products Series 2006-RS6	1,375,000.00	Residential Funding Company, LLC (Sponsor) Residential Asset Mortgage Products, Inc. (Depositor)
RAMP Series 2006-ECF2, Class M8	Residential Asset Mortgage Products, Inc. Series 2006-EFC2	1,200,000.00	Residential Funding Company, LLC (Sponsor) Residential Asset Mortgage Products, Inc. (Depositor) Residential Funding Securities, LLC (Underwriter)
RALI Series 2006-QO9, Class M8	Residential Accredit Loans, Inc. Series 2006-QO9	4,927,018.59	Residential Funding Company, LLC (Sponsor) Residential Accredit Loans, Inc. (Depositor)
RAMP Series 2007-RZ1, Class M6, Class M7, and Class M8	Residential Asset Mortgage Products, Inc. Series 2007-RZ1	1,955,585.94	Residential Funding Company, LLC (Sponsor) Residential Asset Mortgage Products, Inc. (Depositor)

Asset	Full Name of Offering	Purchase Price	Seller Defendants
RASC Series 2007-KS3, Class M3S	Residential Asset Securities Corp. Series 2007-KS3	3,000,000.00	Residential Funding Company, LLC (Sponsor) Residential Asset Securities Corporation (Depositor)
RALI Series 2007-QH6, Class A1	Residential Accredit Loans, Inc. Series 2007-QH6	15,808,017.00	Residential Funding Company, LLC (Sponsor) Residential Accredit Loans, Inc. (Depositor)
TOTAL		295,067,936.78	

IV. DEFENDANTS' ABANDONMENT OF THEIR DISCLOSED UNDERWRITING STANDARDS TO FACILITATE SALE OF LOW-QUALITY LOANS TO INVESTORS

A. RFC's Representations That It Consistently Followed Underwriting Standards

43. The fundamental basis upon which residential mortgage-backed securities are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral for those loans. If the borrowers cannot pay, and the collateral is insufficient, the investors incur losses. For this reason, the underwriting standards and practices of the mortgage originator that issued the loans backing the certificates, and the representations in the Offering Materials regarding those standards, are critically important to the value of the securities, and to investors decisions to purchase the securities.

44. As Sponsor of the securitizations at issue, Residential Funding either originated the underlying mortgage loans through its wholly owned subsidiary, Homecomings Financial,

LLC, formerly Homecomings Financial Network, Inc. ("Homecomings"), or purchased them from other originators. Each loan was purportedly underwritten according to a set of underwriting guidelines, which are specified criteria that the mortgage loans must meet depending upon the individual loan program and circumstances of each mortgage loan. In general, the underwriting guidelines stipulated what documentation was required to be included in the mortgage loan files for each loan product (which may include, depending upon the loan product, verifications of income, assets, closing funds and payment histories, among others) and criteria for eligibility, including tests for debt-to-income ("DTI") and combined loan-to-value ("CLTV") ratios.

45. The RFC Defendants represented to investors that the securitized loans were underwritten according to meaningful underwriting standards.

46. From 2005 to 2007, Residential Capital consistently reported in its public filings for itself and its subsidiaries, including all RFC Defendants, that underwriting standards were consistently applied, even for non-conforming loans, to confirm a borrower's credit profile and to produce performing loans:

> All mortgage loans that we originate and most of the mortgage loans we purchase are subject to our underwriting guidelines and loan origination standards. When originating mortgage loans . . . , we follow established lending policies and procedures that require consideration of a variety of factors, including:
>
> - the borrower's capacity to repay the loan;
> - the borrower's credit history;
> - the relative size and characteristics of the proposed loan; and
> - the amount of equity in the borrower's property (as measured by the borrower's loan-to-value ratio).

> Our underwriting standards have been designed to produce loans that meet the credit needs and profiles of our borrowers, thereby creating more consistent performance characteristics for investors in our loans.

47. Residential Capital also consistently reported from 2005 to 2006 that quality control and periodic audits ensured the consistent application of underwriting standards:

> We also conduct a variety of quality control procedures and periodic audits to ensure compliance with our origination standards, including our responsible lending standards and legal requirements. Although many of these procedures involve manual reviews of loans, we seek to leverage our technology in further developing our quality control procedures. For example, we have programmed many of our compliance standards into our loan origination systems and continue to use and develop automated compliance technology to mitigate regulatory risk.

48. Representations about the underwriting standards were repeated in the Offering Materials for each of the 18 securitizations.

49. The Offering Materials promised investors that the mortgage originators for the loans had collected a variety of financial information about a borrower to ensure that the borrower could repay the loan:

> As part of the description of the mortgagor s financial condition, each mortgagor is required to furnish information . . . regarding its assets, liabilities, income (except as described below), credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower s credit history with local merchants and lenders and any record of bankruptcy. The mortgagor may also be required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts.

50. The Offering Materials promised investors that only borrowers who could repay loans had received them:

> Based on the data provided in the application and certain verifications, if required, and the appraisal or other valuation of the mortgaged property, a determination will have been made by the original lender that the mortgagor s monthly income, if required to be stated, would be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property . . . . Generally, scheduled

> payments on a mortgage loan during the first year of its term plus taxes and insurance and all scheduled payments on obligations that extend beyond ten months, including those mentioned above and other fixed obligations, must equal no more than specified percentages of the prospective mortgagor's gross income.

51. The Offering Materials also promised investors that Residential Funding itself had reviewed the underwriting information to confirm compliance with underwriting standards:

> Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided . . . for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards . . . .

52. The review by Residential Funding including sampling mortgage loans to confirm conformity with underwriting standards and likelihood of repayment:

> Residential Funding Corporation, on behalf of the depositor, typically will review a sample of the mortgage loans purchased by Residential Funding Corporation for conformity with the applicable underwriting standards and to assess the likelihood of repayment of the mortgage loan from the various sources for such repayment, including the mortgagor, the mortgaged property, and primary mortgage insurance, if any.

53. Finally, the Offering Materials promised investors that all loans were issued in substantial compliance with underwriting standards, and that any deviation from a specific criteria was justified by sufficient positive compensating factors:

> [A] mortgage loan will be considered to be originated in accordance with the underwriting standards described above if, based on an overall qualitative evaluation, the loan is in substantial compliance with the underwriting standards. For example, a mortgage loan may be considered to comply with the underwriting standards described above, even if one or more specific criteria included in the underwriting standards were not satisfied, if other factors positively compensated for the criteria that were not satisfied.

B. RFC's Abandonment of Underwriting Standards to Generate a Large Volume of Loans for Securitization, With Investors Bearing the Risk of Loss

54. The securitization process incentivized RFC to abandon underwriting standards so that it could originate and purchase huge volumes of low-quality loans to securitize.

55. As the private residential mortgage-backed securities market expanded, the traditional "originate to hold" model morphed into the "originate to distribute" model. Under the "originate to distribute" model, mortgage companies, such as the RFC Defendants, no longer held the mortgage loans to maturity. Rather, they shifted the risk of loss to the investors who purchased an interest in the securitized pool of loans.

56. The new distribution model was highly profitable for the RFC Defendants and other mortgage companies. By securitizing and selling mortgage loans to investors through underwriters, mortgage companies received immediate payment for the loans, shifted the loans off their books, and were able to issue more loans. The securitization process enabled the mortgage companies to earn most of their income from transaction and loan-servicing fees. Because the mortgage companies did not have to bear the risk of loss, they had an unchecked incentive to originate more and more loans to feed into the securitization machine.

57. The Attorney General for the Commonwealth of Massachusetts explained this unchecked incentive in her investigation into the subprime mortgage industry:

> Historically, the vast majority of home mortgages were written by banks which held the loans in their own portfolios, knew their borrowers, and earned profit by writing good loans and collecting interest over many years. Those banks had to live with their "bad paper" and thus had a strong incentive to avoid making bad loans. In recent years, however, the mortgage market has been driven and funded by the sale and securitization of the vast majority of loans. Lenders now frequently make mortgage loans with the intention to promptly sell the loan and mortgage to one or more entities. ... The lenders' incentives thus changed from writing good loans to writing a huge volume of loans to re-sell, extracting their profit at the front end, with considerably less regard to the ultimate performance of the loans.

58. Ben Bernanke, Chairman of the Federal Reserve Bank, also explained the incentive to abandon underwriting standards in Congressional testimony:

> When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.

59. To take advantage of the exploding market for residential mortgage-backed securities, the RFC Defendants abandoned their disclosed underwriting guidelines to originate and purchase as many loans as possible for securitization.

60. Unbeknownst to MassMutual, the RFC Defendants originated or purchased loans that had been issued to borrowers, regardless of their ability to pay. The loans were often issued on the basis of overstated incomes, inflated appraisals, false verifications of employment, or exceptions to underwriting criteria that had no proper justification. The origination practices engaged in by the RFC Defendants and the originators from which they purchased were in blatant disregard of RFC's disclosed underwriting standards, and any semblance of reasonable and prudent underwriting.

61. The RFC Defendants' abandonment of their underwriting guidelines has been the subject of multiple investigations and lawsuits. For example, in the case *MBIA Insurance Co. v. Residential Funding Corp.*, No 603552-2008 (NY State Supreme Court), MBIA states that it obtained mortgage loans for multiple RFC transactions and found that out of 7,913 loans examined, "at least 7,019 [more than 88% of the mortgage loans that MBIA reviewed] were not originated or acquired in material compliance with RFC's representations and warranties." Similarly, in *New Jersey Carpenters Health Fund, et al v. Residential Capital, LLC*, et al, 08-

CV-8781 (S.D.N.Y. 2008), plaintiff pension funds alleged violations of underwriting guidelines and misrepresentations relating to underwriting guidelines by RFC in the Offering Materials of 10 RFC sponsored securities, including 2 at issue here—RALI 2006-QO6 and RALI 2006-QO9. In that complaint, plaintiffs state, "The descriptions of the underwriting guidelines included in the Offering Documents described the policies employed by RFC, by way of its wholly-owned subsidiary [Homecomings] in examining borrower creditworthiness and verifying borrower information . . . and in conducting appraisals of the mortgaged properties . . . . These portions of the Offering Documents also contained misstatements and omissions since, as has emerged only well after issuance of the Certificates, [Homecomings] and its correspondent lenders systematically disregarded the stated underwriting guidelines set forth in the Offering Documents."

C. Widespread Defaults That Confirm RFC's Abandonment of Its Underwriting Standards

62. Even though the Certificates purchased by MassMutual were supposed to be long-term, stable investments, just years after their issuance, a substantially high percentage of the mortgage loans backing the Certificates have defaulted, been foreclosed upon, or are delinquent, resulting in massive losses to the certificateholders, including MassMutual. The following table contains the most recent performance data available for the loan pools:

Transaction	Number of Loans in Pool at Closing	Current Number of Loans in Pool	Number of Loans Liquidated or Foreclosed Upon	Number of Loans in Default or Delinquent	% of Loans Liquidated, Foreclosed Upon, in Default or Delinquent
RALI 2005-QO3	1414	254	348	91	31.05%
RALI 2005-QO4	2306	458	600	154	32.70%
RALI 2006-QA6	2226	627	860	75	42.00%
RALI 2006-QO1	2807	589	856	177	36.80%
RALI 2006-QO3	1897	422	644	154	42.07%
RALI 2006-QO4	2470	579	881	215	44.37%
RALI 2006-QO5	2975	715	1119	294	47.50%
RALI 2006-QO6	3651	926	1393	325	47.06%

RALI 2006-QO9	2553	723	1062	286	52.80%
RALI 2007-QH6	1549	563	603	222	53.26%
RAMP 2005-RZ1	1379	315	184	10	14.07%
RAMP 2006-EFC2	2385	727	778	80	35.97%
RAMP 2006-RS4	5288	1400	576	170	14.11%
RAMP 2006-RS6	1610	480	704	33	45.78%
RAMP 2006-RZ3	4604	1455	1704	152	40.31%
RAMP 2007-RZ1	1904	683	692	71	40.07%
RASC 2006-EMX6	3989	773	1944	156	52.64%
RASC 2007-KS3	8173	3022	2812	365	38.87%

63. Many of MassMutual's investments initially received the highest possible Standard & Poor's rating—AAA—which has historically represented an expected loss rate of less than .05%. This is the same rating typically given to bonds backed by the full faith and credit of the United States government, such as treasury bills. According to S&P's whitepaper, "Understanding Standard & Poor's Rating Definitions," a AAA rating represents an "extremely strong capacity to meet its financial commitments."

64. Because of the high delinquency and default rates, among other things, however, most of the Certificates have been downgraded to junk-bond ratings, as can be seen in the following table:

Certificate	Original S&P Rating	Current S&P Rating	Original Moody's Rating	Current Moody's Rating
RALI 2005-QO3 A1	AAA	CCC	Aaa	Caa2
RALI 2005-QO4 2A1	AAA	CCC	Aaa	Caa3
RALI 2006-QA6 A2	AAA	CC	Aaa	Caa3
RALI 2006-QA6 A3	AAA	CC	Aaa	Caa3
RALI 2006-QO1 3A1	AAA	CCC	Aaa	Caa3
RALI 2006-QO3 A1	AAA	CCC	Aaa	Caa2
RALI 2006-QO4 2A1	AAA	B-	Aaa	Caa3
RALI 2006-QO5 2A1	AAA	B-	Aaa	Caa3
RALI 2006-QO6 A2	AAA	CC	Aaa	Caa3
RALI 2006-QO9 M8	BBB	No Longer Rated[1]	A3	No Longer Rated
RALI 2007-QH6 A1	AAA	B-	Aaa	Caa3
RAMP 2005-RZ1 M1	AA	AA	Aaa	Aaa
RAMP 2005-RZ1 M2	AA	AA	Aa1	Aa1
RAMP 2006-RS4 M9	BBB-	No Longer Rated	Baa2	No Longer Rated
RAMP 2006-RS6 M7	BBB	No Longer Rated	Baa1	No Longer Rated

[1] Each bond indicated "No Longer Rated" has been entirely written off due to losses.

RAMP 2006-RZ3 M8	NR	No Longer Rated	Baa2	No Longer Rated
RAMP 2007-RZ1 M6	A-	No Longer Rated	A3	No Longer Rated
RAMP 2007-RZ1 M7	BBB	No Longer Rated	A3	No Longer Rated
RAMP 2007-RZ1 M8	BBB	No Longer Rated	A3	No Longer Rated
RASC 2006-EMX6 M8	BBB	No Longer Rated	Baa2	No Longer Rated
RASC 2006-EMX6 M9	BBB-	No Longer Rated	Baa3	No Longer Rated
RASC 2007-KS3 M3S	AA-	No Longer Rated	Aa3	No Longer Rated

65. The poor performance of the loan pools and the rapidly dropping credit ratings of the Certificates have caused a massive decline in the market values of the Certificates. According to the most recent data, the Certificates should be worth approximately $177 million, but their market value is substantially lower approximately $84 million.

66. The economic downturn cannot explain the abnormally high percentage of defaults, foreclosures, and delinquencies observed in the loan pools. Loan pools that were properly underwritten and contained loans with the represented characteristics would have experienced substantially fewer payment problems and substantially lower percentages of defaults, foreclosures, and delinquencies.

V. MISREPRESENTATIONS ABOUT APPRAISALS AND LOAN-TO-VALUE RATIOS REVEALED BY A FORENSIC REVIEW OF THE MORTGAGE LOANS

A. Appraisal and LTV Testing

67. MassMutual commissioned a forensic review of the mortgage loans underlying the Certificates to determine whether the characteristics of the mortgage loans, as represented in the Offering Materials, were accurate.

68. As part of the forensic review, data relating to the collateral loans underlying each of the securitizations was gathered from multiple public sources, including assessor, DMV, credit, and tax records, as well as proprietary sources such as loan servicing, securitization, and mortgage application records. The data relating to individual mortgage loans was then compared to the representations made in the Offering Materials.

69. The forensic review tested the appraised values and loan-to-value ratio ("LTV") of each property, as represented in the Offering Materials, through an industry-standard automated valuation model ("AVM").

70. The LTV is the ratio of a mortgage loan's original principal balance to the appraised value of the mortgaged property. This ratio was material to MassMutual and other investors because higher ratios are correlated with a higher risk of default. A borrower with a small equity position in a property has less to lose if he or she defaults on the loan. There is also a greater likelihood that a foreclosure will result in a loss for the lender if the borrower fully leveraged the property. LTV is a common metric for analysts and investors to evaluate the price and risk of mortgage-backed securities.

71. For each of the loans reviewed, the underlying property was valued by an industry-standard AVM. AVMs are routinely used in the industry as a way of valuing properties during prequalification, origination, portfolio review, and servicing. AVMs have become ubiquitous enough that their testing and use is specifically outlined in regulatory guidance and discussed in the Dodd-Frank Act. AVMs rely upon similar data as in-person appraisals—primarily county assessor records, tax rolls, and data on comparable properties. AVMs produce independent, statistically-derived valuation estimates by applying modeling techniques to this data. The AVM that MassMutual used incorporates a database of 500 million mortgage transactions covering ZIP codes that represent more than 97% of the homes, occupied by more than 99% of the population, in the United States. Independent testing services have determined that this AVM is the most accurate of all such models.

72. For purposes of MassMutual's forensic review, a retrospective AVM was conducted for each loan to calculate the value of the underlying property at the time each loan

was originated. The inputs for each calculation included, *inter alia*, (1) any subsequent sale prices of the target property, (2) sale prices and appraisals of comparable properties in the neighborhood, and (3) changes in home price indices over time.

73. Applying the AVM results to the available data for the loans underlying the Certificates shows that the appraised values given to the properties were often significantly higher than what the properties were actually worth. This affected the LTV ratios by decreasing the actual value of the properties relative to the loan amounts, which increased the overall ratios. This overvaluation affected numerous statistics in the Offering Materials, as described in detail for each transaction in Section V.B below.

B. Specific Misrepresentations in the Offering Materials.

(1) RALI 2005-QO3

74. The Prospectus Supplement for the RALI 2005-QO3 securitization represented that the weighted average LTV ratio of the mortgage loans was 73.84%. It also represented that only 8 mortgage loans would have an LTV above 90%, which was 0.51% of the collateral pool.

75. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2005-QO3 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation, as described above under "--Loan-to-Value Ratio." Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated

> from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

76. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

77. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	73.84%	81.35%
Percentage of Collateral Loans with LTV of Greater than 90%	0.51% (8 loans)	16.56% (221 loans)

78. In total, 37% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 29% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

79. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(2) RALI 2005-QO4

80. The Prospectus Supplement for the RALI 2005-QO4 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 74.25%. It also represented that only 40 Mortgage Loans would have an LTV greater than 90%, which represented 1.21% of the pool.

81. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2005-QO4 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation, as described above under "--Loan-to-Value Ratio." Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

82. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

83. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	74.25%	83.71%
Percentage of Collateral Loans with LTV of Greater than 90%	1.21% (40 loans)	19.81% (457 loans)

84. In total, 41% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 35% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

85. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data,

along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(3) RALI 2006-QA6

86. The Prospectus Supplement for the RALI 2006-QA6 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 76.97%. It also represented that only 24 Mortgage Loans had an LTV ratio greater than 90%, which represented 1.01% of the pool.

87. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QA6 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation, as described above under "--Loan-to-Value Ratio." Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

88. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

89. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	76.97%	85.58%
Percentage of Collateral Loans with LTV of Greater than 90%	1.01% (24 loans)	18.84% (395 loans)

90. In total, 35% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 30% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

91. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV

and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(4) RALI 2006-QO1

92. The Prospectus Supplement for the RALI 2006-QO1 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 74.51%. It also represented that only 55 Mortgage Loans had an LTV ratio greater than 90%, which represented just 1.61% of the pool.

93. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QO1 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation, as described above under "--Loan-to-Value Ratio." Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

94. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an

appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

95. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	74.51%	84.06%
Percentage of Collateral Loans with LTV of Greater than 90%	1.61% (55 loans)	24.71% (694 loans)

96. In total, 45% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 40% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

97. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the

properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(5) RALI 2006-QO3

98. The Prospectus Supplement for the RALI 2006-QO3 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 74.31%. It also represented that only 27 Mortgage Loans would have an LTV above 90, which was 1.22% of the collateral pool.

99. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QO3 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation. . . . Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

100. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

101. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	74.31%	85.53%
Percentage of Collateral Loans with LTV of Greater than 90%	1.22% (27 loans)	20.94% (383 loans)

102. In total, 46% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 39% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

103. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties.

They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(6) The RALI 2006-QO4 Securitization

104. The Prospectus Supplement for the RALI 2006-QO4 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 74.27%. It also represented that only 33 Mortgage Loans would have an LTV above 90, which was 0.92% of the collateral pool.

105. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QO4 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation . . . . Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

106. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

107. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above.

MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	74.27%	83.10%
Percentage of Collateral Loans with LTV of Greater than 90%	.92% (33 loans)	21.64% (535 loans)

108. In total, 42% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 34% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

109. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(7) RALI 2006-QO5

110. The Prospectus Supplement for the RALI 2006-QO5 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 74.67%. It also represented that only 51 Mortgage Loans would have an LTV above 90, which was 1.26% of the collateral pool.

111. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QO5 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation. . . . Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

112. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

113. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	74.67%	84.15%
Percentage of Collateral Loans with LTV of Greater than 90%	1.26% (51 loans)	19.54% (584 loans)

114. In total, 45% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 37% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

115. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(8) RALI 2006-QO6

116. The Prospectus Supplement for the RALI 2006-QO6 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 74.66%. It also represented that only 75 Mortgage Loans would have an LTV above 90, which was 1.56% of the collateral pool.

117. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QO6 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation. . . . Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

118. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

119. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	74.66%	85.69%
Percentage of Collateral Loans with LTV of Greater than 90%	1.56% (75 loans)	23.98% (861 loans)

120. In total, 48% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 40% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

121. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(9) RALI 2006-QO9

122. The Prospectus Supplement for the RALI 2006-QO9 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 75.15%. It also represented that only 17 Mortgage Loans would have an LTV above 90%, which was 0.54% of the collateral pool.

123. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2006-QO9 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation. . . . Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

124. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

125. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	75.15%	89.46%
Percentage of Collateral Loans with LTV of Greater than 90%	.54% (17 loans)	32.42% (770 loans)

126. In total, 60% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 53% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

127. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(10) RALI 2007-QH6

128. The Prospectus Supplement for the RALI 2007-QH6 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 73.89%. It also represented that only 32 Mortgage Loans would have an LTV above 90%, which was 1.62% of the collateral pool.

129. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RALI 2007-QH6 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation. . . . Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

130. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

131. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	73.89%	90.66%
Percentage of Collateral Loans with LTV of Greater than 90%	1.62% (32 loans)	36.07% (559 loans)

132. In total, 61% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

133. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(11) RAMP 2005-RZ1

134. The Prospectus Supplement for the RAMP 2005-RZ1 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 102.23%. It also represented

that 758 Mortgage Loans would have an LTV above 100%, which was 58.07% of the collateral pool.

135. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus Supplement for RAMP 2005-RZ1 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally has been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. At least one full appraisal is obtained (plus a field review or an additional appraisal for Credit Grade A4) for the mortgaged property. Appraisers are either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by the originator. The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal would have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

136. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports, except with respect to Home Loans, and is anticipated to support in the future, the outstanding loan balance.

137. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	102.23%	106.46%
Percentage of Collateral Loans with LTV of Greater than 100%	58.07% (758 loans)	62.61% (804 loans)

138. In total, 27% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 29% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

139. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(12) RAMP 2006-EFC2

140. The Prospectus Supplement for the RAMP 2006-EFC2 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 83.28%. It also represented that 685 Mortgage Loans would have an LTV above 90%, which was 19.18% of the collateral pool.

141. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus Supplement for RAMP 2006-EFC2 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally has been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. Appraisers are either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by the originator. The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal would have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

142. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports, except with respect to Home Loans, and is anticipated to support in the future, the outstanding loan balance.

143. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	83.28%	91.71%
Percentage of Collateral Loans with LTV of Greater than 90%	19.18% (685 loans)	38.31% (759 loans)

144. In total, 50% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 41% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

145. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(13) RAMP 2006-RS4

146. The Prospectus Supplement for the RAMP 2006-RS4 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 88.12%. It also represented that 2,827 Mortgage Loans would have an LTV above 90%, which was 46.23% of the collateral pool.

147. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RAMP 2006-RS4 represented as follows:

> The adequacy at origination of a mortgaged property as security for repayment of the related loan will typically have been determined by an appraisal. Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with guidelines established by or acceptable to the originator. The appraisal procedure guidelines in most cases will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

148. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports, except with respect to Home Loans, and is anticipated to support in the future, the outstanding loan balance.

149. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	88.12%	97.02%
Percentage of Collateral Loans with LTV of Greater than 90%	46.23% (2827 loans)	56.92% (3146 loans)

150. In total, 38% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 37% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

151. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(14) RAMP 2006-RS6

152. The Prospectus Supplement for the RAMP 2006-RS6 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 80.68%. It also represented that

only 69 Mortgage Loans would have an LTV above 90%, which was 3.73% of the collateral pool.

153. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus for RAMP 2006-RS6 represented as follows:

> The adequacy at origination of a mortgaged property as security for repayment of the related loan will typically have been determined by an appraisal. Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with guidelines established by or acceptable to the originator. The appraisal procedure guidelines in most cases will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

154. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports, except with respect to Home Loans, and is anticipated to support in the future, the outstanding loan balance.

155. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	80.68%	92.56%
Percentage of Collateral Loans with LTV of Greater than 90%	3.73% (69 loans)	26.9% (380 loans)

156. In total, 40% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 37% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but that the representations relating appraisal practices were false as well. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

157. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(15) RAMP 2006-RZ3

158. The Prospectus Supplement for the RAMP 2006-RZ3 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 100.25%. It also represented that 379 loans would have LTVs greater than 100%, which represented 8.56% of the pool.

159. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus Supplement for RAMP 2006-RZ3 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally has been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. At least one full appraisal is obtained for the mortgaged property. Appraisers are either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by the originator. The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal would have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

160. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports, except with respect to Home Loans, and is anticipated to support in the future, the outstanding loan balance.

161. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	100.25%	109.65%
Percentage of Collateral Loans with LTV of Greater than 100%	8.56% (379 loans)	38.56% (1499 loans)

162. In total, 35% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 38% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

163. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(16) RAMP 2007-RZ1

164. The Prospectus Supplement for the RAMP 2007-RZ1 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 99.56%. It also represented that 71 Mortgage Loans would have an LTV above 100%, which was 3.54% of the collateral pool.

165. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus Supplement for RAMP 2007-RZ1 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally has been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. At least one full appraisal is obtained for the mortgaged property. Appraisers are either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by the originator. The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal would have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

166. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports, except with respect to Home Loans, and is anticipated to support in the future, the outstanding loan balance.

167. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	99.56%	109.2%
Percentage of Collateral Loans with LTV of Greater than 100%	3.54% (71 loans)	42.62% (672 loans)

168. In total, 36% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 39% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

169. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(17) RASC 2006-EMX6

170. The Prospectus Supplement for the RASC 2006-EMX6 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 83.09%. It also represented that only 1,403 Mortgage Loans would have an LTV above 90%, which was 15.61% of the collateral pool.

171. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus Supplement for RASC 2006-EMX6 represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally has been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. Appraisers were either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by the originator. The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal would have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

172. The Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described above, currently supports and is anticipated to support in the future the outstanding loan balance.

173. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV/CLTV of the Collateral Loans	83.09%	91.58%

174. In total, 45% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 29% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

175. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

(18) RASC 2007-KS3

176. The Prospectus Supplement for the RASC 2007-KS3 securitization represented that the weighted average LTV ratio of the Mortgage Loans was 82.63%. It also represented that

2,346 of the Mortgage Loans would have an LTV above 90, which was 21.55% of the collateral pool.

177. Additionally, the Offering Materials represented that independent appraisals were obtained for certain of the Mortgage Loans. The Prospectus Supplement for RASC 2007-KS3, RFC represented as follows:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally has been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. Appraisers were either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by the originator.
>
> The appraisal procedure guidelines generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal would have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio may have been based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

178. The Prospectus Supplement also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

179. These representations regarding appraisals were material to MassMutual and other investors because they signaled the reliability of the LTV ratios discussed above. MassMutual's forensic review revealed that these representations were false. The true LTV

ratios for the collateral loans were actually much higher than represented, as shown in the chart below:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Weighted Average LTV of the Collateral Loans	82.63%	92.72%
Percentage of Collateral Loans with LTV of Greater than 90%	21.55% (2,346 loans)	38.96% (2528 loans)

180. In total, 51% of the loans tested were shown to have appraisals that were inflated by 10% or more, and 42% of the loans tested had LTVs that were 10 or more points less than was represented. These results not only demonstrate that the loan statistics in the Offering Materials were false, but also that the representations relating to appraisal practices were false. Independent appraisers following proper practices would not systematically generate appraisals that deviate so significantly from the true values of the appraised properties.

181. The RFC Defendants had full access to the appraisal records and all data relating to the collateral loans. The Underwriter Defendant also had full access to the records and data, along with an affirmative obligation to conduct due diligence to verify the accuracy of the LTV and appraisal representations. Based on these defendants' involvement in originating and securitizing the loans and conducting due diligence, they knew that the estimations of the properties' values bore no relationship to the actual data and characteristics of the properties. They therefore knew that the estimations of the properties' values were not justified, unreasonable, and inaccurate.

VI. MISREPRESENTATIONS ABOUT OWNER-OCCUPANCY STATISTICS REVEALED BY A FORENSIC REVIEW OF THE MORTGAGE LOANS

A. Owner-Occupancy Testing

182. The forensic review commissioned by MassMutual also tested the accuracy of the representations of owner-occupancy in the Offering Materials.

183. Owner-occupancy statistics were material to MassMutual and other investors because high owner-occupancy rates would have made the Certificates safer investments than Certificates backed by second homes or investment properties. Homeowners who reside in mortgaged properties are less likely to default than owners who purchase homes as investments or second homes and live elsewhere.

184. MassMutual's forensic review tested the accuracy of the representations of owner-occupancy in the Offering Materials. To determine whether a given borrower actually occupied the property as claimed, MassMutual investigated tax information for the loans. One would expect that a borrower residing at a property would have the tax bills sent to that address, and would take applicable tax exemptions available to residents of that property. If a borrower had his or her tax records sent to another address, that is evidence that that borrower was not actually residing at the mortgaged property. If a borrower declined to make certain tax exemption elections that depend on the borrower living at the property, that also is evidence the borrower was living elsewhere. MassMutual also reviewed: (1) borrower credit records, because one would expect that people have bills sent to their primary address. If a borrower was telling creditors to send bills to another address, even six months after buying the property, that is evidence the borrower was living elsewhere; (2) property records, because it is unlikely that a borrower lives in any one property if in fact that borrower owns multiple properties. It is even more unlikely that the borrower resides at the mortgaged property if a concurrently-owned

separate property did not have its own tax bills sent to the property included in the mortgage pool; and (3) records of other liens, because if the property was subject to additional liens but those materials were sent elsewhere, that is evidence the borrower was not living at the mortgaged property. If the other lien involved a conflicting declaration of residency, that too would be evidence that the borrower did not live in the subject property .

185. If a property fails more than one of the above tests, that is strong evidence the borrower did not in fact reside at the mortgaged property. As described more fully in Section VI.B below, the results of MassMutual's loan-level analysis of true owner-occupancy rates on the mortgage loans underlying its Certificates show that, despite the prospectus representations, a much higher percentage of borrowers did not occupy the mortgaged properties than was represented.

B. Specific Misrepresentations in the Offering Materials.

(1) RALI 2005-QO3

186. The Offering Materials for RALI 2005-QO3 represented that 1190 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 12.9% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1190 of the loans being owner occupied, as represented in the Offering Materials, only 1036 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1190 loans (84.16%)	1036 loans (73.26%)

(2) RALI 2005-QO4

187. The Offering Materials for RALI 2005-QO4 represented that 1836 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 14.4% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1836 of the loans being owner occupied, as represented in the Offering Materials, only 1572 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1836 loans (79.62%)	1572 loans (68.17%)

(3) RALI 2006-QA6

188. The Offering Materials for RALI 2006-QA6 represented that 1624 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 16.5% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1624 of the loans being owner occupied, as represented in the Offering Materials, only 1345 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1624 loans (72.96%)	1345 loans (60.42%)

(4) RALI 2006-QO1

189. The Offering Materials for RALI 2006-QO1 represented that 2292 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 13.2% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 2292 of the loans being owner occupied, as represented in the Offering Materials, only 1989 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	2292 loans (81.65%)	1989 loans (70.86%)

(5) RALI 2006-QO3

190. The Offering Materials for RALI 2006-QO3 represented that 1606 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 10.8% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1606 of the loans being owner occupied, as represented in the Offering Materials, only 1432 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1606 loans (84.66%)	1432 loans (75.49%)

(6) The RALI 2006-QO4 Securitization

191. The Offering Materials for RALI 2006-QO4 represented that 2084 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 13.5% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 2084 of the loans being owner occupied, as represented in the Offering Materials, only 1803 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	2084 loans (84.37%)	1803 loans (72.98%)

(7) RALI 2006-QO5

192. The Offering Materials for RALI 2006-QO5 represented that 2538 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 11.9% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 2538 of the loans being owner occupied, as represented in the Offering Materials, only 2235 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	2538 loans (85.31%)	2235 loans (75.12%)

(8) RALI 2006-QO6

193. The Offering Materials for RALI 2006-QO6 represented that 3124 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 14.4% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 3124 of the loans being owner occupied, as represented in the Offering Materials, only 2673 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	3124 loans (85.57%)	2673 loans (73.21%)

(9) RALI 2006-QO9

194. The Offering Materials for RALI 2006-QO9 represented that 2141 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 15.3% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 2141 of the loans being owner occupied, as represented in the Offering Materials, only 1813 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	2141 loans (83.86%)	1813 loans (71.05%)

(10) RALI 2007-QH6

195. The Offering Materials for RALI 2007-QH6 represented that 1282 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 18.4% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1282 of the loans being owner occupied, as represented in the Offering Materials, only 1046 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1282 loans (82.76%)	1046 loans (67.53%)

(11) RAMP 2005-RZ1

196. The Offering Materials for RAMP 2005-RZ1 represented that 1184 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 9.6% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1184 of the loans being owner occupied, as represented in the Offering Materials, only 1070 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1184 loans (85.86%)	1070 loans (77.59%)

(12) RAMP 2006-EFC2

197. The Offering Materials for RAMP 2006-EFC2 represented that 2267 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 9.3% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 2267 of the loans being owner occupied, as represented in the Offering Materials, only 2056 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	2267 loans (93.48%)	2056 loans (84.78%)

(13) RAMP 2006-RS4

198. The Offering Materials for RAMP 2006-RS4 represented that 3989 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 8.9% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 3989 of the loans being owner occupied, as represented in the Offering Materials, only 3634 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	3989 loans (75.43%)	3634 loans (69.72%)

(14) RAMP 2006-RS6

199. The Offering Materials for RAMP 2006-RS6 represented that 933 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 13.3% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 933 of the loans being owner occupied, as represented in the Offering Materials, only 809 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	933 loans (57.7%)	809 loans (50.03%)

(15) RAMP 2006-RZ3

200. The Offering Materials for RAMP 2006-RZ3 represented that 3683 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 8.3% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 3683 of the loans being owner occupied, as represented in the Offering Materials, only 3375 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	3683 loans (80.13%)	3375 loans (73.43%)

(16) RAMP 2007-RZ1

201. The Offering Materials for RAMP 2007-RZ1 represented that 1460 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 10.8% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 1460 of the loans being owner occupied, as represented in the Offering Materials, only 1302 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	1460 loans (76.68%)	1302 loans (68.38%)

(17) RASC 2006-EMX6

202. The Offering Materials for RASC 2006-EMX6 represented that 3871 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 11.9% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 3871 of the loans being owner occupied, as represented in the Offering Materials, only 3410 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	3871 loans (95.34%)	3410 loans (83.99%)

(18) RASC 2007-KS3

203. The Offering Materials for RASC 2007-KS3 represented that 7615 of the Mortgage Loans were for primary residences, i.e. owner-occupied properties. In MassMutual's subsequent loan-level analysis, however, 12.9% of the Mortgage Loans reported to be owner-occupied failed multiple tests for owner occupancy. Thus, as shown in the chart below, instead of 7615 of the loans being owner occupied, as represented in the Offering Materials, only 6785 were:

	As Represented in the Offering Materials	Actual Values Per Forensic Review
Number of Loans Covering Primary Residences	7615 loans (93.20%)	6785 loans (83.04%)

VII. LIABILITY OF THE SPONSOR, DEPOSITORS, AND UNDERWRITERS AS SELLERS OF SECURITIES TO MASSMUTUAL

204. The defendants that qualify as sellers of securities under the Massachusetts Uniform Securities Act are the Sponsor (Residential Funding), Depositors (RALI, RAMP, and RASC), and Underwriters (Residential Funding and UBS). Each of these is primarily liable for misrepresentations in the Offering Materials under Massachusetts General Laws, Chapter 110A, Section 410(a)(2).

205. As the Sponsor for the securitizations at issue, Residential Funding originated or acquired the mortgage loans that were pooled together in the securitizations, and then sold, transferred, or otherwise conveyed title to those loans to the Depositors. Residential Funding had responsibility for preparing the Offering Materials that were used to solicit purchases of the Certificates, and was identified as the Sponsor or Seller on the Prospectuses and Prospectus Supplements. Residential Funding profited from the sales of the Certificates.

206. As the Depositors for the securitizations at issue, RALI, RAMP, and RASC purchased the mortgage loans from Residential Funding. The Depositors then sold, transferred, or otherwise conveyed the mortgage loans to the Trusts, which held the loans as collateral for the Certificates. The Depositors had responsibility for preparing the Offering Materials that were used to solicit purchases of the Certificates, and were identified on the Prospectuses and Prospectus Supplements. In addition, the Depositors were responsible for registering the offerings with the Securities and Exchange Commission. The Depositors profited from the sales of the Certificates.

207. The Trusts issued the Certificates that were sold to investors, including MassMutual. The Trusts had no autonomy or assets of their own, but were mere agents of the Depositors created for the sole purposes of holding the pools of mortgage loans assembled by the Sponsor and Depositors and issuing the Certificates for sale to the investors.

208. The Sponsor and Depositors used Residential Securities and UBS, among others, as the Underwriters to market and sell the Certificates. The Underwriters were responsible for underwriting and managing the sale of Certificates, including screening the mortgage loans for compliance with the appropriate underwriting guidelines. The Underwriters profited from the sales of the Certificates.

209. The Sponsor, Depositors, and Underwriters successfully solicited MassMutual's purchase of the Certificates at issue. The Underwriters transferred title in the Certificates to MassMutual.

VIII. LIABILITY OF THE REMAINING DEFENDANTS AS CONTROL PERSONS

Bruce Paradis

210. As President of Residential Securities (the Underwriter), Paradis was involved in and controlled the day-to-day affairs of this primary violator. In addition, as President and Chief

Executive Officer of Residential Funding, RALI, RAMP, and RASC, Paradis was involved in and controlled the day-to-day affairs of the Sponsor and Depositors. Paradis also had control over the securitizations at issue, as evidenced by his signature on the registration statements for the following 17 securitizations:

Residential Asset Mortgage Products, Inc. Series 2005-RZ1
Residential Accredit Loans, Inc. Series 2005-QO3
Residential Accredit Loans, Inc. Series 2005-QO4
Residential Accredit Loans, Inc. Series 2006-QO1
Residential Accredit Loans, Inc. Series 2006-QO3
Residential Accredit Loans, Inc. Series 2006-QO4
Residential Accredit Loans, Inc. Series 2006-QO5
Residential Asset Mortgage Products Series 2006-RS4
Residential Accredit Loans, Inc. Series 2006-QO6
Residential Asset Securities Corp. Series 2006-EMX6 Class M9
Residential Accredit Loans, Inc. Series 2006-QA6
Residential Asset Mortgage Products Series 2006-RZ3
Residential Asset Mortgage Products Series 2006-RS6
Residential Asset Mortgage Products, Inc. Series 2006-EFC2
Residential Accredit Loans, Inc. Series 2006-QO9
Residential Asset Mortgage Products, Inc. Series 2007-RZ1
Residential Asset Securities Corp. Series 2007-KS3

Davee Olson

211. As Chief Financial Officer of Residential Funding and RAMP, Olson was involved in the day-to-day financial affairs of these primary violators. Olson also had control over the securitizations at issue, as evidenced by his signature on the registration statements for the following 14 securitizations:

Residential Asset Mortgage Products, Inc. Series 2005-RZ1
Residential Accredit Loans, Inc. Series 2006-QO3
Residential Accredit Loans, Inc. Series 2006-QO4
Residential Accredit Loans, Inc. Series 2006-QO5
Residential Asset Mortgage Products Series 2006-RS4
Residential Accredit Loans, Inc. Series 2006-QO6
Residential Asset Securities Corp. Series 2006-EMX6 Class M9
Residential Accredit Loans, Inc. Series 2006-QA6
Residential Asset Mortgage Products Series 2006-RZ3
Residential Asset Mortgage Products Series 2006-RS6

Residential Asset Mortgage Products, Inc. Series 2006-EFC2
Residential Accredit Loans, Inc. Series 2006-QO9
Residential Asset Mortgage Products, Inc. Series 2007-RZ1
Residential Asset Securities Corp. Series 2007-KS3

David Walker

212. As Chief Financial Office and director of U.S. funding and securitization for Residential Funding Corporation's parent, Walker was intimately involved with the securitization strategy for the enterprise. Walker used his knowledge of securitizations at RALI and RAMP when he served as an inside director of those companies. Walker also had control over the securitizations at issue, as evidenced by his signature on the registration statements for the following 4 securitizations:

Residential Asset Mortgage Products, Inc. Series 2005-RZ1
Residential Accredit Loans, Inc. Series 2005-QO3
Residential Accredit Loans, Inc. Series 2005-QO4
Residential Accredit Loans, Inc. Series 2006-QO1

Kenneth Duncan

213. As Acting Chief Financial Officer of each of Residential Funding, RALI, RAMP, and RASC, Duncan was involved in the day-to-day financial affairs of these primary violators. Duncan also had control over the securitizations at issue, as evidenced by his signature on the registration statements for the following 16 securitizations:

Residential Accredit Loans, Inc. Series 2005-QO3
Residential Accredit Loans, Inc. Series 2005-QO4
Residential Accredit Loans, Inc. Series 2006-QO1
Residential Accredit Loans, Inc. Series 2006-QO3
Residential Accredit Loans, Inc. Series 2006-QO4
Residential Accredit Loans, Inc. Series 2006-QO5
Residential Asset Mortgage Products Series 2006-RS4
Residential Accredit Loans, Inc. Series 2006-QO6
Residential Asset Securities Corp. Series 2006-EMX6 Class M9
Residential Accredit Loans, Inc. Series 2006-QA6
Residential Asset Mortgage Products Series 2006-RZ3
Residential Asset Mortgage Products Series 2006-RS6

Residential Asset Mortgage Products, Inc. Series 2006-EFC2
Residential Accredit Loans, Inc. Series 2006-QO9
Residential Asset Mortgage Products, Inc. Series 2007-RZ1
Residential Asset Securities Corp. Series 2007-KS3

Ralph Flees

214. As Controller and Principal Accounting Officer of each of RALI, RAMP, and RASC, Flees was involved in the day-to-day financial affairs of these primary violators. Flees also had control over the securitizations at issue, as evidenced by his signature on the registration statements for the following 17 securitizations:

Residential Accredit Loans, Inc. Series 2005-QO3
Residential Accredit Loans, Inc. Series 2005-QO4
Residential Accredit Loans, Inc. Series 2006-QO1
Residential Accredit Loans, Inc. Series 2006-QO3
Residential Accredit Loans, Inc. Series 2006-QO4
Residential Accredit Loans, Inc. Series 2006-QO5
Residential Asset Mortgage Products Series 2006-RS4
Residential Accredit Loans, Inc. Series 2006-QO6
Residential Asset Securities Corp. Series 2006-EMX6 Class M9
Residential Accredit Loans, Inc. Series 2006-QA6
Residential Asset Mortgage Products Series 2006-RZ3
Residential Asset Mortgage Products Series 2006-RS6
Residential Asset Mortgage Products, Inc. Series 2006-EFC2
Residential Accredit Loans, Inc. Series 2006-QO9
Residential Asset Mortgage Products, Inc. Series 2007-RZ1
Residential Asset Securities Corp. Series 2007-KS3
Residential Accredit Loans, Inc. Series 2007-QH6

James Jones

215. As President and Chief Executive Officer of RALI, Jones was involved in the day-to-day affairs of a primary violator. Jones also had control over the securitizations at issue, as evidenced by his signature on the following registration statement:

Residential Accredit Loans, Inc. Series 2007-QH6

David Bricker

216. As Chief Financial Officer of RALI, Bricker was involved in the day-to-day financial affairs of a primary violator. Bricker also had control over the securitizations at issue, as evidenced by his signature on the following registration statement:

Residential Accredit Loans, Inc. Series 2007-QH6

FIRST CAUSE OF ACTION
(Primary Violations of the Massachusetts Uniform Securities Act)

217. MassMutual incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 216 as if fully set forth herein.

218. Under Massachusetts General Laws, Chapter 110A, Section 410(a)(2), any person who offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the purchaser of the security.

219. The Sponsor (Residential Funding), Depositors (RALI, RAMP, and RASC), and Underwriters (Residential Securities and UBS) qualify as sellers of the Certificates because they issued, marketed, and/or sold the Certificates to the public for their own financial benefit.

220. The Sponsor, Depositors, and Underwriters offered to sell and sold the Certificates in the State of Massachusetts.

221. The Sponsor, Depositors, and Underwriters offered and sold the Certificates to MassMutual by means of false and misleading statements of material fact and omissions of material facts necessary to make the statements made not misleading.

222. As set forth in more detail in paragraphs 43 to 203 above, the public statements of the Sponsor, Depositors, and Underwriters, including in the Offering Materials, were materially false and misleading because, among other things, they misrepresented the underwriting

standards applied to the mortgage loans backing the Certificates, misrepresented the LTV and appraisal information for the loans, and misrepresented the owner-occupancy information for the loans.

223. MassMutual did not know, and in the exercise of due diligence could not have known, of the untruths and omissions.

224. MassMutual will elect its remedy before the entry of judgment. For each Certificate, MassMutual will seek statutory damages, including interest, or will make or arrange a tender before entry of judgment.

SECOND CAUSE OF ACTION
(Joint and Several Liability Under the Massachusetts Uniform Securities Act)

225. MassMutual incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 224 as if fully set forth herein.

226. Under Massachusetts General Laws, Chapter 110A, Section 410(b), "[e]very person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, [and] every person occupying a similar status or performing similar functions" is liable jointly and severally with and to the same extent as the seller.

227. As set forth above, the Sponsor (Residential Funding), the Depositors (RALI, RAMP, and RASC), and the Underwriters (Residential Securities and UBS) are liable as sellers under subsection (a).

228. Defendant Bruce Paradis is jointly and severally liable to the same extent as the primary violators because he was an officer of one or more primary violators and controlled their operations, including the securitizations at issue.

229. Defendant Davee Olson is jointly and severally liable to the same extent as the primary violators because he was an officer and/or director of one or more primary violators and controlled their operations, including the securitizations at issue.

230. Defendant David Walker is jointly and severally liable to the same extent as the primary violators because he was an inside director of one or more primary violators and controlled their operations, including the securitizations at issue.

231. Defendant Kenneth Duncan is jointly and severally liable to the same extent as the primary violators because he was an officer of one or more primary violators and controlled their operations, including the securitizations at issue.

232. Defendant Ralph Flees is jointly and severally liable to the same extent as the primary violators because he was an officer of one or more primary violators and controlled their operations, including the securitizations at issue.

233. Defendant James Jones is jointly and severally liable to the same extent as the primary violators because he was an officer of one or more primary violators and controlled their operations, including the securitizations at issue.

234. Defendant David Bricker is jointly and severally liable to the same extent as the primary violators because he was an officer of one or more primary violators and controlled their operations, including the securitizations at issue.

PRAYER FOR RELIEF

WHEREFORE MassMutual prays for relief as follows:

1. On the first cause of action, for primary violations of the Massachusetts Uniform Securities Act, relief in the form of damages and/or statutory recovery upon tender;

2. On the second cause of action, for joint and several liability under the Massachusetts Uniform Securities Act, relief in the form of damages and/or statutory recovery upon tender; and

3. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), MassMutual hereby demands a trial by jury on all issues triable by jury.

DATED: February 29, 2012 EGAN, FLANAGAN AND COHEN, P.C.

By: /s/ Edward J. McDonough Jr.

Edward J. McDonough Jr. (BBO 331590)
Stephen E. Spelman (BBO 632089)
Egan, Flanagan and Cohen, P.C.
67 Market Street, P.O. Box 9035
Springfield, Massachusetts 01102
Telephone: (413) 737-0260
Fax: (413) 737-0121
ejm@efclaw.com;
ses@efclaw.com

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY

Mark Roellig (BBO 669117)
Executive Vice President and General Counsel
Bernadette Harrigan (BBO 635103)
Assistant Vice President & Counsel
Eleanor P. Williams (BBO 667201)
Assistant Vice President & Counsel
Massachusetts Mutual Life Insurance Company
1295 State Street
Springfield, Massachusetts 01111
Telephone: (413) 788-8411
Fax: (413) 226-4268
bharrigan@massmutual.com;
ewilliams@massmutual.com

Of counsel:

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Philippe Z. Selendy
Jennifer J. Barrett
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
Fax (212) 849-7100

A. William Urquhart
Harry A. Olivar, Jr.
Molly Stephens
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
(213) 443-3000
Fax (213) 443-3100

Exhibit 10

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U.S.D.C. S.D. N.Y.
COMPLETED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW JERSEY CARPENTERS HEATLH FUND, NEW JERSEY CARPENTERS VACATION FUND and BOILERMAKER BLACKSMITH NATIONAL PENSION TRUST, *on Behalf of Themselves and All Others Similarly Situated,*

Plaintiffs,

v.

RESIDENTIAL CAPITAL, LLC, RESIDENTIAL FUNDING, LLC, RESIDENTIAL ACCREDITED LOANS, INC., BRUCE J. PARADIS, KENNETH M. DUNCAN, DAVEE L. OLSON, RALPH T. FLEES, LISA R. LUNDSTEN, JAMES G. JONES, DAVID M. BRICKER, JAMES N. YOUNG, RESIDENTIAL FUNDING SECURITIES CORPORATION d/b/a GMAC RFC SECURITIES, GOLDMAN, SACHS & CO., RBS SECURITIES, INC. f/k/a GREENWICH CAPITAL MARKETS, INC. d/b/a RBS GREENWICH CAPITAL, DEUTSCHE BANK SECURITIES, INC., CITIGROUP GLOBAL MARKETS, INC., CREDIT SUISSE SECURITIES (USA) LLC, BANK OF AMERICA CORPORATION *as successor-in-interest to* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., UBS SECURITIES, LLC, JPMORGAN CHASE, INC. *as successor-in-interest to* BEAR, STEARNS & CO., INC. and MORGAN STANLEY & CO., INC.,

Defendants.

Case No.: 08-CV-8781 (HB)

CONSOLIDATED SECOND AMENDED SECURITIES CLASS ACTION COMPLAINT

ECF CASE

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IX. PRAYER FOR RELIEF 100

Plaintiffs undertake this amendment to comply with this Court's Opinion and Order dated December 21, 2010 ("December 21 Order") granting the motions to intervene brought by (i) Court-Appointed Lead Plaintiff New Jersey Carpenters Health Fund ("Carpenters Health Fund" or "Lead Plaintiff"); (ii) Plaintiff New Jersey Carpenters Vacation Fund ("Carpenters Vacation Fund," with Carpenters Health Fund, the "Carpenters Funds"); (iii) Plaintiff Boilermaker Blacksmith National Pension Trust ("Boilermaker Pension Trust"); and Plaintiffs-in-Intervention (iv) Iowa Public Employees' Retirement System ("IPERS"); (v) Midwest Operating Engineers Pension Trust Fund ("Midwest OE"); (vi) Orange County Employees Retirement System ("OCERS"); and (vi) Police and Fire Retirement System of the City of Detroit ("Detroit PFRS") (collectively, "Plaintiffs"). In so doing, Plaintiffs do not waive and hereby preserve all previously asserted claims regarding all securities included in the Consolidated First Amended Securities Class Action Complaint ("First Amended Complaint" or "FAC") filed May 18, 2009 in this action including any previously dismissed claims or parties, as if fully set forth herein. Plaintiffs believe that substantial additional evidentiary support for the allegations set forth below will be developed after a reasonable opportunity for discovery.

I.

SUMMARY OF THE ACTION

1. This Consolidated Second Amended Securities Class Action Complaint (the "Complaint" or "SAC") is alleged upon personal knowledge with respect to Plaintiffs, and upon information and belief with respect to all other matters. This action is brought pursuant to Section 11, 12 and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77k, 77l(a)(2) and 77o, by Plaintiffs on their own behalf and as a class action on behalf of all persons and entities who purchased or otherwise acquired interests in the Issuing Trusts (as set forth in ¶¶ 19-24, *infra*) (the "Issuing Trusts") pursuant or traceable to two (2) separate Registration Statements and accompanying Prospectuses filed with the Securities and Exchange Commission

(□SEC□) by Residential Accredited Loans, Inc. (□RALI□), a subsidiary of Residential Capital, LLC f/k/a Residential Capital Corporation (□RCC□),[1] on March 3, 2006 (No. 333-131213) (the □2006 Registration Statement□) and on April 3, 2007 (No. 333-140610) (the □2007 Registration Statement,□ with the 2006 Registration Statement, collectively referred to herein as the □Registration Statements□) (the □Class□).

2. Pursuant to the Registration Statements and Prospectus Supplements incorporated therein (collectively, the □Offering Documents□), $9.44 billion of RALI mortgage backed securities (□MBS□) designated Mortgage Pass Through Certificates (the □Certificates□) were sold to Plaintiffs and the Class in ten (10) Offerings within eleven months between June 28, 2006 and May 30, 2007 (collectively, the □Offerings□). Since RALI had limited investment bank capabilities, Residential Funding Securities Corporation d/b/a GMAC RFC Securities (another subsidiary of GMAC) underwrote two (2) Offerings either on its own or in conjunction with a second Underwriter. A total of eight (8) Offerings were underwritten by Defendants Goldman, Sachs & Co., Inc. (□GSC□), Deutsche Bank Securities, Inc. (□DBS□), Citigroup Global Markets, Inc. (□CITI□) and/or UBS Securities, LLC (□UBS□) (collectively, the □Underwriters□ or the □Underwriter Defendants□).[2] Each of the Underwriter Defendants was itself a major player in the rapid and massive securitization of sub-prime and Alt-A residential mortgage loans.

3. As set forth below, the Offering Documents contained material misstatements and omitted material information in violation of Sections 11, 12 and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o. Defendants are strictly or negligently liable for the material

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[1] Defendant RCC is a wholly-owned subsidiary of General Motors Acceptance Corporation (□GMAC□). Although GMAC was a wholly owned subsidiary of General Motors Corporation (□GM□), it is now a GM subsidiary that is majority owned by a consortium of investors led by Cerebus Capital LLC (□□27, 132). For the purposes of the within Complaint, GMAC and GM are collectively referred to as □General Motors.□

[2] Lehman Brothers, Inc. (□LB□) served as the Underwriter on one of the RALI Certificate Offerings. However, as set forth in □□32 and 50 below, LB is not named as a Defendant herein.

misstatements and omissions under the Securities Act. The Complaint asserts no allegations or claims sounding in fraud.

4. Plaintiffs seek redress against Defendant RALI, the Issuer of the Registration Statements and Depositor of the underlying collateral; the individual signatories to the Registration Statements, Defendants Bruce J. Paradis ("Paradis"), Kenneth M. Duncan ("Duncan"), Davee L. Olson ("Olson"), Ralph T. Flees ("Flees"), Lisa R. Lundsten ("Lundsten"), James G. Jones ("Jones"), David M. Bricker ("Bricker") and James N. Young ("Young"); the Sponsor and Seller for each of the Offerings, Defendant Residential Funding Company, LLC ("RFC");[3] Defendant RCC, the parent Company of RALI and RFC; and the Underwriters of the RALI Offerings, Defendants RFSC, GSC, DBS, CITI and UBS. RCC, RALI, RFC and RFSC, along with their affiliates and subsidiaries are referred to collectively as "Residential Capital."

5. This action arises from the conversion by Residential Capital of largely sub-prime and Alt-A mortgage loans into $9.44 billion of purportedly "investment grade" residential MBS. The value of the Certificates was directly tied to repayment of the underlying mortgage loans since the principal and interest payments due to investors were secured and derived from cash flows from those loans.[4]

[3] Residential Funding Corporation, a Delaware Corporation formed in 1982, became Residential Funding Company, LLC, a limited liability company, in October 3, 2006. All references to Defendant RFC are inclusive of the current as well as the former entity.

[4] As the original borrowers on each of the underlying mortgage loans paid their mortgages, distributions were made to investors through the Issuing Trusts in accordance with the terms of the Offering Documents governing the issuance of the Certificates. If borrowers failed to pay back their mortgages, defaulted, or were forced into foreclosure, the resulting losses flowed to the Certificate investors. As set forth in the Prospectus Supplements, the Certificates were divided into a structure of classes, or "tranches," reflecting different priorities of seniority, payment, exposure to risk and default, and interest payments.

6. By the end of 2005, GMAC and its subsidiary, Residential Capital, had become one of the largest issuers of MBS, not just in the United States, but in the world. According to *Inside Mortgage Finance*, in 2005 alone, Residential Capital issued over $56.93 billion of MBS, making it the fifth largest issuer of such securities. Residential Capital was capable of securitizing such massive quantities of mortgage collateral because it created and operated what was essentially a high-speed assembly line for the securitization of mortgage loans. Residential Capital had sufficient "product" in the form of mortgage loans because it owned and operated Homecomings Financial LLC f/k/a Homecomings Financial Network, Inc. ("HFN") – a subsidiary principally engaged in the business of residential mortgage loan origination. HFN solely acquired and originated non-conforming (sub-prime and Alt-A) loans. The HFN-originated loans were immediately purchased by RFC, who acted as Sponsor and Seller of the Certificates, and securitized by RALI, the Depositor of the Certificates.[5] Because Residential Capital's investment banking operations were more limited, it underwrote only two of the 10 Certificate Offerings. The remaining four Underwriter Defendants were engaged on the balance of the Offerings.

7. The Certificates could not be sold at all – much less profitably – unless they had been assigned the highest investment grade rating from one or more Nationally Recognized Statistical Ratings Organizations ("NRSRO"), specifically, Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Services, a Division of the McGraw-Hill Companies ("S&P," with Moody's collectively referred to herein as the "Ratings Agencies"). The reason was simple. Without such ratings, they could not be purchased by the Underwriter

[5] RALI served as "Depositor" for the Offerings (¶¶29-33) acquiring the loans from RFC and "depositing" them to the Issuing Trusts where RALI securitized the cash-flows from the mortgage loans and formed the Certificates.

Defendants principal potential clientele institutional investors, namely pension funds and insurance companies.

8. Residential Capital and the Underwriter Defendants did not leave the assignment of these highest AAA ratings to chance. These Defendants ensured the award of such ratings by engaging Moody s and S&P not only to rate the Certificates prior to issue, but, more importantly, to directly participate in the securitization and structuring of the Offerings. (61-64). Also, using their economic weight as a source of substantial rating engagements as leverage, the Defendants had the Ratings Agencies submit their proposed ratings as part of their competitive bid for the ratings engagement. (64). Regardless of the creditworthiness of the borrower or the terms of the underlying mortgages,[6] the Certificates were substantially assigned the highest investment grade ratings by the Ratings Agencies. Moody s and S&P rated $9.14 billion and $9.26 billion, respectively, of the $9.44 billion Certificates issued pursuant to the Offerings complained of herein. (71). At the time the Certificates were issued, Moody s assigned its highest investment grade rating of Aaa to 95.11%, or $8.70 billion, of the Moody s rated Certificates, and S&P assigned its highest investment grade rating of AAA to 95%, or $8.80 billion, of the S&P rated Certificates.[7] (*Id.*). These ratings reflected the risk or probability of default by the borrower according to the Offering Documents. (71, 208). None of the Certificates were initially rated below investment grade, (Ba1 and below for Moody s and BB and below for S&P). (*Id.*).

9. Soon after issuance of the Certificates, the value of the Certificates collapsed. Further, the likelihood of these securities ever recovering its value is severely diminished by the

[6] The Certificate collateral included adjustable rate loans which posed a high degree of risk of payment shock since they required small fixed payments for an initial or limited period of time which would reset to much higher adjustable rate interest payments.

[7] AAA and Aaa are collectively referred to herein as AAA.

fact that approximately ***41%*** of the mortgage loans underlying the Certificates – the source of financial return for Certificate investors – as of the filing of the FAC, were in delinquency, default, foreclosure or repossession. (¶¶ 65-69). Moreover, approximately 100% of the Certificates had, by May 2009, been downgraded by Moody's to speculative and junk bond status. (¶71).

10. Since Certificate Investors were dependent on the quality of the underlying mortgage loan collateral for receipt of a return on their investment, the descriptions of the loan origination guidelines in the Offering Documents were highly material disclosures to Certificate purchasers. The descriptions of the underwriting guidelines included in the Offering Documents described the policies employed by RFC, by way of its wholly-owned subsidiary HFN, in examining borrower creditworthiness and verifying borrower information (¶¶ 168-195) and in conducting appraisals of the mortgaged properties. *Id*. These portions of the Offering Documents also contained misstatements and omissions since, as has emerged only well after issuance of the Certificates, HFN and its correspondent lenders systematically disregarded the stated underwriting guidelines set forth in the Offering Documents. *Id.* These misstatements and omissions as well as the defective nature of the Certificate collateral were further reflected in the fact that the Ratings Agencies themselves, in downgrading the Certificates from the highest investment grade to junk status, specifically attributed the downgrades to "aggressive underwriting" in the origination of the mortgage loans (¶ 90) the utter collapse of the AAA ratings originally assigned the Certificates (¶ 71); and the uniform pattern of exponential increases in delinquency, default and foreclosure rates almost immediately after the consummation of the various Offerings (regardless of when the Offering occurred) (¶¶65-68).

11. While compliance with those loan underwriting guidelines was highly material to Certificate investors, who were dependent on the creditworthiness of the borrowers for interest and principal payments, Residential Capital had no such similar financial interest. Residential Capital and the Underwriting Defendants conducted inadequate due diligence with respect to whether the loans were originated in conformity with the underwriting guidelines set forth in the Offering Documents. "Due diligence" principally occurred not during the underwriting phase of the Offering by the Underwriter Defendants, but while Residential Capital acquired the collateral from its subsidiary HFN. (¶63). At that stage, there was a disincentive for Residential Capital to reject loans as non-compliant with stated guidelines because the loans were the property of RCC regardless, since the loans were originated by its subsidiary. Residential Capital's and the Underwriter Defendants' "due diligence" was limited, inadequate and defective. (¶¶69, 80-86, 109, 135, 146, 152, 158, 167). Residential Capital and the Underwriter Defendants were forced to review loans on an expedited basis and therefore did not commit to a full review of the mortgage loans underlying the securitizations.

12. Residential Capital and the Underwriters contracted out the inspection of loans for compliance with the Originator's underwriting guidelines to outside firms – Clayton Holdings, Inc. ("Clayton") and The Bohan Group ("Bohan") – and then conducted limited oversight of these subcontractors' activities. As disclosed as part of an ongoing investigation of investment banking misconduct in underwriting MBS being conducted by the New York Attorney General (the "NYAG"), Clayton and Bohan routinely provided investment banks with detailed reports of loans non-compliant with underwriting guidelines, but the investment banks routinely overrode exclusion of those loans from purchase and securitization. (¶84). Further, Bohan's President

stated that, by the time the Offerings of the Certificates took place, investment banks were requiring a review of only 5% to 7% of the entire loan pools. (¶86).[8]

13. The Offering Documents failed to disclose that, given Residential Capital and HFN's systematic disregard for the underwriting guidelines, the amount of credit enhancement supporting the Certificates was insufficient to substantiate the assigned AAA and other investment grade ratings; and that the Ratings Agencies caused this understatement by failing to timely and adequately update the models employed to make those assessments. As was only disclosed well after the issuance of the Certificates, S&P's models had not been materially updated since 1999; and Moody's models had not been materially updated since 2002. Because these models employed statistical assumptions based on the performance of mortgage loans issued in or before 2002, they failed to accurately reflect the performance of the Certificate collateral which included substantial portions of the type of loans which only began to be originated en masse after 2002 – *i.e.,* sub-prime and Alt-A loans, non-traditional or hybrid adjustable rate mortgages; interest-only and negative amortization loans,[9] as well as loans issued with limited borrower documentation or employment verification. (¶¶168-195).

14. The Offering Documents also failed to disclose material financial conflicts of interest between the Ratings Agencies and Residential Capital, including Residential Capital's engagement of the Ratings Agencies through "ratings shopping." (¶¶ 64, 112-15). These conflicts of interest were detailed in a report released by the SEC in July 2008 (the "SEC Report"), after a year-long investigation into the Ratings Agencies' activities relating to the

[8] As former head of MBS at Moody's, Brian Clarkson stated in an October 17, 2008 article in the *Financial Times*, in structured finance, including mortgage backed securities "[y]ou start with a rating and build a deal around a rating." (¶118).

9 As discussed below, originations of non-traditional adjustable mortgages, interest only and negative amortization loans increased dramatically between 2004 and 2006. (¶60). These types of loans presented the greatest potential for **"payment shock"** to the borrower since they both provide small initial fixed rates for a limited period of time which then reset thereafter to much higher monthly payment amounts.

issuance of RMBS in the period spanning 2005 through 2007. The SEC Report disclosed that the Ratings Agencies typically were engaged by way of "ratings shopping" whereby the Ratings Agency that was ultimately engaged was the one which provided the most profitable rating to the investment bank in "bidding" for the engagement. The SEC Report also explained that the Ratings Agencies were incentivized, due to the highly profitable nature of these MBS engagements and the concentration of business in the hands of a relatively small group of investment banks, to not update their models lest they become unable to provide to the investment bank the most profitable credit enhancement and rating structure for the MBS transaction. (¶¶92-102).

15. As set forth herein, the Offering Documents contained material misstatements and omissions of material facts in violation of Sections 11 and 12 of the Securities Act, including the failure to disclose that: (i) the Certificate mortgage loan collateral was not originated in accordance with the loan underwriting guidelines set forth in the Registration Statements or the Prospectus Supplements, since Residential Capital and HFN failed to conduct meaningful assessment of the borrower's creditworthiness, employment verification and/or standard appraisals of the mortgaged properties sufficient to assess their fair value (¶¶ 168-195); (ii) Residential Capital and the Underwriter Defendants failed to conduct adequate due diligence with respect to HFN's compliance with the loan underwriting guidelines stated in the Offering Documents (¶¶ 79-86); (iii) the stated credit enhancement did not support the investment grade ratings assigned to the Certificates in light of the true undisclosed and impaired quality of the mortgage collateral. (¶¶ 92-115); (iv) there were material undisclosed conflicts of interest between Residential Capital and the Underwriter Defendants, and the Ratings Agencies, including as reflected in the undisclosed ratings shopping practices, which incentivized the

Ratings Agencies to understate the appropriate Certificate credit enhancement and inflate the Certificate ratings (¶¶ 121-26); and (v) the amount of credit enhancement provided to the Certificates was inadequate to support the AAA and investment grade ratings because those amounts were determined primarily by Ratings Agencies' models which had not been updated in a timely manner. (¶¶92-102).

16. As a result of these material misstatements and omissions of material fact Plaintiffs and the Class have suffered damages for which Defendants are liable pursuant to Sections 11, 12 and 15 of the Securities Act.

II.

JURISDICTION AND VENUE

17. The claims alleged herein arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o. Jurisdiction is conferred by Section 22 of the Securities Act and venue is proper pursuant to Section 22 of the Securities Act.

18. The violations of law complained of herein occurred in this County, including the dissemination of materially false and misleading statements complained of herein into this County. RCC, RFC, RALI, RFSC, the Underwriter Defendants their affiliates, subsidiaries and/or successors-in-interest conduct or conducted business in this County.

III.

PARTIES AND RELEVANT NON-PARTIES

19. Court-Appointed Lead Plaintiff Carpenters Health Fund and Plaintiff Carpenters Vacation Fund are Taft-Hartley Pension Funds. As reflected in the Certification of Securities Class Action filed herein, the Carpenters Funds purchased the following classes of Certificates

pursuant and traceable to the Registration Statements and Prospectus Supplements and have been damaged thereby:

Certificates Purchased	Amount of Units Purchased	Price Paid (Per Unit)	Value as of the Date of Filing of Complaint (Per Unit)
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO7, Class M1	180,000	$ 1.00625	$ 0.00984
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS1, Class 1A1	415,000	$ 1.00980	$ 1.0058[A]
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS1, Class 2A10	155,000	$ 1.00500	$ 1.0027[A]
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH4, Class A1	80,000	$ 0.99890	$ 0.3049

[[A] - per unit price of security as of January 31, 2008.]

20. Plaintiff Boilermaker Pension Trust is a Taft-Hartley Pension Fund. As reflected in the Certification of Securities Class Action filed herein, the Boilermaker Pension Trust purchased the following Certificates pursuant and traceable to the Registration Statements and Prospectus Supplements and has been damaged thereby:

Certificates Purchased	Amount of Units Purchased	Price Paid (Per Unit)	Value as of the Date of Filing of Complaint (Per Unit)
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QO4, Class A1A	961,530.55	$ 095520	$ 0.3527

21. Plaintiff IPERS is a public pension fund. As reflected in the Certification of Securities Class Action filed with IPERS Motion to Intervene on July 30, 2010 (*see* Dkt. Nos.

98-100), IPERS purchased the following Certificates pursuant and traceable to the Registration Statements and Prospectus Supplements:

Certificates Purchased	Date of Purchase	Amount of Units Purchased	Price Paid (Per Unit)
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO10, Class A1	5/1/2007	7,073,554.39	$0.9986
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS1, Class 2A2	5/29/2008	13,460,044.45	$0.7275
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QO2, Class A1	3/27/2008	3,356,988.00	$0.7375

22. Plaintiff OCERS is public pension fund. As reflected in the Certification of Securities Class Action filed with OCERS Motion to Intervene on July 30, 2010 (*see* Dkt. Nos. 98-100), OCERS purchased the following Certificates pursuant and traceable to the Registration Statements and Prospectus Supplements:

Certificates Purchased	Date of Purchase	Amount of Units Purchased	Price Paid (Per Unit)
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QS18, Class 3A1	6/11/2007	1,376,865.76	$0.9859
RALI Mortgage Asset Backed Pass-Through Certificates, Series 2006-QO6, Class A1	3/5/2008	1,417,167.04	$0.8300

23. Plaintiff Midwest OE is a Taft-Hartley Pension Fund. As reflected in the Certification of Securities Class Action filed with Midwest OE s Motion to Intervene on July 13, 2010 (*see* Dkt. Nos. 91-93, 95), Midwest OE purchased the following Certificates pursuant and traceable to the Registration Statements and Prospectus Supplements:

Certificates Purchased	Date of Purchase	Amount of Units Purchased	Price Paid (Per Unit)

RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO9, Class 1A1B	9/26/2007	2,293,260.45	$0.9874

24. Detroit PFRS is a pension plan and trust established by the Charter and Municipal Code of the City of Detroit, Michigan. Detroit PFRS has approximately $3.5 billion of net assets held in trust for the benefit of the active and retired police officers and firefighters of the City of Detroit, Michigan. As reflected in the certification filed with Detroit PFRS Motion to Intervene on July 2, 2010 (*see* Dkt. Nos. 84-86), Detroit PFRS purchased the following Certificates pursuant and traceable to the Registration Statements and Prospectus Supplements and has been damaged by the following amounts:

Certificates Purchased	Amount of Units Purchased	Price Paid (Per Unit)	Amount Received on Units Sold (Per Unit)
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QS8, Class A1	1,451,140.68	$0.84	$0.735

25. Upon filing of the initial complaint on September 22, 2008 (the Initial Complaint) the statute of limitations was tolled as to all claims asserted herein by Plaintiffs with respect to the RALI Series 2006-QO6, 2006-QO9, 2006-QO10, 2007-QO2 Offerings. *See* Dkt. No. 1. Thereafter, the filing of the FAC on May 18, 2009 tolled the statute of limitations as to all of the claims asserted herein by Plaintiffs with respect to the RALI Series 2006-QS8 and RALI Series 2006-QS18 Offerings. *See* Dkt. No. 27. The filing of the FAC also tolled the statute of limitations on Plaintiff IPERS claims with respect to the RALI Series 2007-QS1 Offering. *Id.* This Complaint asserts the same Securities Act claims, names the same defendants and contains identical allegations as to the same Registration Statements and Prospectus Supplements as the Initial Complaint and/or the FAC. The claims here arise out of the same conduct, transactions and occurrences set forth in the Initial Complaint and/or the FAC. As set forth in this Court's

Decision and Order on the Defendants' Motion to Dismiss the First Amended Complaint dated March 31, 2010, both the Initial Complaint and the FAC asserted timely claims on the RALI Offerings included therein. Therefore, under the tolling doctrine set forth in *American Pipe* and its progeny, as well as the relation-back doctrine of Fed. R. Civ. P. 15(c), the claims asserted herein on behalf of all Plaintiffs are timely.

26. General Motors Corporation (□GM□) GM is primarily engaged in automotive production and marketing, and financing and insurance operations. GM is a Delaware corporation with its principal offices located at 300 Renaissance Center, Detroit Michigan.

27. Defendant GMAC, LLC, f/k/a General Motors Acceptance Corporation (collectively referred to herein as □GMAC□), is principally located at 200 Renaissance Center, Detroit, Michigan 48265. GMAC was founded in 1919 as a wholly-owned subsidiary of General Motors Corporation, and was originally established to provide GM dealers with the automotive financing necessary to acquire and maintain vehicle inventories and to provide retail customers the means by which to finance vehicle purchases through GM dealers. On November 30, 2006, GM sold a 51% interest in GMAC for approximately $7.4 billion to FIM Holdings LLC, an investment consortium led by Cerberus FIM Investors, LLC, the sole managing member, and changed its name to GMAC, LLC. GMAC is a leading, independent, globally diversified, financial services firm with approximately $248 billion of assets and operations in approximately 40 countries. Since its inception, GMAC has greatly expanded its business and now includes the following primary lines of business □ Global Automotive Finance, Mortgage (Residential Capital, LLC) and Insurance. GMAC is the parent and sole owner of Defendant RCC, as well as Defendant Residential Funding Securities Corporation.

28. Defendant Residential Capital, LLC, f/k/a Residential Capital Corporation (collectively referred to herein as "RCC") is a wholly owned subsidiary of GMAC, LLC and is principally located at 8400 Normandale Lake Boulevard, Suite 600, Minneapolis, Minnesota 55437, has principal offices of operations in Minneapolis, Minnesota and Fort Washington, Pennsylvania and maintains significant presence in states throughout the U.S., including New Jersey, Texas and California. Defendant RCC is the parent company of Defendants RALI, RFC and the principal originator of the loan collateral, HFN. RCC and its subsidiaries originate, purchase, sell, and securitize residential mortgage loans primarily in the United States, as well as internationally; provide primary and master servicing to investors in residential mortgage loans and securitizations; provide collateralized lines of credit, which are referred to as warehouse lending facilities, to other originators of residential mortgage loans; and hold a portfolio of residential mortgage loans for investment or sale together with interests retained from our securitization activities.

29. Defendant Residential Funding Company LLC, f/k/a Residential Funding Corporation (collectively referred to herein as "RFC"), acted as the Sponsor for the Certificates issued pursuant to the Registration Statements. Residential Funding Corporation changed its status from a Delaware Corporation to a limited liability company in October 2006. Residential Capital originated or acquired all underlying mortgage collateral for the various Offerings via the Sponsor, RFC. (¶¶55-64). RFC made certain representations and warranties in connection with the loan pools collateralizing the Certificates. (*Id.*) As set forth in the Registration Statements, RFC then conveyed the mortgages to the Depositor, Defendant RALI, which was formed for the sole purpose of creating, and thereafter depositing the collateral into, the Issuing Trusts. The Issuing Trusts then issued the Certificates supported by the cash flows from the assets and were

secured by those assets. (□□34, 55-64). RFC□s principal office is located at 8400 Normandale Lake Boulevard, Suite 600, Minneapolis, Minnesota 55437.

30. Defendant RALI served as the Depositor for the Offerings and is principally located at 8400 Normandale Lake Boulevard, Suite 600, Minneapolis, Minnesota 55437. Defendant RALI is the wholly owned subsidiary of RCC. Defendant RALI filed Registration Statements and accompanying Prospectuses with the SEC in connection with the Offerings. The role of RALI as the Depositor was to purchase the mortgage loans from the seller and then assign the mortgage loans and all of its rights and interest under the mortgage loan purchase agreement to the trustee for the benefit of the Bondholders. RALI, as Depositor, was also responsible for preparing and filing any reports required under the Securities Exchange Act of 1934.

31. Defendant RALI filed the following Registration Statements and accompanying Prospectuses with the SEC on Form S-3, as subsequently amended on Form S-3/A, under Registration Nos. 333-131213 and 333-140610 as follows:

The 2006 Registration Statement:

Date Filed	Form Type	Amount Registered
January 23, 2006	S-3	$ 1,000,000
March 3, 2006	S-3/A	$ 34,723,478,970[10]

The 2007 Registration Statement:

Date Filed	Form Type	Amount Registered
February 12, 2007	S-3	$ 1,000,000
April 3, 2007	S-3/A	$ 80,000,000,000[11]

[10] The amount registered under the 2006 Registration Statement includes $24,723,478,970 previously registered under Registration No. 333-126732 on July 30, 2005 and which remained unissued as of March 3, 2006.

[11] The amount registered under the 2007 Registration Statement includes $27,349,759,494 previously registered under Registration No. 333-131213 (the 2006 Registration Statement) and which remained unissued as of April 3, 2007.

32. Defendants RFC and RALI, as Sponsor/Seller and Depositor, respectively, formed the following eight (8) Issuing Trusts, by which RFC and RALI issued, or caused to be issued, the RALI Certificates, pursuant to the 2006 Registration Statement:

Issuing Trust	Approximate Principal Amount	Approx. Offering Date	Underwriter(s)	Depositor/Issuer	Sponsor
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO6	$ 1,290,297,000	June 28, 2006	Goldman, Sachs & Co., Inc.	Residential Accredited Loans, Inc.	Residential Funding Corporation
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO7	$ 1,542,440,000	September 29, 2006	UBS Securities, LLC	Residential Accredited Loans, Inc.	Residential Funding Corporation
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO9	$ 890,657,000	November 28, 2006	Lehman Brothers, Inc.	Residential Accredited Loans, Inc.	Residential Funding Company, LLC
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO10	$ 889,857,000	December 27, 2006	Goldman, Sachs & Co., Inc.	Residential Accredited Loans, Inc.	Residential Funding Company, LLC
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QS8	$ 953,783,554	July 25, 2006	Citigroup Global Markets, Inc./ Residential Funding Securities Corporation	Residential Accredited Loans, Inc.	Residential Funding Corporation
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QS18	$ 1,164,635,393	December 27, 2006	Deutsche Bank Securities, Inc.	Residential Accredited Loans, Inc.	Residential Funding Company, LLC
RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QO2	$ 527,132,000	February 26, 2007	Deutsche Bank Securities, Inc.	Residential Accredited Loans, Inc.	Residential Funding Company, LLC

RALI Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS1	$ 1,280,501,451	January 26, 2007	Citigroup Global Markets, Inc.	Residential Accredited Loans, Inc.	Residential Funding Company, LLC

33. Defendants RFC and RALI, as Sponsor/Seller and Depositor, respectively, formed the following two (2) Issuing Trusts, by which RFC and RALI issued, or caused to be issued, the RALI Certificates, pursuant to the 2007 Registration Statement:

Certificate Trust Series	Approximate Principal Amount	Approx. Offering Date	Underwriter(s)	Depositor/Issuer	Sponsor
RALI Mortgage Asset-Backed Pass-Through Certificates, 2007-QH4	$ 397,963,000	April 26, 2007	Goldman, Sachs & Co., Inc. / Residential Funding Securities Corporation	Residential Accredited Loans, Inc.	Residential Funding Company, LLC
RALI Mortgage Asset-Backed Pass-Through Certificates, 2007-QO4	$ 502,837,000	May 30, 2007	Residential Funding Securities Corporation	Residential Accredited Loans, Inc.	Residential Funding Company, LLC

34. Each of the Issuing Trusts for the various Offerings set forth above was a common law trust formed for the sole purpose of holding and issuing the Certificates. Each of the Issuing Trusts issued hundreds of millions of dollars worth of Certificates pursuant to a Prospectus Supplement, incorporated by reference into the corresponding Registration Statement, which broke out and identified numerous classes of Certificates within each Offering.

35. Defendant Bruce J. Paradis ("Paradis") was, during the relevant time period, RALI's President and Chief Executive Officer. Paradis also served as the President of Defendant RFSC. Paradis signed the 2006 Registration Statement for the Offerings.

36. Defendant Kenneth M. Duncan (□Duncan□) was RALI□s Acting Chief Financial Officer (Principal Financial Officer). Duncan signed the 2006 Registration Statement for the Offerings.

37. Defendant Davee L. Olson (□Olson□) was a Director of RALI. Olson signed the 2006 Registration Statement for the Offerings.

38. Defendant Ralph T. Flees (□Flees□) was, at all relevant times, RALI□s Controller (Principal Accounting Officer). Defendant Flees signed the 2006 and 2007 Registration Statements for the Offerings.

39. Defendant Lisa R. Lundsten (□Lundsten□) signed the 2006 and 2007 Registration Statements as Attorney-in-Fact.

40. Defendant James G. Jones (□Jones□) was RALI□s President and Chief Financial Officer at the time the 2007 Registration Statement was issued and thereafter. Jones signed the 2007 Registration Statement for the Offerings.

41. Defendant David M. Bricker (□Bricker□) was a Director of RALI as well as its Chief Executive s President and Chief Financial Officer at the time the 2007 Registration Statement was issued and thereafter. Bricker signed the 2007 Registration Statement for the Offerings.

42. Defendant James N. Young (□Young□) was a Director of RALI at the time the 2007 Registration Statement was issued and thereafter. Young signed the 2007 Registration Statement for the Offerings.

43. The Defendants identified in □□ 35-42 are referred to herein as the □Individual Defendants.□ The Individual Defendants functioned as directors to the Issuing Trusts as they were officers and/or directors of RALI and signed either one or both of the Registration

Statements for the registration of the securities which were thereafter issued by the Issuing Trusts.

44. The Individual Defendants participated with and/or conspired with the remaining Defendants in the wrongful acts and course of conduct or otherwise caused the damages and injuries claimed herein and are responsible in some manner for the acts, occurrences and events alleged in this Complaint.

45. Defendant RFSC, d/b/a GMAC RFC Securities, served as the underwriter for two (2) of the RALI Certificate Offerings – specifically, the RALI Series 2007-QH4 and RALI Series 2007-QO4 Certificate Offerings (collectively the "RFSC Offerings"). RFSC is an SEC registered broker-dealer, principally located at 8400 Normandale Lake Boulevard, Suite 600, Minneapolis, Minnesota 55437 and is a wholly-owned subsidiary of Defendant RCC. RFSC's banking operations are limited to broker-dealer functions in the issuance and underwriting of residential and commercial mortgage-backed securities. Moreover, RFSC only conducts business with institutional clientele. RFSC was one of the leading MBS underwriters in the United States. RFSC, as an essential part of its investment banking business, has substantial contacts within this County and during the relevant time period transacted and continues to transact business in New York – specifically New York County (*i.e.*, Wall Street and the financial markets) including through the Offerings. RFSC actively served as the underwriter in the sale of the Certificates and assisted in drafting and disseminating the Offering Documents pursuant to which the Certificates were issued.

46. Defendant GSC served as the underwriter for three (3) of the RALI Certificate Offerings – specifically, the RALI Series 2006-QO6, RALI Series 2006-QO10 and RALI Series 2007-QH4 Certificate Offerings (collectively the "GSC Offerings"). GSC is an SEC registered

broker-dealer, principally located at 85 Broad Street, New York, New York 10004. GSC is one of the leading MBS underwriters in the United States. GSC, as an essential part of its investment banking business, maintains its principal place of business operations and has substantial contacts within this County and during the relevant time period transacted and continues to transact business in New York specifically New York County (*i.e.*, Wall Street and the financial markets) including through the Offerings. GSC actively served as the underwriter in the sale of the Certificates and assisted in drafting and disseminating the Offering Documents pursuant to which the Certificates were issued.

47. Defendant DBS served as the underwriter for two (2) of the RALI Certificate Offerings (collectively the DBS Offerings), including the RALI Series 2006-QS18 and RALI Series 2007-QO2 Certificate Offerings. DBS is an SEC registered broker-dealer, principally located at 60 Wall Street, New York, New York 10005. DBS is one of the leading MBS underwriters in the United States. DBS, as an essential part of its investment banking business, in addition to maintaining its principal offices, has substantial contacts within this County and during the relevant time period transacted and continues to transact business in New York specifically New York County (*i.e.*, Wall Street and the financial markets) including through the Offerings. DBS actively served as the underwriter in the sale of the Certificates and assisted in drafting and disseminating the Offering Documents pursuant to which the Certificates were issued.

48. Defendant CITI served as the underwriter for two (2) of the RALI Certificate Offerings, including the RALI Series 2006-QS8 and RALI Series 2007-QS1 (collectively the CITI Offerings). CITI is an SEC-registered broker-dealer, principally located at 399 Park Avenue, 7th Floor, New York, New York 10043. Defendant CITI was intimately involved in the

CITI Offerings. CITI is one of the leading MBS underwriters in the United States. CITI, as an essential part of its investment banking business, has substantial contacts, including its principal offices, within this County and regularly transacts business in New York – specifically New York County (*i.e.*, Wall Street and the financial markets) including through the Offerings. CITI actively served as the underwriter in the sale of the Certificates and assisted in drafting and disseminating the Offering Documents pursuant to which the Certificates were issued.

49. Defendant UBS served as the underwriter for the RALI Series 2006-QO7 Offering (the "UBS Offering"). UBS is an SEC registered broker-dealer, principally located at 1285 Avenue of the Americas, 19th Floor, New York, New York 10019. UBS is one of the leading MBS underwriters in the United States. UBS, as an essential part of its investment banking business, UBS maintains its principal offices and has substantial contacts within this County and during the relevant time period transacted business in New York – specifically New York County (*i.e.*, Wall Street and the financial markets) including through the Offerings. UBS actively served as the underwriter in the sale of the Certificates and assisted in drafting and disseminating the Offering Documents pursuant to which the Certificates were issued.

50. Lehman Brothers, Inc. ("LB"), the former investment banking arm of the now-defunct entity Lehman Brother Holding, Inc. ("LBHI") served as the underwriter for the RALI Series 2006-QO9 Certificate Offering (the "LB Offering"). LB was an SEC registered broker-dealer, and was principally located at 745 Seventh Avenue, New York, New York 10019. LB was one of the leading MBS underwriters in the United States. LB, as underwriter for the LB Offering, is liable under Sections 11 and 12 of the Securities Act, but is not named as a Defendant herein because on September 15, 2008, its parent company, LBHI, filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code, and in conjunction

therewith, the Securities Investor Protection Corporation commenced proceedings to liquidate LB.

51. Defendants RFSC, GSC, DBS, CITI and UBS are collectively referred to herein and the "Underwriters" or "Underwriter Defendants."

52. McGraw-Hill is a New York corporation with its principal place of business located at 1221 Avenue of the Americas, New York, New York 10020. S&P, a division of McGraw-Hill, provides credit ratings, risk evaluation, investment research and data to investors. S&P participated in the drafting and dissemination of the Prospectus Supplements pursuant to which the Certificates were sold to Plaintiffs and other Class members. In addition, S&P worked with Residential Capital, the Underwriter Defendants, loan sellers and servicers in forming and structuring the securitization transactions related to the Certificates, and then provided pre-determined credit ratings for the Certificates, as set forth in the Prospectus Supplements.

53. Moody's Investors Service, Inc. (defined herein as "Moody's"), a division of Moody's Corp., is principally located at 250 Greenwich Street, New York, New York 10007, and provides credit ratings, risk evaluation, investment research and data to investors. Moody's participated in the drafting and dissemination of the Prospectus Supplements pursuant to which the Certificates were sold to Plaintiffs and other Class members. In addition, Moody's worked with Residential Capital, the Underwriter Defendants, loan sellers and loan servicers in forming and structuring the securitization transactions related to the Certificates, and then provided pre-determined credit ratings for the Certificates, as set forth in the Prospectus Supplements.

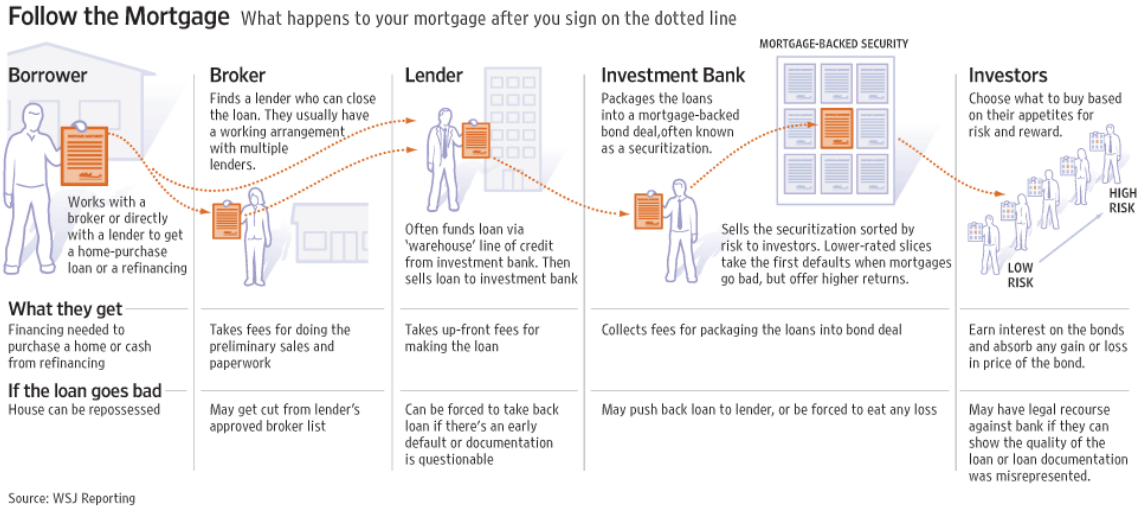
54. McGraw-Hill, inclusive of S&P, and Moody's are collectively referred to hereinafter as the "Ratings Agencies").

IV.

BACKGROUND

A. Residential Capital Emerges As a Major Issuer and Underwriter of Mortgage-Backed Securities

55. As illustrated below, a mortgage securitization is where mortgage loans are acquired, pooled together, and then sold to investors, who acquire rights in the income flowing from the mortgage pools.



56. When mortgage borrowers make interest and principal payments as required by the underlying mortgages, the cash flow is distributed to the holders of the MBS certificates in order of priority based on the specific tranche held by the MBS investors. The highest tranche (also referred to as the senior tranche) is first to receive its share of the mortgage proceeds and is also the last to absorb any losses should mortgage-borrowers become delinquent or default on their mortgage. Of course, because the investment quality and risk of the higher tranches is affected by the cushion afforded by the lower tranches, diminished cash flow to the lower tranches results in impaired value of the higher tranches.

57. The securitization of loans fundamentally shifts the risk of loss from the mortgage loan originator to the investor who purchased an interest in the securitized pool of loans. When the originator holds the mortgage through the term of the loan, it profits from the borrower's payment of interest and repayment of principal, but it also bears the risk of loss if the borrower defaults and the property value is not sufficient to repay the loan. As a result, traditionally, the originator was economically vested in establishing the creditworthiness of the borrower and the true value of the underlying property through appraisal before issuing the mortgage loans. In securitizations where the originator immediately sells the loan to an investment bank, it does not have the same economic interest in establishing borrower creditworthiness or a fair appraisal value of the property in the loan origination process.

58. In the 1980s and 1990s, securitizations were generally within the domain of Government Sponsored Enterprises ("GSE"), *i.e.,* the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which would purchase loans from originators. Investors in these early GSE securitizations were provided protections since the underlying loans were originated pursuant to strict underwriting guidelines.

59. Between 2001 and 2006, however, there was dramatic growth in both non-GSE loan originations and securitizations, for which there were no such underwriting limitations. That growth resulted in a commensurate increase in subprime securitizations. According to *Inside Mortgage Finance* (2007), in 2001, agency originations were $1.433 trillion and securitizations were $1.087 trillion – far outpacing non-agency originations of $680 billion and securitizations of $240 billion. In 2006, agency originations grew to $1.040 trillion while securitizations declined to $904 million. However, in that same period, non-agency originations

had grown by 100% to $1.480 trillion, and non-agency securitizations had grown by 330% to $1.033 trillion in 2006. Further, non-agency origination of subprime loans grew by 315% from $190 billion in 2001 to $600 billion in 2006; and non-agency Alt-A origination grew by 566% from $60 billion in 2001 to $400 billion in 2006. Non-agency securitizations of subprime loans had also grown exponentially by 415% from $87.1 billion in 2001 to $448 billion in 2006. Along with the growth of subprime securitizations the growth of subprime home equity securitizations also grew by 216% from approximately $150 billion in 2002 to $475 billion in 2006.

60. Residential Capital became a significant issuer in the MBS securitizations market. According to *Inside Mortgage Finance*, Residential Capital issued $42.336 billion and $56.93 billion of non-agency MBS in 2004 and 2005. (Moody's, *Bloomberg Asset Securitization*, January 2008.) In 2005, RFC was the fifth largest non-agency MBS issuer and ninth largest overall mortgage securities issuer. In 2006, Residential Capital increased their production to $66.2 billion, making it the fourth largest non-agency MBS issuer and eighth largest in total MBS issuance. In 2007, Residential Capital issued $6.6 billion of subprime MBS and an additional $22.2 billion of Alt-A MBS.

B. Residential Capital's Securitization Operations

61. In 2005 through 2007, Residential Capital's RMBS operations were run primarily out of its offices at 8400 Normandale Lake Boulevard, Suite 600, Minneapolis, Minnesota 55437.

62. Residential Capital derived its profit from the sale of the Certificates for a price in excess of the amount paid for the underlying mortgage loans. The goal for Residential Capital was to sell the Certificates for a price above par or $1.00 per unit. As noted, for securitized

Certificates to be marketable to begin with, approximately 80% of the securitization had to have the highest rating by the rating agencies. With that condition met, subprime securitizations and home equity securitizations posed the greater profit potential for Residential Capital.

63. Before securitization could begin, Residential Capital had to acquire the underlying mortgage loans directly from its loan origination affiliate, HFN. With the securitization structure in place, the Certificates were then issued through RALI Trusts designated with specific "Shelf" names. The different shelf names reflected the different types of mortgage collateral underlying each of the specific RALI Offerings. The underlying mortgages in the RALI "QH" Shelf Trusts were principally one- to four-family residential, payment-option, hybrid adjustable-rate first lien mortgage loans with a negative amortization feature; the underlying mortgages in the RALI "QO" Shelf Trusts were also principally one- to four-family residential, payment-option, adjustable-rate first lien mortgage loans with a negative amortization feature; and the underlying mortgages in the RALI "QS" Shelf Trusts were principally one- to four-family residential first lien mortgage loans. RALI completed one (1) QH Offering, six (6) QO Offerings and three (3) QS Offerings pursuant to the 2006 and 2007 Registration Statements, between June 28, 2006 and May 30, 2007, which are all the subject of the within Complaint.

64. Residential Capital and the Underwriter Defendants' ability to market the Certificates at all, much less at a profit - depended on ensuring that substantially all them were assigned the highest rating from the Ratings Agencies. In order to ensure this occurred Residential Capital and the Underwriter defendants made sure the Ratings Agencies participated in all aspects of the formation and structuring of the Certificates: from reviewing the loan tape before the loans were acquired to determining the loans to be included in the underlying

Certificate collateral pools. These Defendants also had the Ratings Agencies compete for the engagement by including their proposed ratings on the Certificates as part of their bid for the Certificate rating engagement. This ratings shopping resulted in 95% of the Certificates being assigned the highest AAA designation. The rating shopping practices was first disclosed in detail to investors in the July 2008 SEC Report (¶¶120-23) and in testimony by former Moody's and S&P managers in October 2008 (¶¶97-115). The practice was effectively ended by way of an agreement entered into between the Ratings Agencies and NYAG in 2008. (¶¶113, 124-25).

V.

DEFENDANTS' OMISSIONS OF MATERIAL FACT FROM THE OFFERING DOCUMENTS UNDER THE SECURITIES ACT

A. Exponential Increase in Borrower Delinquencies Shortly After Each Certificate Offering Reflects Defective Collateral and Faulty Origination

65. Regardless of when the Certificate Offering occurred, delinquency rates rose exponentially shortly after issuance reflecting the defective quality of the loan collateral.

66. At the time of issuance, the average delinquency and default rate of the outstanding loan balance was 0.00%. Within four months of the Offerings, delinquencies skyrocketed from 0.00% of the outstanding loan balance as of the cut-off dates to 3.2% of the balance. Broken down by Shelf, average delinquencies within four months of issue rose to over 3.7% for the RALI QO Offerings which are the subject of the within Complaint, to approximately 3.7% for the RALI QS Offerings and to 1.9% for the RALI QH Offering.

67. Within six months after issuance of the Certificates, delinquencies dramatically worsened, increasing by 48,000% from issuance, from the cut-off dates, to 4.9% of the outstanding collateral balance – in excess of 4.6% for the RALI QO Offerings, 5.6% for the RALI QS Offerings and 4.6% for the RALI QH Offering. As of the filing of the FAC in May

2009, the collateral had largely failed with a startling 41% of the total mortgage loans either delinquent, defaulted, in foreclosure or repossessed.

68. The meteoric increase in delinquencies rates so soon after issuance is reflective of substantial instances of "early payment default" ("EPD") by borrowers on the underlying mortgage loans. Such defaults are highly indicative of failed and deficient loan underwriting and origination practices. (¶¶ 127-167). As reported by the Federal Bureau of Investigation (the "FBI") in its 2006 and 2007 Mortgage Fraud Reports, a study of three million residential mortgage loans found that between 30% and 70% of early payment defaults were linked to significant misrepresentations in the original loan applications. The study cited by the FBI and conducted by Base Point Analytics, found that loans that contained egregious misrepresentations were five times more likely to default in the first six months than loans that did not. The misrepresentations included income inflated by as much as 500%, appraisals that overvalued the property by 50% or more, fictitious employers and falsified tax returns. The 2006 FBI report also cited studies by a leading provider of mortgage insurance, Radian Guaranty Inc., found the same top states for mortgage fraud – including the states where the underlying HFN mortgage collateral was principally originated – were also the same top states with the highest percentage of early payment defaults.

69. This pattern of borrower default shortly after the completion of the Offerings evidences substantial early payment default and borrower misrepresentations. The origination of such fundamentally impaired loan collateral could only have occurred as a result of systematic failures to abide by the underwriting guidelines in the Offering documents and as a result of inadequate due diligence by Residential Capital and the Underwriter Defendants in monitoring compliance with those guidelines.

B. The Collapse of the Certificates' Ratings Shortly After Each Offering Reflects Defective Collateral and Faulty Origination

70. The Ratings Agencies rated the Certificates pursuant to the following twenty three (23) level rating system:

		Definition	Moodys	S & P	Fitch
		Investment Grade			
	10.0	US Treasuries	***	***	***
	9.5	Prime, maximum safety	Aaa	AAA	AAA
	9.0	Very high grade/quality	Aa1	AA+	AA+
	8.5	"	Aa2	AA	AA
	8.0	"	Aa3	AA-	AA-
	7.5	Upper medium quality	A1	A+	A+
	7.0	"	A2	A	A
	6.5	"	A3	A-	A-
	6.0	Lower medium grade	Baa1	BBB+	BBB+
	5.5	"	Baa2	BBB	BBB
	5.0	"	Baa3	BBB-	BBB-
Color code	Number	Definition	Moodys	S & P	Fitch
		Speculative grade			
	4.5	Speculative	Ba1	BB+	BB+
	4.0	"	Ba2	BB	BB
	3.5	"	Ba3	BB-	BB-
	3.0	Highly speculative	B1	B+	B+
	2.5	"	B2	B	B
	2.0	"	B3	B-	B-
	1.5	Substantial risk	Caa1	CCC+	CCC+
	1.0	In poor standing	Caa2	CCC	CCC
	0.5	"	Caa3	CCC-	CCC-
	0.0	Extremely speculative	Ca	CC	CC
	0.0	Maybe in or extremely close to default	C	C+,C,C-	C+,C,C-
	0.0	Default		D	D

71. As noted above, Moody's and S&P rated $9.14 billion and $9.26 billion, respectively, of the $9.44 billion Certificates issued pursuant to the RALI Offerings at issue in this Complaint. At the time these Certificates were issued, Moody's assigned its highest investment grade rating of "Aaa" to 95.11%, or $8.7 billion, of the Moody's rated Certificates,

and S&P assigned its highest investment grade rating of "AAA" to 95%, or $8.8 billion, of the S&P rated Certificates. As a general matter, a rating downgrade of even one level – *e.g.,* from AAA to AA or from Aaa to Aa – is considered material to the financial condition of the rated entity or security. Here, the magnitude of the Certificate downgrades is unprecedented. The Certificates have been downgraded as many as the maximum 23 levels – with, for example, 100% of Certificates initially rated AAA having now been downgraded to "Ba1" or below, meaning these Certificates were not only designated "junk," but are considered in danger of "imminent default." The remaining Certificate tranches have fared no better since 100% of the $9.44 billion of Certificates at issue herein have been downgraded to speculative or "junk" status. Furthermore, Certificates rated in the Aa and A range by Moody's at issuance have been downgraded to CC and below – from "very high grade" and "upper medium" securities to "extremely speculative" junk bonds. This historic and dramatic reversal in the financial assessment of the Certificates by the Ratings Agencies underscores that these securities were defective from the outset.

C. Investigations and Disclosures Subsequent to Offerings Evidence That HFN Disregarded Stated Mortgage Loan Underwriting Guidelines

72. HFN was a principal originator for all 10 RALI Certificate Offerings subject to the within action. Homecomings Financial, LLC, formerly known as Homecomings Financial Network, Inc., ("HFN"), based in Minneapolis, Minnesota, is an indirect subsidiary of GMAC and a direct wholly-owned of RCC. HFN was founded in 1995 after RCC was purchased by GMAC, and has since served as RCC's primary wholesale lender.

73. Following issuance of the Certificates, disclosures began to emerge which further reflected HFN's systemic disregard for the underwriting guidelines set forth in the Offering Documents, its practices and policies of favoring riskier, fee-driven mortgage lending including

sub-prime, Alt-A and option-ARM (hybrid adjustable rate or negative amortization) mortgage loans and inflating revenue via hidden prepayment penalties and fees.

74. In mid-2008, the Federal Trade Commission (the "FTC") commenced an investigation into HFN's policies and practices after an FTC staff review of HFN's mortgage loan data report pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801-2810, indicated that African American and Hispanic borrowers paid more for mortgage loans than non-Hispanic Whites. According to a letter from the FTC to HFN's counsel, the investigation focused on whether the underwriting risk and the credit characteristics of the borrowers justified the reported disparities in loan price.

> Homecomings originated the vast majority of its loans through independent brokers and Homecomings' policy and practice was to set the risk-based price and other terms of its brokered loans. In addition, Homecomings' policy and practice was to allow brokers to assess discretionary charges on these loans, within certain limits set by Homecomings. These discretionary charges took the form of (1) fees charged at the time of origination, including broker points and fees, and (2) higher interest rates, in return for which Homecomings paid brokers yield spread premiums.
>
> Based on an extensive investigation, which included obtaining and analyzing Homecomings' full and complete loan data, the staff's statistical analyses of the data show that, on average, Homecomings charged African-American and Hispanic borrowers substantially more for home purchase and refinance loans than similarly-situated non-Hispanic whites. ***The staff further determined that these disparities were caused by Homecomings' policy and practice of allowing its brokers broad discretion to determine the amount of discretionary fees charged to borrowers in addition to the risk-based price. The staff concluded that the disparities in these discretionary charges are substantial, statistically significant, and cannot be explained by any legitimate underwriting or credit characteristics in violation of the FCOA and the FTC Act.***

75. Before the FTC could complete their investigation, on September 3, 2009, RCC announced that it was shutting its wholesale mortgage origination operations, thereby closing down HFN, as well as its retail operations, GMAC Mortgage, LLC ("GMACM"). In a January 22, 2009 FTC letter closing the investigation, the FTC explained:

> During the course of this investigation, Homecomings ceased originating mortgage loans and stated it has no intention to resume mortgage lending in the future. In addition, Residential Capital, LLC ("ResCap"), an indirect parent company of Homecomings, filed a 10-Q Quarterly report for the third quarter of 2008 for ResCap and its direct and indirect subsidiaries, including Homecomings (collectively, the "Company"), which states that the ability of the Company to continue as a going concern is in substantial doubt. The 10-Q further notes that the Company is heavily dependent on its own indirect parent, GMAC, LLC, for funding and capital support and that there can be no assurance that such support will continue. Because of these developments and based on additional information provided by the Company regarding its financial status, the staff has closed the investigation. However, the staff will continue to monitor future developments concerning Homecomings, including whether GMAC's recent conversion to a bank holding company and its receipt of financial assistance from the U.S. Department of the Treasury, may affect Homecomings' operating and financial status. If warranted by materially changed circumstances, the staff will take appropriate action, including the reopening of this investigation.

76. In a March 5, 2009 article titled "Shaky Loans May Spur New Foreclosure Wave," the *Portland Tribune* recounted the events leading up to the massive failures throughout the U.S. mortgage lending industry - including the role of HFN:

> "In order to keep your market share, you had to be more aggressive," said Tim Boyd, who sold subprime loans in the Portland area for six years and then Alt A loans for seven years for Homecomings Financial.
>
> "The main focus was doing Alt A because that's where the money was," said Boyd, who left the industry. A loan officer arranging a $300,000 Option ARM loan could collect $10,500 in fees, he said.
>
> Lenders could unload shaky loans by selling them to investors, who often resold them in what amounted to a worldwide game of financial musical chairs. Wall Street's insatiable appetite for more loans kept the pipeline filled, even if the deals weren't always sound.
>
> "The V.P.s came down to the office beating the drums about Option ARMs," urging mortgage brokers to sell them to customers, Ridge said. "I had Wachovia march through there; I had GMAC."
>
> * * *
>
> He said he knows of loan officers who'd tell title agents to keep quiet about Option ARM loan provisions during document-signing time.

> They'd tell the title officer, 'Don't go over this; just glean through it quickly and get the thing signed.''

> Tim Boyd said he drew the line at selling Option ARMs because he saw how that could get people into trouble. 'It made me sick,' he said.

77. In late 2002, the West Virginia Attorney General's Office began an investigation into predatory lending practices of HFN and another subprime mortgage lender, Fairbanks Capital Corp ('Fairbanks'). The investigation led to a June 25, 2005 settlement between the WVAG, Fairbanks and HFN, pursuant to which Fairbanks and HFN agreed to pay $773,000 in restitution, account credits and refunds for approximately 2,300 West Virginia consumers who had been charged unlawful fees and who lost their homes through 'questionable foreclosures.'

78. In a September 11, 2006 article titled 'Nightmare Mortgages,' *BusinessWeek Magazine* described HFN's lending policies as using outrageous pre-payment penalties to keep borrowers stuck in pay-option ARM loans and their using 'fine-print' in contracts to hide disclosures:

> Gordon Burger is among the first wave of option ARM casualties. The 42-year-old police officer from a suburb of Sacramento, Calif., is stuck in a new mortgage that's making him poorer by the month. Burger, a solid earner with clean credit, has bought and sold several houses in the past. In February he got a flyer from a broker advertising an interest rate of 2.2%. It was an unbeatable opportunity, he thought. If he refinanced the mortgage on his $500,000 home into an option ARM, he could save $14,000 in interest payments over three years. Burger quickly pulled the trigger, switching out of his 5.1% fixed-rate loan. 'The payment schedule looked like what we talked about, so I just started signing away,' says Burger. He didn't read the fine print.
>
> After two months Burger noticed that the minimum payment of $1,697 was actually adding $1,000 to his balance every month. 'I'm not making any ground on this house; it's a loss every month,' he says. ***He says he was told by his lender, Minneapolis-based Homecoming Financial, a unit of Residential Capital, the nation's fifth-largest mortgage shop, that he'd have to pay more than $10,000 in prepayment penalties to refinance out of the loan. If he's unhappy, he should take it up with his broker, the bank said. "They know they're selling crap, and they're doing it in a way that's very deceiving," he says. "Unfortunately, I got sucked into it."*** In a written statement, Residential

> said it couldn't comment on Burger's loan but that "each mortgage is designed to meet the specific financial needs of a consumer."

(Emphasis added).

D. The Offering Documents Failed to Disclose the Underwriter Defendants' Inadequate Due Diligence with Respect to Compliance with Stated Mortgage Loan Underwriting Guidelines

79. The Registration Statement provided that the loan underwriting guidelines used to originate the loan collateral is as specifically set forth in each of the Prospectus Supplements. (¶¶ 168-217). The Prospectus Supplements provide that the mortgage loans underlying the Certificates were originated pursuant to RFC's stated underwriting guidelines adhered to by HFN in originating the mortgage loans. *Id.*

80. As Underwriters of the Certificates Offerings, the Underwriting Defendants conducted inadequate due diligence with respect to whether the Residential Capital and HFN complied with the loan underwriting guidelines described in the Prospectus Supplements.

81. Very little if any due diligence was actually conducted by the Underwriter Defendants themselves. The Underwriter Defendants contracted with external firms to review whether the loans included in MBS that they underwrote were in compliance with the loan originators' represented standards. Residential Capital was a noted client of Bohan and Clayton.

82. In June 2007, the NYAG subpoenaed documents from Bohan and Clayton related to their due diligence efforts on behalf of the investment banks, such as Residential Capital, that underwrote mortgage backed securities. The NYAG, along with Massachusetts, Connecticut and the SEC (all of which also subpoenaed documents) are investigating whether investment banks held back information they should have provided in the disclosure documents related to the sale of mortgage backed securities to investors.

83. In a January 12, 2008 article titled "Inquiry Focuses on Withholding of Data on Loans", *The New York Times* reported:

> An investigation into the mortgage crisis by New York State prosecutors is now focusing on whether Wall Street banks withheld crucial information about the risks posed by investments linked to subprime loans.
>
> Reports commissioned by the banks raised red flags about high-risk loans known as exceptions, which failed to meet even the lax credit standards of subprime mortgage companies and the Wall Street firms. But the banks did not disclose the details of these reports to credit-rating agencies or investors.
>
> The inquiry, which was opened last summer by New York's attorney general, Andrew M. Cuomo, centers on how the banks bundled billions of dollars of exception loans and other subprime debt into complex mortgage investments, according to people with knowledge of the matter. Charges could be filed in coming weeks.
>
> * * *
>
> The inquiries highlight Wall Street's leading role in igniting the mortgage boom that has imploded with a burst of defaults and foreclosures. The crisis is sending shock waves through the financial world, and several big banks are expected to disclose additional losses on mortgage-related investments when they report earnings next week.
>
> As plunging home prices prompt talk of a recession, state prosecutors have zeroed in on the way investment banks handled exception loans. In recent years, lenders, with Wall Street's blessing, routinely waived their own credit guidelines, and the exceptions often became the rule.
>
> It is unclear how much of the $1 trillion subprime mortgage market is composed of exception loans. Some industry officials say such loans made up a quarter to a half of the portfolios they saw. In some cases, the loans accounted for as much as 80 percent. While exception loans are more likely to default than ordinary subprime loans, it is difficult to know how many of these loans have soured because banks disclose little information about them, officials say.
>
> Wall Street banks bought many of the exception loans from subprime lenders, mixed them with other mortgages and pooled the resulting debt into securities for sale to investors around the world.
>
> * * *

> Mr. Cuomo, who declined to comment through a spokesman, subpoenaed several Wall Street banks last summer, including Lehman Brothers and Deutsche Bank, which are big underwriters of mortgage securities; the three major credit-rating companies: Moody's Investors Service, Standard & Poor's and Fitch Ratings; and a number of mortgage consultants, known as due diligence firms, which vetted the loans, among them Clayton Holdings in Connecticut and the Bohan Group, based in San Francisco. Mr. Blumenthal said his office issued up to 30 subpoenas in its investigation, which began in late August.
>
> * * *
>
> To vet mortgages, Wall Street underwriters hired outside due diligence firms to scrutinize loan documents for exceptions, errors and violations of lending laws. But Jay H. Meadows, the chief executive of Rapid Reporting, a firm based in Fort Worth that verifies borrowers' incomes for mortgage companies, said lenders and investment banks routinely ignored concerns raised by these consultants,
>
> "Common sense was sacrificed on the altar of materialism," Mr. Meadows said, "We stopped checking."

84. On January 27, 2008, Clayton revealed that it had entered into an agreement with the NYAG for immunity from civil and criminal prosecution in the State of New York in exchange for agreeing to provide additional documents and testimony regarding its due diligence reports, including copies of the actual reports provided to its clients. On the same day, both the *New York Times* (Anderson, J. and Bajaj, V., "Reviewer of Subprime Loans Agrees to Aid Inquiry of Banks," Jan. 27, 2008), and the *Wall Street Journal* ran articles describing the nature of the NYAG's investigation and Clayton's testimony. The *Wall Street Journal* reported that the NYAG's investigation is focused on "the broad language written in prospectuses about the risky nature of these securities changed little in recent years, even as due diligence reports noted that the number of exception loans backing the securities was rising." According to the *New York Times* article, Clayton told the NYAG "that starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending expectations" and "some investment banks directed Clayton to halve the sample of loans it evaluated in each portfolio."

85. A March 23, 2008 *Los Angeles Times* article reported that Clayton and Bohan employees "raised plenty of red flags about flaws [in subprime home loans] so serious that mortgages should have been rejected outright – such as borrowers' incomes that seemed inflated or documents that looked fake – but the problems were glossed over, ignored or stricken from reports" as follows:

> The reviewers' role was just one of several safeguards – including home appraisals, lending standards and ratings on mortgage-backed bonds – that were built into the country's mortgage-financing system.
>
> But in the chain of brokers, lenders and investment banks that transformed mortgages into securities sold worldwide, no one seemed to care about loans that looked bad from the start. Yet profit abounded until defaults spawned hundreds of billions of dollars in losses on mortgage-backed securities.
>
> "The investors were paying us big money to filter this business," said loan checker Cesar Valenz. "It's like with water. If you don't filter it, it's dangerous. And it didn't get filtered."
>
> As foreclosures mount and home prices skid, the loan-review function, known as "due diligence," is gaining attention.
>
> The FBI is conducting more than a dozen investigations into whether companies along the financing chain concealed problems with mortgages. And a presidential working group has blamed the subprime debacle in part on a lack of due diligence by investment banks, rating outfits and mortgage-bond buyers.

The Los Angeles Times, "Subprime Watchdogs Ignored," March 23, 2008.

86. Moreover, while underwriters would have sought to have Clayton review 25% to 40% of loans in a pool that was going to be securitized earlier in the decade, by 2006 the typical percentage of loans reviewed for due diligence purposes was just 5-7%. Bohan's President, Mark Bohan, stated that "[b]y contrast [to investment banks in RMBS deals], buyers who kept the mortgages as an investment instead of packaging them into securities would have 50% to 100% of the loans examined."

E. Governmental Agency Investigations Subsequent to Offerings Evidence Faulty Loan Origination and Securitization Practices

87. In August 2007, following reports of defaults in mortgage loans underlying various MBS, downgrades of such MBS and potential downgrades of additional MBS in the future, and the resulting illiquidity in the credit markets, the President of the United States commissioned the Secretary of the Treasury, the SEC and the Commodities Futures Trading Commission ("CFTC") (hereinafter referred to as the "President's Working Group" or the "PWG") to investigate the causes of the market turmoil. After a seven-month investigation, the PWG issued its report on March 13, 2008. The PWG found as follows :

- A significant erosion of market discipline by those involved in the securitization process, including ***originators, underwriters, credit rating agencies, and global investors,*** related in part to failures to provide or obtain adequate risk disclosures;

- The turmoil in financial markets clearly was triggered by a ***dramatic weakening of underwriting standards for U.S. subprime mortgages***"

(Emphasis added).

88. Further, as noted, relatively soon after issuance, the delinquency and foreclosure rates of the Certificate collateral began to increase. (¶¶ 127-167). This performance was an indication to S&P of pervasive underwriting failures in the origination of the collateral which ultimately led to widespread and deep downgrades of most of the Certificate classes. On or about July 10, 2007, S&P publicly announced it was revising the methodologies used to rate numerous RMBS Certificates because the performance of the underlying collateral "called into question" the accuracy of the loan data. This announcement triggered several governmental investigations which only began reporting their findings in 2008.

89. S&P announced that it was revising its methodology assumption to require increased "credit protection" for rated transactions. S&P reiterated that it would also seek in the

future to review and minimize the incidence of potential underwriting abuse given the level of *loosened underwriting* at the time of loan origination, misrepresentation and speculative borrower behavior reported for the 2006 ratings.

90. One day later, on July 11, 2007, Moody's announced it was also revising its methodology used to rate the Certificates, and anticipated Certificate downgrades in the future. Moody's did in fact significantly downgrade most of the Certificate classes, noting "aggressive underwriting" used in the origination of the collateral.

91. Further, as set forth more fully below, disclosures emerged well after the issuance of the Certificates with respect to each of the Originators which further evidenced that they had engaged in loan underwriting practices which were wholly inconsistent with the guidelines set forth in the Registration Statement and Prospectus Supplements. (¶¶168-217).

F. The Offering Documents Failed to Disclose that Residential Capital and the Underwriter Defendants Relied on S&P and Moody's Outdated Models to Determine Levels of Credit Enhancement and Ratings

92. The Prospectus Supplements describe the varying forms of credit enhancement, including by way of subordination and over-collateralization. The Supplements contain material misstatements and omissions of fact, including the failure to disclose that the amounts and forms of credit enhancement were insufficient and understated because they were largely determined by Ratings Agencies' models that had not been materially updated since 1999 (for S&P) and 2002 (for Moody's). As a result, these outdated models were based primarily on the performance of fixed interest loans and not subprime, Alt-A, no or limited documentation loans – which were the kinds of loans substantially included in the Certificate collateralizations. The models failed both to provide sufficient, appropriate credit enhancement and to disclose the deficiencies in the manner in which credit enhancement was determined.

93. The Ratings Agencies determinations of the amount and kind of credit enhancement to be included in the Certificates were faulty. These same faulty determinations were then used by the same firms to assign inflated and faulty AAA ratings to a substantial portion of the total Certificate value of the Offerings (95.0% by S&P and 95.1% by Moody s). These ratings were unjustifiably high because they were determined pursuant to the same models used to determine credit enhancement models that had not adequately been updated at the time the Certificates were issued.

94. The truth about the Ratings Agencies undisclosed use of outdated models in rating RMBS deals only began to emerge in 2008. The inadequacy of the models used to rate (and determine the amount of credit enhancement needed to support the rating) was discussed in the April 2008 issue of *Mortgage Banking* which explained that the Ratings Agencies models used statistical assumptions that were too heavily based on the performance of 30-year fixed mortgages which were not the kinds of mortgages that had been securitized in the prior four years:

> S & P s Coughlin admits that assumptions that went into decision-making [on credit ratings] were informed by what had happened in the past, and yet in this instance previous loss data proved to be much less of a guide to future performance.
>
> But why? Drexel University s Mason believes it s because the CRAs relied on statistical models that were misleading, at best. I think their [credit-rating] methodologies were demonstrably insufficient, he says.
>
> Unlike the traditional rating processes for single-named issuers, which rely on empirical analysis at their core, structured-finance rating analysis is essentially driven by statistical models, write Mason and Rosner in their paper. And the data that the rating agencies used when evaluating mortgage-backed securities--including those backed by subprime mortgages--were heavily biased by over-reliance on traditional 30-year fixed prime mortgage loans. But it turns out that a subprime loan, as Mason explains during an interview, is a very different animal.
>
> This is not your historical mortgage loan, he says. This is more like a credit-

> card loan. Mason cites the increased popularity during the mortgage boom of so-called option ARMs, which are home loans that give the borrower a variety of monthly payment options and have variable cash-flow characteristics that are more like credit cards.

95. In an article appearing in *The New York Times* on April 8, 2008, entitled Triple A Failure, *The New York Times* took note of Moody s April 2007 disclosure that it was revising its model which had not been revised since 2002:

> In April 2007, Moody s announced it was revising the model it used to evaluate subprime mortgages. It noted that the model was first introduced in 2002. Since then, the mortgage market has evolved considerably. This was a rather stunning admission; its model had been based on a world that no longer existed.

96. The article explained that when Moody s had analyzed subprime delinquency data in 2007 it had found trends that its 2002 model never accounted for:

> Poring over the data, Moody s discovered that the size of people s first mortgages was no longer a good predictor of whether they would default; rather, it was the size of their first and second loans that is, their total debt combined. This was rather intuitive; Moody s simply hadn t reckoned on it. Similarly, credit scores, long a mainstay of its analyses, had not proved to be a strong predictor of defaults this time. Translation: even people with good credit scores were defaulting. Amy Tobey, leader of the team that monitored XYZ, told me, it seems there was a shift in mentality; people are treating homes as investment assets. Indeed. And homeowners without equity were making what economists call a rational choice; they were abandoning properties rather than make payments on them. Homeowners equity had never been as high as believed because appraisals had been inflated.

97. On October 22, 2008, the United States House of Representatives Committee on Oversight and Government Reform (defined herein as the House Oversight Committee) heard testimony from Frank Raiter (the Raiter Testimony), the former Managing Director and head of Residential Mortgage-Backed Securities at S&P from March 1995 through April 2005. Raiter testified that the Ratings on S&P deals turn in part on the credit rating of the individual mortgages. It was from this credit analysis that S&P determined ***(1) the expected default probability*** of a loan and ***(2) the loss that would occur in the event of a default*** which, in turn,

was used to establish the amount of AAA bonds that could be issued against the pool and amount of equity or "credit enhancement" needed to protect the AAA bonds from experiencing losses:

> A mortgages backed security consists of a pool of individual mortgage loans. Depending on the type of mortgage product (i.e., prime-jumbo, subprime, Alt-A or HEL) underlying a given security, the pool could consist of 1,000 to 25,000 loans. The ratings process consists of two distinct operations – the credit analysis of individual mortgages and a review of the documents governing the servicing of loans and the payments to investors in the securities.
>
> ***The credit analysis is focused on determining the expected default probabilities on each loan and the loss that would occur in the event of a default.*** These, in turn, establish the expected loss for the entire pool and determine the amount of AAA bonds that can be issued against the pool. It is analogous to your equity position in your home and the underlying mortgage.
>
> The loss estimate determines the equity needed to support the bond – it is intended to protect the AAA bonds from experiencing any losses, much the same as the homeowners' equity stake in a house protects the lender from loss in the mortgage loan.

Raiter Testimony, at 3 (emphasis added).

98. Raiter testified that in 1995, S&P developed a sophisticated model to estimate the default and loss of individual loans and pools – a model based on approximately 500,000 loans with performance data going back five or more years. This "LEVELS" Model was updated in early 1999 based on a database of 900,000 loans. Raiter testified further that ***"it was critical to maintain the best models as they were the linchpins of the rating process."*** Raiter Testimony, at 4 (emphasis added). After the housing boom took off in 2001, S&P developed a far better model in 2001, with updated data in 2003 and 2004, based on approximately 9.5 million loans ***"covering the full spectrum of new mortgage products, particularly in AAA and fixed/floating payment type categories."*** *Id*.

99. Nevertheless, S&P failed to implement this updated model, which, in Raiter's view, would have forewarned on the loan-losses from the new loan products, in particular:

> [T]he analysts at S&P had developed better methods for determining default which did capture some of the variations among products that were to become evident at the advent of the crisis. It is my opinion that had these models been implemented we would have had an earlier warning about the performance of many of the new products that subsequently lead to such substantial losses. That, in turn, should have caused the loss estimates mentioned above to increase and could have thus caused some of these products to be withdrawn from the market as they would have been too expensive to put into bonds.

Raiter Testimony, at 4.

100. As Raiter explained, the unfortunate consequences of continuing to use outdated versions of the rating model included "the failure to capture changes in performance of the new non-prime products" and "the unprecedented number of AAA downgrades and subsequent collapse of prices in the RMBS market." S&P's current President, Deven Sharma, agreed, noting: "It is by now clear that a number of the assumptions we used in preparing our ratings on mortgage-backed securities issued between the last quarter of 2005 and the middle of 2007 did not work . . . [E]vents have demonstrated that the historical data we used and the assumptions we made significantly underestimated the severity of what has actually occurred."

101. Executives at Moody's also acknowledged a lack of investment in Moody's ratings models and the failure of Moody's ratings models to capture the decrease in lending standards. In a confidential presentation to Moody's Board of Directors from October 2007, released by the House Oversight Committee on October 22, 2008 during the Committee's "Hearing on the Credit Agencies and the Financial Crisis" (the "House Oversight Committee Hearing"),[12] Raymond McDaniel, the current Chairman and CEO of Moody's, noted that underfunding can put ratings accuracy at risk and acknowledged that "Moody's Mortgage Model (M3) needs investment." McDaniel also acknowledged that Moody's models did not sufficiently capture the changed mortgage landscape. *Id.* Brian Clarkson – the former President and Chief

[12] All exhibits released by the House Oversight Committee from the Committee's "Hearing on Credit Agencies and the Financial Crisis" can be found on the Committee's website at www.oversight.house.gov.

Operating Officer of Moody's, also recognized during a Moody's Town Hall on September 10, 2007, the transcript of which was released during the House Oversight Committee Hearing on October 22, 2008, Moody's failure to incorporate decreased lending standards into their ratings, stating: "We should have done a better job monitoring that [decrease in underwriting standards]."

102. Not only were Moody's and S&P's models based on outmoded data but they were often constructed by people who were not familiar with the housing markets in the areas that they were rating. And, in some instances, real estate investments were graded by analysts who never actually reviewed the investment and who merely relied upon ratings assigned by a competitor ratings agency.

G. The Ratings Agencies Relaxed the Ratings Criteria Which Led to Artificially High Ratings Awarded to the Certificates

103. Moody's and S&P repeatedly eased their ratings standards in order to capture more market share of the ratings business. In a September 25, 2008 article published by *Bloomberg*, titled "Race to Bottom at Moody's, S&P Secured Subprime's Boom, Bust," a former S&P Managing Director Richard Gugliada explained the easing of standards as a "*market-share war where criteria were relaxed*" and admitted, "*I knew it was wrong at the time … [i]t was either that or skip the business.* That wasn't my mandate. My mandate was to find a way. Find the way." According to Gugliada, when the subject of tightening S&P's ratings criteria came up, the co-director of CDO ratings, David Tesher, said: "Don't kill the golden goose." *Id.*

104. The loosening of ratings standards is exemplified by the following "instant message" conversation between Rahul Shah ("Shah") and Shannon Mooney ("Mooney"), two S&P analysts, from April 5, 2007, that described S&P's rating of an investment similar to the Trusts and that was submitted during the House Oversight Committee Hearing:

Shah: btw "that deal is ridiculous

Mooney: i know right ... model def does not capture half of the rish [sic]

Mooney: *risk*

Shah: we should not be rating it

Mooney: we rate every deal

Mooney: it could be structured by cows and we would rate it

Shah: but there's a lot of risk associated with it – I personally don't feel comfy signing off as a committee member.

105. In an email sent on December 5, 2006, released during the House Oversight Committee Hearing, an S&P analytical manager in the same group as Shah and Mooney wrote to a senior analytical manager that the "[r]ating agencies continue to create and [sic] *even bigger monster – the CDO market. Let's hope we are all wealthy and retired by the time this house of cards falters.*"

106. On October 28, 2008, former Moody's Managing Director Jerome S. Fons ("Fons") testified before the House Oversight Committee (hereinafter "Fons Testimony"). Fons had been an Executive at Moody's for 17 years, in various positions including Managing Director of Credit Policy. Fons testified that due to profit concerns, a loosening of ratings standards took place at his company: "[T]he focus of Moody's shifted from protecting investors to being a marketing-driven [sic] organization" and "management's focus increasingly turned to maximizing revenues" at the expense of ratings quality.

107. Fons explained that the originators of structured securities were free to shop around for the rating agency that would give them the highest rating and "*typically chose the agency with the lowest standards, engendering a race to the bottom in terms of rating quality*." Fons Testimony, at 3. Fons noted that the rating agencies' "drive to maintain or expand market share made [them] willing participants in this [rating] shopping spree" and made it "relatively

easy for the major banks to play the agencies off one another." *Id.* Fons said it was this business model that "*prevented analysts from putting investor interests first*." *Id.*

108. Raymond McDaniel, the current CEO of Moody's, also acknowledged the degradation of ratings standards. In the same confidential presentation to Moody's Board of Directors in October 2007, cited *supra*, McDaniel told the Board: "The real problem is not that the market ... underweights ratings quality but rather that in some sectors, it actually penalizes quality ... It turns out that *ratings quality has surprisingly few friends*." He noted the pressure exerted on analysts to come up with high ratings, explaining "[a]nalysts and MDs [managing directors] are continually "pitched" by bankers, issuers, investors" and sometimes "we "drink the kool-aid." In fact, *The Wall Street Journal,* in an article published on April 24, 2007, found that in at least one instance, Moody's increased the proportion of AAA ratings within a mortgage after its client complained and said it might go with a different rating firm.

H. The Prospectus Supplements Did Not Reflect the True Risk of the Certificates

109. The Ratings Agencies rated the Certificates based in large part on data about each mortgage loan that Residential Capital provided to them – including appraisal values, LTV ratios, and borrower creditworthiness and the amount of documentation provided by borrowers to verify their assets and/or income levels. As discussed above, much of this data was inaccurate due to the inflated appraisal values, inaccurate LTV ratios, borrower income inflation, and the other facets of defective underwriting addressed in this Complaint. Neither Moody's nor S&P engaged in any due diligence or otherwise sought to verify the accuracy or quality of the loan data underlying the RMBS pools they rated (and specifically disclaimed any due diligence responsibilities). Nor did they seek representations from sponsors that due diligence had been performed. During Moody's September 2007 "Town Hall Meeting," hosted by Moody's

Managing Director, Raymond McDaniel, executives at Moody's acknowledged that the Ratings Agencies used inaccurate data to form their ratings:

> We're on notice that a lot of things that we relied on before just weren't true... [W]e relied on reps and warrantees that no loans were originated in violation of any state or federal law. We know that's a lie.
>
> * * *
>
> There's a lot of fraud that's involved there, things that we didn't see...We're sort of retooling those to make sure that we capture a lot of the things that we relied on in the past that we can't rely on, on a going forward basis.
>
> * * *
>
> [W]e're being asked to figure out how much everyone lied. ... [I]f all of the information was truthful and comprehensive and complete, we wouldn't have an issue here ...
>
> What we're really being asked to do is figure out how much lying is going on and bake that into a credit ... which is a pretty challenging thing to do. I'm not sure how you tackle that from a modeling standpoint.

Moody's Town Hall Meeting Transcript, at 16, 58.

110. In response to the Town Hall Meeting, a Moody's employee noted:

> [W]hat really went wrong with Moody's sub prime ratings leading to massive leading to massive downgrades and potential more downgrades to come? We heard 2 answers yesterday: 1. people lied, and 2. there was an unprecedented sequence of events in the mortgage markets. ***As for #1, it seems to me that we had blinders on and never questioned the information we were given.*** Specifically, why would a rational borrower with full information sign up for a floating rate loan that they couldn't possibly repay, and why would an ethical and responsible lender offer such a loan? ***As for #2, it is our job to think of the worst case scenarios and model them ... Combined, these errors make us look either incompetent at credit analysis, or like we sold our soul to the devil for revenue, or a little bit of both.***

Moody's Town Hall Meeting Transcript, at 79 (emphasis added).

111. Because Moody's and S&P were using flawed information and models to generate their ratings, the ratings assigned to the Certificates did not accurately reflect their risk,

and the Certificates were given investment grade ratings when in reality they were not of investment grade quality. These artificially high ratings, which were published in the Prospectus Supplements, were false and misleading in that they did not reflect the true risk of the Certificates.

I. The Offering Documents Failed to Disclose Residential Capital's Ratings Shopping Practices

112. The Registration Statement disclosed the engagement of Ratings Agencies but omitted disclosure of the manner in which the Ratings Agencies were engaged – so-called Ratings Shopping. As noted, the SEC Report set forth that S&P and Moody's engaged in the practice of "ratings shopping," as indicative of one of the practices which may have pressured Ratings Agencies to issue faulty ratings for MBS.

113. In June, 2008, the NYAG's Office announced that after an investigation of the Ratings Agencies in the context of mortgage-backed securities, it had reached an agreement with S&P, Moody's and Fitch which contemplated a complete overhaul of the then-current ratings procedures and guidelines and to put an end to what had been termed "ratings shopping." Instead of investment banks looking to issue mortgage-backed bonds going to all three agencies for a review, but only use, and pay for, the most optimistic rating, the agencies now will get paid up front regardless if they are hired to assign a rating, a move expected to remove any potential for conflicts of interest.

114. As set forth above, in Fons' Testimony before the House Oversight Committee, he explained that Moody's provided inadequate ratings on RMBS because of conflicts of interest and being forced to "bid" or "shop" its ratings to obtain engagements:

> Why did it take so long for the rating agencies to recognize the problem? Why were standards so low in the first place? And what should be done to see that this does not happen again?

> ***My view is that a large part of the blame can be placed on the inherent conflicts of interest found in the issuer-pays business model and rating shopping by issuers of structured securities.*** A drive to maintain or expand market share made the rating agencies willing participants in this shopping spree. It was also relatively easy for the major banks to play the agencies off one another because of the opacity of the structured transactions and the high potential fees earned by the winning agency. Originators of structured securities typically chose the agency with the lowest standards, engendering a race to the bottom in terms of rating quality. While the methods used to rate structured securities have rightly come under fire, in my opinion, the business model prevented analysts from putting investor interests first.

Fons Testimony, at 3 (emphasis added).

115. In further testimony at the October 22, 2008 House Oversight Committee Hearing, Managing Director of Egan-Jones Rating Co., Sean J. Egan ("Egan"), stated, in part:

> Assigning ratings on structured finance bonds differs from the process for corporate and municipal bonds. In the unsecured corporate and municipal markets, debt issuers are subject to being rated by all of the rating agencies because financial information is publicly available to all parties. The structured finance market has been a "rating by request" market where the debt issuers invite some or all of the major rating agencies to preview the collateral pools so the rating agencies can provide preliminary rating indications that can be used to size the bond classes and structure the bond transactions.
>
> ***Historically, all of the rating agencies have agreed to bow out of the rating process if they are not actually selected by the debt issuer to rate a securities transaction. This has encouraged the debt issuers to shop for the best ratings so they can optimize their securitization proceeds.***

Testimony of Sean J. Egan, House Oversight Committee Hearing, October 22, 2008, at 9 (emphasis added).

J. The Offering Documents Failed to Disclose the True Roles of Ratings Agencies in Forming and Structuring the Certificates for Sale as Primarily AAA Securities

116. In the April 2008 issue of *Mortgage Banking*, critics began to note the role of the Ratings Agencies in providing "structuring advice:"

> But serious concerns have also been voiced by members of Congress about whether the CRAs' business model - where the large investment banks that

> underwrite mortgage-backed securities (MBS) and collateralized debt offerings actually pay to have their deals rated by the agencies, and the agencies in turn provide feedback to the underwriters on how to boost their deals credit rating to the highly coveted triple-A status may have prejudiced their objectivity and integrity.
>
> It seems to me that the credit-rating agencies are playing both coach and referee, said Sen. Robert Menendez (D-New Jersey), during a September 2007 hearing by the Senate Banking Committee on the collapse of the subprime market.
>
> Critics also argue that the CRAs are actively involved in the structuring of RMBS and CDO deals, and thus can hardly claim that their ratings are merely opinions on the likelihood that a debt security might go into default or, as one agency official has called them, the world s shortest editorials.
>
> Joseph Mason, an associate professor of finance at Drexel University in Philadelphia and a former economist at the Office of the Comptroller of the Currency (OCC), says ***it is indisputable that the CRAs provide underwriters with "active structuring advice" on how to get a triple-A credit rating for their deals. While the CRAs insist they're merely providing information to the investment bankers during the underwriting process, Mason says they're trying to draw "an artificial line between advice and communication."***

(Emphasis added).

117. As reported in the *International Herald Tribune* on June 1, 2007, the Ratings Agencies did much more than evaluate [MBS instruments] and give them letter grades, they played an integral role in structuring the transactions and instructing the assemblers how to squeeze the most profit out of the MBS by maximizing the tranches with the highest ratings. Now, it is evident that these credit ratings agencies indirectly and directly participated in and took steps necessary to the distribution of mortgage pass-through certificates and other MBS.

118. An article appearing in *The Financial Times* on October 17, 2008 entitled When Junk Was Gold, addressed the unique role of the Ratings Agencies in structured finance deals such as mortgage backed securities:

> The first mortgage-backed bonds were created in the late 1980 s, well before Clarkson s time, by a trader called Lewie Ranieri. Ranieri, the head of the

> mortgage trading desk at the former investment bank Salomon Brothers, was famous for the huge sums of money he netted for his employer and for the quantity of cheeseburgers he ate. What he struck upon in structured finance was a process of pure alchemy: a way of turning myriad messy mortgage loans into standardized, regimented and easy-to-assess bonds.
>
> Ranieri knew that the magic of structuring was in the packaging. Packaged in the right way, mortgages could come to create a huge, new tradable bond market. And this is where the rating agencies came in. Structured bonds, like any other bond, needed ratings in order to be sold. ***But with a structured bond, the pools of debt could be built or modified in order to attain a particular rating. This wasn't a matter of disguising the risk, rather a way of reapportioning it and allowing investors with different risk appetites to buy the right product for them. "The rating is what gives birth to the structure in the first place," explains Sylvain Raynes, a financial modeling expert who was with Moody's in the 1990s, when Clarkson joined. In some cases, the ratings are known before the bonds have even been inked. "You start with a rating and build a deal around a rating," Clarkson told an investment magazine last year.***

(Emphasis added).

119. The actual role of the Ratings Agencies in structuring the securitizations first began to emerge in an article appearing on *Conde Naste's Portfolio.com* in September 2007. The article described a presentation that Moody's gave to a group of Russian investors in 2006 where Moody's explained the "interative" process of MBS securitization where Moody's gave "feedback" to underwriters before the bonds were issued as follows:

> Moody's revealed a significant, and ultimately more dangerous, role that the agencies play in financial markets. ***The slides detailed an "iterative process, giving feedback" to underwriters before bonds are even issued. They laid out how Moody's and its peer's help their clients put together complicated mortgage securities before they receive an official ratings stamp.*** But this give-and-take can go too far: Imagine if you wanted a B-plus on your term paper and your high-school teacher sat down with you and helped you write an essay to make that grade.
>
> ***The [investors] had just been let in on one of the dirtiest open secrets in the mortgage-ratings world, one that may have played a part in creating the housing bubble that's now popping: The ratings agencies have had a bigger role in the subprime-mortgage meltdown than most people know. So far, irate investors have focused on—and upcoming congressional hearings and investigations will probe – the agencies' overly optimistic ratings for packages***

> ***of subprime mortgages, many of which are now – blowing up. It's becoming clear that the ratings agencies were far from passive raters, particularly when it came to housing bonds. With these, the agencies were integral to the process, and that could give regulators and critics the ammunition they've been looking for to finally force the Big Three to change.*** The credit-ratings agencies "made the market. Nobody would have been able to sell these bonds without the ratings," says Ohio attorney general Marc Dann, who is investigating the agencies for possibly aiding and abetting mortgage fraud. "That relationship was never disclosed to anybody."

(Emphasis added).

120. The Ratings Agencies' unique role in influencing the structure of the securitization was more fully discussed in the July 2008 SEC Report. The SEC Report confirmed that S&P and Moody's provided "feed back" to the Sponsor of the Offerings as to the structure, which would result in the highest rating:

> The three examined rating agencies generally followed similar procedures to develop ratings for subprime RMBS and CDOs. ***The arranger of the RMBS initiates the ratings process by sending the credit rating agency a range of data on each of the subprime loans to be held by the trust (e.g., principal amount, geographic location of the property, credit history and FICO score of the borrower, ratio of the loan amount to the value of the property and type of loan: first lien, second lien, primary residence, secondary residence),*** the proposed capital structure of the trust and the proposed levels of credit enhancement to be provided to each RMBS trance issued by the trust. Typically, if the analyst concludes that the capital structure of the RMBS does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. ***The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche – as the highest rated tranche – pays the lowest coupon rate of the RMBS' tranches and, therefore, costs the arranger the least to fund.***

(Emphasis added).

K. The Offering Documents Failed to Disclose Material Financial Conflicts of Interest Between Residential Capital and the Ratings Agencies

121. The Offering Documents make no mention of the material financial conflicts of interest between Residential Capital and the Ratings Agencies, including the fact that the analysts involved in rating were also involved in the rating fees or the Ratings Agencies business interests. The SEC Report confirmed significant undisclosed conflicts of interest which incented ratings agencies to issue inflated ratings. The SEC Report found, in violation of SEC Rules, key participants in the securitization process negotiated fees the rating agency would receive in exchange for their high ratings. SEC Report, at 23-24.

122. The SEC noted, *inter alia*, that analysts are aware of the rating firm s business interests when securing the rating of the deal as follows:

- ***While each rating agency has policies and procedures restricting analysts from participating in fee discussions with issuers,*** these policies still allowed key participants in the ratings process to participate in fee discussions.

- Analysts appeared to be aware, when rating an issuer, of the rating agency s business interest in securing the rating of the deal. The Staff notes multiple communications that indicated that some analysts were aware of the firm s fee schedules, and actual (negotiated) fees. There does not appear to be any internal effort to shield analysts from emails and other communications that discuss fees and revenue from individual issuers.

- ***"Rating agencies do not appear to take steps to prevent considerations of market share and other business interests from the possibility that they could influence ratings or ratings criteria."***

SEC Report, at 24-25 (emphasis added).

123. The July 2008 SEC Report found that a number of factors unique to the rating of RMBS may have exacerbated the effect of conflicts of interest inherent in the fact that the issuer or arranger pays for the ratings. These factors include that the arranger of the deal has:

- ***"More flexibility to adjust the deal to obtain a desired credit rating as compared to arrangers of non-structured asset classes."***

- Second, there is a high concentration in the firms conducting the

underwriting function. While 22 different arrangers underwrote subprime RMBS deals, 12 arrangers accounted for 80% of the deals, in both number and dollar volume.

- With a fast-changing market, rating processes are frequently and quickly changed. The high concentration of arrangers with the influence to determine the ***choice of rating agency heightened the inherent conflicts in the "issuer pays" compensation model.*** Compensation is calculated by volume of deals and total dollar volume, as a result arrangers prefer fast and predictable ratings processes.

- Ratings Agencies may be pressured by arrangers to produce a more ***favorable outcome or reduce credit enhancement levels,*** thus reducing ***the cost of the debt for a given level of cash inflows from the asset pool.*** When the arranger also sponsors the RMBS or CDO trust, pressure can influence an agency's decision to update a model when the update would lead to a less favorable outcome.

- ***High profit margins may have provided an incentive for rating agencies to encourage the arrangers to route future business its way.*** Unsolicited ratings were not available to provide independent checks on the rating agencies' ratings, nor was information regarding the structure of the security or portfolio of assets readily available to parties unrelated to the transaction, especially before issuance.

SEC Report, at 31-33 (emphasis added).

124. As reported in *The Washington Post* on June 6, 2008, the New York State Attorney General's Office announced that it had reached an agreement with the credit-rating companies, S&P, Moody's and Fitch to:

> change the way they evaluate mortgage securities that have roiled financial markets for the past year.
>
> The deal with Moody's Investors Service, Standard & Poor's and Fitch Ratings aims to restore confidence among investors -- who saw top-rated securities lose much of their worth in a matter of months -- by revising how the agencies are paid for issuing ratings. The agreement also requires credit-rating agencies to direct investment banks to provide them with more data on the pools of mortgages that make up the bonds.
>
> The agencies have been under fire for the role they played in the subprime mortgage crisis by awarding top ratings to securities that soured. Regulators and investors have alleged that the agencies have a conflict of interest because they

> are paid by the investment banks issuing the securities, thus encouraging the credit agencies to give high ratings to win business.
>
> The agreement seeks to end this practice by having the issuers pay the credit-rating agencies at four points during the rating process, not just at the end when the rating is given.
>
> Credit-rating agencies will also be required to disclose information about all securities submitted for review, allowing investors to determine whether issuers sought, but subsequently decided not to use, ratings from a specific agency. This will allow investors to see whether investment banks shopped around for the agency that would give their securities the best rating, said Andrew M. Cuomo, New York's attorney general.

125. The NYAG further stated that:

> "The mortgage crisis currently facing this nation was caused in part by misrepresentations and misunderstanding of the true value of mortgage securities," Cuomo said in a statement. "By increasing the independence of the rating agencies, ensuring they get adequate information to make their ratings, and increasing industry-wide transparency, these reforms will address one of the central causes of that collapse."

Id., at 2.

126. In or about July 2008, both Moody's and S&P sought to make internal changes to reform the conflicts of interest problems identified by the SEC. In a *Reuters* article, S&P Draws Criticism as Sets Ratings Reform, published on July 2, 2008, it was reported that S&P had "unveiled an overhaul of its ratings process on Thursday, responding to widespread criticism of the quality and accuracy of credit ratings" and had:

> " [a]nnounced 27 steps that its aid would boost confidence in credit ratings. It came on the heels of planned reforms announced this week by its major rivals, [Moody's and Fitch].
>
> Ratings agencies have come under fire from regulators and investors who say they helped precipitate the U.S. subprime mortgage crisis and credit tightening that began in 2007.
>
> "The supposed reforms announced today by Standard & Poor's and by Moody's on Tuesday are too little, too late," New York State Attorney General Andrew Cuomo said in a statement. "Both S&P and Moody's are attempting to make

> piecemeal change that seem more like public relations window-dressing than systematic reform. He pledged to continue investigating their roles in the mortgage crisis.
>
> Critics say the agencies at first assigned high ratings to hundreds of billions of dollars of securities linked to low-quality debt, only to exacerbate market turmoil by later rapidly downgrading many of those same securities.
>
> This has contributed to write-downs piling up in the financial industry, hurting stock prices and causing losses in a variety of pension and mutual funds.

L. Subsequent Disclosures Evidence Underwriter Defendants' Write-Downs and Near Collapse Due to Their Role in Securitizing and Underwriting Mortgage-Backed Securities

127. Each of the Underwriter Defendants maintained operations through which they conducted issuance and sale to investors of massive quantities MBS in 2005 and through 2007. These securities were collateralized with sub-prime and Alt-A mortgage loans originated under conditions which failed to comply with stated mortgage loan underwriting guidelines. As delinquencies, foreclosures and repossessions began to skyrocket as early as four months after the initial Offering dates, all of the Underwriter Defendants were forced to write-down a significant portion of the value of their mortgage-related securities holdings, have been and continue to be subject to Federal and State investigations and in some cases, have been forced into bankruptcy from the resultant mortgage-related losses.

1. Defendant RFSC

128. As set forth in detail above, RFSC d/b/a GMAC RFC Securities is a registered broker-dealer engaged in the business of underwriting and selling securitized MBS to institutional investors. RFSC is an affiliate of GMAC Bank, LLC. According to the RCC, referred to at times as ResCap, website, RFSC was one of the first mortgage conduits in the U.S. to focus on buying and securitizing single-family, jumbo mortgages, loans with balances above the purchasing authority of the government-sponsored enterprises.

129. In 2005, GMAC-RFC was ranked as the fifth largest non-agency MBS issuer with $56.93 billion in volume, a 4.8% increase over its 2004 level of $42.336 billion. In 2006, GMAC-RFC was rated by *IMF* as the eight largest mortgage securities producer, with $66.24 billion in mortgage securities volume and a 3.2% market share. Of that $66.24 billion, $64.229 billion was from non-agency MBS.

130. On July 30, 2007, GMAC and RCC both announced losses as a result of their residential mortgage business. GMAC's net income fell to $293 million from $787 million a year earlier. RCC had a loss of $254 million, compared with a profit of $548 million a year earlier, because of loans to buyers with poor credit ratings.

131. To make matters worse, as reported by *Reuters* on July 31, 2008, GMAC posted a $2.48 billion second quarter loss as a result of write-downs and mounting losses at its mortgage lending unit.

132. On February 22, 2008, as reported by *Forbes Magazine*, S&P announced that it would be downgrading RCC as a result of mounting mortgage losses.

> GMAC and its Residential Capital mortgage unit were cut several notches deeper into junk status by Standard & Poor's, which said mounting mortgage losses might require new capital injections from General Motors and Cerberus Capital Management.

133. On March 29, 2008, *Forbes* announced "GMAC had reported a heavy first-quarter loss, making for 6 consecutive losses of its kind."

> GMAC's loss increased to $589.0 million from $305.0 million a year earlier. The dent included an $859.0 million loss at its subsidiary Residential Capital. It was the mortgage unit's sixth consecutive quarterly loss, though the amount lost fell from $910.0 million last year.

134. On December 24, 2008, as reported by *Reuters*, GMAC was forced to seek federal approval to become a bank holding company, giving it access to government lending programs and helping it to stave off bankruptcy.

135. As alleged herein, RFSC failed to conduct proper due diligence and perform necessary oversight functions in the underwriting, securitization and preparation of the Offering Documents for the RALI Offerings complained of herein.

2. Defendant Goldman Sachs

136. Defendant GSC, or Goldman Sachs, is an investment banking firm that through its various subsidiaries, provides a range of investment banking, securities and investment management services. As an investment bank, GSC is an underwriter of a wide range of securities and other financial instruments, including mortgage related securities. According to its 2007 Annual Report, GSC's investment banking revenue skyrocketed from $3.67 billion in 2005, to $5.629 billion in 2006 and $3.671 billion in 2007. In fact, On March 5, 2005, *Bloomberg News* labeled Goldman Sachs Group, Inc. the world's most profitable securities firm. In that year, GSC was ranked first in U.S. IPO underwriting.

137. In 2005, *IMF* ranked Goldman Sachs as the ninth largest non-agency MBS issuer and the sixth largest non-agency MBS Underwriter with $38.772 billion and $69.432 billion in volume, respectively. A year later, GSC was ranked the twelfth largest mortgage securities producer with $47.5 billion in volume. In 2007, as reported by *IMF*, GSC issued $3.78 billion in subprime securities alone and ranked seventh among the largest prime and alt-A underwriters with $28.224 billion in volume.

138. GSC made most its record profits during this time by betting against the U.S. mortgage market. On December 15, 2007, the British newspaper, *The Times*, reported that while

key rivals were losing millions on investments, GSC had raked in over $4 billion by betting on the collapse of the U.S. subprime market.

> They believed that mortgage lending criteria had become so lax that a jump in defaults on high-risk home loans was inevitable and would drag down the value of the bonds that they backed.

139. However, GSC's underwriting practices were as suspect as the rest of the industry. On January 11, 2007, C*NN* reported that the City of Cleveland had filed suit against GSC and twenty other financial institutions alleging that the banks had caused the sub-prime crisis by creating a process of offering and securitizing loans given to borrowers who could not afford them.

140. On January 30, 2008, the FBI and SEC launched a joint investigation into 14 investment banks, loan providers and developers as part of a crackdown focusing on the subprime mortgage crisis. As reported that same day by the *Daily Telegraph*, GSC confirmed its involvement in the investigation.

> Goldman Sachs and Morgan Stanley, two of Wall Street's largest investment banks, have confirmed for the first time that they are embroiled in investigations into the US sub-prime mortgage collapse.
>
> In its annual report for the year to November 30, Goldman said it had "received requests for information from various governmental agencies and self-regulatory organizations relating to sub-prime mortgages, and securitizations, collateralized debt obligations and synthetic products related to sub-prime mortgages."

141. *BusinessWire* reported on March 18, 2008 that GSC's February 2008 quarterly report disclosed a 40% drop in underwriting revenues for the investment bank. GSC attributed this to the significantly lower net revenues in debt underwriting.

142. In December 2007, the Massachusetts Attorney General launched an investigation into the securitization of subprime loans. The investigation focused on the industry practices

involved with issuance and securitization of subprime loans to Massachusetts consumers. According to a Press Release issued by the Massachusetts Attorney General's Office,

> The Office is investigating whether securitizers may have:
>
> - facilitated the origination of "unfair" loans under Massachusetts law;
> - failed to ascertain whether loans purchased from originators complied with the originators' stated underwriting guidelines;
> - failed to take sufficient steps to avoid placing problem loans in securitization pools;
> - been aware of allegedly unfair or problem loans;
> - failed to make available to potential investors certain information concerning allegedly unfair or problem loans, including information obtained during loan diligence and the pre-securitization process, as well as information concerning their practices in making repurchase claims relating to loans both in and out of securitizations.

143. On May 11, 2009, it was reported by both the *New York Times* and *Wall Street Journal* that GSC had agreed to provide $50 million in relief to Massachusetts sub-prime mortgage holders and pay an additional $10 million to the state to end the investigation into the company. According to *The New York Times* article,

> At a news conference, [the Massachusetts AG] said that the problem was industry-wide and that the Goldman settlement would provide "much needed relief for many in Massachusetts." Even so, she also criticized what she called predatory lending that was encouraged by Wall Street firms that bought individual subprime mortgages and repackaged them into securitized loans for investors.

144. On December 16, 2008, as reported by *The New York Times*, GSC was forced to take its first quarterly loss, $2.12 billion, since going public in 1999.

145. A detailed complaint for violations of the federal securities laws was filed against GSC on February 6, 2009 in United States Federal District Court for the Southern District of New York. *Public Employee's Retirement Sys. Of Miss. v. Goldman Sachs Group, Inc.*, No. 09-1110. According to the GSC Class Action Complaint (the "GSC Complaint" or the "GSC Compl."):

> Wall Street aggressively pushed into the complex, high-margin business of packaging mortgages and selling them to investors as MBS, including mortgage pass through certificates. This aggressive push created a boom for the mortgage lending industry. By buying and packaging mortgages, Wall Street enabled the lenders to extend credit even as the dangers grew in the house market. At the center of the escalation was Wall Street□s partnership with subprime lenders. This relationship was a driving force behind the once soaring home prices and the spread of exotic loans that are now defaulting and foreclosing in record numbers. (GSC Compl., □86).
>
> Each of the Individual Defendants, Issuing Defendants and Underwriter Defendants failed to possess a reasonable basis for believing, and failed to make a reasonable investigation to ensure, that statements contained in the Offering Documents were true and/or that there was no omission of material facts necessary to make the statements contained therein not misleading. (GSC Compl., □124).

146. As alleged herein, GSC failed to conduct proper due diligence and perform necessary oversight functions in the underwriting, securitization and preparation of the Offering Documents for the RALI Offerings complained of herein.

3. Defendant Deutsche Bank

147. Deutsche Bank Securities, Inc. (□DBS□), or Deutsche Bank, serves as the U.S. investment banking and securities arm of German Deutsche Bank AG. DBS was founded in 1973 as a subsidiary of Deutsche Bank AG. DBS is an SEC registered broker-dealer registered and is a member of NASD and the New York Stock Exchange.

148. In 2005, DBS was ranked twenty-second in non-agency MBS issuers by *IMF*, issuing more than $17 billion. Moreover, in that same year, DBS was ranked eighth among non-agency MBS underwriters with $7.05 billion in volume. This was a drastic increase from its 2004 underwriting volume of $29.9 billion. In 2006, DBS climbed two spots among non-agency MBS underwriters with $72.765 billion. In that same year, *IMF* ranked DBS and its $25.328 billion in volume as the twenty-first largest mortgage securities producer and the sixth largest

home equity loan security underwriter with $29.46 billion in volume. In 2007, DBS underwrote $11.94 billion and ranked eighth among the top subprime MBS underwriters.

149. On October 3, 2007, *The New York Times* reported that DBS expected to write down $3.1 billion in loans and mortgage backed assets. On July 31, 2008, as reported by *Reuters*, Deutsche Bank AG announced another $3.6 billion in write-downs primarily due to DBS over exposure to U.S. in residential MBS. The July 2008 write-down brought DBS s total write downs to more than $11 billion.

150. On June 27, 2008 a lawsuit was filed in the Supreme Court of the State of New York alleging violations of federal securities law against DBS. *Massachusetts Bricklayers and Masons Trust Fund v. Deutsche Alt-A Securities, Inc.,* No. 08-CV-3178(LDW) (Removed to the Eastern District of New York on August 5, 2008) (the Bricklayers Complaint or Bricklayers Compl.). The Bricklayers Complaint alleges that DBS, as underwriter of the mortgage-backed certificates, failed to perform adequate due diligence on the mortgage loans DBS including in its MBS offerings.

151. On March 20, 2009, another lawsuit, this time against Deutsche Bank AG, was filed in the United States District Court for the Southern District of New York alleging that the Bank, its subsidiaries and its officers violated the Securities Act of 1933 by issuing false and misleading registration statements, prospectuses and other documents. *Kaess et al v. Deutsche Bank AG et al*, No. 09-CV-2556 Initial Complaint (the Kaess Complaint or Kaess Compl.). The Kaess Complaint alleged, *inter alia*, that Deutsche Bank AG, with respect to its mortgage-related securities:

- failed to properly record provisions for credit losses, residential mortgage-backed securities, commercial real estate loans
- The Company s internal controls were inadequate to prevent it from improperly recording provisions for credit losses, residential mortgage-

backed securities, commercial real estate loans

Kaess Compl., 47 (emphasis added).

152. As alleged herein, DBS failed to conduct proper due diligence and perform necessary oversight functions in the underwriting, securitization and preparation of the Offering Documents for the RALI Offerings complained of herein.

4. Defendant Citigroup

153. Defendant Citigroup Global Markets, Inc. (CITI) is the registered broker-dealer of the global banking giant Citigroup, Inc. (Citigroup). As one of the top underwriters of MBS in the last five-years, Citigroup has been one of the major contributors to the collapse of the U.S. sub-prime mortgage market and the current economic crisis. In 2005, CITI was ranked by *IMF* as the seventh largest MBS Issuer having issued $68.305 billion in MBS. In that same year, CITI issued 17.9 billion of non-agency MBS alone. In 2006, CITI issued $20 billion of non-agency MBS, and was ranked as the sixth largest producer of MBS with a volume of $71.782 billion.

154. On January 15, 2008 Citigroup reported its greatest loss in its 196-year history as it wrote off $18.1 billion and announced $9.8 billion in sub-prime related losses for the fourth quarter. On April 18, 2008 Citigroup declared another write-down of an additional $15.2 billion.

155. On March 7, 2008 the House Oversight and Government Reform Committee subpoenaed CITIs former CEO, Charles Prince, seeking information regarding CITIs role in the MBS financial meltdown. According to a March 7, 2009 article in the *The New York Times:*

> Under Mr. Prince, Citigroup charged aggressively into the trading of mortgage-backed securities that were the hot product on Wall Street at the time. As late as the summer of 2007, as evidence mounted of a collapse in the housing market, Mr. Prince declared that the bank was still dancing.

> Not much later, the music ended, and Mr. Prince was out in November of that year as the bank posted a $5.9 billion loss.
>
> That turned out to be the first of many. On Jan. 16, 2009, Citigroup announced an $8.29 billion fourth-quarter loss, bringing its total losses for 2008 to $27.7 billion, among the largest in corporate history.

156. On November 5, 2008, a class action complaint for violations of the Federal Securities Laws was filed against CITI in Federal District Court, Southern District of New York, alleging that, *inter alia*, in certain Public Offering documents, CITI materially understated loss reserves for the Company's $213 billion portfolio of residential mortgage loans. *In re Citigroup Bond Litigation,* No. 08-CV-9522. Consolidated Amended Class Action Complaint ("CITI Complaint" or "CITI Compl."). The CITI Complaint states in part:

> Many of these mortgages carried a high risk of default because they were made to borrowers who did not document their income or who possessed especially low credit scores, or because the loans were drawn against the equity value of a property at a time when housing prices were declining precipitously. While accounting rules required Citigroup to take reserves based on losses that were "likely" to occur, the Company allowed its reserves to track "and at times to be less than "the amount of loans that had already defaulted. Further, despite the Company's rapidly expanding portfolio of particularly risky loans, coupled with the collapse of the housing market, Citigroup reduced its allowance for loan losses as a percentage of total loans in 2006 and 2007.

CITI Compl., at "8.

157. In latter part of 2008, in order to remain viable, CITI received $52 billion in cash from the Government's Troubled Asset Relief Program ("TARP") and handed over 36% of ownership to the federal government.

158. As alleged herein, CITI failed to conduct proper due diligence and perform necessary oversight functions in the underwriting, securitization and preparation of the Offering Documents for the RALI Offerings complained of herein.

5. Defendant UBS

159. Defendant UBS, a wholly-owned subsidiary of UBS AG, is an SEC registered broker-dealer which engages in investment banking activities around the world, including underwriting, financing and asset management. In 2005, as reported by IMF, UBS issued $12.75 billion of MBS and was the seventh largest underwriter of non-agency MBS ($58.536 billion). The following year, UBS broke into the top 25 of non-agency issuers, issuing $12.752 billion of MBS, and was the thirty-fifth largest MBS producers, producing $12.847 billion of MBS. In 2007, UBS issued $3.05 billion of subprime MBS.

160. In 2005, according to its Annual Audit Report filed with the SEC, UBS ended the year with $127 billion in total assets - $26 billion of which were mortgage-backed obligations. Furthermore, in 2006, according to its Annual Audit Report, UBS assets at year-end totaled $153 billion, of which over $36 billion were in the form of mortgage-backed obligations. And in 2007, the investment bank s assets totaled $156 billion with $33.5 billion in the form of mortgage-backed obligations.

161. By 2008, however, the one-time massive global investment bank now valued its mortgage-backed obligations at only $8 billion and reported total assets of only $54 billion - a 76% decline in total mortgage-backed obligations and a 65% decline in total assets as compared to 2007.

162. In December, 2007, UBS issued a profit warning, expecting write downs related to sub-prime mortgage losses - estimating the figure to reach upwards of $10 billion.

163. In January 2008, *The Wall Street Journal* reported that due to massive exposure to the U.S. housing and mortgage markets, UBS was forced to take substantial write-downs resulting from sub-prime mortgage related losses.

> UBS, the world's largest wealth manager, announced the need to write down another $4 in subprime-related losses. This new write-down brings the total for UBS subprime losses over $18.4 billion. Subprime related losses pushed the company its worst year of performance in its institutional history.

164. UBS has written off nearly $38 billion since the subprime crisis began, over $18 billion of which came in the first quarter of 2008.

165. In April 2008, a *New York Times* article reported that the "UBS, which has written off more debt from the sub-prime crisis than any other bank, conceded in a report on Monday that a blind drive for revenue led it to take more risks than it should have."

166. *The Wall Street Journal* reported on February 2, 2008 that a federal criminal investigation of UBS had been commenced, focusing on practices of misleading investors about the value of its mortgage-related holdings. This report include:

> A U.S. attorney's office investigation as to whether UBS AG criminally misled investors by posting inflated prices of its mortgage bond holdings, despite knowing that the valuations had dropped.
>
> An SEC probe into similar "mismarking" issues surrounding the bank's massive holdings of mortgage securities. The SEC case has recently been upgraded to a formal investigation.

167. As alleged herein, UBS failed to conduct proper due diligence and perform necessary oversight functions in the underwriting, securitization and preparation of the Offering Documents for the RALI Offerings complained of herein.

VI.

MATERIAL MISSTATEMENTS AND OMISSIONS IN THE OFFERING DOCUMENTS

A. Defendants' Material Misstatements and Omitted Information Regarding Stated Mortgage Loan Underwriting Guidelines

1. The Registration Statements

168. The Registration Statements set forth the underwriters expectations that each originator will have applied strict procedures to evaluate the loans it had originated.

> The depositor expects that the originator of each of the mortgage loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 12; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 18.

169. ***Omitted Information***: This statement failed to disclose that the originators made little or no attempt to evaluate the borrowers credit standing and repayment ability. As has emerged, all of the originators loosened or totally disregarded their stated underwriting guidelines in an effort to increase origination volume.

170. The Registration Statements each set forth the underwriting guidelines applied in the origination of the mortgage loan collateral underlying the Certificates.[13] In terms of the General Standards applicable to the origination process, the Registration Statements state, in part:

> In most cases, under a traditional full documentation program, each mortgagor will have been required to complete an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, the mortgagor will have

[13] Both Registration Statements and the Prospectus Supplements for those Offerings in which the underlying collateral was originated by Residential Capital's own Homecomings Financial include the identical language describing the Originator's Underwriting Guidelines and refer specifically to The Program. (219-232).

> furnished information, which may be supplied solely in the application, with respect to its assets, liabilities, income (except as described below), credit history, employment history and personal information, and furnished an authorization to apply for a credit report that summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy.
>
> ***If specified in the accompanying prospectus supplement, a mortgage pool may include mortgage loans that have been underwritten pursuant to a streamlined documentation refinancing program. Such program permits some mortgage loans to be refinanced with only limited verification or updating of the underwriting information that was obtained at the time that the original mortgage loan was originated.***
>
> ***If specified in the accompanying prospectus supplement, some mortgage loans may have been originated under "limited documentation," "stated documentation" or "no documentation" programs that require less documentation and verification than do traditional "full documentation" programs. Under a limited documentation, stated documentation or no documentation program, minimal investigation into the mortgagor's credit history and income profile is undertaken by the originator and the underwriting may be based primarily or entirely on an appraisal of the mortgaged property and the LTV ratio at origination.***

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 12-13; *cf.*, Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 18.

171. ***Omitted Information:*** In the industry, mortgage loans originated under streamlined or other "less than full-documentation" programs were referred to as "liar loans" which were much riskier than suggested by the Prospectus Supplements. Specifically, Residential Capital took the information on the borrower application as true, performing little if any review of the underlying documentation, if any such documentation was required. The computerized underwriting system employed by Residential Capital (and explained further below) did not have the ability to verify information entered into it by Residential Capital or directly by correspondent lenders, and only reviewed the information it was programmed to review. Because little if any verification was required, borrower and mortgage broker fraud "or "lies" were common in these types of applications and ignored by Residential Capital.

172. Furthermore, the Registration Statements included explanations of the appraisals of the underlying mortgaged property and the methodologies used in obtaining proper valuation of the properties:

> The adequacy of a mortgaged property as security for repayment of the related mortgage loan will typically have been determined by an appraisal or an automated valuation, as described above under Loan-to-Value Ratio. Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with pre-established guidelines established by or acceptable to the originator. The appraisal procedure guidelines will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 13; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 18-19.

173. ***Omitted Information:*** In fact, Residential Capital was not nearly as thorough in getting documentation from or about borrowers as these statements imply. As set forth herein in detail, the Originators and underwriting officers placed the emphasis not on adherence to underwriting guidelines, but rather, on getting loans done, severely hindering the quality of the mortgage loans and resulting in flawed and in many cases fraudulent loan applications which, among other things, included over-valued property appraisals, and making no attempt to confirm the standards actually used by mortgage brokers, correspondents and other third-parties from which they acquired mortgages. Higher deal fees and more profitable market conditions were motivation for Residential Capital not to spend the time and money to investigate the validity of appraisal values on the underlying mortgaged properties prior to securitization. Specifically,

only a small sampling of the mortgage loan pool, no more than 5% to 7%, was reviewed before Residential Capital securitized the loans, leaving a substantial amount of bad loans to escape inspection. Further, with Residential Capital's use of the computerized underwriting software (¶¶168-195) the loan characteristics became numbers blindly plugged into a computer with little or no attention paid to the underlying collateral, as long as the averages of the loan pool fit within a certain loosely defined parameter. These statements were materially false and misleading since appraisal standards were largely disregarded and the values of the underlying mortgage properties were, in many instances, inflated in the loan origination process.

174. The Registration Statements then set forth the process of review by the Sponsor/Seller, Defendant RFC, in determining whether or not the mortgage was originated in-line with its stated underwriting standards:

> The level of review by Residential Funding Corporation, if any, will vary depending on several factors. Residential Funding Corporation, on behalf of the depositor, typically will review a sample of the mortgage loans purchased by Residential Funding Corporation for conformity with the applicable underwriting standards and to assess the likelihood of repayment of the mortgage loan from the various sources for such repayment, including the mortgagor, the mortgaged property, and primary mortgage insurance, if any. Such underwriting reviews will generally not be conducted with respect to any individual mortgage pool related to a series of certificates.
>
> * * *
>
> In addition, Residential Funding Corporation may conduct additional procedures to assess the current value of the mortgaged properties. Those procedures may consist of drive-by appraisals, automated valuations or real estate broker's price opinions. The depositor may also consider a specific area's housing value trends. These alternative valuation methods may not be as reliable as the type of mortgagor financial information or appraisals that are typically obtained at origination. In its underwriting analysis, Residential Funding Corporation may also consider the applicable Credit Score of the related mortgagor used in connection with the origination of the mortgage loan, as determined based on a credit scoring model acceptable to the depositor.
>
> * * *

> A portion of the mortgage loans typically will be reviewed by Residential Funding Corporation or by a designated third party for compliance with applicable underwriting criteria. Any determination of underwriting eligibility using an automated system will only be based on the information entered into the system and the information that the system is programmed to review.

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 14--16; *cf.*, Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 19-22.

175. ***Omitted Information:*** The above statement was misleading and omitted information regarding the level of scrutiny with which RFC and HFN examined the collateral and conducted due diligence. As set forth above, Residential Capital, and RFC and HFN specifically, were more concerned with pushing loans through and increasing fees and profits from MBS securitizations than kicking-back loans to correspondent lenders. Moreover, the sample size of the loans that Residential Capital did review was just a small percentage of the loans it acquired from HFN and correspondent lenders, from which only extreme outliers which fell outside acceptable parameters were dropped out. Regardless, Residential Capital farmed out most of the review of the mortgage loan collateral to third-party firms, including Bohan and Clayton, which have publicly disclosed the severe deficiencies in the standards applied in underwriting and securitizing mortgage loan collateral throughout the relevant time period.

176. Furthermore, the Registration Statements set forth borrower documentation and verification requirements for more risky loans such as ARMs or Buy-Down Mortgages:

> Once all applicable employment, credit and property information is received, a determination is made as to whether the prospective borrower has sufficient monthly income available to meet the borrower's monthly obligations on the proposed mortgage loan and other expenses related to the home, including property taxes and hazard insurance, and other financial obligations and monthly living expenses. ***ARM loans, Buy-Down Mortgage Loans, graduated payment mortgage loans and any other mortgage loans will generally be underwritten on the basis of the borrower's ability to make monthly payments as determined by reference to the mortgage rates in effect at origination or the reduced initial***

> ***monthly payments, as the case may be, and on the basis of an assumption that the borrowers will likely be able to pay the higher monthly payments that may result from later increases in the mortgage rates or from later increases in the monthly payments, as the case may be, at the time of the increase even though the borrowers may not be able to make the higher payments at the time of origination.*** The mortgage rate in effect from the origination date of an ARM loan or other types of loans to the first adjustment date are likely to be lower, and may be significantly lower, than the sum of the then applicable index and Note Margin

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 15-16; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 21.

177. ***Omitted Information:*** In fact, Residential Capital instructed correspondent lenders to push certain types of mortgage loans, such as hybrid option-ARM loans, also referred to as Negative Amortization loans (*see, supra*), historically reserved for only those borrowers with outstanding credit history and sufficient income. These hybrid loan products allowed borrowers to pick-a-payment for an initial period of one to five years, with the difference between what was owed and what was paid then added on to the outstanding loan amount. In an attempt to increase the amount of loans originated, the Originators failed to disclose to borrowers that once the outstanding loan amount reached a certain level, i.e., 110% of original balance, the pick-a-payment period ended, and borrowers would be required to make monthly payments of an even larger outstanding amount at an adjusted, and significantly higher, interest rate. As such, HFN buried or completely omitted information regarding the option-ARM caps, rate adjustments when originating these types of loans for sub-prime or otherwise unqualified borrowers in order to increase the volume of origination of these types of loans.

178. Residential Capital, according to the Registration Statements, also originated or purchased loans which were underwritten pursuant to certain Expanded Criteria:

> ***Residential Funding Corporation's Expanded Criteria Program is designed for borrowers with good credit who may have difficulty obtaining traditional***

> ***financing due to loan characteristics, such as a LTV ratios higher than 80%, occupancy of the mortgaged property or type of mortgaged property, or borrower characteristics such as self-employment.***

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 16; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 21.

179. ***Omitted Information:*** As set forth herein in detail, Residential Capital failed to adhere to these criteria because loans were continuously approved for borrowers with bad credit, high LTV or no verifiable employment whatsoever. The public disclosures of late have revealed that mortgage lenders throughout the country engaged in fraudulent activities in order to obtain mortgages for borrowers and the fees obtained as payment □HFN being no exception.

180. The Registration Statements also explained that Residential Capital, in reviewing the loans originated by correspondent lenders, employs the use of an automated underwriting system which reviews □most□ of the information contained in borrower applications for determinations of whether or not to purchase individual mortgages loans for securitization:

> In recent years, the use of automated underwriting systems has become commonplace in the residential mortgage market. Residential Funding Corporation evaluates many of the mortgage loans that it purchases through the use of one or more automated underwriting systems. In general, these systems are programmed to review most of the information set forth in Residential Funding Corporation□s Seller Guide as the underwriting criteria necessary to satisfy each underwriting program. In the case of the Expanded Criteria Program, the system may make adjustments for some compensating factors, which could result in a mortgage loan being approved even if all of the specified underwriting criteria in the Seller Guide for that underwriting program are not satisfied.
>
> ***In some cases, Residential Funding Corporation enters information into the automated underwriting system using documentation delivered to Residential Funding Corporation by the mortgage collateral seller.*** In this situation, each automated review will either generate an approval or a recommendation for further review. Most approved mortgage loans will not receive any additional review of their credit components. In the case of a recommendation for further review, underwriting personnel may perform a manual review of the mortgage loan documentation before Residential Funding Corporation will accept or reject the mortgage loan. For most mortgage collateral sellers, Residential Funding

> Corporation will conduct a limited review of the mortgage loan documentation. If that limited review does not detect any material deviations from the applicable underwriting criteria, Residential Funding Corporation will approve that mortgage loan for purchase.
>
> ***In other cases, the mortgage collateral seller enters the information directly into the automated underwriting system. Mortgage loans that have been approved by the automated underwriting system, and submitted to Residential Funding Corporation for purchase may be reviewed to verify that the information entered by the mortgage collateral seller accurately reflects information contained in the underwriting documentation.*** For most mortgage collateral sellers, Residential Funding Corporation will verify the accuracy of the information with respect to a sample of that mortgage collateral seller's mortgage loans.
>
> Because an automated underwriting system will only consider the information that it is programmed to review, which may be more limited than the information that could be considered in the course of a manual review, the results of an automated underwriting review may not be consistent with the results of a manual review.

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 17; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 22-23.

181. ***Omitted Information:*** The above statements were misleading and omitted information relating to Residential Capital's lack of incentive to perform any review or verification on the information in the mortgage application. Residential Capital's need for non-conforming mortgage loans in a competitive market caused it to forego any substantial review the validity of mortgage loan applications and borrower information.

2. <u>The Prospectus Supplements</u>

182. The underlying loan collateral for all of the Issuing Trusts (¶¶ 32-33) was principally originated by HFN. As set forth above, HFN is a Delaware corporation and wholly-owned subsidiary of RFC, which in turn, in a wholly-owned subsidiary of Defendant RCC. As set forth in the Prospectus Supplement for the RALI Series 2006-QO7 Certificates, "all of the

HFN collateral was originated in accordance with RFC's underwriting standards." RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at S-58.

183. Moreover, the underwriting guidelines, or "The Program" according to the Prospectus Supplements, was "administered by Residential Funding on behalf of" RALI, the Depositor. *Id*., at S-56.

184. The Prospectus Supplements described the RFC underwriting guidelines, supposedly adhered to by HFN in originating the underlying mortgage loan collateral. For example, the Prospectus Supplement for the RALI 2006-QO7 Certificate Offering stated:

> *Program Underwriting Standards*. In accordance with the Seller Guide, the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information, which may have been supplied solely in the application, regarding its assets, liabilities, income (except as described below), credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy.

Id., at S-56.

185. ***Omitted Information***: These statements failed to disclose that the issues of borrower creditworthiness were largely disregarded. Beginning in 2006, RCC, specifically RFC and HFN began abandoning prudent lending standards in order to "push more loans through the system." The company's approach was to originate enough loans so that they could outrun their own delinquency rates and raise capital after GMAC's credit rating was revised to the lowest possible grade in late 2005, hindering GMAC and RCC's access to credit markets and long-term capital. The lax controls led to the substantial increase of low-quality mortgage loans as more stress was placed on quantity at the expense of loan quality.

186. The RALI 2006-QO7 Prospectus Supplement also stated:

> Based on the data provided in the application and certain verifications, if required, a determination is made by the original lender that the mortgagor's monthly income, if required to be stated, will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations.

Id., at S-57.

187. ***Omitted Information:*** In fact, HFN did not verify the income of borrowers as represented, and was extremely liberal with terms even to borrowers with low credit scores. Over time, HFN became heavily focused on pushing Option-ARM and hybrid products to borrowers who could otherwise not qualify for a mortgage loan. Moreover, HFN's correspondent loans routinely included hidden fees and charges to borrowers who were never informed of them in the application process.

188. The RALI 2006-QO7 Prospectus Supplement also stated:

> Certain of the mortgage loans have been originated under "reduced documentation" or "no stated income" programs, which require less documentation and verification than do traditional "full documentation" programs. Generally, under a "reduced documentation" program, no verification of a mortgagor's stated income is undertaken by the originator. Under a "no stated income" program, certain borrowers with acceptable payment histories will not be required to provide any information regarding income and no other investigation regarding the borrower's income will be undertaken. Under a "no income/no asset" program, no verification of a mortgagor's income or assets is undertaken by the originator. The underwriting for those mortgage loans may be based primarily or entirely on an appraisal of the mortgaged property and the LTV ratio at origination.

Id.

189. ***Omitted Information***: These deficiencies in income documentation made accurate and reliable appraisals essential since so much emphasis was placed on the value of the mortgaged property. However, appraisers were in fact pressured to appraise to certain levels. Appraisers knew if they appraised under certain levels they would not be hired again. Thus, the

appraisals were inherently unreliable and there was little to support the value and adequacy of the mortgaged property.

190. The RALI 2006-QO7 Prospectus Supplement also stated:

> The adequacy of the mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in the Seller Guide. Appraisers may be staff appraisers employed by the originator. The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

Id.

191. ***Omitted Information:*** Appraisals of the underlying properties were not nearly as meticulous as suggested by the Prospectus Supplement. They were much more perfunctory, and appraisers were motivated to reach a certain conclusion □ much more so than to use their professional judgment. Given the credit problems of many of these borrowers, the lack of valid appraisals was a significant adverse fact and indication of future problems. In fact, HFN□s home loan appraisals were not obtained from independent appraisers or appraisal services, but rather from appraisers who understood that their appraisals must conform to predetermined levels at which a loan could be approved, or risk their association and employment with HFN or brokers working with HFN and its correspondent lenders. The result was that purportedly independent appraisals were not prepared in conformance with these stated appraisal standards. HFN and RFC failed to confirm that appraisers were following the guidelines described, and this, combined with the implied or express pressures placed on appraisers to appraise to the desired

value, created enormous upward pressure on appraisal values, distorting loan-to-value ratios and making the mortgage loans in the pool much riskier than suggested by the Offering Documents. This was particularly true in 2006 and 2007 when real estate values in many of the areas where the mortgage pools were located had stopped increasing at the rapid pace of 2004 to 2005. Thus, the aggressive lending practices introduced during those years where, for example, borrowers with mortgages in excess of their ability to pay were assured that by the promise of refinancing to a lower rate, were unavailable.

192. The RALI 2006-QO7 Prospectus Supplement also stated:

> Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the Seller Guide. With regard to a material portion of these mortgage loans, this review of underwriting information by Residential Funding was performed using an automated underwriting system. Any determination described above using an automated underwriting system will only be based on the information entered into the system and the information the system is programmed to review.

Id.

193. ***Omitted Information***: As set forth herein, the above statements were misleading and omitted information relating to Residential Capital's lack of incentive to perform any review or verification on the information in the mortgage application. Residential Capital's need for non-conforming mortgage loans in a competitive market caused it to forego any substantial review the validity of mortgage loan applications and borrower information.

194. The RALI 2006-QO7 Prospectus Supplement also stated:

> The applicable underwriting standards include a set of specific criteria by which the underwriting evaluation is made. However, the application of the underwriting standards does not imply that each specific criterion was satisfied individually. Rather, a mortgage loan will be considered to be originated in accordance with the underwriting standards described above if, based on an overall qualitative

evaluation, the loan is in substantial compliance with the underwriting standards.

Id., at S-58.

195. ***Omitted Information***: Exceptions to guidelines were granted in many circumstances not just where compensating factors existed or substantial compliance was satisfied. The exceptions were granted when the borrower could not qualify for a mortgage loan. A substantial portion of the loans originated pursuant to the HFN/RFC Program underwriting guidelines were approved and submitted by mortgage brokers and correspondent lenders throughout the country. Thereafter, as set forth above, the loans would be evaluated using a computerized system which could not exercise any degree of realistic control over the truthfulness of the borrower information contained in mortgage applications.

B. The Offering Documents Omitted Information Regarding Delinquencies as of the Cut-Off Dates

196. The Registration Statements contained general descriptions of the information that would be contained in each of the Prospectus Supplements. With regards to delinquencies of the underlying collateral as of the cut-off date, the 2006 Registration Statement stated as follows:

> As of the cut-off date, none of the mortgage loans will be 30 or more days delinquent in payment of principal and interest.

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at S-37; *cf.*, Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at S-39.

197. Each of the Prospectus Supplements contained the same or similar language as set forth above, indicating that as of the cut-off date (defined differently in each Prospectus Supplement) none of the mortgage loans were 30 days or more delinquent as of that date. In

addition, the Prospectus Supplements contained additional information regarding delinquencies of the underlying collateral as follows:

> ***As of the cut-off date, none of the mortgage loans are currently 30 to 59 days delinquent in payment of principal and interest.*** As of the cut-off date, one of the mortgage loans representing 0.1% of the mortgage loans has been 30 to 59 days delinquent in payment of principal and interest in the past 24 months. As of the cut-off date, none of the mortgage loans are currently 60 to 89 days delinquent in the payment of principal and interest. As of the cut-off date, none of the mortgage loans have been 60 to 89 days delinquent in the payment of principal and interest in the past 24 months. As of the cut-off date, none of the mortgage loans are currently 90 or more days delinquent in the payment of principal and interest. As of the cut-off date, none of the mortgage loans have been 90 or more days delinquent in the payment of principal and interest in the past 24 months.

RALI Series 2006-QA4 Prospectus Supplement, Form 424B5, filed May 26, 2006, at S-43 (emphasis added); *see also* RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at S-54 (emphasis added).

198. ***Omitted Information:*** These statements masked the true impaired nature of the collateral since the delinquency rates for these loan pools followed the same pattern of skyrocketing delinquencies immediately following the Offerings. Specifically, within four months after the respective cut-off dates, borrower delinquency rates increased by an average of 47,000%, from 0.00% to almost 4.78% of the outstanding collateral balance, and within six months that figure further rose to over 6.39%, another 28% increase within just two months and a combined increase of over 63,000% from the cut-off dates. As of the date of the filing of the within Complaint, borrower delinquency and defaults have increased to over 36.9% of the outstanding collateral balance.

C. The Offering Documents Included Material Misstatements and Omitted Information Regarding Credit Support

199. Credit enhancement refers to excess mortgage loan collateral which provides support to the mortgage collateral underlying the Offered Certificates and generates additional

interest to protect security holders in the event of borrower default or other event which may impair the collateral underlying the certificates.

200. The Registration Statements stated, in regards to credit enhancement, that:

> Each series may include multiple classes of certificates with differing payment terms and priorities. ***Credit enhancement will be provided for all offered certificates.***

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 2; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at A-7.

201. Further, with respect to credit enhancement, the Registration Statements provided explanations of the losses that credit enhancement is in place should such losses occur:

DESCRIPTION OF CREDIT ENHANCEMENT

General

Credit support for each series of certificates may be comprised of one or more of the following components. Each component will have a dollar limit and will provide coverage with respect to Realized Losses that are:

- Defaulted Mortgage Losses;
- Special Hazard Losses;
- Bankruptcy Losses; and
- Fraud Losses.

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 52; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 62.

202. The Registration Statements also set forth the nature of the credit enhancements and the degree of loss that it would cover:

> Most forms of credit support will not provide protection against all risks of loss and will not guarantee repayment of the entire outstanding principal balance of the certificates and interest. If losses occur that exceed the amount covered by credit support or are of a type that is not covered by the credit support, certificate-holders will bear their allocable share of deficiencies. In particular, Defaulted Mortgage Losses, Special Hazard Losses, Bankruptcy Losses and Fraud Losses in excess of the amount of coverage provided therefor and Extraordinary Losses will

> not be covered. To the extent that the credit enhancement for any series of certificates is exhausted, the certificate-holders will bear all further risks of loss not otherwise insured against.

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 51; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 62.

203. The Registration Statements also set forth the obligations of the parties to maintain the stated credit enhancements.

> **Maintenance of Credit Enhancement**
> If credit enhancement has been obtained for a series of certificates, the master servicer, the servicer or the Certificate Administrator will be obligated to exercise its best reasonable efforts to keep or cause to be kept the credit enhancement in full force and effect throughout the term of the applicable pooling and servicing agreement, unless coverage thereunder has been exhausted through payment of claims or otherwise, or substitution therefor is made as described below under "-Reduction or Substitution of Credit Enhancement."

Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed March 3, 2006, at 59; *cf.,* Residential Accredit Loans, Inc., Form S-3/A Registration Statement, filed April 3, 2007, at 72.

204. Furthermore, the Prospectus Supplements each set forth the types of credit enhancement applicable to each specific offering:

> **Credit Enhancement**
>
> Credit enhancement for the offered certificates consists of:
> - excess cash flow;
> - overcollateralization;
> - a swap agreement; and
> - subordination provided to the Class A Certificates by the Class M Certificates, and subordination provided to the Class M Certificates by each class of Class M Certificates with a lower payment priority.

RALI Series 2006-QA4 Prospectus Supplement, Form 424B5, filed May 26, 2006, at cover; *see also* RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at cover.

205. In addition, the Prospectus Supplements contained explanations of the credit enhancement specific to each of the Offerings. For example, the Prospectus Supplement for the RALI Series 2006-QA4 Offering provided that credit enhancement would include:

> **Credit Enhancement**
>
> The credit enhancement for the benefit of the offered certificates consists of:
> Excess Cash Flow. Because more interest with respect to the mortgage loans is payable by the mortgagors than is expected to be necessary to pay the interest on the offered certificates each month and related expenses, there may be excess cash flow. Some of this excess cash flow may be used to protect the offered certificates against some realized losses by making an additional payment of principal up to the amount of the realized losses.
>
> *Overcollateralization*. On the closing date, the trust will issue an aggregate principal amount of offered certificates which is approximately equal to 99.35% of the aggregate principal balance of the mortgage loans as of the cut-off date. On each distribution date, to the extent not used to cover realized losses, excess cash flow, if necessary, will be used to pay principal to the offered certificates, reducing the aggregate certificate principal balance of those certificates below the aggregate principal balance of the mortgage loans to the extent necessary to maintain the required overcollateralization amount. The excess amount of the balance of the mortgage loans represents overcollateralization, which may absorb some losses on the mortgage loans to the extent not covered by excess cash flow.
>
> *Subordination*. So long as the Class M Certificates remain outstanding, losses on the mortgage loans which are not covered by excess cash flow or overcollateralization will be allocated to the Class M Certificates that remain outstanding with the lowest payment priority, and the other classes of certificates will not bear any portion of such losses. If none of the Class M Certificates are outstanding, all such losses will be allocated to the related Class A Certificates as described in this prospectus supplement.
>
> *Swap Agreement.* The holders of the Class A Certificates and Class M Certificates will benefit from a swap agreement. On each distribution date, the trust will be obligated to make fixed payments, and HSBC Bank USA, N.A., the swap counterparty, will be obligated to make floating payments, in each case as set forth in the swap agreement and as described in this prospectus supplement. To the extent that the fixed payment exceeds the floating payment on any distribution date, amounts otherwise available to certificate-holders will be applied to make a net swap payment to the swap counterparty. To the extent that the floating payment exceeds the fixed payment on any distribution date, the swap counterparty will make a net swap payment to the trust which may be used to

> cover certain interest shortfalls, basis risk shortfalls and losses on the mortgage loans as described in this prospectus supplement.
>
> Upon early termination of the swap agreement, the trust or the swap counterparty may be liable to make a swap termination payment to the other party (regardless of which party has caused the termination). The swap termination payment will be computed in accordance with the procedures set forth in the swap agreement. In the event that the trust is required to make a swap termination payment to the swap counterparty, that amount will be paid by the trust on the related distribution date and on any subsequent distribution dates until paid in full, prior to any distribution to the Class A Certificates and Class M Certificates, except for certain swap termination payments resulting from an event of default by or certain termination events with respect to the swap counterparty as described in this prospectus supplement, for which payments by the trust to the swap counterparty will be subordinated to all distributions to the Class A Certificates and Class M Certificates. The swap agreement will terminate after the distribution date in May 2011.
>
> Except as described in the second preceding sentence, amounts payable by the trust to the swap counterparty will be deducted from available funds before distribution to certificate-holders.

RALI Series 2006-QA4 Prospectus Supplement, Form 424B5, filed May 26, 2006, at S-13; *see also* RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at S-18.

206. ***Omitted Information:*** The above statements failed to disclose that the Ratings Agencies largely determined the amount and kind of credit support or credit enhancement to be provided for each class of Certificates, before and after the Ratings Agencies were formally "engaged" by Residential Capital, in order for the Certificates to be assigned predetermined desired ratings of the Underwriter. The above statements also failed to disclose that the amounts and kind of credit support the Ratings Agencies determined was appropriate for the Certificates, as specifically set forth in each Prospectus Supplement, were faulty, erroneous and inaccurate since the Ratings Agency models had not been updated and failed to accurately or adequately reflect the performance of the Certificate mortgage loans. Regardless of that fact, Residential Capital and the Underwriters continued to consummate Offerings of MBS throughout 2006 and

2007. Furthermore, as the statements purport to convey to the investor that credit support levels are determined by the exposure to risk of default or delinquency by the underlying borrowers, this was far from the truth. In fact, credit enhancement levels were set at the absolute minimum level that was required not to protect investors, but rather to achieve and be awarded the highest possible credit rating in order to maximize fees and profit from selling the Certificates at inflated prices.

D. The Prospectus Supplements Misstated the True Loan-to-Value Ratios Associated with the Underlying Mortgages

207. Each of the Prospectus Supplements contained detailed information about the LTV ratios of the loans underlying the trusts. In a series of charts, investors were provided with LTV ratio data, including information about the number of loans containing LTV ratios within a given range. The following chart, taken from the Prospectus Supplement for RALI Series 2006-QA4, stated:

Original Loan-to-Value Ratios of the Mortgage Loans

Original Loan-to-Value Ratio (%)	Number of Mortgage Loans	Principal Balance	Percentage of Mortgage Loans	Average Principal Balance	Weighted Average Credit Score
00.01 - 50.00	31	$6,356,761	2.07%	$205,057	719
50.01 - 55.00	13	3,988,603	1.30	306,816	705
55.01 - 60.00	27	11,836,249	3.86	438,380	718
60.01 - 65.00	50	20,397,677	6.66	407,954	708
65.01 - 70.00	63	22,896,056	7.47	363,429	718
70.01 - 75.00	106	31,808,740	10.38	300,082	713
75.01 - 80.00	685	201,960,535	65.91	294,833	711
80.01 - 85.00	3	818,341	0.27	272,780	703
85.01 - 90.00	22	3,961,049	1.29	180,048	718
90.01 – 95.00	10	2,080,593	0.68	208,059	722
95.01 – 100.00	2	334,900	0.11	167,450	745
Total, Average or Weighted Average	1,012	$306,439,505	100.00%	$302,806	712

The weighted average Loan-to-Value ratio at origination of the mortgage loans will be approximately 75.68%.

RALI Series 2006-QA4 Prospectus Supplement, Form 424B5, filed May 26, 2006, at I-3; *see also* RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at I-3.

208. ***Omitted Information*:** As explained above, the appraisal value of the properties underlying the mortgage loans and borrower incomes and credit were grossly inaccurate and significantly inflated. Furthermore, due to hidden incentives, the stated sales price of properties underlying the mortgage loans did not accurately reflect the true value of the properties. These inflated appraisals and misleading sales price figures were used to form the LTV ratios set forth in the prospectus supplements. Incorporating an inflated appraisal into the LTV calculation will result in a lower LTV ratio for a given loan. For instance, as described above, if a borrower seeks to borrow $90,000 to purchase a house worth $100,000, the LTV ratio is $90,000/$100,000 or 90%. If, however, the appraised value of the house is artificially increased to $120,000, the LTV ratio drops to just 75% ($90,000/$120,000).

209. Due to the inflated appraisals, the LTV ratios listed in the prospectus supplements were artificially low, making it appear that the loans underlying the trusts were less risky than they really were. Due to the fact that such a large percentage of each Offering contained mortgage loan collateral which had the option or negative amortization feature, understated and misleading LTV ratios had a direct correlation to the skyrocketing delinquency and default rates within the first six months of the Offerings. Incorporating the example above, if a borrower's $90,000 loan application on a home appraised by an originator at $100,000, the LTV ratio is 90%. In a negative amortization scenario, if the true appraisal value of the underlying property for the borrower's mortgage is actually $80,000, the LTV ratio increases to 112.5%, triggering the automatic adjustment in rate and loss of the negative amortization feature. Since many of the negative amortization loans underlying the Certificates were made to subprime and Alt-A borrowers, the resulting payments would be considerably more than what they could have been able to afford.

210. Furthermore, also due to the artificially inflated appraisals (as detailed above) mortgages were extended to borrowers whose true LTV ratio did not support the amount of the mortgage loan. Moreover, contrary to the statement that these many of the mortgages were in fact "limited documentation," or not "full documentation" loans, they were not extended to borrowers who have a credit history that demonstrates an established ability to repay indebtedness in a timely fashion. In fact, the originators implemented policies designed to extend mortgages to borrowers regardless of whether they were able to meet their obligations under the mortgage such as:

- Coaching borrowers to misstate their income on loan applications to qualify for mortgage loans under the originators' underwriting standards, including directing applicants to no-documentation loan programs when their income was insufficient to qualify for full documentation loan programs.

- Steering borrowers to more expensive loans that exceeded their borrowing capacity.

- Encouraging borrowers to borrow more than they could afford by suggesting NINA and SISA loans when they could not qualify for full documentation loans based on their actual incomes.

- Approving borrowers based on "teaser rates" for loans despite knowing that the borrower would not be able to afford the "fully indexed rate" when the adjustable rate adjusted.

- Allowing non-qualifying borrowers to be approved for loans under exceptions to the originators' underwriting standards based on so-called "compensating factors" without requiring documentation for such compensating factors.

- Incentivizing their employees to approve borrowers under exceptions to the originators' underwriting policies.

- Failing to determine whether stated income or stated assets were reasonable.

E. The Prospectus Supplements Misstated the the Certificates' True Investment Rating

211. The Registration Statements and Prospectus Supplements contained statements regarding the ratings of the Certificates that were supported by the mortgage loans. The Registration Statements referred the investor to the Prospectus Supplements for specific information as to the ratings for each of the Certificates.

212. Each of the Prospectus Supplements provided: (1) both S&P's and/or Moody's actual rating for each class of Offered Certificate within each Offering; or (2) stated that the Certificates in each class would not be offered unless they received ratings from both Moody's and/or S&P that were at least as high as those set forth in the Prospectus Supplement. All of the ratings set forth in all of the Prospectus Supplements were within the "Investment Grade" range of Moody's (Aaa through Baa3) and S&P (AAA through BBB) and the majority of Offered Certificates, over 95% of the total Offering values for each Moody's and S&P, received the highest rating of AAA.

213. The following chart, taken from the Prospectus Supplement for RALI Series 2006-QA4 is an example of this representation:

Offered Certificates

Class	Pass-Through Rate	Initial Certificate Principal Balance	Initial Rating (S&P/ Moody's)[1]	Designations
Class A Certificates:				
A	Adjustable Rate	$286,520,000	AAA / Aaa	Senior /Adjustable Rate
Class M Certificates:				
M-1	Adjustable Rate	$5,056,000	AA+ / Aa1	Mezzanine/Adjustable Rate
M-2	Adjustable Rate	$2,604,000	AA+ / Aa2	Mezzanine/Adjustable Rate
M-3	Adjustable Rate	$1,991,000	AA+ / Aa3	Mezzanine/Adjustable Rate
M-4	Adjustable Rate	$1,072,000	AA / A1	Mezzanine/Adjustable Rate
M-5	Adjustable Rate	$1,072,000	AA / A2	Mezzanine/Adjustable Rate
M-6	Adjustable Rate	$1,072,000	AA / A3	Mezzanine/Adjustable Rate
M-7	Adjustable Rate	$1,072,000	AA- / Baa1	Mezzanine/Adjustable Rate
M-8	Adjustable Rate	$1,072,000	A / Baa2	Mezzanine/Adjustable Rate
M-9	Adjustable Rate	$1,378,000	A- / Baa3	Mezzanine/Adjustable Rate
M-10	Adjustable Rate	$1,533,000	BBB / Ba2	Mezzanine/Adjustable Rate
Total Class M Certificates:		$17,922,000		
Total Offered Certificates:		$304,442,000		

Non-Offered Certificates[2]

SB	N/A	$1,997,504	N/A	Subordinate
R-I	N/A	N/A	N/A	Residual
R-II	N/A	N/A	N/A	Residual
R-III	N/A	N/A	N/A	Residual
Total non-offered certificates:		$1,997,504		
Total offered and non-offered certificates:		$306,439,504		

(1) See "Ratings" in this prospectus supplement.
(2) The information presented for non-offered certificates is provided solely to assist your understanding of the offered certificates.

RALI Series 2006-QA4 Prospectus Supplement, Form 424B5, filed May 26, 2006, at S-6; *see also* RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at S-6.

214. ***Omitted Information*:** The ratings stated in the Prospectus Supplements were based on outdated models, lowered ratings criteria, and inaccurate loan information as set forth

in great detail above. These flaws produced artificially high credit ratings for the Certificates, making them appear less risky than they really were.

215. Furthermore, the Prospectus Supplements contained the following language or slight variation thereof pertaining to the Certificates' ratings:

> It is a condition to the issuance of the offered certificates that they be rated as indicated on page S-6 of this prospectus supplement.

RALI Series 2006-QA4 Prospectus Supplement, Form 424B5, filed May 26, 2006, at S-109; *see also* RALI Series 2006-QO7 Prospectus Supplement, Form 424B5, filed September 29, 2006, at S-126.

216. Furthermore, in each Prospectus Supplement appears the following language or variation thereof:

> Standard & Poor's ratings on mortgage pass-through certificates address the likelihood of the receipt by certificate-holders of payments required under the pooling and servicing agreement. Standard & Poor's ratings take into consideration the credit quality of the mortgage pool, structural and legal aspects associated with the certificates, and the extent to which the payment stream in the mortgage pool is adequate to make payments required under the certificates. Standard & Poor's rating on the certificates does not, however, constitute a statement regarding frequency of prepayments on the mortgages.
>
> * * *
>
> The rating assigned by Moody's to the offered certificates address the likelihood of the receipt by the offered certificate-holders of all distributions to which they are entitled under the pooling and servicing agreement. Moody's ratings reflect its analysis of the riskiness of the mortgage loans and the structure of the transaction as described in the pooling and servicing agreement.

Id.

217. ***Omitted Information:*** The ratings stated in the Prospectus Supplements were based on outdated models, lowered ratings criteria, and inaccurate loan information as set forth in great detail above. These flaws produced artificially high credit ratings for the Certificates, making them appear less risky than they really were. As such, the ratings set forth in the

Prospectus Supplements issued in connection with the Offerings did not accurately address the likelihood of receipt of any distributions, let alone all distributions, as is apparent from the staggering percentage initially AAA rated Certificates which have since been downgraded to speculative or junk grades.

VII.

CLASS ACTION ALLEGATIONS

218. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure behalf of a class consisting of all persons or entities who acquired the Certificates issued by the Issuing Trusts, as set forth in 32-33 above, pursuant and/or traceable to the false and misleading Registration Statements and who were damaged thereby (the Class).

219. Excluded from the Class are Defendants, the officers and directors of the Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

220. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by RCC, RFC, RALI or their transfer agents and maybe notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions. Billions of dollars worth of Certificates were issued pursuant to the Registration Statements.

221. Plaintiffs claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants wrongful conduct in violation of federal law that is complained of herein.

222. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

223. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are: whether Defendants violated the Securities Act; whether the Registration Statements issued by Defendants to the investing public negligently omitted and/or misrepresented material facts about the underlying mortgage loans comprising the pools; and to what extent the members of the Class have sustained damages and the proper measure of damages.

224. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

VIII.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

For Violation of § 11 of the Securities Act
(Against RALI, the Individual Defendants and the Underwriter Defendants)

225. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein, to the extent that such allegations do not sound in fraud.

226. This Cause of Action is brought pursuant to § 11 of the Securities Act, on behalf of Plaintiffs and the Class, against the Issuers of the Registration Statements, the Individual Defendants and the Underwriter of the Offerings. This Cause of Action is predicated upon Defendants strict liability for making material misleading statements and omitting material information from and in the Offering Documents.

227. The Offering Documents were materially misleading, contained untrue statements of material fact, omitted to state other facts necessary to make the statements not misleading, and omitted to state material facts required to be stated therein.

228. Defendant RALI, the Individual Defendants and the Underwriter Defendants are strictly liable to Plaintiffs and the Class for making the misstatements and omissions in issuing the Certificates.

229. The Individual Defendants each signed one or both of the Registration Statements.

230. The Underwriter Defendants acted as underwriter in the sale of Certificates issued by the Issuing Trusts, directly and indirectly participated in the distribution of the Certificates, directly and indirectly solicited offers to purchase the Certificates, and directly and indirectly participated in drafting and disseminating the Offering Documents for the Certificates.

231. Defendant RALI, the Individual Defendants and the Underwriter Defendants owed to the Plaintiffs and other Class members the duty to make a reasonable and diligent investigation of the statements contained in the Offering Documents at the time they became effective to ensure that such statements were true and correct and that there was no omission of material facts required to be stated in order to make the statements contained therein not misleading.

232. Defendant RALI, the Individual Defendants and the Underwriter Defendants knew, or in the exercise of reasonable care should have known, of the material misstatements and omissions contained in or omitted from the Offering Documents as set forth herein.

233. Defendant RALI, the Individual Defendants and the Underwriter Defendants failed to possess a reasonable basis for believing, and failed to make a reasonable investigation to ensure, that statements contained in the Offering Documents were true and/or that there was no omission of material facts necessary to make the statements contained therein not misleading.

234. Defendant RALI, the Individual Defendants and the Underwriter Defendants issued and disseminated, caused to be issued or disseminated, and participated in the issuance and dissemination of material statements to the investing public which were contained in the Offering Documents, which made false and misleading statements and/or misrepresented or failed to disclose material facts, as set forth above.

235. By reason of the conduct alleged herein, Defendant RALI, the Individual Defendants and the Underwriter Defendants each violated § 11 of the Securities Act, and are liable to Plaintiffs and the Class.

236. Plaintiffs and other Class members acquired the Certificates pursuant and/or traceable to the Registration Statements. At the time Plaintiffs and Class members obtained their

Certificates they did so without knowledge of the facts concerning the misstatements and omissions alleged herein.

237. Plaintiffs and other Class members have sustained damages as a result of the wrongful conduct alleged and the violations of Defendant RALI, the Individual Defendants and the Underwriter Defendants.

238. By virtue of the foregoing, Plaintiffs and other Class members are entitled to damages, jointly and severally from Defendant RALI, the Individual Defendants and the Underwriter Defendants, as set forth in § 11 of the Securities Act.

239. This action is brought within one year after the discovery of the untrue statements and omissions contained in the Offering Documents and within three years of the Certificates being offered to the public. Despite the exercise of reasonable diligence, Plaintiffs could not have reasonably discovered the untrue statements and omissions in the Offering Documents at an earlier time.

SECOND CAUSE OF ACTION

For Violation of § 12(a)(2) of the Securities Act (Against the Underwriter Defendants)

240. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein, to the extent that such allegations do not sound in fraud.

241. This Cause of Action is brought pursuant to § 12(a)(2) of the Securities Act, on behalf of Plaintiffs and the Class, against the Underwriters of the Offerings.

242. The Underwriter Defendants promoted and sold the Certificates pursuant to the defective Prospectus Supplements for their own financial gain. The Prospectus Supplements contained untrue statements of material fact, omitted to state facts necessary to make statements not misleading, and concealed and failed to disclose material facts.

243. The Underwriter Defendants owed to Plaintiffs and the other Class members who purchased Certificates pursuant to the Offering Documents, a duty to make a reasonable and diligent investigation of the statements contained in the Offering Documents, to ensure that such statements were true and that there was no omission of material fact necessary to make the statements contained therein not misleading.

244. The Underwriter Defendants knew of, or in the exercise of reasonable care should have known of, the misstatements and omissions contained in the Offering Documents, as set forth herein.

245. Plaintiffs and other Class members purchased or otherwise acquired Certificates pursuant to and/or traceable to the defective Offering Documents. Plaintiffs did not know, and in the exercise of reasonable diligence could not have known, of the misrepresentations and omissions contained in the Offering Documents.

246. By reason of the conduct alleged herein, The Underwriter Defendants violated § 12(a)(2) of the Securities Act, and are liable to Plaintiffs and other Class members who purchased Certificates pursuant to and/or traceable to the Offering Documents.

247. Plaintiffs and other Class members were damaged by The Underwriter Defendants wrongful conduct. Those Class members who have retained their Certificates have the right to rescind and recover the consideration paid for their Certificates, as set forth in § 12(a)(2) of the Securities Act. Those Class members who have sold their Certificates are entitled to rescissory damages, as set forth in § 12(a)(2) of the Securities Act.

248. This action is brought within one year after the discovery of the untrue statements and omissions contained in the Offering Documents, within one year after reasonable discovery of the untrue statements and material omissions and within three years of when the Certificates

were sold to the public. Despite the exercise of reasonable diligence, Plaintiffs could not have reasonably discovered the untrue statements and omissions in the Offering Documents at an earlier time.

THIRD CAUSE OF ACTION

Violations of § 15 of the Securities Act
(Against the Individual Defendants and the Underwriter Defendants)

249. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein, to the extent that such allegations do not sound in fraud.

250. This Cause of Action is brought pursuant to § 15 of the Securities Act against the Individual Defendants and the Underwriter Defendants.

251. Each of the Individual Defendants, by virtue of his or her control, ownership, offices, directorship, and specific acts set forth above was, at the time of the wrongs alleged herein, a controlling person of RCC, RFC, RALI and the Issuing Trusts within the meaning of Section 15 of the Securities Act. Each of the Individual Defendants had the power to influence, and exercised that power and influence, to cause RCC, RFC, RALI and the Issuing Trusts to engage in violations of the Securities Act, as described above.

252. The Underwriter Defendants, by virtue of their control, influence, participation and solicitation of offers to purchase the Certificates and specific acts set forth above were, at the time of the wrongs alleged herein, controlling persons of RCC, RFC, RALI and the Issuing Trusts within the meaning of Section 15 of the Securities Act. The Underwriter Defendants had the power to influence, and exercised that power and influence, to cause RCC, RFC, RALI and the Issuing Trusts to engage in violations of the Securities Act, as described above.

253. The Individual Defendants and the Underwriter Defendants control, position and influence made them privy to, and provided them with actual knowledge of, the material facts and omissions concealed from Plaintiffs and the other Class members.

254. Each of the Individual Defendants were each a participant in the violations alleged herein, based on their having prepared, signed or authorized the signing of the Registration Statements and having otherwise participated in the consummation of the Offerings detailed herein. The Defendants named herein were responsible for overseeing the formation and operation of the Issuing Trusts, including routing payments from the borrowers to investors.

255. Individual Defendants prepared, reviewed and/or caused the Registration Statements and Prospectus Supplements to be filed and disseminated.

256. Since the Defendants named herein controlled the ultimate decision of which mortgage loans would be included and excluded from the securitized pools of loans as well as the ultimate amount of credit enhancement required in order for the Certificates to be sold to investors, they controlled all material aspects relating to the acquisition, structure and sale of the Certificates and thus, the activities of the Issuing Trusts and Individual Defendants within the meaning Section 15 of the Securities Act.

257. By virtue of the wrongful conduct alleged herein, the Individual Defendants and the Underwriter Defendants are liable to Plaintiffs and the other Class members for the damages sustained.

IX.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying Plaintiffs as Class representatives;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding rescission or a rescissory measure of damages; and

E. Awarding such additional equitable, injunctive or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiffs hereby demand a trial by jury

Dated: New York, New York
January 3, 2011

Respectfully submitted,

COHEN MILSTEIN SELLERS & TOLL PLLC

By: _____

Joel P. Laitman
Christopher Lometti
Richard Speirs
Michael B. Eisenkraft
Daniel B. Rehns
Kenneth M. Rehns
150 East 52nd Street, Thirtieth Floor
New York, New York 10022
Telephone: (212) 838-7797
Facsimile: (212) 8380-7745
jlaitman@cohenmilstein.com
clometti@cohenmilstein.com
rspeirs@cohenmilstein.com
meisenkraft@cohenmilstein.com
drehns@cohenmilstein.com
krehns@cohenmilstein.com

Steven J. Toll *(pro hac vice)*
Julie Goldsmith Reiser *(pro hac vice)*
Joshua Devore *(pro hac vice)*
S. Douglas Bunch
1100 New York Avenue, NW, Suite 500 West
Washington, D.C. 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
stoll@cohenmilstein.com
jdevore@cohenmilstein.com
jreiser@cohenmilstein.com
dbunch@cohenmilstein.com

Lead Counsel for Plaintiffs New Jersey Carpenters Vacation and Health Funds, Boilermaker Blacksmith National Pension Trust, IPERS, OCERS and Midwest OE and the Proposed Class

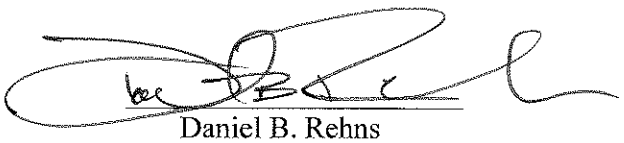
-and-

Robin F. Zwerling
Jeffrey C. Zwerling
Justin M. Tarshis
ZWERLING, SCHACHTER & ZWERLING, LLP
41 Madison Avenue
New York, New York 10010
Telephone: (212) 223-3900
Facsimile: (212) 371-5969
rzwerling@zsz.com
jzwerling@zsz.com
jtarshis@zsz.com

Counsel for the Police & Fire Retirement System of the City of Detroit

CERTIFICATE OF SERVICE

I, Daniel B. Rehns, counsel for the Plaintiffs, hereby certify that on January 3, 2011, I filed an original of the foregoing by hand with the Clerk of the Court and delivered a copy to all parties named herein and/or counsel of record in the within action by hand or first-class mail.



Daniel B. Rehns

Exhibit 11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SEALINK FUNDING LIMITED,

Plaintiff,

-against-

THE ROYAL BANK OF SCOTLAND GROUP PLC; RBS HOLDINGS USA, INC.; RBS SECURITIES, INC. (f/k/a GREENWICH CAPITAL MARKETS, INC.); RBS ACCEPTANCE, INC. (f/k/a GREENWICH CAPITAL ACCEPTANCE, INC.); RBS FINANCIAL PRODUCTS INC. (f/k/a GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.); FINANCIAL ASSETS SECURITIES CORP.; CITIGROUP, INC.; ARGENT SECURITIES INC.; CITIGROUP GLOBAL MARKETS, INC.; CREDIT SUISSE HOLDINGS (USA), INC.; CREDIT SUISSE (USA), INC.; CREDIT SUISSE SECURITIES (USA) LLC; ALLY FINANCIAL INC. (f/k/a GMAC, LLC); GMAC MORTGAGE GROUP, INC.; RESIDENTIAL CAPITAL LLC (f/k/a RESIDENTIAL CAPITAL CORPORATION); GMAC-RFC HOLDING COMPANY, LLC (d/b/a GMAC RESIDENTIAL FUNDING CORPORATION); RESIDENTIAL FUNDING COMPANY, LLC (f/k/a RESIDENTIAL FUNDING CORPORATION); RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; DEUTSCHE BANK AG; MORTGAGEIT, INC., DEUTSCHE BANK SECURITIES, INC.; FORTRESS INVESTMENT GROUP LLC; NATIONSTAR MORTGAGE LLC; NATIONSTAR FUNDING LLC; H&R BLOCK, INC.; SAND CANYON CORPORATION (f/k/a OPTION ONE MORTGAGE CORPORATION); OPTION ONE MORTGAGE ACCEPTANCE CORPORATION; H&R BLOCK FINANCIAL ADVISORS INC.; NOMURA HOLDINGS, INC.; NOMURA CREDIT & CAPITAL, INC.; NOMURA HOME EQUITY LOAN, INC.; NOMURA ASSET ACCEPTANCE CORPORATION; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE CAPITAL MARKETS, LLC; COUNTRYWIDE HOME LOANS; COUNTRYWIDE SECURITIES CORPORATION; CWABS, INC.;

Index No.

Summons with Notice

WELLS FARGO & COMPANY; WACHOVIA CAPITAL MARKETS, LLC; BANK OF AMERICA CORPORATION; MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.; BANC OF AMERICA SECURITIES, LLP; HSBC NORTH AMERICA HOLDINGS INC.; HSBC MARKETS (USA) INC.; HSBC SECURITIES (USA) INC.; HSBC (USA) INC.; JPMORGAN CHASE & CO.; J.P. MORGAN SECURITIES LLC (f/k/a/ JP MORGAN SECURITIES INC.); AND BEAR STEARNS & CO., INC.

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys a notice of appearance or demand for a complaint within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you on default for the relief demanded herein.

Plaintiff designates New York County as the place of trial. Venue is proper because Defendants are principally located in this County, and many of the wrongful acts alleged herein occurred in this County.

NOTICE

This is an action for damages, or alternatively, a declaratory judgment arising from the investment in residential mortgage-backed securities ("RMBS" or the "Securities") which were securitized and/or sold by Defendants. Plaintiff Sealink Funding Limited ("Sealink") is a company incorporated under the laws of Ireland that was established to receive, hold and manage RMBS purchased by certain special purpose vehicles (the "Sealink SPVs"), and the claims

asserted herein arise from the purchase of those RMBS by the Sealink SPVs. The Sealink SPVs assigned the claims asserted herein to Sealink through a series of agreements, including but not limited to a Master Framework and Definitions Schedule and a series of Sales and Purchase Agreements, that transferred the RMBS -- including present and future properties, revenues and rights of every description -- to Sealink. The Sealink SPVs purchased $948,815,000 in Securities in the offerings listed on Exhibit A attached hereto (the "Offerings"). The Securities are either currently held by the Plaintiff or were held and sold previously at a loss.

Defendants were actively involved in each step of the securitization and sale of the Securities. Defendants acted as depositor, underwriter, seller, sponsor, and/or broker-dealer for the Offerings.

The offering materials issued by Defendants for the Offerings (the "Offering Materials") contained material misrepresentations and omissions regarding the underwriting standards used to issue the mortgage loans that were pooled together into the Offerings, the legal validity of assignments of those mortgage loans to trusts formed to hold the pooled loans and to collect interest and principal payments due on the loans, and the legal validity of the trusts and their legal entitlement to receive interest and principal payments on the loans.

The Offering Materials also contained material misrepresentations and omissions regarding key statistical characteristics of the mortgage loans underlying the Securities, including loan-to-value ratios and the percentage of owner-occupied properties. The Offering Materials also contained material misrepresentations about the Securities' credit ratings, which understated the Securities' risk profile.

Each of the Defendants knew, or at a minimum was negligent in not knowing, that its representations and omissions were false and/or misleading at the time they were made. Each

Defendant made the false and/or misleading statements with the intent for Plaintiff to rely upon those statements.

Defendants obtained mortgage loans from the originators and created securities from them. The underwriters underwrote the Offerings and sold the Securities by means of Offering Materials which contained knowing material misrepresentations and omissions. Alternatively, if the underwriters did not know of material misrepresentation and omissions, then contracts of sale from the underwriters are void or voidable as a result of mutual mistake.

Plaintiff and the Sealink SPVs did not know the true facts regarding Defendants' misrepresentations and omissions in the Offering Materials, and justifiably relied on those misrepresentations and omissions. Defendants' wrongdoing has led directly to the damages at issue in this Action, which include loss of market value on the Securities.

The causes of action against The Royal Bank of Scotland Group PLC, RBS Holdings USA, Inc., Citigroup, Inc., Deutsche Bank AG, H&R Block, Inc., Bank of America Corporation, and Countrywide Financial Corporation are at law and at equity for claims including common-law fraud, fraudulent inducement, negligent misrepresentation, aiding and abetting fraud, declaratory judgment, and contract claims, including rescission, restitution and mutual mistake. The depositors identified in Exhibit A, as well as Ally Financial, Inc., GMAC Mortgage Group, Inc., Residential Capital LLC, GMAC-RFC Holding Company, Fortress Investment Group LLC, and Nomura Holdings, Inc. are liable for claims including common law fraud, fraudulent inducement, and negligent misrepresentation. The sponsors identified in Exhibit A, as well as Ally Financial, Inc., GMAC Mortgage Group, Inc., Residential Capital LLC, GMAC-RFC Holding Company, Fortress Investment Group LLC, and Nomura Holdings, Inc. are liable for claims including common law fraud, fraudulent inducement, and negligent misrepresentation.

The underwriters identified in Exhibit A, as well as Credit Suisse (USA) LLC, Merrill Lynch, Pierce, Fenner & Smith, Inc., HSBC North America Holdings Inc., HSBC (USA) Inc., HSBC Markets (USA) Inc.; Wells Fargo & Company, JPMorgan Chase & Co., and Countrywide Capital Markets, LLC, are liable for claims including aiding and abetting fraud, negligent misrepresentation, and contract claims, including rescission, restitution and mutual mistake.

Upon your failure to appear, judgment will be taken against you by default for money damages in an amount of at least $948,815,000, and interest thereon, together with punitive damages of $948,815,000, rescission, rescissory damages, legal fees, and the costs of this action.

Dated: New York, New York
February 21, 2012

LABATON SUCHAROW LLP

By: _____
Joel H. Bernstein

140 Broadway
New York, NY 10005
(212) 907-0700

Sealink Funding Limited

FILED: NEW YORK COUNTY CLERK 02/21/2012
NYSCEF DOC. NO. 2
INDEX NO. 650484/2012
RECEIVED NYSCEF: 02/21/2012

EXHIBIT A

Start Date	CUSIP	Issuing Entity	Short Name	Tranche	Sponsor	Underwriter	Depositor	Original Position
02/22/2006	61915RBZ8	MortgageIT Mortgage Loan Trust 2006-1	MHL 2006-1	1A2	MortgageIT, Inc.	Greenwich Capital Markets, Inc.	Greenwich Capital Acceptance, Inc.	$77,047,000
04/06/2006	83611MNE4	Soundview Home Loan Trust 2006-2	SVHE 2006-2	A3	Greenwich Capital Financial Products, Inc.	Greenwich Capital Markets, Inc.	Financial Asset Securities Corp.	$70,000,000
04/07/2006	83611MMK1	Soundview Home Loan Trust 2006-OPT2	SVHE 2006-OPT2	A3	Option One Mortgage Corporation	Greenwich Capital Markets, Inc.	Financial Asset Securities Corp.	$40,000,000
08/17/2006	83612HAC2	Soundview Home Loan Trust 2006-3	SVHE 2006-3	A3	Greenwich Capital Financial Products, Inc.	Greenwich Capital Markets, Inc.	Financial Asset Securities Corp.	$37,000,000
09/15/2006	83612JAC8	Soundview Home Loan Trust 2006-EQ1	SVHE 2006-EQ1	A3	Greenwich Capital Financial Products, Inc.	Greenwich Capital Markets, Inc.	Financial Asset Securities Corp.	$43,750,000
05/15/2007	83612TAC6	Soundview Home Loan Trust 2007-OPT1	SVHE 2007-OPT1	2A2	Greenwich Capital Financial Products, Inc.	Greenwich Capital Markets, Inc.	Financial Asset Securities Corp.	$41,843,000
05/09/2006	75156VAC9	RAMP Series 2006-RS3 Trust	RAMP 2006-RS3	A3	Residential Funding Corporation	Greenwich Capital Markets, Inc.	Residential Asset Mortgage Products, Inc.	$75,000,000
08/29/2006	75156YAC3	RAMP Series 2006-RS5 Trust	RAMP 2006-RS5	A3	Residential Funding Corporation	Greenwich Capital Markets, Inc.	Residential Asset Mortgage Products, Inc.	$60,000,000
05/25/2006	04012XAD7	Argent Securities Trust	ARSI 2006-W5	A2C	Ameriquest Mortgage	Greenwich Capital Markets, Inc.	Argent Securities	$45,000,000

		2006-W5			Company		Inc.	
09/27/2006	03076MAD6	Argent Securities Trust 2006-M3	ARSI 2006-M3	A2C	Ameriquest Mortgage Company	Greenwich Capital Markets, Inc.	Argent Securities Inc.	$81,127,000
11/30/2006	66988RAD9	NovaStar Mortgage Funding Trust, Series 2006-6	NHEL 2006-6	A2C	NovaStar Mortgage, Inc.	Greenwich Capital Markets, Inc.	NovaStar Mortgage Funding Corporation	$40,000,000
05/10/2006	35729RAE6	Fremont Home Loan Trust 2006-A	FHLT 2006-A	2A3	Fremont Investment & Loan	Greenwich Capital Markets, Inc.	Financial Asset Securities Corp.	$40,000,000
02/28/2007	669971AD5	NovaStar Mortgage Funding Trust, Series 2007-A	NHEL 2007-1	A2C	NovaStar Mortgage, Inc.	Deutsche Bank Securities Inc.; Greenwich Capital Markets, Inc.; Wachovia Securities	NovaStar Mortgage Funding Corporation	$40,000,000
02/7/2007	63860HAD1	Nationstar Home Equity Loan Trust 2007-A	NSTR 2007-A	AV4	Nationstar Mortgage LLC	Citigroup Global Markets Inc.; Greenwich Capital Markets, Inc.; Banc of America Securities LLC; Credit Suisse Securities (USA) LLC	Nationstar Funding LLC	$20,000,000
03/12/2007	68401TAD0	Option One Mortgage Loan Trust 2007-2	OOMLT 2007-2	3A2	Option One Mortgage Corporation	Banc of America Securities; Greenwich Capital Markets, Inc.; H & R Block Financial Advisors Inc.; HSBC Securities (USA) Inc.	Option One Mortgage Acceptance Corporation	$30,000,000
04/12/2007	68402BAC0	Option One Mortgage Loan Trust 2007-3	OOMLT 2007-3	2A2	Option One Mortgage Corporation	Banc of America Securities; Greenwich Capital Markets, Inc.; H & R Block Financial Advisors Inc.;	Option One Mortgage Acceptance Corporation	$25,000,000

						HSBC Securities (USA) Inc.		
04/27/2007	68403HAC6	Option One Mortgage Loan Trust 2007-5	OOMLT 2007-5	2A2	Option One Mortgage Corporation	Banc of America Securities; Greenwich Capital Markets, Inc.; H & R Block Financial Advisors Inc.; J.P. Morgan Securities Inc.	Option One Mortgage Acceptance Corporation	$47,448,000
01/31/2007	65537KAY6	Nomura Home Equity Loan, Inc., Home Equity Loan Trust, Series 2007-1	NHELI 2007-1	1A4	Nomura Credit & Capital, Inc.	Bear, Stearns & Co. Inc.; Greenwich Capital Markets, Inc.	Nomura Home Equity Loan, Inc.	$20,000,000
06/29/2007	655378AE7	Nomura Asset Acceptance Corporation, Alternative Loan Trust, Series 2007-2	NAA 2007-2	A4	Nomura Credit & Capital, Inc.	Banc of America Securities; Greenwich Capital Markets, Inc.	Nomura Asset Acceptance Corporation	$17,600,000
03/29/2007	12668UAG6	CWABS Asset-Backed Certificates Trust 2007-3	CWL 2007-3	2A3	Countrywide Home Loans	Countrywide Securities Corporation; Greenwich Capital Markets, Inc.	CWABS, Inc.	$38,000,000
03/30/2007	12669LAD2	CWABS Asset-Backed Certificates Trust 2007-6	CWL 2007-6	2A3	Countrywide Home Loans	Countrywide Securities Corporation; Greenwich Capital Markets, Inc.	CWABS, Inc.	$60,000,000
								$948,815,000

Exhibit 12

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BY

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

STICHTING PENSIOENFONDS ABP

Plaintiff,

v.

ALLY FINANCIAL INC. f/k/a GMAC, LLC; GMAC MORTGAGE CORPORATION a/k/a GMAC MORTGAGE LLC; HOMECOMINGS FINANCIAL, LLC, F/K/A HOMECOMINGS FINANCIAL NETWORK, INC.; RESIDENTIAL ACCREDIT LOANS, INC.; RESIDENTIAL CAPITAL LLC f/k/a RESIDENTIAL CAPITAL CORPORATION; GMAC-RFC HOLDING COMPANY, LLC d/b/a GMAC RESIDENTIAL FUNDING CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC f/k/a RESIDENTIAL FUNDING CORPORATION; ALLY SECURITIES, LLC f/k/a RESIDENTIAL FUNDING SECURITIES, LLC d/b/a GMAC RFC SECURITIES and f/k/a RESIDENTIAL FUNDING SECURITIES CORPORATION; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; RESIDENTIAL ASSET SECURITIES CORPORATION; DEUTSCHE BANK SECURITIES, INC.; J.P. MORGAN SECURITIES LLC f/k/a J.P. MORGAN SECURITIES, INC; BANC OF AMERICA SECURITIES LLC; BARCLAYS CAPITAL INC.; MERRILL LYNCH, PIERCE, FENNER & SMITH INC.; BRUCE J. PARADIS; KENNETH M. DUNCAN; DAVEE L. OLSON; RALPH T. FLEES; LISA R. LUNDSTEN; DAVID C. WALKER; JAMES G. JONES; DAVID M. BRICKER; JAMES N. YOUNG and DIANE WOLD,

Defendants.

Court File No.

COMPLAINT

JURY TRIAL DEMANDED

GRANT & EISENHOFER P.A.
485 Lexington Avenue, 29th Floor
New York, New York 10017
Jay W. Eisenhofer, Esq.
Geoffrey C. Jarvis, Esq.
Deborah A. Elman, Esq.
Robert D. Gerson, Esq.
Telephone: (646) 722-8500 • Facsimile: (646) 722-8501

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Plaintiff Stichting Pensioenfonds ABP ("ABP" or "Plaintiff") makes the allegations in this Complaint based upon personal knowledge as to matters concerning Plaintiff and its own acts, and upon information and belief as to all other matters. This information is derived from the investigation by Plaintiff's counsel, which has included a review and analysis of annual reports and publicly filed documents, reports of governmental investigations by the United States Securities and Exchange Commission (the "SEC"), the Financial Crisis Inquiry Commission (the "FCIC"), the United States Department of Justice (the "DOJ"), the United States Senate Permanent Subcommittee on Investigations, and numerous investigations by other federal and state governmental units, as well as press releases, news articles, analysts' statements, conference call transcripts and presentations, and transcripts from speeches and remarks given by Defendants. In addition, Plaintiff's counsel conferred with counsel for other plaintiffs who have filed other complaints against these Defendants based on the same or similar activities. Based on the foregoing, Plaintiff believes that substantial additional evidentiary support exists for the allegations herein, which Plaintiff will find after a reasonable opportunity for discovery.

NATURE OF ACTION

1. This is an action by Plaintiff ABP against Defendants for fraud, aiding and abetting fraud, negligent misrepresentation, and violation of the Minnesota Securities Act.

2. This action arises out of Plaintiff's purchases of certain residential mortgage-backed securities ("RMBS"), as evidenced in the form of "Certificates," in reliance on the false and misleading statements that were made by Defendants. Based on these material misrepresentations and omissions, Plaintiff purchased securities that were far riskier than had been represented, and were backed by mortgage loans that were worth significantly less than had been represented and had been made to borrowers who were much less creditworthy than had been represented.

3. The securities purchased by Plaintiff were collateralized against mortgages originated and/or acquired by GMAC (as defined in ¶ 17, *infra*). GMAC did not, however, hold the mortgage loans it originated and/or acquired. Rather, taking advantage of an unprecedented boom in the securitization industry, it deposited the loans into special purpose entities or "trusts" and then repackaged the loans for sale to investors in the form of RMBS. Defendants Ally Securities, LLC, Banc of America Securities LLC, Barclays Capital, Deutsche Bank Securities, Inc., J.P. Morgan Securities, LLC, and Merrill Lynch, Pierce, Fenner & Smith, Inc., as underwriters, then sold the RMBS to investors such as Plaintiff.

4. The Certificates entitled investors to receive monthly distributions of interest and principal on cash flows from the mortgages held by the trusts. The Certificates issued by each trust were divided into several classes (or "tranches") that had different seniority, priorities of payment, exposure to default, and interest payment provisions. Rating agencies, such as Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Corporation ("S&P"), DBRS, Inc. ("DBRS"), and/or Fitch, Inc. ("Fitch"),[1] rated the investment quality of all tranches of Certificates based upon information provided by the Defendants about the quality of the mortgages in each mortgage pool and the seniority of the Certificate among the various Certificates issued by each trust. These ratings, in significant part, determined the price at which these Certificates were offered to investors.

5. In selling the Certificates, the Defendants prepared and filed with the Securities and Exchange Commission ("SEC") certain registration statements (the "Registration Statements"), prospectuses (the "Prospectuses"), and prospectus supplements (the "Prospectus

[1] Moody's, Fitch, DBRS and S&P are approved by the Securities and Exchange Commission as "Nationally Recognized Statistical Rating Organizations" and provide credit ratings that are used to distinguish among grades of creditworthiness of various securities under the federal securities laws.

Supplements", and together with the Registration Statements and Prospectuses, the "Offering Documents"). In these Offering Documents, Defendants repeatedly touted the strength of their underwriting guidelines and standards and those of the relevant third party originators, claimed that the underwriting guidelines and standards were designed to ensure the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral, and represented that the mortgages underlying the Certificates were originated in accordance with those stated underwriting guidelines and standards. Where Defendants had not originated the mortgage loans underlying the Certificates, they emphasized their quality control procedures, such as reviewing underwriting information provided by the originators.

6. In addition, in the Offering Documents Defendants repeatedly assured investors as to the soundness of the appraisals used to arrive at the value of the underlying properties and, specifically, that the real estate collateralizing the loans had been subjected to objective real estate appraisals performed in accordance with stated guidelines. Defendants made numerous other representations regarding the quality of the loan pools, including clean transfer of title, high owner-occupancy rates, loan-to-value and combined loan-to-value ratios, debt-to-income ratios, credit ratings, and credit enhancements.

7. Plaintiff and other investors did not have access to the underlying mortgage loan files. Instead, the Defendants were responsible for gathering and verifying information about the credit quality and characteristics of the loans that were deposited into each trust and presenting this information in the Registration Statements, Prospectuses, and Prospectus Supplements prepared for potential investors. This due diligence process is a critical safeguard for investors who rely on this information in making their investment decisions, and is a fundamental legal obligation of the Defendants.

8. As set forth below, the Offering Documents contained material misstatements and omitted material information. Contrary to Defendants' assurances, the originators of the underlying loans had not followed their touted underwriting guidelines and standards when originating and/or acquiring the mortgage loans, and Defendants had neither maintained nor conducted quality control procedures.

9. Specifically, as set forth below, Defendants knew of the wholesale and systematic abandonment of underwriting guidelines by both GMAC's own affiliated originators as well as various third party originators. Because GMAC's affiliated lenders, Defendants GMAC Mortgage Group, Inc. and Homecomings Financial, operated primarily to generate loans for GMAC's RMBS operations, they intentionally granted mortgage loans to borrowers whom they knew did not satisfy the eligibility criteria as described in the Offering Documents. Face with GMAC's demands for as many loans as possible, the third party originators did likewise, knowing that GMAC would purchase and securitize even risky, low-quality loans. In many cases, GMAC purchased and securitized loans on a wholesale basis without reviewing their loan files or having any reason to believe that they complied with its purported underwriting standards. Furthermore, when deciding whether to originate or purchase loans, GMAC and its affiliated lenders made use of proprietary underwriting software that did not apply GMAC's purported underwriting standards or require basic documentation.

10. In addition, Defendants knew that the mortgages underlying the Certificates had been extended based on collateral appraisals that were not performed in accordance with the stated guidelines, such that the value of the underlying properties and the amount of credit enhancements built into the Certificates were overstated, thereby exposing investors such as Plaintiff to additional losses in the event of foreclosure. In many cases, Defendants also failed to

deliver good title to the Issuing Trusts in a timely manner, severely undermining the Issuing Trusts' capacity to manage the assets that were supposed to be underlying the Certificates and contributing to massive foreclosure backlogs and moratoriums. Defendants did not apply the rigorous quality control procedures they touted in the Offering Documents to uncover lapses, and where Defendants did discover problems in the loan pools, they deliberately overlooked them.

11. Examination of the individual mortgage files underlying GMAC's RMBS has revealed just how thoroughly and blatantly GMAC misrepresented the trust assets to investors. A review of the loans underlying several GMAC RMBS comparable to those purchased by Plaintiff revealed that at least ***89%*** of the delinquent and charged-off loans breached one or more of GMAC's representations and warranties. Common defects included unacceptably high loan-to-value and debt-to-income ratios, implausible and unverified borrower incomes, missing documentation, and violation of predatory lending laws, all basic matters readily ascertainable in the exercise of rudimentary due diligence. The sheer volume of the violations, the fact that they went to the most basic characteristics of the pooled loans, and the ease with which Defendants could have discovered the truth all foreclose the possibility that the misrepresentations in the Offering Documents were the product of anything other than intentional wrongdoing.

12. The practices of financial institutions such as GMAC and their role in inflating the housing bubble have been and continue to be the subject of intense regulatory scrutiny. In June 2011, GMAC acknowledged receipt of subpoenas from both the U.S. Department of Justice and the SEC. The subpoena received from the SEC requests documentation relating to mortgage loans placed in securitization trusts, and the subpoena received from the Department of Justice requests documentation and information in connection with the investigation of potential fraud related to the origination and/or underwriting of mortgage loans. GMAC has also been forced to

reimburse the government-sponsored entities Fannie Mae and Freddie Mac hundreds of millions of dollars for mortgages that were not underwritten as represented, and is currently being sued for securities fraud in connection with its RMBS sales by the Federal Housing Finance Agency ("FHFA").

13. As a result of the untrue statements and omissions in the Offering Documents, Plaintiff purchased Certificates that were far riskier than represented and that were not equivalent to other investments with the same credit ratings. The rating agencies have now significantly downgraded the Certificates purchased by Plaintiff, all of which were represented in the Offering Documents to be AAA instruments at the time of purchase The Certificates, therefore, are no longer marketable at anywhere near the purchase prices paid by Plaintiff. As a consequence, Plaintiff has suffered losses on its purchases of the Certificates.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over each of the non-domiciliary Defendants pursuant to MINN. STAT. § 543.19, subdiv. (1)(2) because each of them has transacted business within the state of Minnesota, and pursuant to MINN. STAT. § 543.19, subdiv. (1)(3) because each of them has committed tortious acts within the state of Minnesota causing property damage. Many of the acts and transactions alleged herein, including the negotiation, preparation and dissemination of many of the material misstatements and omissions contained in the Registration Statements, Prospectuses and Prospectus Supplements, occurred in substantial part in this state. Additionally, the Certificates were actively marketed and sold in this state.

15. Venue is proper in this Court pursuant to MINN. STAT. § 542.09, because Defendants Residential Capital Corporation and GMAC Residential Funding Corporation both maintain offices in Hennepin County.

PARTIES

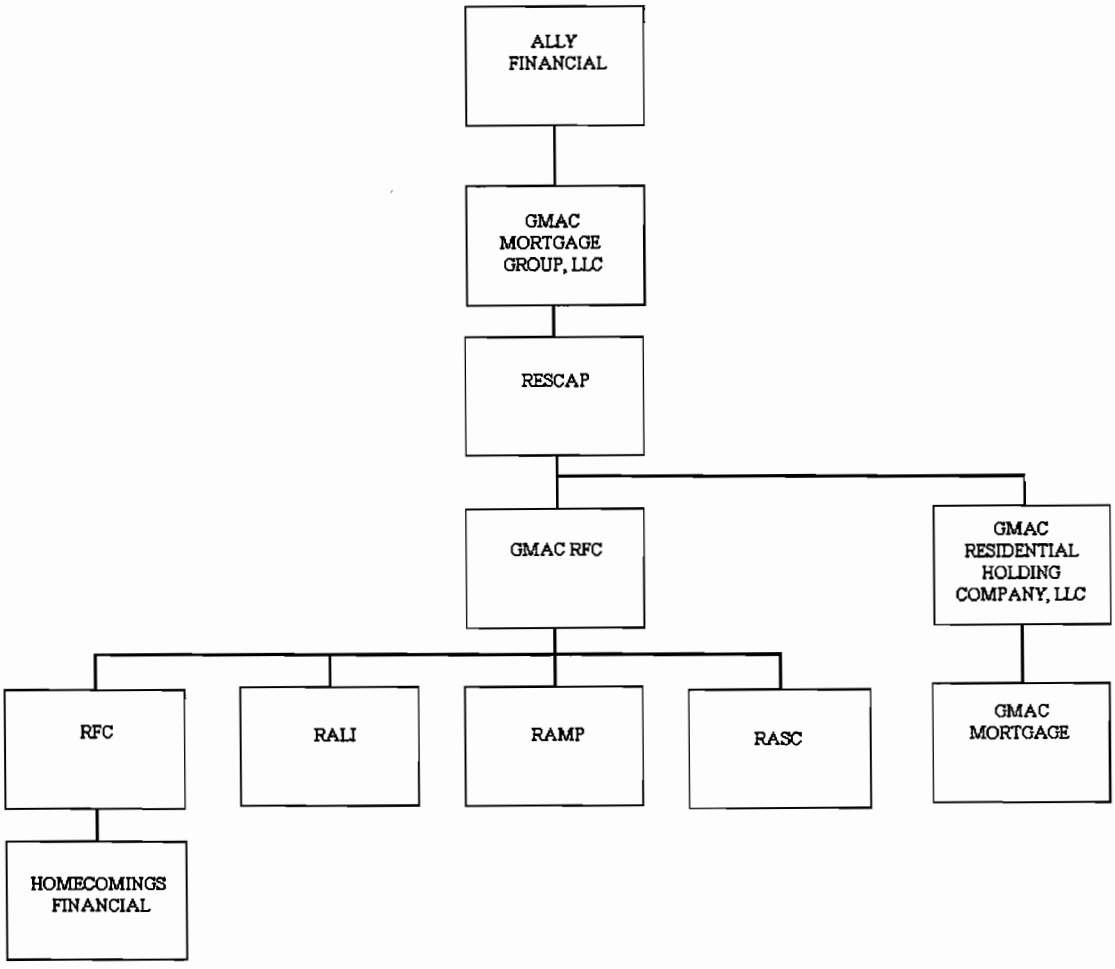
A. PLAINTIFF

16. Plaintiff ABP is an independent administrative pension fund established under the laws of the Kingdom of the Netherlands. ABP serves as the pension fund for public employees in the governmental and education sectors in the Netherlands. With assets under management of approximately € 250 billion, ABP is one of the three largest pension funds in the world.

B. GMAC DEFENDANTS

17. Defendant Ally Financial Inc. ("Ally Financial") is a bank holding company headquartered in Detroit, Michigan. Until May 2010, Ally Financial was known as GMAC Financial Services. Ally Financial was founded to provide financing to automobile purchasers, but expanded over time into areas including mortgage securitization, commercial finance and online banking. Ally Financial is the direct or indirect owner of Defendants Residential Capital LLC; GMAC Mortgage, LLC; GMAC Residential Funding Corporation; Homecomings Financial, LLC; Residential Accredit Loans, Inc.; Residential Asset Securities Corporation; Residential Asset Mortgage Products, Inc.; Residential Funding Company, LLC; and Ally Securities, LLC (together with Ally Financial, collectively referred to hereinafter as "GMAC."). The diagram on the next page depicts the relationships of the GMAC corporate entities.

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18. Defendant Residential Capital LLC, f/k/a Residential Capital Corporation ("ResCap") is a wholly-owned subsidiary of GMAC Mortgage Group LLC and an indirectly owned subsidiary of Ally Financial, with its principal place of business in Minneapolis, Minnesota. ResCap originates, securitizes, and services mortgage loans through its subsidiaries.

19. Defendant GMAC Mortgage, LLC, a/k/a GMAC Mortgage Corporation ("GMAC Mortgage") is an indirectly-owned subsidiary of ResCap and therefore an indirectly-owned subsidiary of Ally Financial, with its principal place of business in Fort Washington, Pennsylvania. GMAC Mortgage originates residential mortgage loans through a network of

retail offices and Internet sites. GMAC Mortgage originated mortgage loans that were pooled in securitizations and purchased by Plaintiff.

20. Defendant GMAC Residential Funding Corporation, a/k/a GMAC-RFC Holding Company, LLC ("GMAC RFC") is a wholly-owned subsidiary of ResCap and therefore an indirectly-owned subsidiary of Ally Financial, with its principal place of business in Minneapolis, Minnesota. GMAC RFC operates as a private issuer of mortgage-backed securities.

21. Defendant Homecomings Financial, LLC, f/k/a Homecomings Financial Network, Inc. ("Homecomings Financial") is an indirectly-owned subsidiary of ResCap and therefore an indirect subsidiary of Ally Financial. Homecomings Financial is a mortgage servicing and origination company. Homecomings Financial originated loans that were pooled in securitizations and purchased by Plaintiff, including: (1) RALI Series 2007-QS7 Trust; (2) RASC Series 2006-KS9 Trust; (3) RASC Series 2007-KS2 Trust; and (4) RASC Series 2007-KS3 Trust.

22. Residential Accredit Loans, Inc. ("RALI") is a wholly-owned, limited-purpose subsidiary of GMAC RFC, with its principal office in Minneapolis, Minnesota. Like all the other depositors, RALI was created specifically as a conduit for the securitization and sale of loans. RALI was the depositor for RALI Series 2007-QS7 Trust.

23. Residential Asset Securities Corporation ("RASC") is a wholly-owned, limited-purpose subsidiary of GMAC RFC, with its principal office in Minneapolis, Minnesota. Like all the other depositors, RASC was created specifically as a conduit for the securitization and sale of loans. RASC was the depositor for (1) RASC Series 2006-EMX9 Trust; (2) RASC Series 2006-KS9 Trust; (3) RASC Series 2007-KS2 Trust; and (4) RASC Series 2007-KS3 Trust.

24. Residential Asset Mortgage Products, Inc. ("RAMP") is a wholly-owned, limited-purpose subsidiary of GMAC RFC, with its principal place of business in Minneapolis, Minnesota. Like all the other depositors, RAMP was created specifically as a conduit for the securitization and sale of loans. RAMP was the depositor for RAAC Series 2005-SP2 Trust.

25. Defendants RALI, RASC, and RAMP are referred to collectively hereinafter as the "Depositor Defendants."

26. Residential Funding Company, LLC ("RFC") is a Delaware corporation and a wholly-owned subsidiary of GMAC RFC. Until October 2006, RFC LLC was known as "Residential Funding Corporation." RFC was created by GMAC RFC specifically as a conduit for the securitization and sale of loans. RFC was the sponsor for all of the securitizations at issue in this litigation. RFC is also the parent company of Homecomings Financial, an originator of mortgage loans underlying the RMBS purchased by Plaintiff.

27. Defendant RFC is referred to hereinafter as the "Sponsor Defendant."

28. Ally Securities, LLC, f/k/a Residential Funding Securities, LLC, d/b/a GMAC RFC Securities, f/k/a Residential Funding Securities Corporation ("Residential Funding"), is an SEC registered broker-dealer with its principal place of business in Minneapolis, Minnesota. Residential Funding was an underwriter of Certificates purchased by Plaintiff.

C. NON-GMAC DEFENDANTS

29. Banc of America Securities LLC ("BoA") is an SEC registered broker-dealer with its principal place of business in New York, New York. BoA was an underwriter of Certificates purchased by Plaintiff.

30. Barclays Capital Inc. ("Barclays") is an SEC registered broker-dealer with its principal place of business in New York, New York. Barclays was an underwriter of Certificates purchased by Plaintiff.

31. Deutsche Bank Securities, Inc. ("Deutsche Bank") is an SEC registered broker-dealer with its principal place of business in New York, New York. Deutsche Bank was an underwriter of Certificates purchased by Plaintiff.

32. J.P. Morgan Securities, LLC f/k/a J.P. Morgan Securities, Inc. ("JPMorgan") is an SEC registered broker-dealer with its principal place of business in New York, New York. JPMorgan was an underwriter of Certificates purchased by Plaintiff.

33. Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") is an SEC registered broker-dealer with its principal place of business in New York, New York. Merrill Lynch was an underwriter of Certificates purchased by Plaintiff.

34. Defendants BoA, Barclays, Deutsche Bank, JPMorgan, Merrill Lynch, and Residential Funding are referred to collectively hereinafter as the "Underwriter Defendants."

35. All Defendants identified in ¶¶ 17-24, 26, and 28-33 are hereinafter collectively referred to as the "Corporate Defendants."

D. INDIVIDUAL DEFENDANTS

36. David M. Bricker ("Bricker") was, at relevant times, a Director and Chief Financial Officer of Defendant RALI. Bricker was also the Chief Financial Officer of GMAC Mortgage and GMAC RFC.

37. Kenneth M. Duncan ("Duncan") was, at relevant times, the Acting Chief Financial Officer of Defendants RALI, RAMP and RASC. Duncan was also the Acting Chief Financial Officer of RFC, GMAC RFC and Homecomings.

38. Ralph T. Flees ("Flees") was, at relevant times, the Controller of Defendants RALI, RAMP, and RASC. Flees was also the Principal Accounting Officer of RFC, GMAC RFC and Homecomings.

39. James G. Jones ("Jones") was the Chief Executive Officer of ResCap from 2007 to 2008, and was also, at relevant times, the President, Chief Executive Officer and a Director of Defendant RALI. Jones had previously been ResCap's Chief Operating Officer and President of its U.S. Residential Finance Group. Prior to joining GMAC, Jones had been the Chief Executive Officer of Aegis Mortgage Corporation.

40. Lisa R. Lundsten ("Lundsten") was an Attorney-in-Fact of Defendants RALI and RASC. Lundsten also became the Senior Vice President of Securitization Management at GMAC RFC in September 2005.

41. Davee L. Olson ("Olson") was, at relevant times, a Director of Defendants RALI and RASC. Olson was also the Chief Financial Officer of ResCap, and a Director of GMAC RFC, RFC, and Homecomings.

42. Bruce J. Paradis ("Paradis") was the President and Chief Executive Officer of GMAC RFC from 1994 to 2005, and was the Chief Executive Officer of ResCap from 2005 to 2007. Paradis was also, at relevant times, the President, Chief Executive Officer, and a Director of the Depositor Defendants RALI, RAMP, and RASC.

43. David C. Walker ("Walker") was, at relevant times, a Director of Defendant RAMP. Walker was also a Director of ResCap, GMAC RFC, GMAC Mortgage, RFC, and Homecomings.

44. Diane S. Wold ("Wold") was, at relevant times, an Attorney-in-Fact of Defendant RAMP. Wold was also GMAC RFC's Senior Vice President of Securitization Management until September 2005, when she moved to ResCap as head of investor relations and corporate finance.

45. James N. Young ("Young") was, at relevant times, a Director of Defendant RALI. Young was also the Chief Accounting Officer and Controller of ResCap.

46. Defendants Bricker, Duncan, Flees, Jones, Lundsten, Olson, Paradis, Walker, Wold, and Young are referred to collectively hereinafter as the "Individual Defendants." The Individual Defendants signed the Registration Statements listed in the table below.

Issuing Trust(s)	Document Date	File No.	Signatories
RAAC 2005-SP2	July 7, 2005	333-125485	Bruce J. Paradis Kenneth M. Duncan Ralph T. Flees David C. Walker Diane S. Wold (attorney-in-fact)
RASC 2006-KS9 RASC 2006-EMX9 RASC 2007-KS2 RASC 2007-KS3	March 30, 2006	333-131209	Bruce J. Paradis Kenneth M. Duncan Davee L. Olson Ralph T. Flees Lisa R. Lundsten (attorney-in-fact)
RALI 2007-QS7	April 3, 2007	333-140610	James G. Jones David M. Bricker James N. Young Ralph T. Flees Lisa R. Lundsten (attorney-in-fact)

E. RELEVANT NON-PARTIES

47. Non-parties, the "Issuing Trusts", are common law trusts. The Issuing Trusts were created and structured by Defendants and their affiliated entities to issue billions of dollars worth of RMBS. The Issuing Trusts issued the Certificates purchased by Plaintiff. The non-party Issuing Trusts are:

(i) RAAC Series 2005-SP2 Trust

(ii) RALI Series 2007-QS7 Trust

(iii) RASC Series 2006-EMX9 Trust

(iv) RASC Series 2006-KS9 Trust

(v) RASC Series 2007-KS2 Trust

(vi) RASC Series 2007-KS3 Trust

SUBSTANTIVE ALLEGATIONS

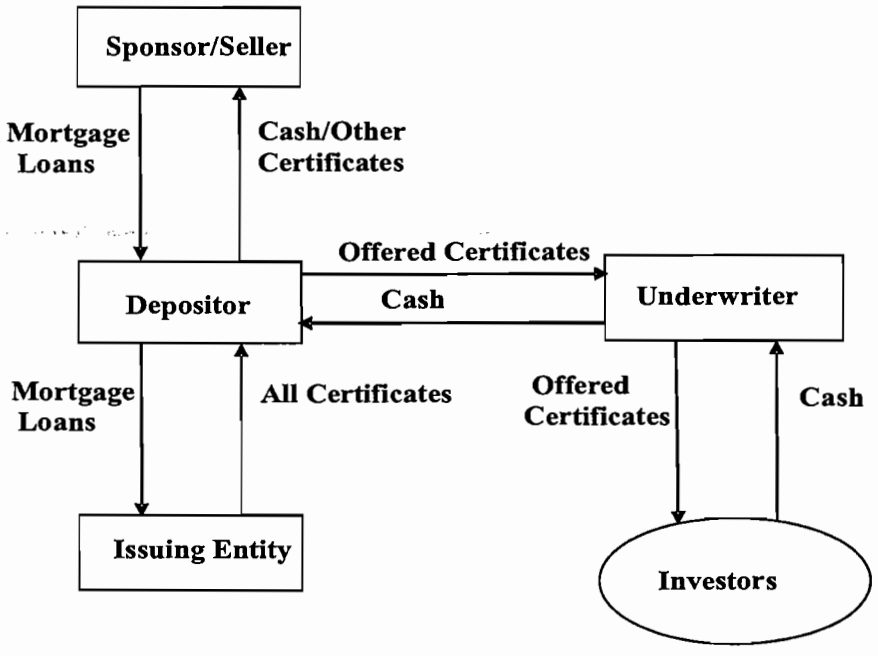
I. THE SECURITIZATION PROCESS GENERALLY

48. Traditionally, the process for extending mortgage loans to borrowers involved a lending institution (the loan originator) making a loan to a home buyer in exchange for a promise by the home buyer, documented in the form of a promissory note, to repay the principal and interest on the loan. The loan originator obtained a lien against the home as collateral in the event the home buyer defaulted on its obligation. Under this simple model, the loan originator held the promissory note until it matured, and was exposed to the risk that the borrower might fail to repay the loan. As such, the loan originator had a financial incentive to ensure that the borrower had the financial wherewithal to repay the loan and that the underlying property had sufficient value to enable the originator to recover its principal and interest in the event that the borrower defaulted.

49. Beginning in the 1990s, however, banks and other mortgage lending institutions increasingly used securitizations to finance the extension of mortgage loans to borrowers. Under the securitization process, after a loan originator issues a mortgage to a borrower, the loan originator sells the mortgage to a third-party financial institution. By selling the mortgage, the loan originator not only obtains fees, but receives the proceeds from the sale of the mortgage up-front, and thereby has new capital to issue more mortgages. The financial institutions which purchase the mortgages then pool the mortgages together and securitize the mortgages into what are commonly referred to as residential mortgage-backed securities or RMBS. In this manner, unlike the traditional process for extending mortgage loans, the loan originator is no longer subject to the risk that the borrower may default; that risk is transferred with the mortgages to investors who purchase the RMBS.

50. The securitization of residential mortgage loans, and the creation of RMBS collateralized against these loans, typically follows the same structure and pattern in each transaction. First, a loan originator, such as a mortgage lender or bank, originates the underlying residential mortgage loans. After a loan has been made, a "sponsor" or "seller" (who either originated the loans itself or acquired the loans from other loan originators) sells the mortgage loans to a "depositor." The depositor pools these loans and deposits them into a special purpose entity or trust created by the depositor. One trust is established to hold the pool of mortgages for each proposed offering. In order to facilitate multiple offerings of RMBS, a depositor sets up multiple trusts to hold the different pools of mortgages that are to be securitized. With respect to each offering, in return for the pool of mortgages acquired from the depositor, the trust issues and distributes RMBS certificates to the depositor. The depositor then works with an underwriter to price and sell the certificates to investors. Thereafter, a servicer is appointed to service the mortgage loans held by the trust, *i.e.*, to collect the mortgage payments from the borrower in the form of principal and interest, and to remit them to the trust for administration and distribution to the RMBS investors. A trustee then determines whether the mortgage loan documents were properly documented and valid. The diagram on the next page illustrates the typical structure of a securitization:

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51. In selling the certificates to investors, the depositor and underwriters disseminate to investors various disclosure or offering documents describing the certificates being sold. The offering documents are comprised of: (1) a "shelf" registration statement (under SEC Rule 415, an issuer may file one registration statement covering several offerings of securities made during a period of up to three years after the filing of the registration statement); (2) a "base" prospectus; and (3) a "prospectus supplement." Because a depositor will create a different trust for each offering of RMBS (as described above), the depositor files one shelf registration statement and one base prospectus that apply to multiple trusts that the depositor proposes to establish. With respect to each specific trust, however, the depositor also files a prospectus supplement that applies only to that particular trust. Thus, for any given offering of securities, the relevant offering documents will typically be a shared registration statement and shared base prospectus, as well as an individual, trust-specific prospectus supplement.

52. Each investor who purchases an RMBS certificate is entitled to receive monthly payments of principal and interest from the trust. The order of priority of payment to each

investor, the interest rate to be paid to each investor, and other payment rights accorded to each investor depend on which class or tranche of certificates the investor purchases.

53. The highest or senior tranche is the first to receive its share of the mortgage payments and is also the last to absorb any losses should mortgage borrowers become delinquent or default on their mortgages. Accordingly, these senior tranches receive the highest investment rating by the rating agencies, usually AAA. After the senior tranche, the middle tranches (referred to as mezzanine tranches) next receive their share of the proceeds. These mezzanine tranches are generally rated from AA to BB by the rating agencies. The process of distributing the mortgage proceeds continues down the tranches through to the bottom tranches, referred to as equity tranches. This process is repeated each month and all investors receive the payments owed to them so long as the mortgage borrowers are current on their mortgages.

II. THE SECURITIZATIONS ASSOCIATED WITH PLAINTIFF'S CERTIFICATES AND ITS INVESTMENTS IN THE CERTIFICATES

54. In this case, the six Issuing Trusts and the seven Certificates purchased by Plaintiff were structured and sold by GMAC and its affiliated entities. As such, the transactions between the sponsor/sellers, depositors, underwriters, and the Issuing Trusts were not arm's length transactions, as GMAC controlled nearly all the entities.

55. Depositor Defendant RAMP, a GMAC entity, created the Issuing Trust RAAC Series 2005-SP2 Trust. RAMP then purchased mortgage loans from another GMAC entity, the Sponsor Defendant RFC, to place into the trusts. In addition, the Certificates issued by the RAAC Series 2005-SP2 Trust were underwritten by another GMAC entity: Defendant Residential Funding.

56. Depositor Defendant RALI, a GMAC entity, created the Issuing Trust RALI Series 2007-QS7 Trust. RALI then purchased mortgage loans from another GMAC entity, the

Sponsor Defendant RFC, to place into the trusts. In addition, the Certificates issued by the RALI Series 2007-QS7 Trust were underwritten by another GMAC entity: Defendant Residential Funding.

57. Depositor Defendant RASC, a GMAC entity, created the Issuing Trusts RASC Series 2006-EMX9 Trust, RASC Series 2006-KS9 Trust, RASC Series 2007-KS2 Trust, and RASC Series 2007-KS3 Trust. RASC then purchased mortgage loans from another GMAC entity, the Sponsor Defendant RFC, to place into the trusts. In addition, the Certificates issued by the RASC Series 2006-EMX9 Trust and RASC Series 2007-KS3 Trust were underwritten by another GMAC entity: Defendant Residential Funding.

58. In connection with their role as the depositors for the Issuing Trusts that are the subject of this action, Defendants RALI, RAMP, and RASC prepared and filed with the SEC the following shelf registration statements, to which the Certificates purchased by Plaintiff are traceable:

Registration Statement	Date Filed	Registrant	Amount Registered
333-125485	July 7, 2005	RAMP	$35,350,152,366
333-131209	March 30, 2006	RASC	$32,785,190,000
333-140610	April 3, 2007	RALI	$80,000,000,000

59. At the time of filing, each Registration Statement contained an illustrative form of a prospectus supplement that would be used in the various offerings of Certificates. At the effective date of a particular offering of Certificates, one or more Underwriter Defendants prepared and filed a final Prospectus Supplement with the SEC, which contained a description of the mortgage pool for that particular offering of Certificates and a description of the underwriting standards by which the mortgages were originated. The Underwriter Defendant or Defendants then marketed and sold the Certificates pursuant to these Prospectus Supplements.

60. The following chart summarizes and identifies (1) each Issuing Trust that issued and sold the Certificates purchased by Plaintiff; (2) the dates of the Registration Statements and Prospectus Supplements pursuant to which the Certificates were issued and sold; and (3) the identities of the depositor, the issuer, underwriters, and the sponsor/seller for each offering.

Amended Registration File No. and	Issuing Trust	Prospectus Supplement Date	Depositor	Underwriter(s)	Sponsor/ Seller
333-125485 (7/7/2005)	RAAC Series 2005-SP2 Trust	10/11/2005	RAMP	Merrill Lynch Residential Funding	RFC
333-131209 (3/30/2006)	RASC Series 2006-EMX9 Trust	10/24/2006	RASC	Residential Funding Barclays	RFC
	RASC Series 2006-KS9 Trust	10/24/2006	RASC	Barclays	RFC
	RASC Series 2007-KS2 Trust	2/20/2007	RASC	JPMorgan	RFC
	RASC Series 2007-KS3 Trust	3/26/2007	RASC	BoA JPMorgan Residential Funding	RFC
333-14061 (4/3/2007)	RALI Series 2007-QS7 Trust	5/31/2007	RALI	Deutsche Bank Residential Funding	RFC

III. IMPORTANT FACTORS IN THE DECISION OF INVESTORS, SUCH AS PLAINTIFF, TO INVEST IN THE CERTIFICATES

61. In purchasing the Certificates, Plaintiff, like other investors, attached critical importance to: (a) the underwriting standards used to originate the loans underlying the Certificates; (b) the value of the properties securing the underlying mortgage loans and the appraisal methods used to determine this; (c) the ratings assigned to the Certificates; (d) the level of credit enhancement applicable to the Certificates; and (e) the ability of the Issuing Trusts to establish legal title to the underlying loans.

62. Sound underwriting was critically important to Plaintiff because the ability of borrowers to repay principal and interest was the fundamental basis upon which the investments in the Certificates were valued. Reflecting the importance of the underwriting standards, the Offering Documents contained representations concerning the standards purportedly used to originate the mortgages held by the Issuing Trusts.

63. For example, the Registration Statement filed by RAMP, dated July 7, 2005, stated that:

> The depositor expects that the originator of each of the loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.... The accompanying prospectus supplement will describe most aspects of the underwriting criteria, to the extent known by the depositor, that were applied by the originators of the loans.

64. Similarly, the Prospectus Supplements indicated that the underwriting guidelines were primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan.

65. With respect to loans acquired from third-party originators, the Prospectus Supplements represented that stated underwriting guidelines required them to consider, among other things, the mortgagor's credit history, repayment ability, and debt-to-income ratio, as well as the type and use of the mortgaged property. In addition, the Prospectus Supplements represented that in order to submit loan packages, the loans must have been made in compliance with the terms of a signed mortgage loan purchase agreement.

66. Independent and accurate real estate appraisals were also critically important to investors such as Plaintiff because they ensured that the mortgage loans underlying the Certificates were not under-collateralized, thereby protecting RMBS investors in the event a

borrower defaulted on a loan. As such, by allowing RMBS investors to assess the degree to which a mortgage loan was adequately collateralized, accurate appraisals provided investors such as Plaintiff with a basis for assessing the price and risk of the Certificates.

67. One measure that uses the appraisal value to assess whether mortgage loans are under-collateralized is the loan-to-value ("LTV") ratio. The LTV ratio is a mathematical calculation that expresses the amount of a mortgage as a percentage of the total value of the property, as obtained from the appraisal. For example, if a borrower seeks to borrow $900,000 to purchase a house worth $1,000,000, the LTV ratio is $900,000/$1,000,000, or 90%. If, however, the appraised value of the house is artificially increased to $1,200,000, the LTV ratio drops to just 75% ($900,000/$1,200,000).

68. From the perspective of lenders, and investors such as ABP, the higher the LTV ratio, the riskier the loan because it indicates the borrower has a lower equity stake, and a borrower with a lower equity position has less to lose if s/he defaults on the loan. The LTV ratio is a significant measure of credit risk because both the likelihood of default and the severity of loss are higher when borrowers have less equity to protect in the event of foreclosure. Worse, particularly in an era of falling housing prices, a high LTV ratio creates the heightened risk that, should the borrower default, the amount of the outstanding loan may ***exceed*** the value of the property.

69. As stated above, the Offering Documents represented that the adequacy of the mortgaged properties as collateral had generally been determined by appraisals in accordance with appraisal procedure guidelines set forth in a Seller's Guide drafted by RFC. These guidelines purportedly mandated measures to ensure the accuracy of the appraisals, including that:

- The appraiser or an agent on its behalf was generally required to personally inspect the properties to verify that they were in good condition, and to ensure that construction of new properties had been substantially completed.

- The appraiser was required to consider market data analyses of recent sales of comparable properties and, if applicable, analyses of income generated from the properties or replacement cost analyses.

70. Reflecting the importance of independent and accurate real estate appraisals to investors such as Plaintiff, the Offering Documents contained extensive disclosures concerning the value of the collateral underlying the mortgages pooled in the Issuing Trusts and the appraisal methods by which such values were obtained.

71. The rating assigned to each of the Certificates was another important factor in Plaintiff's decisions to purchase the Certificates. Plaintiff and other investors relied on the ratings as an indicator of the safety and likelihood of default of the mortgage loans underlying a particular Certificate. Consistent with its conservative corporate investment guidelines, Plaintiff purchased the Certificates because they all were rated AAA.

72. In purchasing the Certificates, Plaintiff relied on the ability of each of the Issuing Trusts to be able to show that it in fact had legal title to the underlying mortgage loans. Plaintiff would never have purchased any of the Certificates from Defendants if there was any doubt as to whether the Issuing Trusts had legal title to any of the mortgage loans that were pooled for each offering.

73. Finally, the Prospectus Supplements represented the level of credit enhancement, or loss protection, associated with the Certificates. Credit enhancements impact the overall credit rating that a Certificate receives. The amount of credit enhancements built into the Certificates was overstated, which exposed Plaintiff to additional losses. These levels of credit enhancement were material to Plaintiff.

IV. DEFENDANTS KNEW THAT A LARGE PERCENTAGE OF THE MORTGAGE LOANS UNDERLYING PLAINTIFF'S CERTIFICATES WERE MADE AS A RESULT OF THE SYSTEMATIC ABANDONMENT OF PRUDENT UNDERWRITING GUIDELINES AND APPRAISAL STANDARDS

74. Prior to underwriting and selling the Certificates to investors like Plaintiff, Defendants had identified but failed to disclose the widespread underwriting and appraisal deficiencies by the mortgage originators described below. This was in direct contrast to the representations in the Offering Documents accompanying the Certificates sold to Plaintiff.

75. As has now come to light, contrary to the representations in the Offering Documents, Defendants GMAC Mortgage and Homecomings Financial and the third-party originators that originated the mortgages underlying the Certificates, knowingly departed from the underwriting and appraisal standards that were represented in the Offering Documents.

76. In the early 2000s an unprecedented boom in the housing market began to unfold. Between 1994 and 2004, the housing market experienced a dramatic rise in home ownership, as 12 million more Americans became homeowners. Likewise, the subprime market grew dramatically, enabling more and more borrowers to obtain credit who traditionally would have been unable to access it. According to INSIDE MORTGAGE FINANCE, from 1994 to 2006, subprime lending increased from an estimated $35 billion, or 4.5% of all one-to-four family mortgage originations, to $600 billion, or 20% of originations.

77. To ride this housing boom, financial firms aggressively pushed into the complex, high-margin business of securitization, *i.e.*, packaging mortgages and selling them to investors as RMBS. This aggressive push created a boom for the mortgage lending industry. Mortgage originators generated profits primarily through the sale of their loans to financial firms like GMAC, and the originators were therefore driven to originate and sell as many loans as possible. This high-volume business model, and the awareness of originators and RMBS issuers that

RMBS investors such as Plaintiff would ultimately take the losses from defaulting loans, led to an overall decline in lending standards and tolerance of mortgage fraud. Indeed, according to the FBI, a fraud analytics company analyzed more than 3 million loans and found that between 30 and 70 percent of early payment defaults were linked to significant misrepresentations in the original loan applications.

78. In addition, some appraisers were openly instructed to alter their valuations for the benefit of the mortgage lenders. According to the June 26, 2007 testimony of Alan Hummel, the chair of the Appraisal Institute's Government Relations Committee, before the House Committee on Financial Services on 'Legislative Proposals on Reforming Mortgage Practices,' "Unfortunately, these parties with a vested interest in the transaction are often the same people managing the appraisal process within many financial institutions, and therein is a terrible conflict of interest. . . . [I]t is common for a client to ask an appraiser to remove details about the material condition of the property to avoid problems in the underwriting process." A 2007 study conducted by the October Research Corporation reported that 90% of appraisers had been pressured to raise property valuations so that deals could go through, and that 75% of appraisers reported "negative ramifications" if they did not alter their appraisals accordingly.

79. Even absent explicit coercion or collusion, mortgage originators could inflate apparent home values simply by offering work to only complaint appraisers. According to the April 7, 2010 testimony of Richard Bitner ("Bitner"), a former executive of a subprime mortgage originator, before the FCIC, "[B]rokers didn't need to exert direct influence. Instead they picked another appraiser until someone consistently delivered the results they needed."

80. Widespread and systematic overvaluations by mortgage originators set into motion a snowball effect that inflated housing prices all across the country and further distorted

the RMBS market. As Bitner testified, "If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals. The process then repeats itself. We saw it on several occasions. We'd close a loan in January and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. . . . In the end, the subprime industry's willingness to consistently accept overvalued appraisals significantly contributed to the run-up in property values experienced throughout the country."

81. In the instant action, the players that structured the Certificates purchased by Plaintiff were GMAC and its affiliated entities. GMAC embarked on a scheme to profit from the housing boom by acquiring or partnering with subprime lenders, such as the third-party originators described in ¶¶ 97-165 below, and then directing or encouraging these lenders to originate and purchase large numbers of mortgage loans, regardless of the borrower's ability to pay, so that the loans could then be quickly flipped at a profit on to an unsuspecting secondary market (that is, RMBS investors such as Plaintiff).

82. GMAC reaped billions of dollars in profits from its activities in the RMBS space during the U.S. housing boom. GMAC's ResCap operation was a vertically integrated business with a hand in nearly every stage of the mortgage securitization business, including originating, purchasing and selling residential mortgage loans, bundling mortgages into RMBS and selling them to investors, and servicing the loans it had securitized. At nearly every stage in the mortgage securitization process, GMAC garnered enormous profits. GMAC pocketed the difference between what it paid to originate or purchase a pool of mortgage loans and what it received from selling those loans into a securitization. GMAC obtained underwriting fees and

commissions from selling the RMBS it had securitized to investors. GMAC also collected fees for servicing pooled mortgages. According to *Inside Mortgage Finance,* from 2004 to 2007 GMAC issued a total of approximately $197.85 billion in non-agency RMBS (which is to say, RMBS not associated with a government agency or government-sponsored enterprise such as Fannie Mae or Freddie Mac). According to Ally Financial's Form 10-K filings, GMAC's ResCap operations produced approximately ***$12.76 billion*** in net revenue over that same time period.

83. GMAC was totally dependent upon a steady supply of mortgage loans – the raw materials of securitization – to keep its lucrative RMBS business in operation. Without such loans, GMAC would not have been able to issue and sell new RMBS. Thus, GMAC was far more interested in originating and purchasing a high volume of loans than it was in ensuring that those loans were of high quality. As a former RFC trader quoted in a separate complaint against GMAC stated, GMAC "needed to continue to purchase more loans for the securitizations, or they would have been out of business." According to this employee, who worked at RFC from 1998 to March 2007, beginning in 2005 RFC began to purchase higher risk loans and allow more frequent exceptions to underwriting guidelines, especially if the third party originators selling the loans were good clients. At about that time, the third party originators that RFC dealt with began restricting RFC's reviews of the loans it acquired in bulk. This employee also stated that RFC's sales force was paid commissions based on the volume of the loans acquired and not the creditworthiness of those loans.

84. According to another former RFC analyst quoted in the *West Virginia Investment* complaint, Defendant Paradis, the President and CEO of RFC, would directly intervene with traders who balked at buying low-quality mortgages, especially when the sellers were favored

vendors. The analyst stated that "it was not uncommon for Paradis to go down to the desk, put his arm around the trader, and say, 'come on, why not.'"

85. As represented in the Offering Documents, the originators made loans pursuant to underwriting guidelines primarily intended to assess the ability and willingness of the borrower to repay the mortgage loan, apart from the adequacy of the mortgaged property as collateral for the loan. Accordingly, the underwriting guidelines required the consideration of, among other things, the borrower's assets, liabilities, income, employment history and credit history.

86. Notwithstanding these explicit requirements in their underwriting guidelines, the originators extended numerous loans even though the borrower's financial and employment information was not provided, or even if it was, that information was patently false and the originators knew that the borrower was misrepresenting her or his income, occupation and other information, and was engaged in outright mortgage fraud.

87. In their respective capacities as sponsor/sellers, depositors, and underwriters of the Certificates purchased by Plaintiff, Defendants had an obligation to conduct due diligence regarding the accuracy and completeness of the Offering Documents prior to their dissemination to investors such as Plaintiff. In connection with that due diligence process, Defendants had access to information which should have alerted them to the various originators' systematic and widespread abandonment of stated underwriting guidelines and appraisal methods. Defendants were supposed to play a "gatekeeper" role for public investors like Plaintiff, who did not have access to non-public information through which to test the assertions in the Offering Documents.

88. Defendants did not fulfill their obligation to ensure that investors, like Plaintiff, were provided with Offering Documents containing accurate and complete information. In connection with a lawsuit, another company, MBIA Insurance Corporation ("MBIA") has

conducted loan-level analyses of three GMAC RMBS with a total original principal balance of more than $4 billion. The RMBS were underwritten by Defendant Residential Funding, the depositor for each offering was Defendant RAMP, and GMAC Bank was the originator of the underlying mortgage loans.

89. MBIA agreed to insure the payments of these RMBS in the event that the cash flows to the trusts were impaired. When the loans underlying the RMBS began to default at a much higher rate than had been expected, MBIA investigated the individual loan files and documentation to determine the reasons for its losses. This forensic analysis covered 4,104 delinquent and charged-off mortgage loans underlying the GMAC RMBS.

90. MBIA discovered that GMAC had flagrantly disregarded its lending and underwriting standards. At least ***89%*** of the delinquent and charged-off loans it reviewed were in breach of one or more of GMAC's representations and warranties, with most containing multiple breaches. A significant number of mortgage loans were made on the basis of stated incomes that were "grossly unreasonable" or were approved despite debt-to-income or loan-to-value ratios in excess of those stated in GMAC's mortgage underwriting guidelines or the prospectus supplements. Furthermore, the vast majority of the loan files MBIA examined were missing basic and necessary documentation, such as disclosures establishing the chain of title.

91. On information and belief, the mortgage loans underlying the Certificates purchased by Plaintiff suffer from similar deficiencies as the mortgage loans underlying the Certificates insured by MBIA. From the sheer volume of nonconforming loans, it is apparent that Defendants either knew or acted with reckless disregard with respect to the risk that a substantial number of the loans that were included in the securitizations purchased by Plaintiff were not underwritten in compliance with the stated underwriting guidelines.

92. GMAC's fraudulent origination and purchasing practices are further evidenced by information obtained from the government sponsored entities Fannie Mae and Freddie Mac (the "GSEs"). Both of the GSEs purchase mortgage loans from financial institutions including GMAC. The mortgages that GMAC sold to the GSEs were originated through substantially the same channels and methods as the mortgages underlying Plaintiff's Certificates, but unlike the loans underlying the Certificates, not all of the mortgages sold to the GSEs were securitized. Because the GSEs purchased individual mortgages directly, rather than receiving Certificates from an Issuing Trust, the GSEs were in a better position than Plaintiff to determine whether the mortgages GMAC sold them had been originated in conformance with GMAC's stated underwriting and documentation standards. If any purchased loans did not comply with GMAC's representations, the GSEs possessed the right to demand that GMAC repurchase them.

93. According to documents provided to the Financial Crisis Inquiry Commission, as of September 10, 2010, Fannie Mae has required GMAC to repurchase 3,457 loans originated by Ally Bank, GMAC Mortgage, and Residential Funding, with an unpaid principal balance of $679 million, and had requested that GMAC also repurchase an additional 776 loans with an outstanding principal balance of $159 million. In December 2010, ResCap agreed to pay Fannie Mae approximately $462 million to settle claims regarding ResCap's obligations to repurchase defective loans.

94. Freddie Mac also purchased RMBS from GMAC. On September 2, 2011, the FHFA, acting as conservator for Freddie Mac, sued GMAC in New York state court, alleging, as Plaintiff does, that the offering documents "falsely represented that the mortgage loans underlying the RMBS complied with certain underwriting guidelines and standards, and presented a false picture of the characteristics and riskiness of those loans." Four of the RMBS

that are the subject of the Freddie Mac lawsuit were also purchased by Plaintiff; namely, (1) RASC Series 2006-EMX9 Trust; (2) RASC Series 2006-KS9 Trust; (3) RASC 2007-KS2 Trust; and (4) RASC 2007-KS3 Trust.

95. For each of the RMBS named in its lawsuit, Freddie Mac reviewed either a random sample of 1,000 of the underlying loans, or all of the underlying loans if there were less than 1,000 in the pool. This review confirmed, on a statistically significant basis, that GMAC's representations regarding owner-occupancy rates, LTV ratios, and underwriting standards had all been materially false. Likewise, in 2008, 2009, and 2010, Freddie Mac required GMAC Mortgage to repurchase 2,375 defective loans with an unpaid principal balance of $509 million.

96. GMAC had direct insight into the true quality of the loans underlying the Certificates it issued to Plaintiff. This is evidenced by GMAC's extensive relationships with the third-party originators, as well as by the origination of equally defective loans through its own mortgage origination affiliates, Defendants GMAC Mortgage and Homecomings Financial. Additionally, when originating and purchasing loans, GMAC made widespread use of proprietary underwriting software despite its awareness that the software did not apply its stated underwriting standards and would approve non-compliant loans.

A. DEFENDANTS GMAC MORTGAGE AND HOMECOMINGS FINANCIAL ABANDONED THEIR UNDERWRITING GUIDELINES AND APPRAISAL STANDARDS

1. GMAC Mortgage

97. GMAC Mortgage originated mortgage loans that were pooled in the RALI Series 2007-QS7 Trust and purchased by Plaintiff. Interviews with former GMAC Mortgage employees conducted in connection with a separate lawsuit have confirmed that GMAC Mortgage abandoned its stated underwriting and appraisal standards so as to generate increased volume. One confidential witness, a senior mortgage underwriter for GMAC Mortgage between

2003 and 2005, said that GMAC Mortgage's underwriting procedures were "pretty loose" and were referred to as "creative underwriting." Because corporate personnel wanted more loans approved, the witness said that approving loans was a way of "scratching peoples' backs."

98. Another confidential witness, a senior wholesale writer for GMAC between 1997 and 2007, said that her supervisors overrode her underwriting decisions to approve "loans they knew were bad," so as to increase their bonuses. "A lot of times the sales director would raise holy commotion with the supervisor and directors, and under pressure, they'd approve bad loans." She said that GMAC Mortgage approved many loans without verifying the borrowers' income or assets, which were called "liar loans, because we knew damn well they were lying. You can't tell me a manicurist in L.A. was making $12,000 a month." The witness also said that fraudulent appraisals that "you knew damn well did not support the value" were accepted by management. She said that she did not even trust the loan documentation, because she had heard of underwriters placing false information in loan files at management's behest.

99. This witness traced GMAC's underwriting practices to the "originate-to-securitize" model, noting that the underwriters would receive emails from the trading department instructing them that they needed additional loans to fill pools. She knew of one person who worked as a liaison between trading and underwriting, who was permitted to approve loans despite no underwriting experience. Another employee in charge of bulk loan files would approve multiple loans at once without taking into account whether they had been approved, declined or pended by the underwriters. When the witness complained to management, she was told that "everybody knew" about this conduct and that there was no problem with it.

100. In addition to adopting skewed incentive structures and tolerating mortgage fraud, GMAC Mortgage also weakened its underwriting standards by utilizing badly flawed

underwriting software. In late 2004, GMAC introduced an automated loan decisionmaking engine called Assetwise to streamline loan acquisition and origination. Loan personnel could enter data regarding a proposed loan into Assetwise and receive immediate guidance as to whether that loan would be eligible for purchase by GMAC. GMAC Mortgage made extensive use of this software, and also provided it to select third party originators to facilitate sales. As General Motors Acceptance Corporation stated in an 8-K filing, filed on June 24, 2005,

> To help ensure consistency and efficiency in its production of residential mortgage loans, much of the Residential Capital Group's underwriting analysis is conducted through the use of its proprietary underwriting technology, Assetwise Direct. This proprietary technology implements automated decision, pricing and integration tools that extend mortgage products and risk management and pricing strategies to points of origination, and facilitates secondary market acquisition of mortgage loans.

101. However, according to a lawsuit filed by MBIA, Assetwise was programmed with looser standards than GMAC's stated underwriting guidelines. As a result, Assetwise approved loans that should never have been made, which were consequently bundled into RMBS and sold to investors such as Plaintiff. Rather than ensuring "consistency and efficiency," Assetwise created inconsistency, masked the true underwriting standards that were being applied, and permitted loan personnel to easily circumvent prudent and necessary safeguards.

102. GMAC Mortgage also made use of another underwriting program, Desktop Underwriter, which similarly failed to apply GMAC's stated underwriting standards. Former GMAC employees quoted in the complaint brought by Thrivent Financial for Lutherans, et al., have discussed the failings of Desktop Underwriter. One witness, a senior underwriter at GMAC Mortgage from 1986 to 2008, said that GMAC Mortgage used human underwriters only to approve loans that could not be processed through its software, and that the software did not require verification of income or assets. Thus, GMAC effectively abdicated its responsibility to

substantiate borrower claims for any loans that its software would accept. The witness further said, "If the application indicates it and the borrower says it, [Desktop Underwriter treated it as] truth. And we as underwriters rarely saw them." This witness also referred to GMAC Mortgage's no-documentation loans as liar loans and said that any GMAC Mortgage borrower "could say they made $8,000 a month [when] they really didn't."

103. Another witness, who was a GMAC underwriter from 1997 to 2008, stated that the Desktop Underwriter did not require documentation, had "very loose guidelines," and "rarely turned down a loan." According to this witness, when processing no-documentation loans, GMAC only verified credit scores and LTV ratios. Requiring borrowers to verify their information "was just unheard of."

104. A witness who worked at GMAC as a securities trading analyst from 2006 to 2007 said that GMAC could have detected fraudulent loans had it chosen to look beyond the basic information in the computer files. However, because the underwriting was automated, mortgage brokers could submit information based on the criteria needed to close a loan rather than the borrower's actual circumstances.

2. Homecomings Financial, LLC

105. Homecomings Financial, LLC, f/k/a Homecomings Financial Network, Inc. ("Homecomings") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RALI Series 2007-QS7 Trust, RASC Series 2007-KS2 Trust, RASC Series 2007-KS3 Trust, RASC Series 2006-KS9 Trust, and RASC Series 2007 KS2 Trust. Homecomings Financial, LLC ("Homecomings"). Homecomings was founded in 1995, and was a leading originator and provider of mortgage loans.

106. Homecomings was ResCap's primary wholesale lender from 1995 until its closure in 2008. A former RFC mortgage trader quoted in the *West Virginia Investment Management*

Board complaint said that RFC traders made exceptions for Homecomings loans that were higher risk and did not fit standard underwriting guidelines.

107. Homecomings has been targeted by lawsuits and come under regulatory scrutiny for offering excessively risky loans and engaging in abusive servicing practices. Tim Boyd, a former Homecomings loan officer, was quoted as saying that Homecomings' "main focus was doing Alt-A [a category of loans supposedly riskier than prime but less risky than subprime] because that's where the money was," in a March 5, 2009 PORTLAND TRIBUNE article, "Shaky Loans May Spur New Foreclosure Wave."

108. Option ARMs are an especially risky form of loan because borrowers may wind up adding to their total indebtedness by making interest-only payments. Bill Ridge, a mortgage broker quoted in the PORTLAND TRIBUNE article, noted that GMAC management was especially keen on pushing such loans, stating, "The V.P.s came down to the office beating the drums about Option ARMs. I had Wachovia march through there; I had GMAC." He also said that he knew of loan officers who would instruct title agents not to inform borrowers about the problematic aspects of these loans. Boyd said that while a loan officer arranging a $300,000 Option ARM loan could collect as much as $10,500 in fees, he personally did not sell such loans because it made him "sick" to see how they could get borrowers into trouble.

109. The West Virginia Attorney General's office has investigated Homecomings for predatory lending and mortgage servicing practices, including charging a wide range of excess and unlawful fees and engaging in servicing practices that made foreclosure more likely to occur. On June 9, 2005, the West Virginia Attorney General's office announced that it had reached a settlement with Homecomings and another mortgage servicing company, whereby they agreed to

pay $773,000 in restitution to approximately 2,300 West Virginia consumers and cancel nearly $11 million in debt.

110. The Federal Trade Commission ("FTC") investigated Homecomings for possible violations of the Equal Credit Opportunity Act after reviewing Homecomings' mortgage loan data and discovering that African-American and Hispanic borrowers paid more for Homecomings mortgage loans than non-Hispanic whites. The FTC's investigation focused on whether the underwriting risk and credit characteristics of the borrowers justified the reported disparities in loan price. The investigation revealed that, rather than applying uniform, risk-based underwriting standards to ensure that its borrowers were receiving loans that they could afford, Homecomings permitted independent brokers to tack on fees and hike interest rates on a discretionary basis, increasing the risk of default.

111. On February 7, 2008, Homecomings borrowers filed a Truth-In-Lending-Act ("TILA") class action complaint against the company, alleging that it had engaged in a "nationwide scheme of illegal, unfair, unlawful and deceptive business practices that violate both state and federal law," including structuring account statements, "in a way that makes it extremely difficult or impossible for borrowers to determine how much they owe, or how any mortgage payment will be allocated." The complaint further alleged that Homecomings' improper fees and collection practices increased the likelihood that borrowers would default, a matter of great concern to RMBS investors such as Plaintiff. The lawsuit settled in November 2009.

112. As discussed in ¶¶ 88-91, *supra,* the insurer MBIA has conducted loan-level analyses of several GMAC RMBS and discovered that the vast majority of the underlying mortgages in default were in violation of the representations and warranties made in the offering

documents. Homecomings was one of the major originators for a number of the RMBS analyzed by MBIA.

113. On September 3, 2008, ResCap announced that it would stop offering home loans through Homecomings. According to a January 22, 2009 letter from the FTC, Homecomings has stated that it has no intention of resuming mortgage lending in the future.

B. THE THIRD PARTY ORIGINATORS OF THE MORTGAGE LOANS UNDERLYING PLAINTIFF'S CERTIFICATES ABANDONED THEIR UNDERWRITING GUIDELINES AND APPRAISAL STANDARDS

114. As discussed above, many of the underlying mortgage loans that the Defendants packaged into securities and sold to Plaintiff were originated by third-party originators and then sold *en masse* to Defendant RFC. The Offering Documents associated with each of Plaintiff's Certificates purported to describe each of the specific originators' underwriting guidelines, and represented that the underlying mortgage loans were originated in compliance with the underwriting and appraisal standards of the originators.

115. Several of the relevant originators involved in these transactions are now known to have, among other things, ignored their own underwriting guidelines and used inflated appraisals during loan generation. The questionable practices that were employed by many of these originators have led to numerous allegations and investigations into their operations. In fact, as noted below, faulty underwriting has led to the downfall of several of the originators whose loans Defendants bundled in these offerings.

116. The Offering Documents contain material representations, relied upon by Plaintiff, that Defendants performed due diligence on the mortgage loans they acquired from third parties and undertook certain quality control measures to ensure that faulty mortgages were ***not*** included in the Certificates they underwrote and sold. *See, e.g.*, Prospectus Supplement for RASC 2007-KS2 (Form 424B5) (Feb. 20, 2007), at S-58:

> Prior to assignment to the depositor, Residential Funding Company, LLC reviewed the underwriting standards for the mortgage loans and all of the mortgage loans were in substantial conformity with the standards set forth in Residential Funding Company, LLC's AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement.

117. Furthermore, a number of Defendants had ownership interests and/or close business relationships with the third-party originators, providing a direct window into how the third-party originators did business and the degree to which they had abandoned prudent lending standards to profit from the securitization machine. Despite their direct knowledge that the third-party originators did not follow their stated underwriting guidelines and lent money recklessly, Defendants permitted the Issuing Trusts to purchase loans originated by them without fair disclosure. In particular:

- Defendant Jones was a former Chief Executive Officer of Aegis Mortgage Corporation before joining GMAC. Thus, Jones was or should have been intimately aware of the company's underwriting standards or lack thereof. Aegis Mortgage Corporation originated some of the mortgages underlying the Certificates issued by RASC Series 2006-KS9 Trust, which Plaintiff purchased.

- Defendant Merrill Lynch was a major creditor of Mortgage Lenders Network USA, Inc., providing it with a warehouse line of credit and purchasing many of the loans that it originated. Merrill Lynch was well aware of the low quality of the loans originated by this lender because, as described *infra,* it required Mortgage Lenders Network USA, Inc. to repurchase tens of millions of dollars of defective mortgages.

- Defendant Merrill Lynch purchased a 20% ownership interest in OwnIT Mortgage Solutions, Inc. in September 2005, and extended the lender a $3.5 billion credit line. As described *infra*, Merrill Lynch both pressured the lender to loosen its lending standards and aggressively asserted repurchase claims against it for defective loans.

118. The table on the next page lists the major third-party originators responsible for originating the mortgages underlying Plaintiff's Certificates.

Issuing Trust	Originators
RAAC Series 2005-SP2 Trust	Ameriquest
	MSMC
RASC Series 2006-EMX9 Trust	MLN
RASC Series 2006-KS9 Trust	Ownit
	People's Choice
	Homecomings Financial
	Aegis
RASC Series 2007-KS2 Trust	New Century
	Homecomings Financial
RASC Series 2007-KS3 Trust	People's Choice
	Homecomings
RALI Series 2007-QS7 Trust	Homecomings Financial
	People's Choice

1. Aegis Mortgage Corporation

119. Aegis Mortgage Corporation ("Aegis") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RASC Series 2006-KS9 Trust. Aegis began life as a privately-held mortgage banking company owned by three individuals. By 1998, the company was generating $1 billion in annual loan volume. In 1998 and 1999, Cerberus Capital Management, LP made a $45 million investment in Aegis. With this cash, Aegis acquired two extremely distressed mortgage production operations, UC Lending and New America. These and subsequent acquisitions enabled Aegis to grow from 150 employees in nine locations in 1999 to 3,800 employees in over 100 locations in 2005. By 2006, Aegis was ranked as the 13th largest subprime lender in the country, generating close to $20 billion in annual originations. In eight years, the company's subprime originations grew by an incredible 1,750%.

120. Aegis's astronomic growth was fueled by an insatiable appetite for high fee, high-risk mortgages. To satisfy its enormous appetite, Aegis loosened its loan underwriting standards

to the point of near abandonment by 2006. A large portion of the loans Aegis originated during this time were in fact purchased from unlicensed mortgage brokers. Because Aegis was selling all the loans it originated to major financial firms like GMAC, underwriting standards were consistently ignored and more and more loans were approved.

121. Eventually, the bad loans caught up with Aegis. A news report issued on August 6, 2007, announced that Aegis could not meet all of its existing funding obligations. The next day, the company had suspended all loan originations. On August 13, 2007, the company was forced to file for bankruptcy protection, listing more than $100 million each in assets and liabilities.

122. Despite filing for bankruptcy, Aegis was still subject to scrutiny for its aggressive loan origination practices. In August 2010, the U.S. Attorney for the United States District Court for the Northern District of Ohio brought a 49-count indictment against several attorneys, appraisers, and loan officers alleging that, from July 2003 through January 2006, a mortgage fraud scheme was devised involving the preparation and submission of fraudulent mortgage loan applications to various lenders, including Aegis, knowing that they contained false information, including the applicants' "assets, whether the property would be used as their primary residence and the source of the down payment funds...." The applications also contained phony appraisal values that far exceeded the true value of the underlying properties.

2. Ameriquest Mortgage Company

123. Ameriquest Mortgage Company ("Ameriquest") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RAAC-2005-SP2 Trust. Ameriquest was a wholly-owned retail lending subsidiary of ACC Capital Holdings, the nation's largest subprime lender.

124. Ameriquest's apparent success in the subprime lending market was characterized by the company's complete abandonment of prudent underwriting guidelines. As revealed by a multi-state investigation, Ameriquest made stated-income or low-documentation loans where Ameriquest employees fabricated or inflated the borrowers' income and/or assets in order to qualify the borrowers for the loans.

125. Former Ameriquest employees have spoken out regarding Ameriquest's business practices. A National Public Radio newscast from May 14, 2007, described how employees were encouraged to conceal rate terms and to make fake fixed-loan documents pushing customers into loans that they could not afford. One former Ameriquest employee, Tyson Russum, stated that the "impression [he] got was that ... it's basically make the sale at any cost." Russum, a loan officer who worked in Tampa, Florida, recalled observing some co-workers applying white-out to income numbers on W-2s and bank statements and filling in "bigger amounts basically to qualify people for loans that they couldn't afford," a practice that was referred to as "taking the loan to the art department." Such practices were not isolated incidents but rather occurred at Ameriquest branches across the country.

126. An August 20, 2007, BUSINESSWEEK article entitled "Did Big Lenders Cross the Line?" reported the emergence of a growing number of lawsuits pertaining to subprime mortgage lending, suggesting that some big lenders, like Ameriquest, had been colluding to "falsify loan documents by beefing up income and lowballing outstanding debts" in an effort to "keep up loan volume and generate sales."

127. The article described one such lawsuit filed by Mary Overton. Overton's complaint alleged that loan officers at a Brooklyn, New York, branch of Ameriquest "coerced [her] into signing a loan," but "[u]nbeknownst to Ms. Overton, Ameriquest created fake tax

returns, employment records, and a 401(k)—to make it appear that the loan was affordable." The article reported that at least 40 other borrowers alleged that Ameriquest doctored loan documents or increased borrowers' income in an effort to boost loan generation and sales.

128. According to written testimony provided in March 2009 by Illinois Attorney General Lisa Madigan to the House Committee on Financial Services:

> Ameriquest [] received its funding line from Wall Street firms. These same firms bought and securitized the subprime loans Ameriquest sold. For those of us on the state level, the Ameriquest investigation marks the moment when we began to see the underwriting practices of mortgage lenders erode at a disturbingly accelerated pace. In 2002, Ameriquest was originating loans with an average loan-to-value ratio of 74 percent. Two years later, the ratio had risen to 81 percent. Ameriquest had also ramped up its originations of stated income loans, that is, loans that permit the borrower merely to state his or her income without further review. By 2003, Ameriquest was originating almost 30 percent of its loans – which were all subprime – as stated-income or limited-documentation loans.
>
> Our multistate investigation of the nation's largest subprime mortgage lender revealed that Ameriquest engaged in the kinds of fraudulent practices that other predatory lenders subsequently emulated on a wide scale. These practices included: inflating home appraisals...Ameriquest also locked borrowers into costly loans by including three-year prepayment penalties on loans with a two-year introductory rate that reset to a higher rate at the end of two years. These penalties were added because Wall Street investors preferred and paid more for loans with prepayment penalties.

129. Ameriquest entered into a nationwide settlement in 2006 under which it agreed to injunctive relief and monetary payments totaling $325 million. Among other things, Ameriquest agreed to use independent loan closers for all subprime loans, to ensure that each loan provided an actual benefit to the borrower, and not to fabricate or inflate income or assets or sign any documents on behalf of a borrower.

130. In October 2007, Wachovia Bank N.A. ("Wachovia") filed a lawsuit against Ameriquest for failure to comply with repurchase requests on loans with fraudulent files. Wachovia paid Ameriquest almost $129 million for loans purchased on December 29, 2005, but later identified at least 135 loans that Ameriquest misrepresented, including loans with documentation containing "incorrect credit scores, false employment records and misstatements of the kind of homes that were being financed."

131. A class action complaint was also filed in the United States District Court for the Northern District of Illinois in December 2005 against Ameriquest, its sister company Argent, and parent ACC Holdings, which was later consolidated along with 14 other class action cases before the Judicial Panel on Multidistrict Litigation. The complaint alleged that Ameriquest violated numerous federal and state laws, including the Truth in Lending Act ("TILA"), breach of contract, unjust enrichment, and state Consumer Protection and Deceptive Trade Practices Acts, by engaging in:

> [A] uniform common plan and scheme to prey upon unsuspecting consumers by routinely causing borrowers to enter into residential loans with unfavorable terms, misleading and inappropriate "discount" fees, high and adjustable interest rates, prepayment penalties, and excessive loan principal compared to equity and ability to pay.

132. In January 2010, Ameriquest and its affiliate defendants participated in a $22 million settlement of these claims.

3. Morgan Stanley Mortgage Capital, Inc.

133. Morgan Stanley Mortgage Capital Holdings LLC, d/b/a Morgan Stanley Mortgage Capital, Inc. ("MSMC"), originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RAAC Series 2005-SP2 Trust.

134. MSMC is engaged primarily in the business of originating mortgages, and acquiring residential mortgage loans through bulk purchases and then selling these loans as mortgage-backed securities through securitization programs. From 2006 through the first half of 2007, MSMC securitized and sold $49 billion worth of subprime mortgages. To achieve such high volume, MSMC often ignored or completely abandoned the underwriting guidelines it had established for the mortgage pools that it purchased for securitization.

135. In December 2010, MBIA initiated a lawsuit in New York State Court against Morgan Stanley and MSMC, alleging, *inter alia*, that Morgan Stanley made material false and misleading representations and warranties which induced MBIA to issue insurance on over $223 million worth of Alt-A RMBS securitized by Morgan Stanley. According to the complaint, Morgan Stanley stated that it conducted extensive due diligence in reviewing mortgages to ensure that they met Morgan Stanley's underwriting guidelines and presented financial analyses purporting to describe the securities. In reality, the vast majority of mortgage loans did not comply with the stated underwriting guidelines and the financial analyses were based on faulty data and misleading. In May 2011, the trial court denied Morgan Stanley's motion to dismiss except as to one cause of action relating to an unjust enrichment claim by MBIA against Saxon Mortgage Services, Inc., a mortgage servicing unit of Morgan Stanley.

136. On September 27, 2011, the Nevada Attorney General announced a settlement with Morgan Stanley relating to an investigation into Morgan Stanley's role, through MSMC, in buying and securitizing 3,000 subprime mortgages in Nevada. According to a September 27, 2011, article in BUSINESSWEEK, entitled *Nev. AG Announces Settlement with Morgan Stanley*, the investigation centered around Morgan Stanley's knowledge that subprime mortgage originators such as New Century, from whom Morgan Stanley purchased mortgages for

securitization, engaged in deceptive loan practices, and that Morgan Stanley substantially assisted these originators by financing and purchasing those loans. The Nevada Attorney General alleged that borrowers were deceived with low "teaser" mortgage rates, without proper disclosure that the rates would eventually adjust upwards. Under the terms of the settlement as reported by BUSINESSWEEK, Morgan Stanley will be required to provide refunds to between 600 and 700 consumers, as well as cap the interest rates charged to these consumers at a fixed level not to exceed the initial teaser rate. Morgan Stanley will also be required to contribute $7.2 million to a fund used to prevent mortgage and foreclosure fraud.

137. In September 2011, the FHFA, as conservator for Fannie Mae and Freddie Mac, initiated an action against Morgan Stanley and MSMC in New York State Court relating to MSMC's origination of subprime mortgages during the financial crisis. The FHFA lawsuit alleges that MSMC routinely and egregiously departed from its stated underwriting guidelines when originating subprime mortgages. This resulted in, the suit alleges, material false and misleading statements regarding compliance with underwriting guidelines in the Prospectus Supplements for several securities purchased by Fannie Mae and Freddie Mac.

4. Mortgage Lenders Network USA, Inc.

138. Mortgage Lenders Network USA, Inc. ("MLN") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RASC Series 2006-EMX9 Trust. Founded in 1996, MLN was a closely-held company that specialized in providing mortgages and home equity financing to borrowers with low income and impaired credit. According to NATIONAL MORTGAGE NEWS, MLN was the 15th largest issuer of subprime mortgages, originating $3.3 billion in subprime loans in the third quarter of 2006 alone.

139. MLN was another subprime player that benefited immensely from employing lax underwriting practices in order to ramp up loan originations. The company offered low- and no-

documentation loans to borrowers, originated loans without regard to the borrowers' ability to repay the loans, and shopped for appraisals that supported the numbers that MLN needed in order to get loans approved. However, when the subprime market began to collapse, MLN experienced significant financial hardships which eventually led to the company's demise. On January 2, 2007, MLN announced that it had stopped funding loans and would not be accepting any new loan applications. In February 2007, MLN filed for Chapter 11 bankruptcy.

140. MLN relied heavily on warehouse lines of credit provided by other financial institutions in order to conduct its business. In fact, Merrill Lynch Bank USA and Merrill Lynch Mortgage Capital, Inc. (both wholly-owned subsidiaries of Merrill Lynch) were among MLN's four largest warehouse lenders, providing MLN with substantial lines of credit to originate subprime loans that would eventually be sold back to Merrill Lynch for collateralization into RMBS.

141. As a result, Merrill Lynch was particularly aware of MLN's poor financial condition and substandard lending practices. Because many of MLN's loans were defaulting at an alarming rate, Merrill Lynch was contractually able to "put" a significant number of the bad loans back to MLN for repurchase. These "put backs" played a huge role in MLN's eventual collapse, making Merrill Lynch one of MLN's largest creditors after the bankruptcy with roughly $81.3 million in outstanding debt.

142. MLN was also targeted by state regulatory agencies as a result of its subpar lending practices. On January 19, 2007, the Connecticut Department of Banking ("DOB") issued a Temporary Order to Cease and Desist and Notice of Intent to Impose Civil Penalty to MLN as a result of various violations of Connecticut statutes, such as failing to timely disperse loan proceeds, failing to provide complete and accurate loan portfolio information, and failing to

show compliance with mortgage lending license requirements. The DOB ordered MLN to suspend all lending activities and threatened to fine the company with up to $7.6 million in civil penalties for its violations. State regulators from Massachusetts, Rhode Island, Michigan, Maine, Vermont, New Hampshire, New York and Pennsylvania have all charged MLN with similar violations.

143. Consumer lawsuits also followed, many alleging violations of the TILA as a result of MLN's dismal underwriting practices. On May 12, 2009, a lawsuit was filed against MLN in the Superior Court of Georgia, Gwinnett County, claiming that MLN intentionally relaxed its underwriting standards and sold risky loan products to borrowers in order to increase its loan origination volume. Specifically, the complaint alleged that employees were encouraged to steer borrowers into larger mortgages than they could afford in order to maximize MLN's profits. Plaintiffs also stated that MLN took no meaningful steps to determine whether borrowers could actually afford to repay the loans and used fraudulently inflated appraisals in order to get larger loans approved.

144. A similar action was filed in July 2010 against MLN in the U.S. District Court for the Northern District of Georgia, alleging that MLN departed from sound underwriting practices by ignoring borrowers' ability to repay the loans and by failing to verify borrowers' income, employment and assets. The plaintiffs were saddled with a loan that they could not afford and ultimately defaulted. As a result, the plaintiffs filed for bankruptcy and the action was later terminated.

5. New Century Mortgage Corporation

145. New Century Mortgage Corporation ("New Century") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RASC 2007-KS2 Trust.

Formed in 1996, New Century was a leader in the mortgage lending boom, growing rapidly from only $357 million in loan originations in 1996 to over $56 billion in 2005.

146. In order to effectuate such a drastic increase in loan originations, the company began taking on riskier loans, relaxed its underwriting standards, and granted numerous exceptions, accepting loans for 100% of the value of the property and utilizing flawed or fraudulent appraisals. Maggie Hardiman, a former appraiser for New Century, described the demands she faced when reviewing loan applications in a May 7, 2007, WASHINGTON POST article. She recalled how "all hell would break loose" if she turned away a loan, and that when she did reject an application, "her bosses often overruled her and found another appraiser to sign off on it."

147. On February 7, 2007, New Century announced that it would be restating its 2006 financials due to material weaknesses in internal controls. On March 2, 2007, the company revealed that it was the subject of two criminal probes and later announced that it would no longer be accepting applications for subprime mortgages. By March 12, most of its creditors had cut off financing or planned to do so. On April 2, 2007, New Century collapsed and filed for bankruptcy.

148. Following the bankruptcy, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a 581-page report on February 9, 2008, detailing the various deficiencies at New Century, including lax mortgage origination standards. "The theme of the report is how easily the loans were originated, how exceptions were made, how they used bad appraisals" and how "[t]here were no appropriate internal controls...." Missal also described how New Century "engaged in a number of significant[ly] improper and imprudent practices related to its loan originations, operations, accounting and financial reporting processes." According to a March

26, 2008, BLOOMBERG article by Tiffany Kary, "New Century Bankruptcy Examiner Says KPMG Aided Fraud," New Century's loan originations increased dramatically, primarily as a result of the increased exceptions made to its underwriting guidelines and the practice of lending money to homeowners who could not afford the initial "teaser rates." Missal explained that these practices eventually created "a ticking time bomb that detonated in 2007."

149. During the course of his investigation, the Examiner conducted 110 interviews of 85 witnesses and reviewed documents from New Century, its outside auditors, and others. In his Final Report, the Examiner concluded that:

- "New Century had a brazen obsession with increasing loan originations, without due regard to the risks associated with that business strategy. Loan originations rose dramatically in recent years, from approximately $14 billion in 2002 to approximately $60 billion in 2006. The Loan Production Department was the dominant force within the Company and trained mortgage brokers to originate New Century loans in the aptly named 'CloseMore University.' Although a primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately fatal levels." (Examiner's Report at 3).

- "The increasingly risky nature of New Century's loan originations created a ticking time bomb that detonated in 2007. Subprime loans can be appropriate for a large number of borrowers. New Century, however, layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers." *Id.*

- "New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the 'number one issue is exceptions to guidelines.' Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies. Of the New Century loans rejected by investors, issues with appraisals were the cause of more than 25% of these 'kick-outs.'" *Id.* at 3-4.

- "Senior Management turned a blind eye to the increasing risks of New Century's loan originations and did not take appropriate steps to manage those risks...." *Id.* at 4.

- "Senior Management was aware of an alarming and steady increase in early payment defaults ('EPD') on loans originated by New Century, beginning no later than mid-2004. The surge in real estate prices slowed and then began to decrease,

> and interest rates started to rise. The changing market conditions exacerbated the risks embedded in New Century's products, yet Senior Management continued to feed eagerly the wave of investor demands without anticipating the inevitable requirement to repurchase an increasing number of bad loans. Unfortunately, this wave turned into a tsunami of impaired and defaulted mortgages." *Id.* at 4.

150. The restatement of New Century's financials also prompted the filing of securities class action lawsuits beginning in February 2007. One complaint filed in the Central District of California alleged that New Century's officers and directors issued materially false and misleading statements regarding the company's business and financial results. On December 3, 2008, the district court denied the defendants' motion to dismiss, finding actionable certain statements regarding the credit quality of New Century's loans. The court wrote:

> The allegations suggest New Century's repeated assurances of strong credit quality and strict underwriting practices. Even in the sub-prime world, there must be a basis for distinction between loans to at-risk borrowers that met basic standards of good lending practice and loans that plainly do not. Those standards may provide the measure for evaluating Defendants' statements. Here, Plaintiffs offer New Century's statement that it observed standards of high-quality credit and underwriting, and set those statements against detailed allegations of practices that utterly failed to meet those standards.

The court also noted that

> [t]he Examiner's Report found knowledge within high-levels of the company of its declining loan quality and underwriting as early as 2004. The Report mentions the internal reports by New Century's Senior Management and negative internal audits that acknowledged serious problems with loan quality and underwriting, as well as the poor performance of the company's high-risk products, and concludes that [ ] New Century failed to respond to "red flags.

New Century agreed to pay more than $90 million to settle these claims in July 2010.

151. The SEC also charged three former top officers of New Century with securities fraud for misleading investors as New Century's subprime mortgage business was collapsing in 2006. December 7, 2009 complaint alleged that defendants Brad A. Morrice (former CEO),

Patti M. Dodge (former CFO), and David N. Kenneally (former Controller), failed to disclose dramatic increases in loan defaults, loan repurchases and pending loan repurchase requests and described the company's business as "anything but 'good' and it soon became evident that its lending practices, far from being 'responsible,' were the recipe for financial disaster." The SEC accepted settlement offers from all three defendants in August 2010.

6. Ownit Mortgage Solutions, Inc.

152. Ownit Mortgage Solutions, Inc. ("Ownit") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RASC Series 2006-KS9 Trust. Ownit, formerly known as Oakmont Mortgage Company, Inc., was a wholesale mortgage lender founded in 1989. Ownit was well-known in the industry for its practices of originating 100%-financed subprime loans and providing loans to borrowers with poor credit and limited income. NONPRIME NEWS ranked Ownit as the 11th-largest issuer of subprime mortgages in the United States, originating $5.46 billion in loans in the first half of 2006 alone.

153. In September 2005, Ownit sold a 20% share in the company to Defendant Merrill Lynch for $100 million. According to Ownit founder and CEO William Dallas ("Dallas"), Merrill Lynch used its ownership stake and its $3.5 billion credit line to Ownit as leverage, instructing Ownit to lower its underwriting standards and to originate more higher-yield, riskier loans. Ownit complied with Merrill Lynch's directive, originating $6 billion in loans from September 2005 to December 2006, including "crazy" 45-year adjustable rate mortgages and no-income-verification loans. Dallas stated, "The market [was] paying me to do a no-income-verification loan more than it [was] paying me to do the full documentation loans."

154. A May 8, 2007 article from the NEW YORK TIMES entitled *East Coast Money Lent Out West* reported how Ownit increased loan volume by weakening underwriting standards and originating more "liar" loans for which no documentation was requested or required to

substantiate the borrowers' oral representations of their annual earnings. Moreover, prior to Merrill Lynch's investment in Ownit in 2005, approximately 90% of Ownit's loans were fully documented. After Merrill Lynch asked for more stated-income loans, the number of stated-income loans climbed from almost zero to over 30%.

155. Ownit also lowered the credit scores it required of its borrowers. The most widely accepted measure of creditworthiness in the credit industry is the "FICO" score, developed by the Fair Isaac Corporation.[2] The Federal Deposit Insurance Corporation defines a "subprime" loan as one for which the borrower has a FICO score of 660 or below. At Merrill Lynch's request, Ownit's average new borrower FICO score dropped from 690 to approximately 630.

156. The intentional weakening of underwriting standards had an immediate and direct impact upon the performance of Ownit's loans. From December 2005 through May 2006, Ownit began to experience first payment defaults and "early payment defaults" (*i.e.*, defaults on any one of the first three mortgage repayments). According to Dallas, prior to Merrill Lynch's involvement with Ownit, it had never experienced such defaults.

157. Unsurprisingly, Ownit imploded in December 2006. According to a December 8, 2006 article in WORKOUT WIRE entitled *BuyBacks Appear to Shutter Two Firms*, Ownit filed for bankruptcy in December 2006 "amid reports that the subprime lender had been hit by huge loan buyback requests from an investor." That investor turned out to be none other than Merrill Lynch. In connection with Ownit's bankruptcy, Merrill Lynch JP Holdings, Inc. filed an

[2] Under the FICO scoring system, borrowers are assigned a credit score (the FICO score) ranging from 300 to 850, with 850 being the most creditworthy. In determining the borrower's overall creditworthiness, the FICO score primarily takes into account the borrower's payment history, current indebtedness, length of credit history, recently established credit and types of credit used. According to Fitch Ratings, FICO scores are the "best single indicator" of mortgage default risk. Thus, the lower the FICO score, the greater risk of borrower default.

unsecured repurchase claim for $92,965,222. That is, Merrill Lynch JP Holdings itself had requested Ownit to buy back nearly $93 million of mortgages that had been sold to Merrill Lynch and that Merrill Lynch claimed to be defective for one or more reasons.

158. Despite its own repurchase claim, Merrill Lynch continued to sell securities based on Ownit's loans well into 2007. According to FOX BUSINESS NEWS, in early 2007, Merrill Lynch created a package of security deals backed by loans issued by Ownit. Around 70% of the borrowers on these Ownit loans had not provided full documentation of either their income or assets. Moreover, most of the loans were for the full appraised value of homes, meaning they were no-down-payment loans, given at a time when home prices were already starting to crumble.

159. Several consumer lawsuits followed soon thereafter. On May 5, 2009, a TILA lawsuit was filed against Ownit alleging that the company had made misrepresentations to the borrower regarding the terms of a loan, including the interest rate, payment amount, and the borrower's ability to refinance if the loan became unaffordable. The complaint stated that Ownit "regularly approved loans to unqualified borrowers, and implemented practices ... ranging from questionable to criminal." Moreover, Ownit "employed brokers and loan officers [who] worked on commissions, meaning the more loans they sold, the more bonus money they received," and these brokers and loan officers steered borrowers "into loans with less favorable terms" or into loans the borrowers were not qualified for in order to make more money.

160. In October 2009, a lawsuit was filed against Ownit in the District of Nevada alleging that the company lured unqualified borrowers into subprime mortgages "while knowing many of the loans would result in foreclosure." The complaint stated that Ownit and its brokers and agents issued mortgages to borrowers "who were incapable of paying the mortgages

throughout the life of the loan," such as those with poor credit scores and inadequate income to afford the loan, and utilized "numerous fees and penalties" that increased the risk of default and foreclosure. The lawsuit included claims for unfair lending practices and fraud.

7. People's Choice Home Loan, Inc.

161. People's Choice Home Loan, Inc. ("People's Choice") originated mortgage loans that were pooled in securitizations and purchased by Plaintiff, including RASC Series 2006-KS9 Trust and RASC Series 2007-KS3 Trust. People's Choice, founded in 1999, operated as a subsidiary of People's Choice Financial Corporation and marketed itself as a subprime lender of wholesale and retail mortgages through the Internet, issuing over $4.5 billion in mortgage-backed securities in 2005.

162. People's Choice garnered most of its financial success by targeting and extending subprime loans to borrowers with poor credit histories and by using unscrupulously loose underwriting and lending guidelines in its business practice. People's Choice also came to possess a reputation in the industry for being a "fraud factory," requiring little or no supporting financial documentation for loans, using inaccurate appraisal values and doctoring loan documents to get borrowers approved.

163. James LaLiberte, former Chief Operating Officer at People's Choice, stated in a March 22, 2009, interview with DATELINE NBC that the company "got where they are" in the business because "[f]raud is what we do." LaLiberte described how it was his job to set underwriting guidelines but that he was met with "resistance" in his attempts to improve the company's internal procedures. LaLiberte emphasized how borrowers were not required to document their financial capacity to repay in order to receive a loan and recounted how People's Choice once issued two loans, totaling $640,000, to a massage therapist whose loan

documentation claimed that she made $15,000 per month. A similar loan was made to a house cleaner whose documentation claimed she made $11,500 per month.

164. In 2004, a mortgage broker named Heidi Weppelman assisted the FBI in a mortgage fraud investigation in northeast Florida. Weppelman recorded a telephone conversation with People's Choice employee Jennifer Grosslight that was later used as evidence at the trial of a man, who sold rental homes and referred customers to Weppelman for mortgages. During that conversation, the two women discussed how People's Choice employees would falsify loan documentation, including appraisal values, signatures on contracts and leases and bank account information, in order to process more loans. Grosslight described these practices as being "totally fine" and that they were "the furthest from any issue."

165. In September 2005, a class action lawsuit was filed against People's Choice in the United States District Court for the Northern District of Illinois, alleging that People's Choice used "prescreening" mailers in order to identify "persons who [had] poor credit or [had] recently obtained bankruptcy discharges, for the purpose of targeting them for subprime credit." On February 5, 2008, the court granted plaintiffs' motion for a default judgment against defendants for $2 million.

V. A SIGNIFICANT NUMBER OF THE MORTGAGE LOANS WERE MADE TO BORROWERS WHO DID NOT OCCUPY THE PROPERTIES IN QUESTION

166. The Offering Documents contained information regarding the purported occupancy status of the mortgaged properties, including whether they were primary homes, investment properties, or second homes. These representations were material to investors such as Plaintiff because high owner-occupancy rates would have made the Certificates safer investments than Certificates backed by second homes or properties purchased for real estate speculation. Thus, Defendants had an incentive to overstate the owner-occupancy rates of the

underlying mortgages to make them appear more secure. As noted in a January 2011 article in BUSINESSWEEK, borrowers either never moved into or later vacated homes for at least ***25%*** of U.S. mortgages that were described as being for "owner occupied" properties when bundled into securities.

167. In connection with a separate lawsuit against the Sponsor Defendant RFC, the insurer Massachusetts Mutual Life Insurance Company ("Mass Mutual") conducted a forensic review of the mortgage loans underlying 18 RMBS sponsored by RFC. Part of this analysis included testing to determine if the owner-occupancy ratios given in the Offering Documents were accurate. Mass Mutual investigated whether borrowers were having tax statements and bills sent to the address of the mortgaged properties, whether the borrowers had taken tax exemptions available for owner-occupied properties, and whether property records showed that the borrowers owned multiple houses. Mass Mutual discovered that the offering documents overstated the owner-occupancy ratio by between 5.71% and 15.23% for ***each*** of the 18 RMBS that it analyzed.

168. Freddie Mac performed a similar analysis of individual loan files in connection with its lawsuit against GMAC. Its analysis covered 21 RMBS and revealed that in each case, the offering materials had overstated the owner-occupancy rates by between 8.48% and 13.10%. Four of the RMBS that Freddie Mac investigated were also purchased by Plaintiff.

- RASC Series 2006-EMX9 Trust: The Offering Documents overstated the owner-occupancy rate by 12.52%. Notably, the Offering Documents represented that all of the loans in the mortgage pool were for owner-occupied properties.
- RASC Series 2006-KS9 Trust: The Offering Documents overstated the owner-occupancy rate by 8.68%.
- RASC Series 2007-KS2 Trust: The Offering Documents overstated the owner-occupancy rate by 9.79%.

- RASC Series 2007-KS3 Trust: The Offering Documents overstated the owner-occupancy rate by 10.6%.

169. On information and belief, the mortgage loans underlying all of the Certificates purchased by Plaintiff suffer from similar deficiencies as the mortgage loans underlying the Certificates purchased by Mass Mutual and Freddie Mac. Two separate analyses covering a total of 34 GMAC RMBS offerings[3] have uncovered material overstatements of the owner-occupancy ratio in every single offering. There is no reason to believe that the systematic and pervasive misrepresentation of owner-occupancy rates identified by Mass Mutual and Freddie Mac were confined to the RMBS they examined.

VI. DEFENDANTS MISREPRESENTED THE LTV RATIOS OF THE MORTGAGE LOANS AND THE NUMBER OF PROPERTIES WORTH LESS THAN THE OUTSTANDING LOANS

170. As discussed in Section III, *supra*, the LTV ratio is one of the most important measures of the riskiness of a loan. In the Offering Documents, Defendants acknowledge that loans with high LTV ratios are more likely to default. For example, the 424B5 Prospectus Supplement for RASC Series 2007-KS3 Trust, filed on March 26, 2007, states: "The rate of default on mortgage loans that are refinances by the borrower, were originated with limited documentation, or are mortgage loans with high LTV ratios, may be higher than for other types of mortgage loans." Furthermore, if a borrower does default and the property enters foreclosure, the Issuing Trust is much more likely to recover the outstanding balance on the loan through a foreclosure sale if the LTV ratio is low.

171. Mortgage loans that are "underwater" – that is to say, those where the LTV ratio is greater than 100% because the value of the outstanding loan exceeds the value of the collateral

[3] The Freddie Mac analysis involved 21 RMBS, and the Mass Mutual analysis involved 18 RMBS. There was some overlap between the two analyses, as five RMBS were analyzed by both Freddie Mac and Mass Mutual.

– are extremely risky investments. In these cases, the borrower has a strong incentive to default, the possibility that the borrower will be capable of refinancing are virtually nil, and if the mortgage enters foreclosure the Issuing Trust will definitely incur a loss.

172. Appraisals that are generated without guidelines can artificially lower LTV ratios by overstating the value of the mortgaged properties. In instances where LTV values have been distorted by faulty appraisals, RMBS investors may be unaware of the true value of their collateral until default and foreclosure occur. The Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States discussed this problem.

> As the housing market expanded, another problem emerged, in subprime and prime mortgages alike: inflated appraisals. For the lender, inflated appraisals meant greater losses if a borrower defaulted. But for the borrower or for the broker or loan officer who hired the appraiser, an inflated value could make the difference between closing and losing the deal. Imagine a home selling for $200,000 that an appraiser says is actually worth only $175,000. In this case, a bank won't lend a borrower, say, $180,000 to buy the home. The deal dies. Sure enough, appraisers began feeling pressure. One 2003 survey found that 55% of appraisers had felt pressed to inflate the value of homes; by 2006, this had climbed to 90%.

173. Defendants had a responsibility to ensure that the LTV figures they presented in the Offering Documents were not the product of fraudulent appraisals. As the U.S. Senate Permanent Subcommittee on Investigations stated in its staff report, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse*, "Whether appraisals are conducted internally by the bank or through a vendor, the bank must take responsibility for establishing a standard process to ensure accurate, unbiased home appraisal values."

174. Mass Mutual and Freddie Mac's reviews of the loans underlying 34 GMAC RMBS revealed that, in addition to consistently misrepresenting owner-occupancy rates, GMAC also consistently misrepresented the LTV ratios of the underlying mortgages and the number of

properties with high LTV ratios. For each loan they examined, Mass Mutual and Freddie Mac used an industry standard automated valuation model ("AVM") to calculate the value of the mortgaged property at the time of origination. AVMs are commonly used in the real estate industry and rely upon similar data as appraisers, including county records, tax records, and data on comparable properties.

175. Freddie Mac's review of 21 GMAC RMBS revealed that in each case, the offering documents overstated the percentage of loans with low LTV ratios (defined as LTV ratios less than 80%) by between 12.24% and 49.08%. The offering documents understated the percentage of underwater loans (loans with LTV ratios greater than 100%) by between 8.18% and 33.81%. With respect to the four RMBS also purchased by Plaintiff:

- RASC Series 2006-EMX9 Trust: The Offering Documents overstated the number of loans with low LTV ratios by 23.03%, and understated the number of underwater loans by a shocking ***33.81%***. The Offering Documents represented that only .03% of the underlying loans had LTV ratios in excess of 100%, when in fact more than a third of them did.

- RASC Series 2006-KS9 Trust: The Offering Documents overstated the number of loans with low LTV ratios by 17.34%, and understated the number of underwater loans by 26.92%. The Offering Documents represented that none of the underlying loans had LTV ratios in excess of 100%.

- RASC Series 2007-KS2 Trust: The Offering Documents overstated the number of loans with low LTV ratios by 16.28%, and understated the number of underwater loans by 28.4%. The Offering Documents represented that none of the underlying loans had LTV ratios in excess of 100%.

- RASC Series 2007-KS3 Trust The Offering Documents number of loans with low LTV ratios by 15.96%, and understated the number of underwater loans by 29.22%. The Offering Documents represented that none of the underlying loans had LTV ratios in excess of 100%.

176. Although Mass Mutual presented its data differently than Freddie Mac did, its review also revealed significant misrepresentations of LTV data. Mass Mutual found that for 17 of the 18 GMAC RMBS it analyzed, the offering documents had understated the weighted

average LTV ratio by between 4.23% and 16.77% and understated the percentage of loans with high LTV ratios (defined as LTV ratios greater than 90% or 100%) by between 4.54% and 39.08%. Only one of the RMBS examined did not misrepresent the percentage of loans with high LTV ratios.

177. On information and belief, the mortgage loans underlying all of the Certificates purchased by Plaintiff suffer from similar deficiencies as the mortgage loans underlying the Certificates purchased by Mass Mutual and Freddie Mac. The loan-level analyses demonstrate that Defendants have engaged in a systematic practice of understating LTV ratios and the number of underwater properties.

VII. THE CREDIT RATINGS ASSIGNED TO THE CERTIFICATES MATERIALLY MISREPRESENTED THE CREDIT RISK OF THE CERTIFICATES

178. The AAA credit ratings of the Certificates were an important factor in Plaintiff's decision to purchase the Certificates. Because Plaintiff is a conservative institutional investor, it purchased only investment grade Certificates, all of which were rated AAA.

179. Investment grade securities are understood by investors to be stable, secure, and safe. A rating of AAA denotes high credit quality and is the same rating as those typically assigned to bonds backed by the full faith and credit of the United States Government, such as treasury bills. Historically, before 2007, investments with AAA ratings had an expected cumulative loss rate of less than 0.5 percent, with an annual loss rate of close to zero. According to Standard and Poor's, the default rate on all investment grade corporate bonds (including AA, A and BBB) from 1981 to 2007, for example, averaged about 0.094% per year and was not higher than 0.41% in any year.

180. The Defendants understood (and banked on) the importance that purchasers of mortgage-backed securities attached to credit ratings. In most cases, the purchasers were

institutional investors, such as Plaintiff, who did not have the knowledge or ability to independently analyze the mortgage pools underlying any particular offering to verify for themselves that the ratings were accurately determined.

181. Accordingly, Defendants featured the ratings prominently in the Offering Documents and discussed at length the ratings assigned to the Certificates and the bases for the ratings. Each Prospectus Supplement stated that the issuance of each of the Certificates was conditioned on the assignment of particular, investment-grade ratings and listed the ratings in a chart. All of the Certificates purchased by Plaintiff were AAA-rated securities, and the remainder were also investment grade.

182. Unbeknownst to Plaintiff and other investors, at all relevant times, Defendants knew that the ratings were not reliable because those ratings were bought and paid for, and were supported by, flawed information provided by Defendants to the rating agencies. In fact, Defendants manipulated the rating agencies to obtain the desired ratings for the Certificates.

183. Specifically, the ratings of the Certificates were significantly compromised by the misinformation provided by Defendants to the rating agencies. Among other matters, Defendants did not disclose to the rating agencies that the originators, including GMAC-affiliated entities, had abandoned their underwriting standards by, among other things, manipulating the assets, liabilities, income and other important information concerning borrowers; using false metrics to qualify borrowers; and aggressively using exceptions to qualify borrowers. Defendants did not disclose their knowledge that, in obtaining appraisals to value the underlying collateral, the originators used inflated appraisals that departed from industry-approved standards. Defendants did not otherwise disclose their knowledge of the pervasive fraud that affected the mortgages underlying the Certificates.

184. Apart from supplying incomplete and false information to the rating agencies, Defendants also manipulated their relationship with the rating agencies in order to achieve the desired ratings. The rating agencies received enormous revenues from the issuers who paid them for rating their securities. Because the desired rating of a securitized product was the starting point for any securities offering, the rating agencies were actively involved in helping issuers structure their products to achieve the requested rating. As a result, the rating agencies essentially worked backwards, starting with the issuer's target rating and then working toward a structure that would yield the desired rating. Among other things, the rating agencies instructed issuers on how much "credit enhancement" to provide to each tranche of the Certificates in order to secure the desired ratings.

185. In this manner, Defendants were able to manipulate the rating agencies to achieve the inflated ratings they desired. Through repeated communications and collaboration with the rating agencies, Defendants were effectively able to reverse engineer aspects of the ratings models and then modify the structure of an offering to improve the ratings without actually improving the underlying credit quality.

186. In a 2008 report entitled "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies," the SEC confirmed that the issuers and the rating agencies worked together so that securities would receive the highest ratings:

> Typically, if the analyst concludes that the capital structure of the RMBS does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger [sponsor/issuer]. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche -- as the highest rated tranche --

pays the lowest coupon rate of the RMBS' tranches and, therefore, costs the arranger the least to fund.

187. As a result, the Certificates were not worthy of the investment-grade ratings given to them, as evidenced most clearly by the fact that many of the Certificates – all initially awarded investment grade ratings (all AAA/Aaa) – have now been downgraded to junk, a vast number of the underlying loans have been foreclosed upon, and the remaining underlying loans are suffering from crippling deficiencies and face serious risks of default. The collective steep downgrade of AAA/Aaa-rated Certificates indicates that the ratings set forth in the Offering Documents were false, unreliable, and inflated.

188. According to the report, "Wall Street and the Financial Crisis," issued by the U.S. Senate Permanent Subcommittee on Investigations, former ratings agency analysts and managers said that investment banks pressured them to get their deals done quickly, to increase the size of the tranches that received AAA ratings, and to reduce the credit enhancements protecting the AAA tranches from loss.

189. On May 13, 2010, THE NEW YORK TIMES reported that the New York Attorney General had launched a probe involving eight Wall Street banks, including Underwriter Defendants Deutsche Bank and Merrill Lynch, over whether these firms misled rating companies in order to achieve higher ratings and "whether they provided misleading information to rating agencies in order to inflate the grades of certain mortgage securities."

190. By including and endorsing the AAA ratings contained in the Offering Documents, Defendants falsely represented that they actually believed that the ratings were an accurate reflection of the credit quality of the Certificates.

VIII. DEFENDANTS MISREPRESENTED THE EXTENT OF CREDIT ENHANCEMENT INCLUDED IN THE CERTIFICATES

191. Defendants used a variety of credit enhancements to make the Certificates seem like more attractive and less risky investments. Credit enhancement represents the amount of "cushion" or protection from loss exhibited by a given security. This cushion is intended to improve the likelihood that holders of highly rated certificates receive the interest and principal they expect based on the Offering Documents. The level of credit enhancement offered is based on the makeup of the loans in the underlying collateral pool. Riskier pools necessarily need higher levels of credit enhancement to ensure payment to senior certificate holders. Credit enhancements for a given trust also impact the overall credit rating that a given tranche of certificates receives. The level of credit enhancement for the Certificates was material to Plaintiff because it represented the protection purportedly afforded from loss.

192. The most common form of credit enhancement in the Offering Documents was "subordination" in which the Defendants created a hierarchy of loss absorption among the tranche securities. To create that hierarchy, Defendants placed the pool's tranches in an order, with the lowest tranche required to absorb any losses first, before the next highest tranche. Losses might occur, for example, if borrowers defaulted on their mortgages and stopped making mortgage payments into the pool. Lower level tranches most at risk of having to absorb losses typically received non-investment grade ratings from the credit rating agencies, while the higher level tranches that were protected from loss typically received investment grade ratings. One key task for both Defendants and the credit rating agencies was to calculate the amount of "subordination" required to ensure that the higher tranches in a pool were protected from loss and could be given AAA or other investment grade ratings.

193. A second common form of credit enhancement was "over-collateralization." In this credit enhancement, the Defendants ensured that the revenues expected to be produced by the assets in a pool exceeded the revenues designated to be paid out to each of the tranches. That excess amount provided a financial cushion for the pool and was used to create an "equity" tranche, which was the first tranche in the pool to absorb losses if the expected payments into the pool were reduced. This equity tranche was subordinate to all the other tranches in the pool and did not receive any credit rating. The larger the excess, the larger the equity tranche, and the larger the cushion created to absorb losses and protect the more senior tranches in the pool. In some pools, the equity tranche was also designed to pay a relatively higher rate of return to the party or parties who held that tranche due to its higher risk.

194. Still another common form of credit enhancement was the creation of "excess spread" or "excess cash flow", which involved designating an amount of revenue to pay the pool's monthly expenses and other liabilities but ensuring that the amount was slightly more than what was likely needed for that purpose. Any funds not actually spent on expenses would provide an additional financial cushion to absorb losses, if necessary.

195. As set forth below, representations regarding the inclusion and scope of these credit enhancements were made in all of the Offering Documents. These representations were false and misleading because all of the purported "enhancements" depended on or derived from inflated appraisals of the mortgaged properties, which caused the listed LTV ratios and levels of credit enhancement to be untrue.

IX. DEFENDANTS FAILED TO ENSURE THAT TITLE TO THE UNDERLYING MORTGAGE LOANS WAS EFFECTIVELY TRANSFERRED

196. A fundamental aspect of the mortgage securitization process is that the issuing trust for each offering must obtain good title to the mortgage loans comprising the pool for that

offering. This is necessary in order for the holders of the RMBS, such as Plaintiff, to be legally entitled to enforce the mortgage loans in the event of default. Two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process – a promissory note and a security instrument (either a mortgage or a deed of trust).

197. The rules for these transfers are governed by the law of the state where the property is located, by the terms of the pooling and servicing agreement ("PSA") for each securitization, and by the law governing the issuing trust (with respect to matters of trust law). In general, state laws and the PSAs require the promissory note and security instrument to be transferred by endorsement, in the same way that a check can be transferred by endorsement, or by sale. In addition, state laws generally require that the trustee of the issuing trust have physical possession of the original, manually-signed promissory note in order for the loan to be enforceable by the trustee against the borrower in the event of the borrower's default.

198. In order to preserve the bankruptcy-remote status of the issuing trusts in RMBS transactions, the notes and security instruments are generally not directly transferred from the mortgage loan originator to the trust. Rather, the notes and security instruments are initially transferred from the originator to the depositor, either directly or via one or more special-purpose entities. After this initial transfer to the depositor, the depositor transfers the notes and security interests to the issuing trust for the particular securitization. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

199. To ensure that the trust qualifies as a tax-free real estate mortgage investment conduit, the PSA generally requires the transfers to the trust to be completed within a strict time limit after formation of the trust. Furthermore, the applicable trust law in each state generally requires strict compliance with the trust documents, including the PSA, so that failure to comply

strictly with the timeliness, endorsement, physical delivery, and other requirements of the PSA with respect to the transfers of the notes and security instruments means that the transfers would be void and the trust would not have good title to the mortgage loans.

200. The Offering Documents for the Certificates represented in substance that the Issuing Trust for the respective offering had obtained good title to the mortgage loans comprising the pool underlying the offering. In fact, however, Defendants routinely and systematically failed to comply with the requirements of applicable state laws and the PSAs for valid transfers of the notes and security instruments. In an October 20, 2010 NEW YORK TIMES article on the failure of large banks to maintain full documentation, "Battle Lines Forming In Clash Over Foreclosures," Rebel A. Cole, a professor of finance and real estate at DePaul University, was quoted as saying that banks "have essentially sidestepped 400 years of property law in the United States. There are so many questionable aspects to this thing it's scary."

201. On October 27, 2010, Katherine Porter, then a visiting a professor at Harvard Law School specializing in consumer credit, consumer protection regulation, and mortgage servicing, testified before the Congressional Oversight Panel:

> The implications of problems with transfer are serious. If the [securitization] trust does not have the loan, homeowners may have been making payments to the wrong party. If the trust does not have the note or mortgage, it may not have standing to foreclose or legal authority to negotiate a loan modification. To the extent that these transfers are being completed retroactively, it raises issues about honesty in creating and dating the assignments/transfers and about what parties can do, if anything, if an entity in the securitization chain, such as Lehman Brothers or New Century, is no longer in existence. Moreover, retroactive transfers may violate the terms of the trust, which often prohibit the addition of new assets, or may cause the trust to lose its REMIC status, a favorable treatment under the Internal Revenue Code. Chain of title problems have the potential to expose the banks to investor lawsuits and to hinder their legal authority to foreclose or even to do loss mitigation.

* * * * *

> I want to share with the Panel that the lawyers that I have met over years of my research on mortgage servicing both creditor lawyers and debtor lawyers have nearly universally expressed that they believe a very large number (perhaps virtually all) securitized loans made in the boom period in the mid-2000s contain serious paperwork flaws, did not meet underwriting or other requirements of the trust, and have not been serviced properly as to default and foreclosure.

202. On November 18, 2010, Adam Levitin, a professor at Georgetown University Law Center, provided similar testimony about the importance of the chain of title to investors and the consequences of faulty transfers before a hearing of the House Financial Services Committee:

> Concerns about securitization chain of title also go to the standing question; if the mortgages were not properly transferred in the securitization process (including through the use of MERS to record the mortgages), then the party bringing the foreclosure does not in fact own the mortgage and therefore lacks standing to foreclose. If the mortgage was not properly transferred, there are profound implications too for investors, as the mortgage-backed securities they believed they had purchased would, in fact be non-mortgage-backed securities, which would almost assuredly lead investors to demand that their investment contracts be rescinded[.]

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> Securitization is the legal apotheosis of form over substance, and if securitization is to work it must adhere to its proper, prescribed form punctiliously. The rules of the game with securitization, as with real property law and secured credit are, and always have been, that dotting "i's" and crossing "t's" matter, in part to ensure the fairness of the system and avoid confusions about conflicting claims to property. Close enough doesn't do it in securitization; if you don't do it right, you cannot ensure that securitized assets are bankruptcy remote and thus you cannot get the ratings and opinion letters necessary for securitization to work. Thus, it is important not to dismiss securitization problems as merely "technical;" these issues are no more technicalities than the borrower's signature on a mortgage. Cutting corners may improve securitization's economic efficiency, but it undermines its legal viability.

203. It is now clear that GMAC did not transfer securitized loans to the Issuing Trusts in a timely fashion, if it did so at all. For example, a September 5, 2011 NATIONAL MORTGAGE NEWS article, "Servicers Are Now Rewriting Their History," discusses GMAC's transfer of a mortgage to a Deutsche Bank trust on May 18, 2011, for a bond deal ***that closed in 2005***. This failure to ensure proper transfer of mortgage documents or maintain the chain of title – tasks which GMAC received servicing fees for supposedly fulfilling – represents a flagrant breach of the representations contained in the Offering Documents.

204. GMAC's failure to maintain the chain of title for securitized mortgages as it represented it would do in the Offering Documents has led it to take unlawful shortcuts, resulting in a costly foreclosure moratorium and multiple investigations. GMAC's former foreclosure counsel, The Law Offices of David J. Stern, P.A., has acknowledged that when engaged in foreclosure proceedings, GMAC did not confirm whether loan and mortgage documents were properly endorsed, assigned, or in the possession in the appropriate party.

205. Around September 20, 2010, GMAC was forced to temporarily halt evictions and foreclosure sales in 23 states after a GMAC employee, Jeffrey Stephan, admitted in a deposition that he routinely submitted false affidavits in foreclosure cases and that he did not review the exhibits whose accuracy he attested to. According to a September 30, 2010 article in the NEW YORK TIMES, "Foreclosures Slow As Document Flaws Emerge," shortly after the moratorium's announcement Old Republic National Title, one of the largest title insurers in the country, sent a bulletin to agents saying that "until further notice" it would not insure title to properties foreclosed upon by GMAC Mortgage.

206. GMAC resumed foreclosures in October, but the moratorium alerted regulators to GMAC's unlawful servicing practices and the need to take action. All fifty state attorneys-

general have launched a coordinated investigation into the foreclosure practices of banks including GMAC. The Board of Governors of the Federal Reserve System ("Federal Reserve") also launched its own investigation. On April 13, 2011, GMAC entered into a consent decree with the Federal Reserve and the Federal Deposit Insurance Corporation requiring it to bring its loan servicing and foreclosure processes into compliance with the law. According to the Federal Reserve's accompanying press release, GMAC and other banking organizations engaged in "a pattern of misconduct and negligence related to deficient practices in residential mortgage loan servicing and foreclosure processing. These deficiencies represent significant and pervasive compliance failures and unsafe and unsound practices at these institutions."

X. DEFENDANTS' SPECIFIC MATERIAL MISSTATEMENTS AND OMISSIONS IN THE OFFERING DOCUMENTS

207. Defendants' representations regarding the mortgage loans underlying the Offerings were highly material to investors such as Plaintiff. Because the revenue paid to investors is derived from the stream of payments received from the mortgage loan borrowers, the value of an investment is necessarily tied to the perceived risk of default in the Mortgage Loan pool. In other words, the market value of a Certificate decreases as the perceived risk of the underlying pool increases. Plaintiff, therefore, closely examined the representations made by the Defendants regarding the mortgage loans underlying each of the Offerings at issue here.

208. In light of the numerous departures from underwriting guidelines and appraisal standards by the Originators described above, the Offering Documents (Registration Statements and Prospectus Supplements) disseminated by Defendants in the course of selling the Certificates contained numerous misstatements and omissions.

A. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING UNDERWRITING STANDARDS AND PRACTICES

209. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospectus Supplements formed a part, contained the following misleading statements, among others, in identical or substantially similar language, regarding the underwriting standards and practices that the Originators applied in originating the mortgage loans underlying the Certificates.

> ***The depositor expects that the originator of each of the mortgage loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.*** All of the mortgage loans constituting the mortgage pool for a series of certificates will have been acquired either directly or indirectly by the depositor through the Expanded Criteria Program, which is described below under "--The Expanded Criteria Mortgage Program."[4]

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at 17 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at 10 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at 10 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at 10 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at 10 (Oct. 30, 2006); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at 19 (Oct. 11, 2005); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 17 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at 13 (Mar. 30, 2006); Registration Statement (333-

[4] Unless otherwise noted, all emphases are added and internal citations are omitted.

125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at 22 (Jul. 7, 2005).

> ***Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the [Residential Funding's Expanded Criteria Seller Guide].***
>
> * * * * *
>
> In accordance with the Seller Guide, the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information, which may have been supplied solely in the application, regarding its assets, liabilities, income (except as described below), credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy.
>
> The mortgagor may also be required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts. In the case of non-owner occupied properties, income derived from the mortgaged property may be considered for underwriting purposes. For mortgaged property consisting of a vacation or second home, generally no income derived from the property is considered for underwriting purposes.
>
> Based on the data provided in the application and certain verifications, if required, a determination is made by the original lender that the mortgagor's monthly income, if required to be stated, ***will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations.*** Generally, scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and all scheduled payments on obligations that extend beyond ten months, including those mentioned above and other fixed obligations, must equal no

more than specified percentages of the prospective mortgagor's gross income.

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-50-53 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at S-10-11, S-55 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at S-10-12, S-58 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at S-11-12, S-59 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at S-11-12, S-46-48 (Oct. 30, 2006); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at 23, S-21 (Oct. 11, 2005); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 19 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at 15 (Mar. 30, 2006); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at 27 (Jul. 7, 2005).

210. The statements quoted above were false because they represented that the Originators applied underwriting guidelines and quality control measures to assess the value of the mortgaged properties, evaluate the adequacy of such properties as collateral for the mortgage loans, and assess the applicants' abilities to repay their mortgage loans, when in fact the Originators had actually abandoned these standards so that they could increase the volume of loan origination and the resulting fees that they earned. The statements also represent that Residential Funding put quality control measures into place in order to assure that the underwriting guidelines were followed. Instead, Residential Funding ignored the underwriting tactics of the Originators. For further discussion of Originators' disregard of their stated underwriting guidelines, *see* Section IV.C., *supra*.

B. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING QUALITY CONTROL PROCEDURES

211. The Offering Documents represented that numerous quality control procedures were conducted with respect to the loans underlying the Certificates. For example, the Offering Documents contained, in sum or substance, the following representation:

> All of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of Residential Funding described under "--The Program" in this prospectus supplement. ***Residential Funding will review each mortgage loan for compliance with its underwriting standards prior to purchase.***

The above misstatement was contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-50 (May 31, 2007).

212. The above statements of material facts were untrue when made because they failed to disclose that the Sponsors and Originators did not, in fact, review each loan for compliance with its underwriting standards prior to purchase.

C. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING UNDERWRITING EXCEPTIONS

213. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, using identical or substantially similar language, regarding the circumstances under which Defendants granted underwriting exceptions for loans underlying the Certificates:

> In certain instances, the LTV ratio may have been based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator. In most cases, the mortgage loans were either originated and underwritten in accordance with Residential Funding Company, LLC's AlterNet Program, as discussed below, or otherwise acquired from a mortgage collateral seller based on standards consistent with the following discussion on credit grades classification or substantially similar standards acceptable to Residential Funding Company,

> LLC. ***Exceptions to these standards are made, however, on a case by case basis if it is determined, generally based on compensating factors, that an underwriting exception is warranted. Compensating factors may include, but are not limited to, a low LTV ratio, stable employment, a relatively long period of time in the same residence, a mortgagor's cash reserves and savings and monthly residual income.*** (emphasis added)

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at S-56-57 (Oct. 27, 2006); Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-53-54 (May 31, 2007); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at 12 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at S-61 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at S-58 (Oct. 30, 2006); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at 19 (Oct. 11, 2005); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 20 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at S-50 (Mar. 30, 2006); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at S-25 (July 7, 2005).

214. The statements quoted above were false because they represented that Residential Funding Company and the Originators only permitted exceptions to their underwriting guidelines on a case-by-case basis and when the borrowers could show some compensating factors as justification, when in fact the Originators systematically granted exceptions to virtually every borrower who did not qualify for a mortgage loan. For further discussion of Originators' wholesale and systematic abuse of exceptions, *see* Section IV.C., *supra*.

D. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS AND OMISSIONS REGARDING LOAN-TO-VALUE RATIOS AND APPRAISALS

215. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, regarding loan-to-value ratios and appraisals of the properties securing the mortgage loans underlying the Certificates:

> The adequacy of the mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in the [Residential Funding's Expanded Criteria] Seller Guide. Appraisers may be staff appraisers employed by the originator. The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

The above misstatement in identical or substantially similar language was contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-53 (May 31, 2007); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at S-43 (Apr. 3, 2007).

> The adequacy at origination of a mortgaged property as security for repayment of the related loan will typically have been determined by an appraisal. Appraisers may be either staff appraisers employed by the originator or independent appraisers selected in accordance with guidelines established by or acceptable to the originator. The appraisal procedure guidelines in most cases will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property

> was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio or combined LTV ratio may have been based on the appraised value as indicated on a review appraisal conducted by the seller or originator.

The above misstatement in identical or substantially similar language was found in the following Offering Documents: Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at 20 (Oct. 11, 2005); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at S-56 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at S-60 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at S-60 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at S-58 (Oct. 30, 2006); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at 14 (Mar. 30, 2006); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at 24 (July 7, 2005).

216. The statements quoted above were false because they represented that the properties securing the loans underlying the Certificates had been independently appraised based on the market values of comparable properties and replacement cost analyses, when in fact the Originators systematically pressured appraisers to overvalue properties and falsify appraisal reports. For further discussion of the corruption of the appraisal system, *see* Section III, *supra*.

217. Furthermore, each Prospectus contained tables substantially similar to that below, purporting to provide data on the LTV ratios of the mortgage loans underlying the Certificates so that investors could reach their own conclusions about whether or not those loans were backed by sufficient collateral. Not only did the tables indicate that no original loan-to-value ratio was

greater than 100% (or in some instances 95%), but also that less than ten percent of the loans had an original loan-to-value ratio greater than 80%. The statements were materially untrue and misleading, however, because the value data underlying the LTV calculations had been systematically skewed by fraudulent appraisals. Thus, these statements understated the true LTV ratios of the loans and the true risk inherent in the Certificates.

Original LTV Ratios of the Mortgage Loans

<TABLE>
<CAPTION>

Original Loan-to-Value Ratio (%)	Number of Mortgage Loans	Principal Balance	Percentage of Mortgage Loans	Average Principal Balance	Weighted Average LTV Ratio
<S>	<C>	<C>	<C>	<C>	<C>
00.01 - 50.00	212	$ 42,984,743	5.35%	$ 202,758	702
50.01 - 55.00	101	23,283,288	2.90	230,528	696
55.01 - 60.00	136	35,595,681	4.43	261,733	704
60.01 - 65.00	218	54,755,955	6.82	251,174	703
65.01 - 70.00	220	59,723,656	7.43	271,471	700
70.01 - 75.00	420	102,117,920	12.71	243,138	700
75.01 - 80.00	1,693	413,487,156	51.47	244,233	707
80.01 - 85.00	64	14,492,399	1.80	226,444	678
85.01 - 90.00	193	36,232,960	4.51	187,736	690
90.01 - 95.00	92	17,114,533	2.13	186,028	693
95.01 - 100.00	26	3,503,916	0.44	134,766	716
Total, Average or Weighted Average ...	3,375	$803,292,207	100.00%	$ 238,013	703

</TABLE>

The weighted average loan-to-value ratio at origination of the mortgage loans will be approximately 74.40%.

The above misstatement in identical or substantially similar language was found in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at I-19 (May 31, 2007); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at II-26 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at II-27 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at II-26 (Oct. 30, 2006).

E. DEFENDANTS MATERIALLY MISREPRESENTED THE ACCURACY OF THE CREDIT RATINGS ASSIGNED TO THE CERTIFICATES

218. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements using identical or

substantially similar language, among others, touting the credit ratings assigned to the Certificates:

> ***Each class of certificates offered hereby and by the accompanying prospectus supplement will be rated at the date of issuance in one of the four highest rating categories by at least one rating agency.*** (emphasis added)

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at 152 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at 112 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at 112 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at 112 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at 112 (Oct. 30, 2006); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at 124 (Oct. 11, 2005); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 152 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at 134 (Mar. 30, 2006); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at 144 (Jul. 7, 2005).

> The ratings assigned by Fitch to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of all distributions to which they are entitled under the transaction structure. Fitch's ratings reflect its analysis of the riskiness of the underlying mortgage loans and the structure of the transaction as described in the operative documents. Fitch's ratings do not address the effect on the certificates' yield attributable to prepayments or recoveries on the underlying mortgage loans. Further, the rating on the Interest Only Certificates does not address whether investors therein will recoup their initial investments. The rating on the Principal Only Certificates only addresses the return of their respective Certificate Principal Balances. The rating on the Residual Certificates only addresses

> the return of its Certificate Principal Balance and interest on the Residual Certificates at the related pass-through rate.
>
> The ratings assigned by Standard & Poor's to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of payments required under the pooling and servicing agreement. Standard & Poor's ratings take into consideration the credit quality of the mortgage pool, structural and legal aspects associated with the certificates, and the extent to which the payment stream in the mortgage pool is adequate to make payments required under the certificates. The rating on the Principal Only Certificates only addresses the return of their respective Certificate Principal Balances. The rating on the Residual Certificates only addresses the return of its Certificate Principal Balance and interest on the Residual Certificates at the related pass-through rate. Standard & Poor's rating on the certificates does not, however, constitute a statement regarding frequency of prepayments on the mortgages. See "Certain Yield and Prepayment Considerations" herein.
>
> The ratings assigned by Moody's to the Senior Certificates, other than the Class II-A-2 Certificates, address the likelihood of the receipt by the Senior Certificateholders of all distributions to which they are entitled under the pooling and servicing agreement. Moody's ratings reflect its analysis of the riskiness of the mortgage loans and the structure of the transaction as described in the pooling and servicing agreement. Moody's ratings do not address the effect on the certificates' yield attributable to prepayments or recoveries on the mortgage loans.

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at 152 (May 31, 2007); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 152 (Apr. 3, 2007); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at 144 (Jul. 7, 2005).

219. The statements quoted above were false because they represented that the investment-grade credit ratings of the Certificates were the product of rigorous independent analysis of the nature of the underlying assets and the credit quality of the guarantor, when in fact the Underwriter Defendants had colluded with the rating agencies and/or withheld

information from them to obtain higher credit ratings than the Certificates truly deserved. This made the Certificates appear to be safe, investment-grade securities when they were actually risky and speculative. For further discussion of the corruption of the rating system, *see* Section VII, *supra*.

F. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING THE SUFFICIENCY OF THE BORROWERS' INCOMES

220. Each of the Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, in identical or substantially similar language regarding the sufficiency of the borrowers' incomes to repay the loans underlying the Certificates:

> Once all applicable employment, credit and property information is received, a determination is made as to whether the prospective borrower has sufficient monthly income available to meet the borrower's monthly obligations on the proposed mortgage loan and other expenses related to the home (such as property taxes and hazard insurance) and other financial obligations and monthly living expenses.

The above misstatement in identical or substantially similar language was found in the following Offering Documents: Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at S-33 (Jul. 7, 2005); Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at 21 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at 13 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at 13 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at 13 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at 13 (Oct. 30, 2006); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 21 (Apr. 3, 2007);

Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at 16 (Mar. 30, 2006).

221. The statements quoted above were false because in fact, the Originators had willfully turned a blind eye to the creditworthiness of their borrowers, lending money without making even cursory attempts to ensure that the loans would be repaid. Indeed, the Originators extended numerous loans even though the borrower's information was not provided, or even if it was, where that information was patently false and the Originators knew that the borrower was misrepresenting her or his income, occupation and other information, and was engaged in outright mortgage fraud. For further discussion of the Originators' purposeful disregard for income verification, *see* Section IV, *supra*.

G. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING OWNER OCCUPANCY RATES

222. Each of the Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained tables substantially similar to that below, purporting to provide data on the owner occupancy rates of mortgage loans underlying the Certificates. The figures contained in these tables were materially false and misleading, however, because Defendants systematically overstated the owner occupancy rates.

OCCUPANCY TYPES OF THE MORTGAGE LOANS

OCCUPANCY	NUMBER OF MORTGAGE LOANS	PRINCIPAL BALANCE	PERCENTAGE OF MORTGAGE LOANS	AVERAGE PRINCIPAL BALANCE	WEIGHTED AVERAGE CREDIT SCORE	WEIGHTED AVERAGE LOAN-TO-VALUE RATIO
Primary Residence.....	6,774	$1,192,830,252	96.65%	$176,089	626	82.40%
Second/Vacation.....	83	14,903,729	1.21	179,563	648	84.83
Non-Owner Occupied.....	190	26,409,995	2.14	139,000	648	77.16
TOTAL.....	7,047	$1,234,143,976	100.00%	$175,130	627	82.32%

o With respect to the junior mortgage loans, this table was calculated using the combined loan-to-value ratio for such mortgage loans.

The above misstatements in identical or substantially similar language were found in the following Offering Documents: Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at II-28 (Oct. 30, 2006); Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-14 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at II-28 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at II-28 (Feb. 23, 2007); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at S-56 (Oct. 11, 2005); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at II-29 (Mar. 26, 2007);.

223. An analysis by Mass Mutual found that only 6,785 of the loans included in this particular mortgage pool were truly primary residences of the mortgagors, not 7,615, as represented above, and that the true owner occupancy rate was only 83.04%, not 93.94%. *See* Section V, *supra.*

224. Contrary to Defendants' representations, far fewer borrowers actually occupied the mortgaged properties than was represented to investors such as Plaintiff in the Offering Documents.

H. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING THE TRANSFER OF TITLE TO THE ISSUING TRUSTS

225. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, regarding the transfer of title to the Issuing Trusts.

> At the time of issuance of a series of certificates, the depositor will cause the mortgage loans or mortgage securities and any other assets being included in the related trust to be assigned to the trustee or its nominee, which may be the custodian, together with, if specified in the accompanying prospectus supplement, all principal and interest received on the mortgage loans or mortgage

> securities after the cut-off date, other than principal and interest due on or before the cut-off date and any Spread. The trustee will, concurrently with that assignment, deliver a series of certificates to the depositor in exchange for the mortgage loans or mortgage securities. Each mortgage loan or mortgage security will be identified in a schedule appearing as an exhibit to the related pooling and servicing agreement. Each schedule of mortgage loans will include, among other things, information as to the principal balance of each mortgage loan as of the cut-off date, as well as information respecting the mortgage rate, the currently scheduled monthly payment of principal and interest, the maturity of the mortgage note and the LTV ratio, at origination or modification, without regard to any secondary financing.

The above misstatement, in identical or substantially similar language, was found in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at 41 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at 27 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at 27 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at 27 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at 27 (Oct. 30, 2006); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at 28-29 (Oct. 11, 2005); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at 41 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at 32 (Mar. 30, 2006); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at 33 (Jul. 7, 2005).

226. These representations were false because Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because Defendants routinely failed to execute valid endorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the

PSAs. The Issuing Trusts therefore did not possess good title to many of the mortgage loans and lacked legal authority to enforce many of the mortgage loans against the borrowers in the event of default.

I. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING THE CREDIT ENHANCEMENTS APPLICABLE TO THE CERTIFICATES

227. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, in identical or substantially similar language, regarding credit enhancements.

> ***The credit enhancement for the benefit of the Class A-I, Class M-I and Class B-I-1 Certificates consists of:***
>
> ***Excess Cash Flow.*** Because more interest with respect to the mortgage loans in loan group I is payable by the mortgagors than is expected to be necessary to pay the interest on the Class A-I, Class M-I and Class B-I-1 Certificates each month, there may be excess cash flow with respect to that loan group. Some of this excess cash flow may be used to protect the Class A-I, Class M-I and Class B-I-1 Certificates against some realized losses by making an additional payment of principal up to the amount of the realized losses or by reimbursing the principal portion of any realized losses previously allocated to the related certificates that remain unreimbursed if the required amount of overcollateralization for loan group I is reached.
>
> ***Overcollateralization.*** On the closing date, the trust will issue an aggregate certificate principal balance of offered certificates and the Class B-I-1 Certificates related to loan group I which is less than the aggregate principal balance of the mortgage loans in loan group I as of the cut-off date. In addition, on each distribution date, to the extent not used to cover certain losses, excess cash flow with respect to loan group I will be used to pay principal to the Class A-I, Class M-I and Class B-I-1 Certificates to the extent required to maintain the required level of overcollateralization, further reducing the aggregate certificate principal balance of the Class A-I, Class M-I and Class B-I-1 Certificates below the aggregate principal balance of the mortgage loans in loan group I. The excess amount of the aggregate principal balance of the mortgage loans represents overcollateralization, which may absorb

> some losses on the mortgage loans, if not covered by excess cash flow. If the level of overcollateralization falls below what is required, the excess cash flow with respect to loan group I will be paid to the related offered certificates as principal to the extent described in this prospectus supplement. This will reduce the principal balance of the offered certificates faster than the principal balance of the related mortgage loans, until the required level of overcollateralization is reached.
>
> ***Subordination.*** Except as described below, with respect to loan group I, if the Class B-I-1 Certificates remain outstanding, losses on the mortgage loans which are not covered by the yield maintenance agreement, excess cash flow or overcollateralization will be allocated to the Class B-I-1 Certificates, and the other classes of certificates will not bear any portion of such losses. If none of the Class B-I-1 Certificates are outstanding and the Class M-I Certificates remain outstanding, all such losses will be allocated to the Class M-I Certificates with the lowest payment priority, and the other classes of certificates will not bear any portion of such losses. If none of the Class B-I-1 Certificates or M-I Certificates are outstanding, all such losses will be allocated to the Class A-I Certificates on a pro rata basis. (emphasis added)

The above misstatements were contained in the following Offering Documents: Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at S-13 (Oct. 11, 2005); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at S-14-15 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at S-16-17 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at S-16-17 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at S-16 (Oct. 30, 2006).

> ***Credit enhancement*** for all of these certificates will be provided by additional classes of subordinated certificates which are not offered hereby.
>
> ...
>
> ***Allocation of Losses; Subordination***
>
> The subordination provided to the Senior Certificates by the Class B Certificates and Class M Certificates and the subordination

> provided to each class of Class M Certificates by the Class B Certificates and by any class of Class M Certificates subordinate thereto will cover Realized Losses on the mortgage loans that are Defaulted Mortgage Losses, Fraud Losses, Bankruptcy Losses and Special Hazard Losses. Any Realized Losses which are not Excess Special Hazard Losses, Excess Fraud Losses, Excess Bankruptcy Losses or Extraordinary Losses will be allocated as follows:
>
> o first, to the Class B Certificates;
>
> o second, to the Class M-3 Certificates;
>
> o third, to the Class M-2 Certificates; and
>
> o fourth, to the Class M-1 Certificates....
>
> (emphasis added)

The above misstatements were contained in the following Offering Document: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-1, S-87-88 (May 31, 2007).

228. These representations were false because all of the purported "enhancements" depended on or derived from the false representations regarding the quality of the mortgage loans underlying the Certificates. Piling additional high risk loans on top of other high risk loans does not "enhance" the nature of the RMBS.

J. DEFENDANTS MADE FALSE AND MISLEADING STATEMENTS REGARDING THE CHARACTERISTICS OF THE MORTGAGE POOLS

229. The Prospectus Supplements disseminated by Defendants in the course of selling the Certificates, and therefore the Registration Statements of which those Prospective Supplements formed a part, contained the following misleading statements, among others, in identical or substantially similar language, regarding the mortgage pool characteristics.

> The description in this prospectus supplement of the mortgage pool and the mortgaged properties is based upon the mortgage pool as constituted at the close of business on the cut-off date, as adjusted for the scheduled principal payments due during the month of the cut-off date. Prior to the issuance of the offered certificates, Residential Funding Company, LLC may remove mortgage loans

from the mortgage pool as a result of incomplete or defective documentation, or if it determines that the mortgage loan does not satisfy the characteristics described in this prospectus supplement. Residential Funding Company, LLC may also add a limited number of other mortgage loans to the mortgage pool prior to the issuance of the offered certificates in substitution for removed loans. ***The information in this prospectus supplement will be substantially representative of the characteristics of the mortgage pool as it will be constituted at the time the offered certificates are issued***, although the range of mortgage rates and maturities and some other characteristics of the mortgage loans in the mortgage pool may vary. ***In the event mortgage loans are removed from or added to the mortgage pool after the date hereof prior to the closing and any material pool characteristics of the actual mortgage pool differ by 5% or more from the description of the mortgage pool in this prospectus supplement, a current report on Form 8-K describing the final mortgage pool will be filed with the Securities and Exchange Commission within four business days of the related closing.***

The above misstatement was contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-54-55 (May 31, 2007); Prospectus Supplement for RASC Series 2006-EMX9 Trust (Form 424B5), at S-63 (Oct. 27, 2006); Prospectus Supplement for RASC Series 2007-KS2 Trust (Form 424B5), at S-64 (Feb. 23, 2007); Prospectus Supplement for RASC Series 2007-KS3 Trust (Form 424B5), at S-64-65 (Mar. 26, 2007); Prospectus Supplement for RASC Series 2006-KS9 Trust (Form 424B5), at S-62 (Oct. 30, 2006); Prospectus Supplement for RAAC Series 2005-SP2 Trust (Form 424B5), at S-64, 5 (Oct. 11, 2005); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at S-44 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at S-54 (Mar. 30, 2006); Registration Statement (333-125485) filed by Residential Asset Mortgage Products, Inc. (Form S-3/A, Am. 1), at S-25-26, 6 (Jul. 7, 2005).

The mortgage loans were selected for inclusion in the mortgage pool from among mortgage loans purchased in connection with the Expanded Criteria Program described below ***based on the***

Sponsor's assessment of investor preferences and rating agency criteria.

The above misstatement was contained in the following Offering Documents: Prospectus Supplement for RALI Series 2007-QS7 Trust (Form 424B5), at S-54-55 (May 31, 2007); Registration Statement (333-140610) filed by Residential Accredit Loans, Inc. (Form S-3/A, Am. 1), at S-39 (Apr. 3, 2007); Registration Statement (333-131209) filed by Residential Asset Securities Corp. (Form S-3/A, Am. 3), at S-32 (Mar. 30, 2006).

230. These representations were false because Defendants were not concerned with investor preferences and instead included mortgage loans in the mortgage pools that were in fact the kinds of risky loans that conservative investors such as Plaintiff avoided.

XI. DEFENDANTS KNEW THAT THE OFFERING DOCUMENTS CONTAINED MATERIAL MISSTATEMENTS AND OMISSIONS

231. The allegations below are made in support of Plaintiff's common-law fraud, aiding and abetting claims and Minnesota Securities Act claims, and not in support of its negligent misrepresentation claim, which is based solely on negligence.

232. As set forth above, at all relevant times, Defendants knew or were reckless in not knowing that the Offering Documents contained material misstatements and omissions. Defendants' knowledge or recklessness is evidenced by, among other things, the following:

- Defendants knew or should have known, from the due diligence reports they received on the mortgage loans being pooled for securitization, their relationships with the third party originators, and their oversight of their affiliated originators GMAC Mortgage and Homecomings Financial, that there were significant and extensive defects in the mortgage loans underlying the Certificates. Defendants were aware that a significant proportion of the loans they originated or purchased had defects, including breaches of their and the third party originators' underwriting guidelines, improper appraisals and lack of documentation, or were reckless in not discovering this information. GMAC was aware that its underwriting software, including Assetwise and Desktop Underwriter, did not apply its stated underwriting standards and would not screen out non-conforming loans. Defendants nonetheless allowed large numbers of defective mortgages to

be included in the mortgage pools used to collateralize the Certificates sold to Plaintiff and other investors. *See supra* ¶¶ 74-113.

- The Defendants also knew or were reckless in not knowing that those mortgages were being issued to borrowers that were likely to default, as evidenced by the high percentage of loans underlying the Certificates that are currently in foreclosure, as well as the percentage of loans underlying the Certificates that are currently delinquent by more than 90 days. *See infra* ¶ 276.

- Defendants knew or were reckless in not knowing that the appraisal and owner-occupancy data presented in the Offering Documents was false, as evidenced by the degree to which the Offering Documents consistently overstated owner-occupancy rates and understated LTV ratios. Defendants knew or should have known that their underwriting procedures were inadequate to verify that the mortgaged properties had been independently appraised and that the statistical data presented in the Offering Documents was accurate. *See supra* ¶¶ 167-169; 173-177.

- Defendants knew or were reckless in not knowing that the mortgages they were acquiring from the various originators as quickly as possible and packaging into the Certificates sold to investors such as Plaintiff were not worthy of their high credit ratings. The ratings of the Certificates, which were in all cases rated AAA/Aaa at the time they were sold to Plaintiff, have declined substantially to their current non-investment grade and/or junk ratings. *See supra* ¶ 182-185; 187; 190; and *infra* 270-275.

- Defendants did not disclose the extent to which they abandoned their underwriting guidelines or used improper appraisals to solicit more favorable ratings from the rating agencies. Defendants collaborated with the rating agencies to obtain sufficient "credit enhancement" to obtain the highest ratings possible. *See supra* ¶¶ 191-195.

- Defendants had control over the loan files, promissory notes and security instruments of the underlying mortgages, and were responsible for ensuring that the documents were properly indorsed and transferred so as to accord with state law and the terms of the applicable PSAs. Defendants were aware that they routinely failed to transfer title to the Issuing Trusts, and attempted to conceal this fact through fraudulent filings when foreclosing on securitized mortgages. *See supra* ¶¶ 200; 203-206.

XII. PLAINTIFF JUSTIFIABLY RELIED ON DEFENDANTS' MISREPRESENTATIONS TO ITS DETRIMENT

233. Plaintiff, through its agents, purchased senior classes of mortgage-backed securities (*i.e.*, those rated AAA/Aaa by the rating agencies Standard & Poor's and Moody's

Investors Service). The Certificates were purchased to generate income and total return through safe investments. The securities were purchased with the expectation that the investments could be—and indeed some would be and were—purchased and sold on the secondary market.

234. In making the investments, Plaintiff and/or its agents relied upon Defendants' representations and assurances regarding the quality of the mortgage collateral underlying the Certificates, including the quality of the underwriting processes related to the underlying mortgage loans. Plaintiff and/or its agents received, reviewed, and relied upon the Offering Documents, which described in detail the mortgage loans underlying each offering. Offering Documents containing the representations outlined above (or nearly identical, materially similar counterparts thereto) were obtained, reviewed, and relied upon before any purchase was made.

235. In purchasing the Certificates, Plaintiff and/or its agents justifiably relied on Defendants' false representations and omissions of material fact detailed above, including the misstatements and omissions in the Offering Documents. These representations materially altered the total mix of information upon which Plaintiff and/or its agents made their purchasing decisions.

236. But for the misrepresentations and omissions in the Offering Documents, Plaintiff and its agents would not have purchased or acquired the Certificates as they ultimately did, because those representations and omissions were material to their decisions to acquire the Certificates, as described above.

237. As discussed *supra*, Plaintiff is a conservative institutional investor that relied on Defendants' representations in the Offering Documents that the Certificates purchased by Plaintiff were safe, AAA-rated securities. Because Plaintiff did not have access to the loan files, appraisals, or other supporting documentation for the loans underlying the Certificates, Plaintiff

had no reasonable means or ability to conduct its own due diligence regarding the quality of the mortgage pool. As such, Plaintiff and its agents were forced to and did rely on the representations made by Defendants in the Offering Documents, and it was because of those representations that Plaintiff purchased the Certificates at issue in this Complaint.

XIII. THE LIABILITY OF THE CONTROL PERSON DEFENDANTS

A. DEFENDANT ALLY FINANCIAL

238. Defendant Ally Financial was in a position to and in fact controlled each of Defendants ResCap, GMAC Mortgage, GMAC-RFC, Homecomings, RALI, RASC, RAMP, RFC, and Residential Funding. Defendant Ally Financial operated its consolidated subsidiaries as a collective enterprise, making significant strategic decisions for its subsidiaries, monitoring enterprise-wide risk, and maximizing profit for Ally Financial's executives and corporate parent.

239. Unlike arm's-length securitizations where the loan originator, depositor, underwriters, and issuers are unrelated third parties, here the transactions among the sponsor (RFC); the depositor (RALI, RAMP or RASC), and the Issuing Trust were not arm's-length transactions at all, as Ally Financial controlled every aspect of the securitization processes. Furthermore, the Ally-controlled entity Residential Funding was an underwriter for several of the Certificates purchased by Plaintiff.

240. The mortgage loans underlying the Certificates were originated by the Ally Financial-controlled entity Homecomings or third-party originators and acquired by the sponsor, RFC. Ally Financial created RALI, RAMP and RASC, corporations structured as limited purpose subsidiaries, to acquire mortgage loans from RFC and to transfer the loans to the Issuing Trusts for sale to investors as RMBS. As the depositors, RALI, RAMP and RASC were shell corporations with no assets of their own, and had the same directors and officers (Paradis, Duncan and Flees among others) as other GMAC entities. Through these executives, Ally

Financial exercised actual day-to-day control over RALI, RAMP and RASC. Revenues flowing from the issuance and sale of the Certificates were passed through to Ally Financial.

241. RALI, RAMP and RASC in turn created the Issuing Trusts. Like the Depositor Defendants, the Issuing Trusts were shell entities that were established for the sole purpose of holding the pools of mortgage loans assembled by the Depositor Defendants, and issuing Certificates collateralized against these mortgage pools to underwriters for sale to the public. Through the Depositor Defendants, Ally Financial also exercised actual control over the Issuing Trusts.

242. Once the Issuing Trusts issued the Certificates, the Certificates were purchased by one or more underwriters. In several cases, Residential Funding, which was similarly controlled by Ally Financial, was one of the underwriters.

243. Ally Financial also participated in creating the Offering Documents. In sum, Ally Financial maintained a high level of day-to-day scrutiny and control over its subsidiaries, and controlled the entire process leading to the sale of the Certificates to ABP.

244. In its SEC filings, Ally Financial discussed its practice of securitizing loans by acting through its subsidiaries. For example, Ally Financial's 10-K Annual Report, filed on February 28, 2006 for the period ending December 31, 2005, states that:

- "We operate directly and through our subsidiaries and affiliates in which we or GM have equity investments. . . . We originate, purchase, service, sell and securitize residential and commercial mortgage loans and mortgage related products."

- "[W]e utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy."

- "We are a leading real estate finance company with two of our mortgage segments, GMAC Residential and GMAC-RFC, providing residential real estate products and services. Net income from the operations of GMAC Residential and GMAC-RFC together totaled $1,021 million, which accounted for approximately 43% of our net income in 2005."

245. Ally Financial also touted its purported underwriting standards in its SEC filings, asserting that it followed established policies and procedures to ensure asset quality. Ally Financial's 10-K Annual Report, filed on February 28, 2006 for the period ending December 31, 2005, states that:

> All mortgage loans that we originate and most of the mortgage loans we purchase are subject to our underwriting guidelines and loan origination standards. When originating mortgage loans directly through our retail branches, or by internet or telephone, or indirectly through mortgage brokers, we follow established lending policies and procedures that require consideration of a variety of factors, including:
>
> - The borrower's capacity to repay the loan;
> - The borrower's credit history;
> - The relative size and characteristics of the proposed loan; and
> - The amount of equity in the borrower's property (as measured by the borrower's loan-to-value ratio.
>
> Our underwriting standards have been designed to produce loans that meet the credit needs and profiles of our borrowers, thereby creating more consistent performance characteristics for investors in our loans. When purchasing mortgage loans from correspondent lenders, we either re-underwrite the loan prior to purchase or delegate underwriting responsibility to the correspondent lender originating the mortgage loan.

246. Thus, according to Ally Financial's own SEC filings, it controlled the underwriting standards for its subsidiaries' RMBS offerings.

247. Ally Financial culpably participated in the violations of its subsidiaries discussed above. Ally Financial approved the manner in which it sold the loans it elected to securitize and controlled the disclosures made in connection with those securitizations. Among other misconduct, Ally Financial oversaw the actions of its subsidiaries and allowed them, including

Defendants RALI, RAMP, RASC, and Residential Funding, to misrepresent the mortgage loans' characteristics in the Offering Documents.

B. THE INDIVIDUAL DEFENDANTS

1. Bricker

248. As Chief Financial Officer and a Director of Defendant RALI, Bricker had the power to direct RALI's policies relating to securitization. Bricker aided and abetted the fraud by permitting RALI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Bricker personally participated in the fraud by, *inter alia*, signing the RALI Registration Statement dated April 3, 2007.

249. In addition to serving as an officer of RALI, according to SEC filings, Bricker was also the Chief Financial Officer of GMAC Mortgage and GMAC RFC, the indirect parent corporation of Homecomings. As such, Bricker either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 97-112, or was reckless for not knowing of these critical matters. Furthermore, Bricker was familiar with and participated in GMAC's RMBS operations through his high-ranking position at GMAC RFC, the parent corporation of the Depositor Defendants and Sponsor Defendant.

2. Duncan

250. As Acting Chief Financial Officer of Defendants RAMP and RASC, Duncan had the power to direct RAMP and RASC policies relating to securitization. Duncan aided and abetted the fraud by permitting RAMP and RASC to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Duncan personally participated in the fraud by, *inter alia*, signing the RAMP Registration Statement dated July 7, 2005 and the RASC Registration Statement dated March 30, 2006.

251. In addition to serving as an officer of RAMP and RASC, according to SEC filings, Duncan was also the Acting Chief Financial Officer of Defendants RFC, GMAC RFC and Homecomings. As Homecomings' Acting Chief Financial Officer, Duncan either knew of Homecomings' abandonment of its underwriting standards, as discussed in ¶¶ 105-112, or was reckless for not knowing of these critical matters. Furthermore, Duncan was familiar with and participated in GMAC's RMBS operations through his high-ranking positions with GMAC RFC, the parent corporation of the Depositor Defendants, and RFC, the Sponsor Defendant.

3. Flees

252. As Principal Accounting Officer of Defendants RAMP and RASC, Flees had the power to direct RAMP and RASC policies relating to securitization. Flees aided and abetted the fraud by permitting RAMP and RASC to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Flees personally participated in the fraud by, *inter alia*, signing the RAMP Registration Statement dated July 7, 2005 and the RASC Registration Statement dated March 30, 2006.

253. In addition to serving as an officer of RAMP and RASC, according to SEC filings, Flees was also the Principal Accounting Officer of Defendants RFC, GMAC RFC and Homecomings. As such, Flees either knew of Homecomings' abandonment of its underwriting standards, as discussed in ¶¶ 105-112, or was reckless for not knowing of these critical matters. Furthermore, Flees was familiar with and participated in GMAC's RMBS operations through his high-ranking position with GMAC RFC, the parent corporation of the Depositor Defendants and Sponsor Defendant.

4. Jones

254. As President and Chief Executive Officer of Defendant RALI, Jones had the power to direct RALI policies relating to securitization. Jones aided and abetted the fraud by

permitting RALI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Jones personally participated in the fraud by, *inter alia*, signing the RALI Registration Statement dated April 3, 2007.

255. In addition to serving as an officer of RALI, according to a March 23, 2007 press release, Jones was named Chief Executive Officer of ResCap in June 2007. Jones had previously been ResCap's Chief Operating Officer and President of its U.S. Residential Finance Group. Jones was familiar with and participated in GMAC's RMBS operations through his high-ranking positions with ResCap, the indirect parent corporation of the Sponsor Defendant, Depositor Defendants, GMAC Mortgage, and Homecomings. Before coming to GMAC, Jones had been Chief Executive Officer of Aegis Mortgage Corporation.

5. Lundsten

256. As Attorney-in-Fact of Defendant RASC, Lundsten had the power to direct RASC's policies relating to securitization. Lundsten aided and abetted the fraud by permitting RASC to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Lundsten personally participated in the fraud by, *inter alia*, signing the RASC Registration Statement dated March 30, 2006.

257. Lundsten was familiar with and participated in GMAC's RMBS operations. According to a September 19, 2005 article in the Asset Securitization Report, Lundsten became the Senior Vice President of Securitization Management at GMAC RFC in September 2005.

6. Olson

258. As a Director of Defendant RASC, Olson had the power to direct RASC's policies relating to securitization. Olson aided and abetted the fraud by permitting RASC to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party

originators for securitization. Olson personally participated in the fraud by, *inter alia*, signing the RASC Registration Statement dated March 30, 2006.

259. In addition to serving as an officer of RASC, according to SEC filings, Olson was also the Chief Financial Officer of ResCap, the indirect parent company of GMAC Mortgage, and a Director of GMAC RFC, RFC, and Homecomings. As such, Olson either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 97-112, or was reckless for not knowing of these critical matters. According to a September 18, 2006 article in the NATIONAL MORTGAGE NEWS, Olsen was appointed the Senior Managing Director of ResCap's warehouse lending business in May 2006, a position believed to involve significant contact with and analysis of third-party mortgage originators. Furthermore, Olson was familiar with and participated in GMAC's RMBS operations through his positions with ResCap and GMAC RFC, the indirect and direct parent corporations of the Sponsor Defendant and Depositor Defendants.

7. Paradis

260. As President and Chief Executive Officer of Defendants RAMP and RASC, Paradis had the power to direct RAMP and RASC policies relating to securitization. Paradis aided and abetted the fraud by permitting RAMP and RASC to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Paradis personally participated in the fraud by, *inter alia*, signing the RAMP Registration Statement dated July 7, 2005 and the RASC Registration Statement dated March 30, 2006.

261. In addition to serving as an officer of RAMP and RASC, according to SEC filings, Paradis was also the co-Chief Executive Officer of ResCap, the indirect corporate parent of GMAC Mortgage and Homecomings Financial, and the Chief Executive Officer of GMAC RFC and RFC. As such, Paradis either knew of GMAC Mortgage and Homecomings'

abandonment of their underwriting standards, as discussed in ¶¶ 97-112, or was reckless for not knowing of these critical matters. Furthermore, Paradis was familiar with and participated in GMAC's RMBS operations through his top-ranking positions with ResCap and GMAC RFC, the indirect and direct parents of the Sponsor Defendant and Depositor Defendants. As discussed in ¶ 84, a former GMAC employee has said that Paradis personally exhorted GMAC personnel to buy even defective loans from favored vendors so as to maintain good business relationships.

8. Walker

262. As a Director of Defendant RAMP, Walker had the power to direct RAMP's policies relating to securitization. Walker aided and abetted the fraud by permitting RAMP to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Walker personally participated in the fraud by, *inter alia*, signing the RAMP Registration Statement dated July 7, 2005.

263. In addition to serving as an officer of RAMP, according to SEC filings, Walker was also a Director of ResCap, GMAC RFC, GMAC Mortgage, RFC, and Homecomings. As such, Walker either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 97-112, or was reckless for not knowing of these critical matters. Furthermore, Walker was familiar with and participated in GMAC's RMBS operations through his positions with ResCap and GMAC RFC, the indirect and direct parents of the Sponsor Defendant and Depositor Defendants.

9. Wold

264. As Attorney-in-Fact of Defendant RAMP, Wold had the power to direct RAMP's policies relating to securitization. Wold aided and abetted the fraud by permitting RAMP to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party

originators for securitization. Wold personally participated in the fraud by, *inter alia*, signing the RAMP Registration Statement dated July 7, 2005.

265. Wold was familiar with and participated in GMAC's RMBS operations. According to a September 19, 2005 article in the Asset Securitization Report, Wold was GMAC RFC's Senior Vice President of Securitization Management until September 2005, when she moved to ResCap as head of investor relations and corporate finance. A June 7, 2011 article in the Asset Securitization Report characterized Wold as having led ResCap's private label mortgage securitization program.

10. Young

266. As a Director of Defendant RALI, Young had the power to direct RALI policies relating to securitization. Young aided and abetted the fraud by permitting RALI to purchase low-quality, poorly-underwritten loans from GMAC entities and/or third-party originators for securitization. Young personally participated in the fraud by, *inter alia*, signing the RALI Registration Statement dated April 3, 2007.

267. In addition to serving as an officer of RALI, according to SEC filings, Young was also the Chief Accounting Officer and Controller of ResCap. Ally's website states that Young "was responsible for financial oversight, analysis, controls and reporting, accounting and business planning for the company's mortgage-related operations." As such, Young either knew of GMAC Mortgage and Homecomings' abandonment of their underwriting standards, as discussed in ¶¶ 97-112, or was reckless for not knowing of these critical matters. Furthermore, Young was familiar with and participated in GMAC's RMBS operations through his top-ranking position with ResCap, the indirect parent of the Sponsor Defendants and Depositor Defendants.

XIV. PLAINTIFF HAS SUFFERED LOSSES AS A RESULT OF ITS PURCHASES OF THE CERTIFICATES

268. The false and misleading statements of material facts and omissions of material facts in the Offering Documents directly caused Plaintiff damage, because the Certificates were in fact far riskier than Defendants had described them to be. As set forth below, the loans underlying the Certificates experienced default and delinquency at very high rates due to Defendants' abandonment of their purported underwriting guidelines. The resulting downgrades to the Certificates ratings have made them unmarketable at anywhere near the prices Plaintiff paid, thus confirming that Plaintiff paid far more for the Certificates than the value they actually received.

269. As set forth below, Plaintiff has incurred substantial losses in market value, due to the poor quality of the collateral underlying the Certificates. The income and principal payments Plaintiff received have been lower than Plaintiff expected. Because of the declining collateral base, it is increasingly likely that Plaintiff will not obtain the full payments expected under the "waterfall" provisions of the securitizations. This is reflected in the far diminished market value for these securities, which, again, is a strong indicator that the true value of the Certificates was far less than what Plaintiff paid.

270. Plaintiff purchased Certificates issued by RAAC Series 2005-SP2 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded twice and are currently rated B3. At the time of filing of this complaint, the Certificates were trading at just approximately 67% of par.

271. Plaintiff purchased Certificates issued by RALI Series 2007-QS7 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded three times

and are currently rated Caa3. At the time of filing of this complaint, the Certificates were trading at just approximately 46% of par.

272. Plaintiff purchased Certificates issued by RASC Series 2006-EMX9 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded twice and are currently rated B2. At the time of filing of this complaint, the Certificates were trading at just approximately 88% of par.

273. Plaintiff purchased Certificates issued by RASC Series 2006-KS9 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded three times and are currently rated Caa1. At the time of filing of this complaint, the Certificates were trading at just approximately 90% of par.

274. Plaintiff purchased Certificates issued by RASC Series 2007-KS2 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded four times and are currently rated Caa1. At the time of filing of this complaint, the Certificates were trading at just approximately 82% of par.

275. Plaintiff purchased Certificates issued by RASC Series 2007-KS3 Trust, when they were rated Aaa by Moody's, but the Certificates have since been downgraded and are currently rated Ba2. At the time of filing of this complaint, the Certificates were trading at approximately 99% of par.

276. As a result of the multiple and material misrepresentations contained in the Offering Documents, Plaintiff has suffered losses on its purchases of Certificates. As of the filing of this Complaint, the mortgage loans in the pools held by the Issuing Trusts and underlying Plaintiff's Certificates have suffered escalating default rates and mounting

foreclosures, resulting in across-the-board ratings downgrades and other negative actions by the rating agencies, as shown in the table below.

Certificates	90 Day Delinquency Rate (%)	Foreclosure Rate (%)	Current Moody's Rating
RAAC 2005-SP2	15.14	10.38	B3
RALI 2007-QS7	17.08	11.38	Caa3
RASC 2006-EMX9	57.21	48.67	B2
RASC 2006-KS9	30.21	21.72	Caa1
RASC 2007-KS2	29.03	20.30	Caa1
RASC 2007-KS3 AI1	28.32	20.98	Ba2

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Common-Law Fraud
(Against the Corporate Defendants)

277. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

278. This claim is brought against the Corporate Defendants.

279. As alleged in detail above, the Offering Documents contained untrue statements of material fact regarding the present creditworthiness of the Certificates and the quality of the underlying assets, omitted to state material facts necessary to make the untrue statements not misleading, and concealed and failed to disclose material facts. The Common-Law Fraud Defendants promoted and sold the Certificates purchased by Plaintiff pursuant to the defective Offering Documents. The Common-Law Defendants possessed accurate information regarding the present creditworthiness of the Certificates and the quality of the underlying assets, which was never disclosed to Plaintiff or other investors.

280. Each of the Common-Law Fraud Defendants either knew their representations and omissions were false and/or misleading at the time they were made, or made their representations with reckless disregard for their truth or falsity.

281. Each of the Common-Law Fraud Defendants made the representations and omissions in the Prospectuses and Prospectus Supplements with the intention to induce Plaintiff and other investors to act in reliance thereon.

282. At the time of the Common-Law Fraud Defendants' false statements, misrepresentations and omissions, Plaintiff was ignorant of their falsity and believed them to be true. Plaintiff justifiably relied on the Common-Law Fraud Defendants' false and misleading representations and omissions in purchasing the Certificates. The true facts regarding the creditworthiness of the Certificates and the quality of the underlying assets, including the Originators' abandonment of their underwriting practices, the use of improper appraisal methods to value collateral, the inaccuracy of the ratings assigned by the rating agencies, and the failure to convey to the Issuing Trusts legal title to the underlying mortgages, were peculiarly within the Common-Law Fraud Defendants' knowledge and not ascertainable by Plaintiff or other investors through ordinary channels. Had Plaintiff known about these matters, Plaintiff would not have purchased the Certificates.

283. As a direct and proximate result of Plaintiff's reliance on the Corporate Defendants' false and misleading statements and omissions, Plaintiff has suffered pecuniary damages in connection with its purchase of the Certificates.

SECOND CAUSE OF ACTION
Aiding & Abetting Fraud
(Against All Defendants)

284. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

285. This claim is brought against all Defendants (the "Aiding and Abetting Defendants") for aiding and abetting the fraudulent and reckless misrepresentations by all

Defendants. Each of these Defendants aided and abetted the fraud committed by all of the other Defendants

286. As alleged in detail above, the Corporate Defendants knowingly promoted and sold Certificates to ABP pursuant to materially misleading Offering Documents, thereby damaging ABP. The Aiding and Abetting Defendants knew of the fraud perpetrated on ABP by the Corporate Defendants. The Aiding and Abetting Defendants directed, supervised and otherwise knew of the abandonment of underwriting practices and the utilization of improper appraisal methods; the inaccuracy of the ratings assigned by the rating agencies; and the failure to convey to the Issuing Trusts legal title to the underlying mortgages.

287. The Aiding and Abetting Defendants provided the Corporate Defendants with substantial assistance in perpetrating the fraud. The Aiding and Abetting Defendants participated in the violation of mortgage loan underwriting and appraisal standards; made false public statements about mortgage loan underwriting and appraisal standards; provided false information about the mortgage loans underlying the Certificates to the rating agencies; provided false information for use in the Offering Documents; and/or participated in the failure to properly endorse and deliver the mortgage notes and security documents to the Issuing Trusts.

288. It was foreseeable to the Aiding and Abetting Defendants at the time they actively assisted in the commission of the fraud that Plaintiff would be harmed as a result of their assistance.

289. As a direct and natural result of the fraud committed by the Corporate Defendants, and the knowing and active participation by the Aiding and Abetting Defendants, Plaintiff has suffered substantial damages.

THIRD CAUSE OF ACTION
Negligent Misrepresentation
(Against All Defendants)

290. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

291. This claim is brought against all Defendants.

292. Defendants were in the business of underwriting home mortgage loans, pooling the mortgage assets for securitization, issuing RMBS, and marketing RMBS to investors. Defendants received pecuniary compensation from the sale of the Certificates.

293. Because the Negligent Misrepresentation Defendants arranged the Securitizations, and originated or acquired, and underwrote all of the underlying mortgage loans, they had unique and special knowledge about the loans in the Offerings. In particular, the Negligent Misrepresentation Defendants had unique and special knowledge and expertise regarding the quality of the underwriting of those loans as well as the servicing practices employed as to such loans.

294. In the course of selling the Certificates, Defendants drafted and distributed the Offering Documents for the guidance of investors such as Plaintiff. The Offering Documents purported to contain material information regarding the creditworthiness of the Certificates and the quality of the underlying assets, and the Negligent Misrepresentation Defendants anticipated that investors would rely on this information in deciding whether or not to purchase Certificates.

295. As an investor in the Certificates, Plaintiff is one of a limited group of persons whom the Defendants intended would rely on the information in the Offering Documents.

296. Because Plaintiff could not evaluate the loan files for the mortgage loans underlying the Certificates, and because Plaintiff could not examine the underwriting quality or servicing practices for the mortgage loans in the securitizations on a loan-by-loan basis, it was

heavily reliant on Defendants' unique and special knowledge regarding the underlying mortgage loans when determining whether to make each investment of Certificates. Plaintiff was entirely reliant on Defendants to provide accurate information regarding the loans in engaging in that analysis. Accordingly, Defendants were uniquely situated to evaluate the economics of each Certificate.

297. The true facts regarding the creditworthiness of the Certificates and the quality of their underlying assets, including the Originators' abandonment of their underwriting practices, the use of improper appraisal methods to value collateral, the inaccuracy of the ratings assigned by the rating agencies, and the failure to convey to the Issuing Trusts legal title to the underlying mortgages, were peculiarly within Defendants' knowledge and not ascertainable by Plaintiff or other investors through ordinary channels.

298. Defendants owed Plaintiff a duty to use reasonable care to ensure that their statements on these matters were not untrue or misleading.

299. Defendants negligently breached and violated this duty to use reasonable care. As alleged above, the Offering Documents contained untrue statements of material fact regarding the present creditworthiness of the Certificates and the quality of the underlying assets, omitted to state material facts necessary to make the untrue statements not misleading, and concealed and failed to disclose material facts. At the time Defendants provided the Offering Documents to Plaintiff, Defendants had no reasonable grounds to believe that the information contained therein regarding the creditworthiness of the Certificates and the quality of the underlying assets was true.

300. At the time of Defendants' false statements, misrepresentations and omissions, Plaintiff was ignorant of their falsity and believed them to be true. Defendants were aware that

Plaintiff relied on their unique and special expertise and experience and depended upon them for accurate and truthful information. Plaintiff justifiably relied on Defendants' false and misleading representations and omissions in purchasing the Certificates. Had Plaintiff known the truth about the creditworthiness of the Certificates and the quality of the underlying assets, Plaintiff would not have purchased the Certificates.

301. Based on their expertise, superior knowledge, and relationship with Plaintiff, Defendants owed a duty to Plaintiff to use reasonable care in providing complete, accurate, and timely information regarding the mortgage loans and the Certificates. Defendants breached their duty to provide such reasonable care and competence to Plaintiff.

302. Defendants likewise made misrepresentations which they knew, or were negligent in not knowing at the time to be false, in order to induce Plaintiff's investment in the Certificates. Defendants provided the Offering Documents to Plaintiff in connection with the Certificates, for the purpose of informing Plaintiff of material facts necessary to make an informed judgment about whether to purchase the Certificates in the Offerings. In providing these documents, Defendants knew that the information contained and incorporated therein would be used for a serious purpose, and that Plaintiff, like other reasonably prudent investors, intended to rely on the information.

303. As a direct and proximate result of Plaintiff's reliance on Defendants to provide accurate information regarding the Certificates and their underlying assets, and Defendants' negligent breach of that duty of care, Plaintiff has suffered pecuniary damages in connection with its purchase of the Certificates.

FOURTH CAUSE OF ACTION
Violation of Minnesota Securities Act

304. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

305. This claim is brought under the Minnesota Securities Act against the Corporate Defendants. The Corporate Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon Plaintiff, in violation of Minn. Stat §§ 80A.68 and 80A.76(b).

306. As alleged in detail above, the Offering Documents contained untrue statements of material fact regarding the present creditworthiness of the Certificates and the quality of the underlying assets, omitted to state material facts necessary to make the untrue statements not misleading, and concealed and failed to disclose material facts. The Corporate Defendants promoted and sold the Certificates purchased by Plaintiff pursuant to the defective Offering Documents.

307. Each of the Corporate Defendants either knew their representations and omissions were false and/or misleading at the time they were made, or made their representations with reckless disregard for their truth or falsity.

308. Each of the Corporate Defendants made the representations and omissions in the Prospectuses and Prospectus Supplements with the intention to induce Plaintiff and other investors to act in reliance thereon.

309. At the time of the Corporate Defendants' false statements, misrepresentations and omissions, Plaintiff was ignorant of their falsity and believed them to be true. Plaintiff

justifiably relied on the Corporate Defendants' false and misleading representations and omissions in purchasing the Certificates. The true facts regarding the creditworthiness of the Certificates and the quality of the underlying assets, including the Originators' abandonment of their underwriting practices, the use of improper appraisal methods to value collateral, the inaccuracy of the ratings assigned by the rating agencies, and the failure to convey to the Issuing Trusts legal title to the underlying mortgages, were peculiarly within the Corporate Defendants' knowledge and not ascertainable by Plaintiff or other investors through ordinary channels. Had Plaintiff known about these matters, Plaintiff would not have purchased the Certificates.

310. As a direct and proximate result of Plaintiff's reliance on the Corporate Defendants' false and misleading statements and omissions, Plaintiff has suffered pecuniary damages in connection with its purchase of the Certificates.

311. By virtue of the foregoing, Defendants have violated Minn. Stat § 80A.68 and are liable to Plaintiff pursuant to MINN. STAT. § 80A.76(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

An award in favor of Plaintiff against Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, but including at a minimum:

(i) Plaintiff's monetary losses, including loss of market value and loss of principal and interest payments;

(ii) Rescission and recovery of the consideration paid for the Certificates, with interest thereon;

(iii) Plaintiff's costs and disbursements in this suit, including reasonable attorneys' fees and expert fees;

(iv) Prejudgment interest at the maximum legal rate; and

(v) Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demand a trial by jury.

Dated: October 11, 2011

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

Richard A. Lockridge, #64117
Karen H. Riebel, #219770
Elizabeth R. Odette, #340698
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
Fax: (612) 339-0981

Jay W. Eisenhofer
Geoffrey C. Jarvis
Deborah A. Elman
Robert D. Gerson
GRANT & EISENHOFER P.A.
485 Lexington Ave., 29th Floor
New York, NY 10017
Tel: (646) 722-8500
Fax: (646) 722-8501

Counsel for Plaintiff Stichting Pensioenfonds ABP

ACKNOWLEDGMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. §549.211, sanctions may be imposed if the Court finds violation of this section.

Dated: October 11, 2011

Elizabeth R. Odette, #340698

Exhibit 13

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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

THRIVENT FINANCIAL FOR LUTHERANS; THRIVENT BALANCED FUND; THRIVENT CORE BOND FUND; THRIVENT INCOME FUND; THRIVENT LIMITED MATURITY BOND FUND; THRIVENT BALANCED PORTFOLIO; THRIVENT BOND INDEX PORTFOLIO; THRIVENT LIMITED MATURITY BOND PORTFOLIO; and THRIVENT FINANCIAL DEFINED BENEFITS PLAN TRUST,

Plaintiffs,

v.

RESIDENTIAL FUNDING COMPANY, LLC; RESIDENTIAL ACCREDIT LOANS, INC.; GMAC MORTGAGE LLC; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; ALLY SECURITIES, LLC (f/k/a Residential Funding Securities LLC); HOMECOMINGS FINANCIAL, LLC; and ALLY BANK,

Defendants.

Index No. 27-CV-11-5830

AMENDED COMPLAINT

JURY TRIAL DEMANDED

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Plaintiffs Thrivent Financial for Lutherans, Thrivent Mutual Funds (defined below), Thrivent Variable Annuity Portfolio Funds (defined below), and Thrivent Defined Benefits Plan Trust (collectively, "Thrivent" or "Plaintiffs"), by their attorneys for their Complaint herein against Residential Funding Company, LLC, GMAC Mortgage, LLC, Residential Accredit Loans, Inc. ("RALI"), Residential Asset Mortgage Products, Inc. ("RAMP"), Ally Securities, LLC (f/k/a Residential Funding Securities, LLC), Homecomings Financial, LLC, and Ally Bank (collectively, "GMAC" or the "GMAC Defendants"), allege as follows:

I. SUMMARY OF THE ACTION

1. This action concerns a massive fraud perpetrated by GMAC against the Plaintiffs, which invested in mortgage-backed securities ("MBS") issued by subsidiaries of GMAC. Thrivent is an institutional investor that wanted conservative, low-risk investments and thus bought GMAC-issued MBS (the "Certificates") that were represented to be backed by mortgages issued pursuant to specific underwriting guidelines and awarded the highest AAA investment-grade rating. In purchasing the Certificates, the Plaintiffs relied on term sheets, prospectuses and other materials prepared by and provided (directly or indirectly by way of other underwriters) to them by the Defendants, which made representations about GMAC's purportedly conservative mortgage underwriting standards, the appraisals of the mortgaged properties, the mortgages' loan-to-value ("LTV") ratios, and other facts that were material to Plaintiffs' investment decisions. These representations by Defendants were recklessly or knowingly false when made.

2. In reality, GMAC was driven by only one purpose – to originate or purchase and securitize as many mortgage loans as possible into MBS to generate profits for the Defendants, without regard to the investors that relied on the critical, false information provided to them with respect to the related Certificates. GMAC was at the forefront of the securitization of

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subprime mortgage loans, issuing nearly $28 billion in subprime residential MBS ("RMBS") in 2005 alone.

3. The GMAC Defendants' fraud has been revealed through numerous private lawsuits and government investigations, including an investigation by all 50 state attorneys general into fraudulent mortgage assignment and foreclosure documents filed by GMAC in foreclosure proceedings. Plaintiffs' counsel's investigation has also obtained evidence of the Defendants' fraud in the form of statements by former employees of the GMAC Defendants. These confidential witnesses confirmed that GMAC engaged in "creative underwriting" in order to approve loans and that supervisors at GMAC routinely overrode recommendations to reject loan applications and accepted faulty appraisals in order to approve loans.

4. Between 2005 and 2007, Plaintiffs purchased millions of dollars in GMAC MBS in seven offerings, which were issued pursuant or traceable to various Registration Statements, Prospectuses and Prospectus Supplements (the "Offering Documents"). All of the Offering Documents contained materially untrue statements and omissions. Plaintiffs' purchases of GMAC Certificates are set forth in Exhibit 1.

5. The Offering Documents for the Certificates at issue, which were relied upon by Plaintiffs, represented, among other things, that (i) the loans packaged into the Certificates were underwritten in accordance with the GMAC Defendants' stated loan origination guidelines; (ii) GMAC evaluated the prospective borrowers' credit standing and repayment ability before approving any loan; (iii) when the Defendants made an exception to the stated underwriting guidelines, they did so on a case-by-case basis and only if compensating factors justifying the exception were present or the loan substantially complied with the underwriting standards; (iv) almost every mortgaged property received an appraisal which conformed to stated standards and formed the basis of its loan-to-value ("LTV") ratio, an important metric to MBS investors; (v)

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the "AAA" ratings assigned to the Certificates were accurate reflections of the Certificates' credit quality; and (vi) the Certificates' issuing trusts possessed good title to the underlying mortgage loans. Each of these material representations was false when made, and Defendants knew or recklessly disregarded the falsity of these representations. Plaintiffs relied on the misrepresentations and suffered losses as a result.

6. Courts in similar actions have already sustained claims of fraudulent and negligent misrepresentations against the GMAC Defendants for their issuance of MBS. The New York State Supreme Court has sustained fraudulent inducement claims brought by MBIA Insurance Corp. ("MBIA"), a guarantor of GMAC's MBS, against GMAC Defendants based on their misrepresentations in MBS offering documents. *MBIA Insurance Co. v. Residential Funding Co., LLC*, Index No. 603552/08 (N.Y. Sup. Dec. 22, 2009); *MBIA Insurance Co. v. GMAC Mortgage LLC*, Index No. 600837/10 (N.Y. Sup. Dec. 14, 2010). Similarly, a New York federal district court has sustained negligence-based claims against the GMAC Defendants based on similar misrepresentations and omissions relating to loans originated in large part by Defendant Homecomings Financial, LLC and securitized by Residential Funding Company, LLC. *New Jersey Carpenters Health Fund v. Residential Capital LLC*, 2010 WL 1257528 (S.D.N.Y. Mar. 31, 2010).

7. After completing an over 18-month investigation into the causes of the financial and economic crisis precipitated by the fraud and downfall of various banks involved in the origination and securitization of mortgage loans, the Financial Crisis Inquiry Commission, established by an act of Congress, published an extensive Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (the "FCIC Report") in January 2011. In the FCIC Report, the Commission concluded that:

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> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to be significant.

8. As a result of the Defendants' failure to follow their underwriting standards and guidelines set forth in the Certificates' Offering Documents, delinquencies and defaults in the loan pools underlying the Certificates have skyrocketed. As of February 2011, approximately 23% of the mortgage loans currently underlying the GMAC Certificates are over 30 days delinquent or are in foreclosure, bankruptcy, or repossession. These figures do not include the substantial losses suffered by Plaintiffs since the Certificates' issuance due to foreclosures and the removal of those mortgage loans from the current loan pools and current delinquency figures. Indeed, since issuance, on average, 53% of the underlying loans have been removed from the loan pools. A significant portion of those loans has caused significant collateral loss to the Certificates. For example, for RALI 2007-QS9, 42% of the initial 2,605 underlying loans have been either removed from the pool or modified at a loss, causing a net loss of over $95 million, or 13.5% net loss to the collateral supporting the Certificates. The underlying loan performance and significant foreclosures have caused Plaintiffs' Certificates to have their credit ratings downgraded. At the time they were issued, all of the Certificates were given the highest credit rating – "AAA". Today, all of the GMAC Certificates' ratings, respectively, have been slashed to below investment-grade, or junk. Accordingly, the Certificates are no longer marketable at or near the prices Plaintiffs paid for them, and Plaintiffs have suffered significant losses.

9. Plaintiffs seek compensatory and/or rescissionary damages against Defendants for fraud and negligent misrepresentation.

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II. JURISDICTION AND VENUE

10. Jurisdiction is proper because Plaintiffs' principal places of business are located in Minneapolis, Minnesota and the Defendants' principal places of business are located in Minneapolis, Minnesota and because they committed acts in Minnesota causing injury to the Plaintiffs. This Court has jurisdiction over each of the non-domiciliary Defendants because each of them transacts business within the State of Minnesota within the meaning of M.S.A. § 543.19, Subd. 1(2) and each of them committed a tortious act inside the State of Minnesota or outside the State of Minnesota causing injury within the State of Minnesota within the meaning of M.S.A. § 543.19, Subd. 1(3) and 1(4).

11. Venue is proper in this Court because Plaintiffs maintain their principal places of business in Hennepin County, specifically, Minneapolis, Minnesota.

III. THE PARTIES

A. Plaintiffs

12. Thrivent Financial for Lutherans ("Thrivent Financial") is a Wisconsin fraternal benefit society with its principal corporate headquarters located in Minneapolis, Minnesota. Non-party Thrivent Asset Management, LLC ("TAM") is a Delaware limited liability company with its principal place of business located in Minneapolis, Minnesota. TAM purchased Certificates on behalf of four mutual funds in its capacity as investment adviser to such funds: Thrivent Balanced Fund, Thrivent Core Bond Fund, Thrivent Income Fund, and Thrivent Limited Maturity Bond Fund (the "Thrivent Mutual Funds"), each a series of Thrivent Mutual Funds, a Massachusetts business trust. Thrivent Financial purchased Certificates on behalf of three Plaintiffs in its capacity as investment adviser to such Plaintiffs: Thrivent Balanced Portfolio, Thrivent Bond Index Portfolio, and Thrivent Limited Maturity Bond Portfolio (the "Thrivent Variable Annuity Portfolios"). The Thrivent Variable Annuity Portfolios are each a

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series of Thrivent Series Fund, Inc., a Minnesota corporation. Thrivent Financial Defined Benefits Plan Trust is an individual pension account plan maintained by Thrivent Financial. These plaintiffs are collectively referred to as "Thrivent" or "Plaintiffs."

B. GMAC Defendants

13. Defendant Residential Funding Company, LLC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. Prior to approximately October 2006, Residential Funding Company, LLC operated as Residential Funding Corporation, a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Residential Funding Company, LLC and its predecessor, Residential Funding Corporation, are referred to herein as "Residential Funding." Residential Funding is a wholly owned subsidiary of Residential Capital, LLC ("ResCap"), which in turn is a wholly owned subsidiary of GMAC LLC, which is a finance subsidiary of General Motors. Residential Funding is an indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc. Residential Funding was the Sponsor and Master Servicer for four of the seven GMAC securitizations at issue in this action: RALI 2004-QS16, RALI 2005-QA10, RALI 2005-QA7 and RALI 2007-QS9 (the "RALI Certificates").

14. Defendant GMAC Mortgage, LLC, formerly known as GMAC Mortgage Corporation, is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMAC Mortgage LLC and its predecessor, GMAC Mortgage Corporation, are referred to herein as "GMAC Mortgage." GMAC Mortgage is a wholly owned subsidiary of ResCap, which in turn is a wholly owned subsidiary of GMAC LLC. GMAC Mortgage is an indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc. GMAC Mortgage was the Sponsor and Master Servicer for three of the seven GMAC securitizations at issue in this action: GMACM 2006-HE2, GMACM 2006-HE3 and GMACM

2006-HE4 (the "RAMP Certificates" and, together with the RALI Certificates, the "GMAC Certificates"). GMAC Mortgage originated a percentage of the mortgage loans underlying the following RAMP Certificates: GMACM 2006-HE2, GMACM 2006-HE3, GMACM 2006-HE4, with the remaining loans in those Certificates originated through its affiliate Ally Bank (formerly known as GMAC Bank).

15. Defendant Residential Accredit Loans, Inc. ("RALI") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RALI was the Depositor for the RALI Certificates. RALI is an indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc.

16. Defendant Residential Asset Mortgage Products, Inc. ("RAMP") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RAMP is an indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc. RAMP was the Depositor for the RAMP Certificates.

17. RAMP and RALI are collectively referred to as the "Depositor Defendants."

18. Defendant Ally Securities LLC is an SEC-registered broker-dealer with its principal place of business in Minneapolis, Minnesota. Prior to August 1, 2011, Ally Securities LLC was formerly known as Residential Funding Securities, LLC, which was doing business as GMAC RFC Securities. Prior to 2007, Residential Funding Securities, LLC operated as Residential Funding Securities Corporation, a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Ally Securities LLC, Residential Funding Securities, LLC (d/b/a GMAC RFC Securities) and Residential Funding Securities Corporation are referred to herein as "Residential Securities." Residential Securities is an indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc. Residential Securities was an underwriter for the RAMP Certificates and one of the RALI Certificates.

19. Defendant Homecomings Financial, LLC ("Homecomings") is a Delaware limited liability company and is a wholly owned subsidiary of Residential Funding and an indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc. Homecomings was a leading originator and provider of mortgage loans. Homecomings originated a significant percentage of the mortgage loans underlying the following RALI Certificates: RALI 2004-QS16, RALI 2005-QA10, RALI 2005-QA7, RALI 2007-QS9.

20. Defendant Ally Bank, formerly known as GMAC Bank, is a bank chartered under Utah law. Ally Bank is a wholly owned indirect subsidiary of Ally Financial Inc., formerly known as GMAC Inc., and is engaged in mortgage lending, automotive lending, and online banking. Ally Bank originated a significant percentage of the mortgage loans underlying the RAMP Certificates.

21. All of the GMAC Defendants are part of the same corporate family, and acted together in all steps of the creation of the Certificates, from the origination of the underlying loans, to the pooling of the mortgage loans, to the underwriting of the Certificates and sale to Plaintiffs.

IV. THE DEFENDANTS' FRAUD

A. The Securitization Process

22. The vast majority of the loans underwritten and originated by GMAC were resold to investors in the secondary market, through either whole loan sales or MBS securitizations.

23. Mortgage loan securitizations were vital to GMAC's financial success. Unlike major banking institutions that could hold significant assets on their balance sheets long term, GMAC needed to engage in mortgage loan securitizations so that they could remove the mortgage loan assets and potential liabilities from their balance sheets. Not only did GMAC's

securitizations and whole loan sales generate enormous income, but the sale of these loans transferred the risk of the borrowers' default from GMAC's balance sheet to investors, including Plaintiffs.

24. Mortgage securitization involves the conversion of illiquid whole loans into bond-like instruments that trade in capital markets. Mortgage loan "pass-through" securities entitle the investor to payments from pools of mortgage loans. Although the structure and underlying collateral of each offering varies, the basic principle remains the same: When borrowers make payments on the underlying mortgages, the cash flow is pooled and "passed through" to investors. Accordingly, the value of an MBS depends primarily on the underlying mortgage borrowers' ability to make principal and interest payments and, secondarily, on the adequacy of the collateral in the event of default. If the loans underlying a Certificate suffer defaults and delinquencies in excess of the assumptions built into the payment structure, or the underlying properties cannot be sold at sufficient value following default, investors suffer greater than expected losses.

25. The first step in creating each of the Certificates was the acquisition by one of the Depositor Defendants of an inventory of loans from the seller, such as Defendants GMAC Mortgage (on its own and through Defendant Ally Bank) and Homecomings, which either originated the underlying loans or acquired the loans from other mortgage originators, in exchange for cash. The Depositor Defendants then transferred, or deposited, the acquired pool of loans to an "issuing trust."

26. The Depositor Defendants securitized the pool of loans in the issuing trust so that the rights to the cash flows from the loans could be sold to investors. The securitization transactions are structured such that the risk of loss is divided among different levels of investment, or "tranches." Tranches consist of multiple series of related MBS offered as part of

the same offering, each with a different level of risk and reward, including different levels of credit enhancement. One form of credit enhancement is overcollateralization, which means that the total principal balance of the mortgage loans in the pool for a securitization (and therefore presumably the total value of the underlying properties) exceeds the aggregate amount of securities issued and sold in the securitization. Another example of credit enhancement is excess interest, which means that the amount of interest collected on the mortgage loans underlying a securitization for each payment period is expected to be greater than the interest distributable on the securities and fees and expenses payable by the trust for that period; excess interest may be applied both to absorb any interest shortfalls and to pay principal on the securities to the extent needed to maintain the required level of overcollateralization. Both of these credit enhancements serve to protect the investor against loss to varying degrees. Any losses on the underlying loans – whether due to default, delinquency, or otherwise – are generally applied in reverse order of seniority.

27. Because these tranches have different claims on the cash flow generated by the pool of mortgages, credit rating agencies assign different ratings to them and issuers can price them differently. The most senior tranches of the Certificates received "AAA" credit ratings or their equivalent from the three leading rating agencies, which indicated the lowest risk and highest quality. Junior tranches – which were not purchased by Plaintiffs – usually obtained lower ratings and were less insulated from risk, but offered greater potential returns.[1] For

[1] Moody's highest investment rating is "Aaa." S&P's highest rating is "AAA." Fitch's highest rating is "AAA." These ratings signify the highest investment-grade, and are considered to be of the "best quality," and carry the smallest degree of investment risk. Ratings of "AA," "A," and "BBB" are also investment-grade and represent high credit quality, upper-medium credit quality, and medium credit quality, respectively. Any instrument rated lower than BBB is considered below investment-grade. All of the Certificates purchased by Plaintiffs were rated AAA at issuance.

example, a pool of loans with an overall weighted-average coupon of 7% might be divided into multiple tranches where the lower-risk, higher-quality senior certificates are expected to yield less than 7% and are rated investment grade ("AAA," "AA," "A" or "BBB"), while the higher-risk, lower-quality subordinate certificates bear coupons that are higher than 7%. Only if credit losses exceed the amount of the subordinate tranche balances will the senior certificate tranches face credit losses, as the subordinate tranches will absorb initial losses.

28. The credit rating agencies received the information about the mortgage loan pools for each securitization and about the structure of the securitization from the sponsor, e.g., Residential Funding and GMAC Mortgage. GMAC worked closely with the rating agencies to structure the securitizations to ensure that each tranche of MBS received the desired rating. GMAC knew or recklessly disregarded that the information they provided to the rating agencies materially misrepresented and omitted the true facts about the credit quality of the mortgage pools and that the ratings therefore did not accurately reflect the credit risk of the MBS.

29. Plaintiffs purchased only AAA investment-grade tranches of the Certificates. A purchaser of AAA-rated residential MBS should have virtually no risk of incurring loss.

30. Credit ratings are intended to be comparable across different types of fixed income instruments. In 1994, a Moody's executive stated that "no matter what types of instruments the ratings apply to, no matter where the issuer resides, and no matter what currency or market in which the security is issued, Moody's ratings are intended to have the same relative meanings in terms of expected credit loss." Similarly, in a May 29, 2007 publication, S&P stated: "Our ratings represent a uniform measure of credit quality globally and across all types of debt instruments. In other words, an 'AAA' rated corporate bond should exhibit the same degree of credit quality as an 'AAA' rated securitized issue."

31. Once the tranches were established, the issuing trusts passed the securities back to the Depositor Defendants, who became the issuers of the Certificates. The Depositor Defendants then passed the Certificates to one or more underwriters, *e.g.*, Residential Funding Securities, who in turn offered the Certificates to Plaintiffs and other investors in exchange for cash that was then passed back to the Depositor Defendants, minus any fees owed to the underwriters. Following the sale of the Certificates, Residential Funding, or GMAC Mortgage, respectively, was responsible for the collection of borrower payments, and the trustee participated in the subsequent distribution of those payments to investors at regular intervals in accordance with the offering's structure.

32. In contrast, in the traditional mortgage model, a mortgage originator originated loans to borrowers, held the loans to maturity, and therefore retained the credit default risk. As such, under the traditional model, the mortgage originator had a financial incentive to ensure that (i) the borrowers had the financial ability to repay the loans, and (ii) the underlying properties had sufficient value to enable the mortgage originator to recover its principal and interest if the borrowers defaulted on the loans.

33. Traditionally, mortgage lenders financed their mortgage business primarily using funds from depositors, retained ownership of the mortgage loans they originated, and received a direct benefit from the income flowing from the mortgages. When a lender held a mortgage through the term of the loan, it received revenue from the borrower's payment of interest and fees, and also bore the risk of loss if the borrower defaulted and the value of the collateral was not sufficient to repay the loan. As a result of this "originate to hold" model, the lender had an economic incentive to verify the borrower's creditworthiness through prudent underwriting and to obtain an accurate appraisal of the value of the underlying property before issuing the mortgage loan.

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34. With the advent of securitization, the traditional "originate to hold" model gave way to the "originate to distribute" model, in which mortgage originators sold the mortgages and transferred credit risk to investors through the issuance and sale of MBS. Securitization concurrently provided lenders like GMAC with an incentive to increase the number of mortgages they issued and reduced their incentive to ensure the mortgages' credit quality. However, the contractual terms of the securitization transactions and adherence to good business practices obligate mortgage originators to underwrite loans in accordance with their stated underwriting and origination policies and to obtain accurate appraisals of the mortgaged properties.

35. During the 1980s and 1990s, the mortgage securitization business grew rapidly, making it possible for mortgage originators to make more loans than would have been possible using only the traditional primary source of funds from deposits. During that period, GMAC generally made loans in accordance with their stated underwriting and appraisal standards. In the early 2000s, however, GMAC began to systematically disregard its stated underwriting standards in an effort to originate an unprecedented number of loans for securitization.

B. In Response To The Rising Demand For Securitized Loans, GMAC Violated Its Stated Underwriting and Appraisal Standards

36. GMAC Mortgage came into existence in 1985 when GMAC Inc., then the finance subsidiary of General Motors, acquired a mortgage loan business. In 1990, GMAC Mortgage acquired Residential Funding Corp. GMAC further increased its mortgage business in 2000 by forming Ally Bank (then known as GMAC Bank). GMAC has been one of the largest MBS issuers in the country since the 1980s, and GMAC grew to be the fourth largest U.S. mortgage loan originator by 2010, issuing tens of billions of dollars of mortgages annually. By 2002, GMAC was the top issuer of subprime RMBS in the amount of $11.5 billion for that year. In

2005, Residential Funding issued $28.7 billion in subprime RMBS, making it the fifth largest issuer of subprime RMBS topped only by Countrywide, New Century, Ameriquest and Lehman Brothers. In 2006, Residential Funding issued $25.9 billion in subprime RMBS.

37. During the relevant period, GMAC secretly abandoned its stated mortgage underwriting and appraisal standards in a drive to originate or acquire as many mortgages as possible to be securitized and sold to unsuspecting investors as MBS.

38. The securitization of mortgage loans fundamentally shifts the risk of loss from the mortgage originator to the investors who purchase MBS. As discussed above, traditionally, mortgage originators had an economic incentive to verify mortgage borrowers' creditworthiness and obtain accurate appraisals of the value of the underlying properties before issuing mortgage loans because the mortgage originator held the loans to maturity. In securitizations where the mortgage originator – here GMAC Mortgage, on its own and through Ally Bank, and Homecomings – instead sold the loans to investors through securitizations (the "originate-to-distribute" model), the mortgage originator does not have the same economic interest in verifying borrowers' creditworthiness or obtaining accurate appraisals in the loan origination process. Nevertheless, the mortgage securitization process worked well during the 1980s and 1990s because GMAC played by the rules and complied with their obligations to underwrite loans responsibly and provide accurate information to investors in RMBS.

39. The process had broken down by 2005. As the FCIC concluded in the FCIC Report: "The originate-to-distribute model undermined responsibility and accountability for the long-term viability of the mortgages and mortgage-related securities and contributed to the poor quality of mortgage loans." The FCIC Report continued:

> [W]e follow the profound changes in the mortgage industry, from the sleepy days when local lenders took full responsibility for making and servicing 30-year loans to a new era in which the idea

> was to sell the loans off as soon as possible, so that they could be packages and sold to investors around the world. New mortgage products proliferated, and so did new borrowers. ***Inevitably, this became a market in which the participants – mortgage brokers, lenders, and Wall Street firms – had a greater stake in the quantity of mortgages signed up and sold than in their quality.***

40. By 2005, GMAC began systematically to violate its stated underwriting and appraisal standards, made loans with little or no documentation, and accepted untrue information from loan applicants. GMAC also began to provide untrue information about its underwriting practices and about the borrowers, loans, appraisals, and mortgaged properties in connection with the securitization of the loans. As a result of this pervasive breakdown of compliance with proper practices among the mortgage originators, GMAC provided Plaintiff with untrue information about its own and other mortgage originators' practices and about the underlying mortgage borrowers, loans, and properties. GMAC also provided Plaintiffs with untrue information about their own due diligence of the mortgage originators and underlying loans.

41. According to Ben S. Bernanke, Chairman of the Federal Reserve Board, in a March 2008 speech, "[t]he deterioration in underwriting standards that appears to have begun in late 2005 is another important factor underlying the current crisis. A large share of subprime loans that were originated during this time feature high combined loan-to-value ratios and, in some cases, layers of additional risk factors, such as a lack of full documentation or the acceptance of very high debt-to-income ratios." The loan-to-value ("LTV") ratio is a significant measure of credit risk, because both the likelihood of default and the severity of loss are higher when borrowers have less equity to protect in the event of foreclosure. The debt-to-income ratio is also a significant measure of credit risk, because borrowers who incur debt that is relatively high compared to their income are more likely to default on their loans. In its March 2008 Policy Statement on Financial Market Developments, the President's Working Group on

Financial Markets concluded that "[t]he turmoil in financial markets clearly was triggered by a *dramatic weakening of underwriting standards for U.S. subprime mortgages, beginning* in late 2004 and extending into early 2007." (Emphasis in original.) As U.S. housing prices subsequently declined, the delinquency rates for such mortgages soared.

42. The FCIC, after "review[ing] millions of pages of documents, interview[ing] more than 700 witnesses, and [holding] 19 days of public hearings in New York, Washington, D.C., and communities across the country," concluded that investment banks "failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards" such that "[p]otential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities."

43. An important aspect of GMAC's violation of its stated underwriting standards was their reliance on faulty appraisals. According to the April 7, 2010 FCIC testimony of Richard Bitner, a former executive of a subprime mortgage originator for 15 years and the author of the book *Confessions of a Subprime Lender*, "the appraisal process [was] highly susceptible to manipulation, lenders had to conduct business as though the broker and appraiser couldn't be trusted, [and] either the majority of appraisers were incompetent or they were influenced by brokers to increase the value." He continued:

> To put things in perspective, during my company's history, half of all the loans we underwrote were overvalued by as much 10%. This meant one out of two appraisals were still within an acceptable tolerance for our end investors. Our experience showed that 10% was the most an appraisal could be overvalued and still be purchased by these investors. Another quarter that we reviewed were overvalued by 11-20%. These loans were either declined or we reduced the property value to an acceptable tolerance level. The remaining 25% of appraisals that we initially underwrote were

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so overvalued they defied all logic. ***Throwing a dart at a board while blindfolded would've produced more accurate results.***[2]

44. Mr. Bitner testified about the implications of inflated appraisals:

> If multiple properties in an area are overvalued by 10%, they become comparable sales for future appraisals. The process then repeats itself. We saw it on several occasions. We'd close a loan in January and see the subject property show up as a comparable sale in the same neighborhood six months later. Except this time, the new subject property, which was nearly identical in size and style to the home we financed in January, was being appraised for 10% more. Of course, demand is a key component to driving value, but the defective nature of the appraisal process served as an accelerant. In the end, the subprime industry's willingness to consistently accept overvalued appraisals significantly contributed to the run-up in property values experienced throughout the country.
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> * * *
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> If the appraisal process had worked correctly, a significant percentage of subprime borrowers would've been denied due to a lack of funds. Inevitably, this would have forced sellers to drop their exorbitant asking prices to more reasonable levels. The rate of property appreciation experienced on a national basis from 1998 to 2006 was not only a function of market demand, but was due, in part, to the subprime industry's acceptance of overvalued appraisals, coupled with a high percentage of credit-challenged borrowers who financed with no money down.
>
> Mr. Bitner testified that the engine behind the increased malfeasance was the Wall Street Banks: "[T]he demand from Wall Street investment banks to feed the securitization machines coupled with an erosion in credit standards led the industry to drive itself off the proverbial cliff."

45. Alan Hummel, Chair of the Appraisal Institute, testified before the Senate Committee on Banking that the dynamic between mortgage originators and appraisers created a "terrible conflict of interest" where appraisers "experience[d] systemic problems of coercion"

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[2] Throughout this Complaint, emphasis in quotations is added except where otherwise noted.

and were "ordered to doctor their reports" or they might be "placed on exclusionary or 'do-not-use' lists."

46. A 2007 survey of 1,200 appraisers conducted by October Research Corp., which publishes *Valuation Review*, found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through. This figure was nearly double the findings of a similar study conducted just three years earlier. The 2007 study also "found that 75% of appraisers reported 'negative ramifications' if they did not cooperate, alter their appraisal, and provide a higher valuation." Adding to these problems was the fact that lenders were generally unable to assess the accuracy of the appraisals for loans originated by mortgage brokers, since the lenders were typically located far from the properties and knew little about the properties' neighborhoods.

47. GMAC's abandonment of its stated underwriting and appraisal standards is confirmed by the statements of former GMAC employees interviewed in Plaintiffs' investigation.

48. CW1, who was a senior mortgage underwriter for GMAC Mortgage in Troy, Michigan from 2003 to 2005, stated that GMAC's underwriting procedures were "pretty loose" and said, "They called it 'creative underwriting.'" For example, if a loan required six months of income but the applicant lacked the necessary income history, GMAC mortgage underwriters would divide the applicant's bank balance by six and treat that amount as the required income. CW1 saw quite a few "risky" loans where he didn't like the parameters or "didn't agree with the way things were done," so he passed these loans to his supervisor, who was GMAC's head of underwriting for several states. The supervisor would approve the loans. People from "corporate" wanted loans approved, so it was a matter of "scratching people's backs," according to CW1.

49. CW2, who was a director for Residential Securities from April 2002 until May 2005, worked directly with the sale of non-agency MBS during his tenure with the underwriter. CW2 stated that regardless of whether business was up or down, GMAC "loosened the underwriting guidelines" in order to "always keep origination volume up." CW2 stated that the MBS issued by Defendant RAMP were "the kitchen sink," because "RAMP was a shelf developed for program exceptions," and that "as the housing bubble really got going, the amount of issuance on the RAMP shelf exploded." According to CW2, RAMP became "a very important shelf for [GMAC] because they could put anything in there. They could put things in there that didn't meet RFC guidelines."

50. CW3, who was a senior wholesale underwriter for GMAC from August 1997 to the spring of 2007, said that her supervisors frequently overrode her underwriting decisions and closed "bad loans." Her supervisors' bonuses were dependent on the volume of closed loans, so they were motivated to push loans through, even if they were questionable. "They were doing loans they knew were bad." CW3 added, "A lot of times the sales director would raise holy commotion with the supervisor and directors, and under pressure, they'd approve bad loans." CW3 also stated that she "didn't trust" the documentation, because she heard of underwriters falsifying information in loan files. Another underwriter told her that she heard her supervisor telling a manager who "couldn't get the figures correct" to close a loan to "Just make it up, put anything; no one will ever check." CW3 stated that GMAC did "a lot" of no-income/no-assets stated loans, which were "a big joke around there" and were called "liar loans, because we knew damn well they were lying. You can't tell me a manicurist in L.A. was making $12,000 a month." CW3 said that she did not challenge the stated incomes even if they were unreasonable because it was just not done at GMAC and "you would get overruled [by a manager]." If CW3 requested full documentation because a borrower's assets did not support his stated income, her

boss would overrule her. Managers also waived bad appraisals that "you knew damn well did not support the value," according to CW3.

51. CW3 specifically linked GMAC's poor underwriting to pressure to generate loans to be sold. The trading group approved exceptions to underwriting standards, and the underwriters "had a feeling they had to make exceptions to fill a pool." The underwriters "would get an email [from the trading department] saying, 'We need 10 more loans to put in the 5% pool.'" She recalled, "A lot of times I'd decline a loan, and if the sales director knew the supervisor wouldn't go for it, [the sales director] would call trading – they knew the weak links in that department – and they knew they'd approve it." There was even a person who worked as a liaison between trading and underwriting and was able to sign off on loans despite having no underwriting experience. CW3 worked on bulk loan files, sorting them into approved loans, "pended loans" which were missing documentation, and declined loans. Another employee who was responsible for funding bulk loans did not address them according to their approved, pended or declined status, but "funded the whole load." CW3 objected to this and raised it with her supervisor and her supervisor's supervisor, but "everyone knew [that GMAC employee] was funding declined, bad, or pended loans" and had no problem with it.

52. CW4, who was an underwriter at GMAC in Monterey, California from 1997 to 2008, stated that GMAC's Desktop Underwriter ("DU") program had "very loose guidelines." 90% of loans were sent through DU, which did not require documentation and "rarely turned down a loan." GMAC's underwriting guidelines got "looser and looser" until 2007. CW4 stated that challenging an applicant's statements "was just unheard of"; "We had a philosophy that whatever the borrower told you was the truth." For no-doc loans, GMAC verified credit scores and LTV ratios and nothing else, according to CW4.

53. CW5, who was a senior underwriter at GMAC Mortgage in Troy, Michigan from 1986 to 2008, also stated that most loans were processed through DU. Loan processors (who were not underwriters) were able to approve loans that went though DU; if DU could not approve a loan, then the loan was sent to an underwriter. CW5 stated that: "You could call [no-doc] loans 'liar loans,' because anyone could say they made $8,000 a month [when] they really didn't." Since GMAC relied on automated underwriting with DU, these stated income/stated asset loans were taken at face value. CW5 stated that: "If the application indicates it and the borrower says it, [DU treated it as] truth. And we as underwriters rarely saw them."

54. CW6, who worked as a securities trading analyst at GMAC in Minneapolis from April 2006 to May 2007, stated that there was concern at GMAC about the quality of loans in late 2006 and early 2007, as they started to see a lot of early payment defaults on "fraudulent subprime loans." CW6 said that GMAC could have detected the fraudulent loans if it had "dug deeper" but usually only looked at the basic information in the computer file like FICO scores and LTV ratios. Because the underwriting was automated, mortgage brokers submitted information based on what criteria were needed to close loans, and "a lot of them didn't have documentation." CW6 also stated that GMAC accepted inflated appraisals: "To make a loan work, an appraisal has to come in at a certain value. The problem is that appraisers would overinflate values. It's not right."

55. GMAC's abandonment of its stated underwriting standards and its fraudulent representations concealing that abandonment from investors have also been confirmed by the allegations that courts have sustained in other lawsuits against GMAC. In *MBIA Insurance Co. v. Residential Funding Co.*, the New York State Supreme Court denied Residential Funding's motion to dismiss MBIA's fraud claims based on Residential Funding's representations about the quality of the mortgages underlying five MBS offerings from July 2006 to 2007 that were

insured by MBIA. 906 N.Y.S.2d 781, 26 Misc.3d 1204(A) (N.Y. Sup. Dec. 22, 2009). When the mortgage pools began to perform badly soon after the securitizations closed, with substantial defaults and delinquencies, MBIA demanded access to the loan files and determined that 34% of the loans in the loan pools were already in default by December 2009, and that more than 88% of the loans in default were not originated or acquired by Residential Funding in material compliance with its representations and warranties that they were underwritten in compliance with Residential Funding's underwriting guidelines, that the loan files contained all necessary documents and complied with all applicable laws, and that the loan pools did not contain unlawful "high cost loans." In fact, significant numbers of the loans had DTI or CLTV ratios far in excess of Residential Funding's guidelines, were made on the basis of stated incomes that were unreasonable, or were originated in violation of federal and state predatory lending laws.

56. These violations of the underwriting guidelines resulted largely from Residential Funding's engaging in three improper underwriting practices: "negotiated commitment," in which Residential Funding prospectively agreed with a loan originator that Residential Funding would buy non-compliant loans to be originated by the originator; "bulk purchase programs," in which Residential Funding agreed to buy bulk amounts of loans from a loan seller that had already been originated without re-underwriting them to confirm that they complied with the underwriting guidelines; and the use of Residential Funding's proprietary automated electronic loan underwriting program, "Assetwise," which purportedly determined whether mortgages met underwriting criteria set up in the program but which did not actually apply Residential Funding's stated underwriting guidelines. After summarizing the allegations from MBIA's complaint that are summarized in this and the preceding paragraph, the court held that "the fraud cause of action survives here, because it is premised on allegations that [Residential Funding]

misrepresented various statistics and other existing facts about the underlying mortgage loans that [Residential Funding] contributed to the mortgage loans pools."

57. The representations that are alleged to be fraudulent in MBIA's action against Residential Funding were contained in the loan tapes, data schedules, and prospectus supplements for the offerings – the same types of documents prepared by the GMAC Defendants that were delivered to Thrivent in connection with the GMAC MBS at issue here – and covered compliance with underwriting guidelines, accuracy of the provided loan information, CLTV and DTI ratios and FICO scores, inclusion of proper documents in the loan files, compliance with applicable laws, absence of high cost loans, and absence of material breaches or defaults on the loans – the same types of representations that are at issue here. The systematic nature of the misrepresentations supports a strong inference that the same types of false statements were made by the GMAC Defendants in the loan tapes, data schedules, and prospectus supplements for the GMAC MBS purchased by Thrivent.

58. The MBIA complaint against Residential Funding includes numerous specific examples of improperly underwritten loans and violations of Residential Funding's underwriting guidelines. For example, one stated income loan was given to a borrower who said he earned $9,800 per month as a dispatcher at a freight company and who had a prior bankruptcy and automobile repossession; another was given to a borrower who said he earned $41,666 per month in 2006 as a liquor store owner but who filed for bankruptcy in 2007 claiming to have earned nothing in 2006. Loans were made with DTI and LTC ratios exceeding the maximums under Residential Funding's guidelines, including loans with LTV ratios over 100%. Many loan files were missing necessary documents, which MBIA alleged "may greatly impede the ability of the trustees for the respective [Residential Funding MBS] Transactions to enforce their rights and remedies with respect to delinquent mortgages."

59. MBIA made allegations substantially identical to its allegations against Residential Funding in another fraud complaint against GMAC Mortgage, which was also sustained by the New York State Supreme Court. *See MBIA Insurance Co. v. GMAC Mortgage LLC*, Index No. 600837/10 (N.Y. Sup. Dec. 14, 2010). The three fraudulent offerings which were the subject of the MBIA action against GMAC include GMAC Mortgage Corp. Home Equity Loan Trust 2006-HE4, which is one of the MBS offerings purchased by Thrivent. The *MBIA v. GMAC* complaint likewise alleges that MBIA reviewed thousands of loan files after the transactions performed badly – including loans that were securitized and sold to Plaintiffs – and determined that at least 89% of the delinquent or charged-off loans reviewed by MBIA were not originated in material compliance with GMAC Mortgage's stated underwriting guidelines and its representations and warranties regarding compliance with those guidelines. While MBIA, as an insurer of those MBS, could gain access to the underlying loan files, Plaintiffs have no such access absent the discovery process.

60. MBIA's analysis in both cases revealed that an overwhelming number of loans in the securitized loan pools had been made to borrowers who could not reasonably have expected to be able to repay the loans, and that the risk factors inherent in the borrowers' portfolios were significantly greater than as represented. MBIA's sustained complaints allege that GMAC and Residential Funding knew that the mortgage loans failed to comply with its own underwriting guidelines, finding that "there were fundamental, material, and consistent violations of [Residential Funding's] underwriting guidelines and policies in connection with the underwriting of the mortgage loans." Moreover, "[t]he undisclosed and misrepresented risks were pervasive throughout the mortgage loan portfolios for the securitization transactions." Similarly, with respect to GMAC Mortgage, MBIA's review of the mortgage loans "made clear that GMAC

Mortgage had wholly abandoned its own underwriting policies and instead routinely approved loans to borrowers who failed to meet basic risk criteria."

61. In both cases, MBIA provided examples of individual loans that diverged from the GMAC Defendants' stated underwriting guidelines, some of which came from the loan files of loans pooled into the GMACM 2006-HE4 Certificate. In fact, for the deals that MBIA analyzed, the characteristics of the deficient loan files significantly overlapped with – if were not identical to – those present here. For example, while MBIA analyzed loans underlying the GMACM 2006-HE4 Certificate, the loans underlying the GMACM 2006-HE2 and GMACM 2006-HE3 Certificates contained similar second lien loans securitized within a 3-month period (July through September 2006). The following specific deficiencies are a small sample of MBIA's specific findings:

- On March 8, 2006, a loan with a principal balance of $55,000 was made to a borrower in Perris, California on a property with an original appraisal value of $225,000 and a senior loan balance of $440,000. The borrower stated his income to be $9,800 per month ($117,800 per year) as a dispatcher at a freight company. Further, the borrower could only demonstrate $22,270.80 in liquid assets, the majority of which was in a 401K retirement account. The stated income was unreasonable based on the borrower's employment and not substantiated by the borrower's credit/asset profile. In that regard, the borrower's credit profile indicated a prior bankruptcy filing, an existing loan against the borrower's 401K retirement account and an automobile repossession.

- On November 30, 2006, a loan with a principal balance of $140,000 was made to a borrower in Newton, Massachusetts on a property with an original appraisal value of $740,000 and a senior loan balance of $513,567. The property subject to the loan was a non-owner occupied investment property. The borrower stated his income to be $41,666 per month ($500,000 per year) as the owner of a Wine/Spirits store. Further, the borrower did not demonstrate any liquid assets. The stated income was unreasonable based on the borrower's employment and not

substantiated by the borrower's credit/asset profile. Notably, the borrower filed for bankruptcy in 2007 in connection with which the borrower claimed to have earned $0.00 for 2006. Further, the appraisal indicated the property failed to conform to legal standards and the loan file lacked any letter from the local authority regarding rebuilding. RFC Underwriting Guidelines require verification of 6 months of reserves for the monthly Principle, Interest, Taxes and Insurance ("PITI") payments for stated income loans on non-owner occupied investment properties yet there is no indication in the loan files that these reserves were identified or verified. Finally, RFC guidelines limit loans under the non-owner occupied loan program to $100,000, $40,000 less than was loaned.

- On November 12, 2006, a loan with a principal balance of $135,000.00 was made to a borrower in Scottsdale, Arizona on a property with an original appraisal value of $540,000.00 and a senior loan balance of $405,000.00. The borrower stated income of $11,000 per month as a sales manager at a concrete company, however, the borrower could only demonstrate assets of $11,491. The stated income was unreasonable based on the borrower's employment and not substantiated by the borrower's credit/asset profile. Notably, the borrower filed for bankruptcy in 2008 in connection with which the borrower claimed to have actually earned $43,523 for 2006 and $20,401 for 2007. Additionally, the bank account used to verify the borrower's reserves is actually held in the name of the loan officer that issued the loan.

- On January 25, 2006, a loan in the amount of $210,000 was made to a borrower in Vacaville, California on a property with an original appraisal value of $460,000 and a senior loan balance of $368,150. The borrower was employed as a correctional officer by the State of California. The loan was approved based on a DTI that was calculated using the borrower's highest reported monthly income, rather than his average income over a 33-month period, as is required by the Underwriting Guidelines. As a result, the true DTI on the loan was 65.56%, which exceeded the maximum ration of 50% permitted under the applicable loan program. The CLTV ratio of 125.68% also exceeded the maximum CLTV ratio of 100% permitted under the Guidelines.

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62. The falsity of the same types of prospectus representations that are at issue here has also been alleged by plaintiffs and sustained by a court in *New Jersey Carpenters Health Fund v. Residential Capital LLC*, 2010 WL 1257528 (S.D.N.Y. Mar. 31, 2010). Residential Funding sponsored and RALI served as a depositor for all of the MBS at issue in that action, and Homecomings served as the primary originator of the underlying loans, just as they are for the RALI loans purchased by Plaintiffs. Plaintiffs in that action alleged that Homecomings "systematic[ally] disregard[ed] . . . the underwriting guidelines set forth in the Offering Documents." The district court agreed, denying defendants' motion to dismiss investors' claims under the Securities Act of 1933 based on false statements in GMAC prospectuses and prospectus supplements for MBS offerings in 2006 and 2007, holding that "'Plaintiffs provide a credible inference that originators of these underlying loan pools systematically disregarded underwriting guidelines' because of 'widespread evidence' of this activity by the originator along with the fact that 'the loan pools provided by those same originators failed at considerable levels.'" *Id.* at *6. The court held that "these factual allegations about [Homecomings'] improper underwriting practices coupled with the loan pools' near-total credit rating collapse and default rate spike are sufficient to create a fair inference that [Homecomings] totally disregarded the underwriting guidelines, contrary to what was stated in the Offering Documents." *Id.*

63. GMAC's pervasive violations of its stated underwriting and appraisal guidelines led to immense losses and the near collapse of GMAC, which received enormous infusions of taxpayer money in a bailout in 2008. In September 2008, GMAC Mortgage closed all of its retail mortgage locations and Homecomings stopped originated loans.

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C. The Credit Ratings Assigned To the GMAC Certificates Materially Misrepresented The Credit Risk Of The Certificates

64. The AAA investment grade credit ratings of the Certificates were a factor in Plaintiffs' purchase of the Certificates. Because Plaintiffs are conservative institutional investors, they purchased only investment-grade Certificates, all which were rated AAA. They therefore purchased purportedly low-risk securities that were high in the capital structure of the Certificate offerings. Thus, Plaintiffs relied to their detriment on the ratings and the GMAC Defendants' representations regarding the ratings in the Offering Documents.

65. "Investment grade" products are understood in the marketplace to be stable, secure and safe. Using S&P's scale, "investment grade" ratings are AAA, AA, A and BBB, and represent, high credit quality (AAA), upper-medium credit quality (AA and A) and medium credit quality (BBB). Any instrument rated below BBB is considered below investment grade or "junk bond."

66. The Defendants well understood (and banked on) the important role the credit ratings played in the MBS markets. They featured the ratings prominently in the Offering Documents and discussed at length the ratings received by the different tranches of the Certificates, and the bases for the ratings. Yet, the Defendants knew that the ratings were not reliable because those ratings were bought and paid for, and were supported by, flawed information provided by the Defendants to the credit rating agencies.

67. Each prospectus supplement states that the issuance of each tranche of the Certificates was conditioned on the assignment of particular, investment-grade ratings, and listed the ratings in a chart. All of the Certificates purchased by Plaintiffs were AAA-rated tranches. The AAA rating denotes "high credit-quality," and is the same rating as those typically assigned to bonds backed by the full faith and credit of the United States Government,

such as Treasury Bills. Historically, before 2007, investments with AAA ratings had an expected cumulative loss rate of less than 0.5 percent, with an annual loss rate of close to nil. According to Standard and Poors, the default rate on all investment grade corporate bonds (including AA, A and BBB) from 1981 to 2007, for example, averaged about .094% per year with no year higher than 0.41%. The Certificates did not deserve these investment grade ratings, as evidenced most clearly by the fact that all of the Certificates have now been downgraded to junk, a vast number of the underlying loans have been foreclosed upon, and the remaining underlying loans are suffering from crippling deficiencies and face serious risks of default.

68. The credit rating agencies received enormous revenue from the issuers who paid them for rating the products they sold. Because the desired rating of a securitized product was the starting point for any securities offering, the credit rating agencies were actively involved in helping GMAC structure the products to achieve the requested rating. As a result, the credit rating agencies essentially worked backwards, starting with GMAC's target rating and thereafter working toward a structure that could conceivably yield the desired rating. To estimate the expected losses or probability of default, the credit rating agencies used historical data to estimate the likely sensitivity of the expected loss or probability of default to underwriting characteristics of the loan, the experience of the originator and servicer, and the local and national economic conditions. Based on the expected losses or the probability of default, the cash flows available to each of the tranches were simulated. Once the cash flows were simulated, the rating agencies and GMAC then determined how much credit enhancement would be made available to each tranche of the Certificates, with an ultimate goal of maximizing GMAC's profit.

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69. A 2008 SEC Report entitled, "Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies" ("Summary Report") revealed that the issuers and the credit rating agencies worked together so that securities would receive the highest ratings:

> [T]ypically, if the analyst concludes that the capital structure of the RMBS does not support the desired ratings, this preliminary conclusion would be conveyed to the arranger. The arranger could accept that determination and have the trust issue the securities with the proposed capital structure and the lower rating or adjust the structure to provide the requisite credit enhancement for the senior tranche to get the desired highest rating. Generally, arrangers aim for the largest possible senior tranche, i.e., to provide the least amount of credit enhancement possible, since the senior tranche -- as the highest rated tranche -- pays the lowest coupon rate of the RMBS' tranches and, therefore, costs the arranger the least to fund.

70. As a result of this collaboration with the credit rating agencies, GMAC was able to manipulate the system to achieve inflated ratings. For example, through repeated interactions with the credit rating agencies, GMAC could effectively reverse engineer aspects of the ratings models and then modify the structure of a financing to improve its ratings without actually improving its credit quality.

71. This rating process was further compromised by the practice of "rating shopping." GMAC did not pay for the credit rating agencies' services until after the agencies submitted a preliminary rating. This practice created, essentially, bidding wars where the issuers would hire the agency that provided the highest rating for the lowest price. The credit rating agencies were paid only if they provided the desired investment grade ratings, and only in the event that the transaction closed with those ratings. "Ratings shopping" jeopardized the integrity and independence of the rating process.

72. The credit ratings of the Certificates were further compromised by misinformation provided by GMAC regarding the abandonment of their underwriting standards, rampant use of aggressive exceptions, knowledge of pervasive fraud in the stated income loan programs, and the inflated appraisals assigned to the underlying collateral, as described above.

73. Subsequent downgrades confirm that the investment grade ratings reported in the Offering Documents were unjustifiably high and misstated the true credit risk of the Certificates purchased by Plaintiffs. Beginning in the spring of 2008, the Certificates purchased by Plaintiffs also became subject to these rating agency downgrades. Today, all of the GMAC Certificates – all of which were initially awarded AAA investment grade ratings – have been downgraded to junk. The *en masse* downgrade of AAA-rated Certificates indicates that the ratings set forth in the Offering Documents were false, unreliable and inflated.

74. The Defendants knew that the AAA investment grade ratings assigned to the Certificates were false because, unbeknownst to Plaintiffs, the Defendants' underwriting and appraisal standards had been abandoned and, as such, no reliable estimate could be made concerning the level of enhancement necessary to ensure that the top tranches purchased by Plaintiffs were of AAA quality. By including and endorsing these AAA ratings in the Prospectus Supplements, Defendants were making a false representation that they actually believed that the AAA ratings were an accurate reflection of the credit quality of the Certificates.

D. GMAC Failed To Ensure That Title To The Underlying Loans Was Effectively Transferred

75. An essential aspect of the mortgage securitization process is that the issuing trust for each MBS offering must obtain good title to the mortgage loans comprising the pool for that offering. This is necessary in order for the MBS holders to be legally entitled to enforce the

mortgage loans in case of default. Two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process – a promissory note and a security instrument (either a mortgage or a deed of trust).

76. The rules for these transfers are governed by the law of the state where the property is located, by the terms of the pooling and servicing agreement ("PSA") for each securitization, and by the law governing the issuing trust (with respect to matters of trust law). Generally, state laws and the PSAs require the promissory note and security instrument to be transferred by indorsement, in the same way that a check can be transferred by indorsement, or by sale. In addition, state laws generally require that the trustee have physical possession of the original, manually signed note in order for the loan to be enforceable by the trustee against the borrower in case of default.

77. In order to preserve the bankruptcy-remote status of the issuing trusts in RMBS transactions, the notes and security instruments are generally not transferred directly from the mortgage loan originator to the trust. Rather, the notes and security instruments are generally initially transferred from the originator (*e.g.*, Ally Bank, Homecomings or GMAC Mortgage) to the depositor (*e.g.*, RALI or RAMP), either directly or via one or more special-purpose entities established by GMAC. After this initial transfer to the depositor, the depositor transfers the notes and security interests to the issuing trust for the particular securitization. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

78. In addition, the PSA generally requires the transfers of the mortgage loans to the trust to be completed within a strict time limit after formation of the trust in order to ensure that the trust qualifies as a tax-free real estate mortgage investment conduit ("REMIC").

79. The applicable state trust law generally requires strict compliance with the trust documents, including the PSA, so that failure to comply strictly with the timeliness, indorsement, physical delivery, and other requirements of the PSA with respect to the transfers of the notes and security instruments means that the transfers would be void and the trust would not have good title to the mortgage loans.

80. The Offering Documents for each offering of the Certificates represented in substance that the issuing trust for that offering had obtained good title to the mortgage loans comprising the pool for the offering. In reality, however, GMAC routinely failed to comply with the requirements of applicable state laws and the PSAs for valid transfers of the notes and security instruments to the issuing trusts.

81. Evidence about failure to properly assign mortgage loan documents has become public in foreclosure litigation involving GMAC. For example, Margie Kwiatanowski, who was a "Limited Signing Officer" of GMAC Mortgage Corp., testified in a deposition in 2006 in a Florida foreclosure action that she signed affidavits for submission to courts in foreclosure actions, which represented the facts about the mortgages and stated that she had reviewed the relevant mortgage documents such as the note and mortgage, but that in fact she did not review the mortgage documents. Based on Kwiatanowski's testimony, the Florida Circuit Court sanctioned the plaintiff trust, finding that the trust "through its servicing entity, GMAC Mortgage Corp., submitted false testimony to the Court in the form of Affidavits of Indebtedness signed and subscribed by Margie Kwiatanowski . . . . The submission of the false Affidavits was pursuant to protocols and procedures wherein Ms. Kwiatanowski, as Limited Signing Officer, would attest to review of the relevant loan documents, the Complaint, and loan payment records, when in fact (as sworn to by Ms. Kwiatanowski in her deposition) she neither reviewed the

referenced records nor was familiar with the manner with which the records were created by GMAC . . . ."

82. Despite the Florida court's sanctions, GMAC continued to submit false affidavits in foreclosure actions around the country. In fact, GMAC promoted Kwiatanowski in 2008 to supervisor of its foreclosure document signing department. One of the GMAC signing officers reporting to Kwiatanowski is "team leader" Jeffrey Stephan, who testified in 2009 and 2010 about his own practice of signing purported assignments of mortgages and affidavits for submission to courts in foreclosure proceedings without reviewing the mortgage documents or verifying the information contained in the assignments and affidavits. Stephan testified that he signs approximately 10,000 assignments, affidavits, and similar documents per month; that the assignments are prepared by GMAC's outside foreclosure counsel *after* the mortgages are referred to counsel for foreclosure; that Stephan signs documents without verifying that the purported holder of the notes actually holds them; that Stephan signs affidavits stating that attached copies of notes are true and correct copies without reviewing the notes; and that these practices are in accordance with GMAC's policies.

83. Based on Stephan's 2010 testimony, a Maine state court vacated a partial summary judgment in favor of Fannie Mae, as purported owner of a GMAC-serviced mortgage, in a foreclosure action and sanctioned Fannie Mae for GMAC's misconduct. The court held that:

> Plaintiff [Fannie Mae] does not dispute that its affiant, Jeffrey Stephan, in his role as limited signing officer for GMAC, Plaintiff's servicing agent, signed the affidavit which Plaintiff submitted in support of its Motion for Summary Judgment without even reading it and without signing it in the presence of a notary. . . . The Court is particularly troubled by the fact that Stephan's deposition in this case is not the first time that GMAC's high-volume and careless approach to affidavit signing has been deposed. Stephan himself was deposed six months earlier, on December 10, 2009, in Florida. His Florida testimony is consistent with the testimony given in this case: except for some limited checking of figures, he signs summary judgment affidavits without first reading them and without appearing before a notary.

84. Summarizing the evidence from the GMAC "robo-signer" cases in which Kwiatanowski and Stephan testified, James A. Kowalski, Jr., the attorney who took the Kwiatanowski deposition, testified before the Committee on the Judiciary of the U.S. House of Representatives that "Assignments are . . . created after the fact in an attempt to demonstrate a chain of ownership, and that many critical facts in the Assignments, such as the date of the Assignment or the assertion of an equitable transfer are not based on any evidence at all. (For example, the date often used for the Assignment is the date the file is transferred to the [foreclosing] law firm, not the date the Trust purportedly took ownership of the loan.)"

85. GMAC temporarily suspended foreclosures in 23 states (primarily those states that require judicial foreclosure proceedings) in September 2010 while it attempted to address the problems created by its improper mortgage assignment and foreclosure documentation procedures. All 50 state attorneys general announced in October 2010 that they are investigating GMAC's foreclosure document practices, including the widespread use of improperly signed mortgage assignments and affidavits. The Ohio Attorney General filed suit against GMAC Mortgage LLC in October 2010, alleging that GMAC "sign[ed] and caus[ed] the filing in Ohio courts of hundreds of false affidavits and assignments of notes." The Ohio Attorney General called GMAC's conduct a "fraud on the court": "It's a basic subversion of our legal system, and it does not sufficiently respect people's private property rights." Analyst Jasraj Vaidya of Barclays, commenting on GMAC's suspension of foreclosures, wrote that "[a] clean record of note ownership is lost or hazy in many cases, due to multiple transfers of the notes." Old Republic National Title, one of the largest U.S. title insurance companies, announced in September 2010 that it would not write title policies for homes foreclosed by GMAC because of the improper documentation problem.

86. Thomas Marano, the chief executive officer of mortgage operations of Ally Financial, which is the present parent company of GMAC, testified before the U.S. House of Representatives Financial Services Subcommittee in November 2010 that "[o]ur company's process for preparing foreclosure affidavits was flawed. There were affidavits signed outside the immediate physical presence of a notary and without direct personal knowledge of the information in the affidavits."

E. The Defendants Controlled The Securitization Process

87. The GMAC Defendants controlled, and had actual knowledge of or were indifferent to the truth or falsity about, each aspect of the securitization process, from loan origination through the sale of the MBS to Plaintiffs.

88. Every Certificate was backed in part by loans from Homecomings, GMAC Mortgage, or Ally Bank (f/k/a GMAC Bank). All of the loans in the RAMP Certificates were backed by loans originated by GMAC Mortgage or Ally Bank, and Homecomings originated a significant percentage of the loans in the RALI Certificates: RALI 2004-QS16 (27.5%), RALI 2005-QA10 (24.6%), RALI 2005-QA7 (16.3%), RALI 2007-QS9 (50%).

89. Defendants acted as the sponsor and servicer for the loans underlying the Certificates. GMAC Mortgage was sponsor and servicer for the RAMP Certificates. Residential Funding was sponsor and servicer for the RALI Certificates. In the case of the RAMP Certificates, Defendants originated the mortgage loans, then pooled the mortgage loans in the securitizations and conveyed these loans to the Depositor Defendants. In the case of the RALI Certificates, Defendants originated a portion of the mortgage loans, acquired the remainder of the mortgage loans, then pooled the mortgage loans in the securitizations and conveyed these loans to the Depositor Defendants.

90. Depositor Defendants RAMP and RALI were the Depositors for the Offerings. In that role, they purchased the mortgage loans and then conveyed the loans to the issuing trusts through conveyance of the loans to the trustees. The Depositors then issued the Certificates to Plaintiffs and other investors.

91. Defendants were underwriters for most of the Certificates marketed and sold to Plaintiffs. Residential Securities was a seller for the RAMP Certificates and one of the RALI Securities. In that role, it shared responsibility for underwriting and managing the sale of the Certificates to Plaintiffs and other investors, including screening the mortgage loans for compliance with the Defendants' underwriting guidelines.

92. Defendants' involvement in and control over each aspect of the securitization process provided them with a unique knowledge and expertise regarding the appropriate standards and procedures for originating, acquiring, underwriting and servicing the mortgage loans underlying the Certificates, as well as of the loan characteristics of the loan pools underlying the Certificates.

V. PLAINTIFFS' INVESTMENT IN THE CERTIFICATES

93. The Certificates for all offerings were issued pursuant to the Offering Documents. These documents generally explained the structure and provided an overview of the Certificates. The Depositor Defendants and Residential Funding Securities prepared the Offering Documents.

94. The Prospectus Supplements filed with the SEC contained detailed descriptions of the mortgage pools underlying the Certificates. The respective Prospectus Supplements provided the specific terms of the particular Certificate offering. Each Prospectus Supplement included tabular data concerning the loans underlying the Certificates, including (but not limited to) the type of loans; the number of loans; the mortgage rate and net mortgage rate (the

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mortgage rate net of the premium for any lender paid mortgage insurance less the sum of the master servicing fee and the trustee fee on the mortgage loan); the aggregate scheduled principal balance of the loans; the weighted average original combined LTV ratio; occupancy rates; credit enhancement; and the geographic concentration of the mortgaged properties. The Prospectus Supplements also contained a summary of GMAC's underwriting and appraisal standards, guidelines and practices. The Registration Statements incorporated by reference the subsequently filed Prospectuses and Prospectus Supplements.

95. The charts in Exhibit 1 identifies (i) each Certificate Offering and tranche in which Plaintiffs purchased; (ii) the full name of the Offering; (iii) the issuing entity; (iv) the corresponding Registration Statement file number; (v) the Depositor Defendant who issued each Certificate; (vi) the issue date of the Certificate; (vii) the purchasing Plaintiff; and (viii) the date of the purchase. Residential Funding or GMAC Mortgage was the Seller/Sponsor for each Offering; Residential Funding or GMAC Mortgage was the servicer of each Offering, and Residential Funding Securities was an underwriter of each Offering except RALI 2004-QS16, RALI 2005 QA10, and RALI 2005-QA7.

96. Thrivent made their investment decisions using internal investment personnel. In deciding to purchase the Certificates, Thrivent relied on the Defendants' false representations and omissions of material fact regarding the Defendants' underwriting standards and the characteristics of the mortgage loans underlying the Certificates. But for the Defendants' fraudulent representations and omissions, Thrivent would not have purchased the Certificates. The same Thrivent personnel made Thrivent's investment decisions with respect to each of the GMAC Certificates, using the same investment criteria, guidelines, processes, and models.

97. Thrivent reasonably relied upon the Defendants' representations in the Offering Documents. Thrivent did not know at the time they purchased the Certificates, and could not

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have known, that GMAC had stopped following their underwriting guidelines to the point of abandoning those guidelines, leading to a drastic increase in the origination of risky loans, nor did they know that the property appraisals secured by GMAC resulted in false appraisal values. Thrivent also did not know that GMAC knowingly or recklessly accepted false information about material facts such as borrowers' stated income and intention to live in the mortgaged properties, which caused the Defendants' representations to Thrivent to be false. If Thrivent had known these and other material facts regarding the Defendants' fraudulent misrepresentations and omissions of material fact, Thrivent would not have purchased the Certificates.

98. The Defendants' misrepresentations and omissions of material facts caused Thrivent to suffer losses on the Certificates, because the Certificates were in fact far riskier—and their rate of default far higher—than the Defendants had described them to be. The mortgage loans underlying the Certificates experienced defaults and delinquencies at a much higher rate due to GMAC's abandonment of their loan-origination guidelines.

99. Thrivent decided to purchase each GMAC Certificate identified in Exhibit 1 on the basis of the information contained in the applicable Offering Documents filed with the SEC, and based on additional information provided to Thrivent by Residential Funding Securities or other brokers involved in the sale of the Certificates. Moreover, in connection with the offers and sales of the Certificates to Plaintiffs, Residential Funding Securities or other brokers provided directly or indirectly to Thrivent the Offering Documents and additional documents, such as statistical tables to be included in the Prospectus Supplements. These documents included term sheets, pooling and servicing agreements, computational material, data regarding the LTV and debt-to-income ratios of the pools, and computer models of the financial structures

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of the securitizations. Similar information was sent to and analyzed by Thrivent investment personnel if the GMAC Certificate was sold to them in the secondary market.

100. Thrivent's investment personnel reviewed and analyzed the information provided directly or indirectly by Residential Funding Securities or other brokers with respect to each offering of the GMAC Certificates and performed various analyses of the Certificate-specific data for each offering before deciding to purchase Certificates in the offering. The analyses conducted by Thrivent before deciding to purchase a Certificate included various credit analyses based on the information provided by Residential Funding Securities or other underwriters with respect to both the credit characteristics of the mortgage loan pool (including, for example, geographic concentration; weighted average life; fixed- or floating-rate loans; full-, low-, or no-documentation "stated income" loans; and owner-occupied, second home, or investment properties), and the structure of the securitization with respect to the seniority and risk characteristics of the particular tranche of Certificates (including, for example, position in the payment "waterfall").

101. Thus, Thrivent relied on the information in the term sheets, computational material, and other data provided directly or indirectly by Residential Funding Securities or other brokers for each offering of the GMAC Certificates. Thrivent also relied on the GMAC Offering Documents' representations and the statements about the underwriting guidelines that were purportedly followed in originating the underlying mortgage loans.

102. These documents contained numerous statements of material facts about the Certificates, including statements concerning: (i) Homecomings', Ally Bank's GMAC Mortgage's, and any other applicable mortgage originators' underwriting guidelines that were purportedly applied to evaluate the ability of the borrowers to repay the loans underlying the Certificates; (ii) the appraisal guidelines that were purportedly applied to evaluate the value and

adequacy of the mortgaged properties as collateral; (iii) the LTV ratios, debt to income ratios, and purported occupancy status of the mortgaged properties, including whether the properties were "owner occupied," "second homes," or "investment properties"; (iv) GMAC's due diligence of the loans and the mortgage originators' underwriting practices; and (v) various forms of credit enhancement applicable to certain tranches of Certificates.

103. These statements of material facts were untrue because: (i) Homecomings, Ally Bank, GMAC Mortgage, and the other mortgage originators violated their stated underwriting guidelines and did not consistently evaluate the borrowers' ability to repay the loans; (ii) inflated appraisals caused the listed LTV ratios and levels of credit enhancement to be untrue; and (iii) the actual numbers of riskier "second home" and "investment property" mortgagees were higher than the stated numbers. In addition, metrics such as debt-to-income ratios were untrue as a result of Homecomings', Ally Bank's, GMAC Mortgage's, and the other mortgage originators' acceptance of untrue information from mortgage applicants. For example, Homecomings, Ally Bank and the other mortgage originators allowed applicants for "stated income" loans to provide untrue income information and did not verify the applicants' purported income. Stated income loans were therefore known among personnel of GMAC as "liar loans."

VI. DEFENDANTS' FALSE AND MISLEADING MATERIAL MISSTATEMENTS AND OMISSIONS IN THE OFFERING DOCUMENTS

104. The Offering Documents pursuant to which Thrivent purchased the Certificates contained untrue statements of material fact, or omitted to state material facts necessary to make the statements therein not misleading, regarding: (i) Homecomings', Ally Bank's, GMAC Mortgage's and other originators' underwriting processes and guidelines by which the loans were originated, including the prevalence and type of exceptions to those guidelines being

applied to the underlying loans, and the rampant fraud in stated income loans; (ii) the value of the underlying real estate securing the loans, in terms of LTV ratios and the appraisal standards by which such real estate values were measured; (iii) the credit ratings of the Securities; and (iv) the adequacy of GMAC's transfer of good title and legal ownership of the underlying loans to the issuing trusts.

A. The GMAC Defendants Made False And Misleading Statements Regarding Their Underwriting Guidelines

1. The RAMP Certificates

105. GMAC Mortgage (on its own and through Ally Bank) originated or packaged the mortgage loans that were included in the pools for the RAMP Certificates. The Prospectus Supplements for the Certificates all contained identical or materially similar statements of material fact regarding GMAC Mortgage's underwriting standards and practices.

106. The RAMP Certificates made the following misrepresentations regarding the GMAC Defendants' underwriting guidelines and practices:

> ***All of the mortgage loans were underwritten generally in accordance with GMAC Mortgage Corporation's underwriting standards.*** . . . GMAC Mortgage Corporation's underwriting standards with respect to the mortgage loans generally will conform to those published in the GMAC Mortgage Corporation underwriting guidelines, including the provisions of the GMAC Mortgage Corporation underwriting guidelines applicable to the GMAC Mortgage Home Equity Program. The underwriting standards as set forth in the GMAC Mortgage Corporation underwriting guidelines are continually revised based on prevailing conditions in the residential mortgage market and the market for mortgage securities.

107. All of the RAMP Certificates Prospectus Supplements made the following material misrepresentations:

> ***The mortgage loans included in the mortgage pool generally were originated subject to a maximum CLTV Ratio of 100.00%. Additionally, loans were generally originated with a maximum***

> ***total monthly debt to income ratio of 45%, although variances are permitted based on compensating factors.***

108. All of the RAMP Certificates' Prospectus Supplements represented that: "***a mortgage loan may be considered to comply with a set of underwriting standards, even if one or more specific criteria included in the underwriting standards were not satisfied, if other factors compensated for the criteria that were not satisfied or if the mortgage loan is considered to be in substantial compliance with the underwriting standards.***"

2. The RALI Certificates

109. Residential Funding subsidiary Homecomings Financial originated or packaged a significant percentage of the mortgage loans that were included in the pools for the RALI Certificates. The Prospectus Supplements for the Certificates all contained identical or materially similar statements of material fact regarding the underwriting standards and practices governing the RALI Certificates.

110. The RALI Certificates made the following misrepresentations regarding the GMAC Defendants' underwriting guidelines and practices applied to the Homecomings Financial and other underlying loans:

> ***All of the mortgage loans were underwritten generally in accordance with GMAC Mortgage Corporation's underwriting standards.*** . . . GMAC Mortgage Corporation's underwriting standards with respect to the mortgage loans generally will conform to those published in the GMAC Mortgage Corporation underwriting guidelines, including the provisions of the GMAC Mortgage Corporation underwriting guidelines applicable to the GMAC Mortgage Home Equity Program. The underwriting standards as set forth in the GMAC Mortgage Corporation underwriting guidelines are continually revised based on prevailing conditions in the residential mortgage market and the market for mortgage securities.

111. All of the RALI Certificates Prospectus Supplements made the following material misrepresentations:

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> The adequacy of the mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in the Seller Guide. Appraisers may be staff appraisers employed by the originator. The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.
>
> *****
>
> Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the Seller Guide. With regard to a material portion of these mortgage loans, this review of underwriting information by Residential Funding was performed using an automated underwriting system. Any determination described above using an automated underwriting system will only be based on the information entered into the system and the information the system is programmed to review.

112. All of the RALI Certificates' Prospectus Supplements represented that, in certain circumstances: "the system may make adjustments for some compensating factors, which could result in a mortgage loan being approved even if all of the specified underwriting criteria in the Seller Guide for that underwriting program are not satisfied."

113. The above statements of material facts in the RAMP and RALI Certificates were untrue when made because, as explained above in ¶¶ 36-63, they failed to disclose that the GMAC Defendants: (i) systematically failed to follow their stated underwriting standards; (ii) allowed pervasive exceptions to their stated underwriting standards in the absence of

compensating factors; (iii) disregarded credit quality in favor of generating increased loan volume for securitizations; (iv) routinely allowed fraudulent representations of an applicant's stated income and, in many cases, knowingly falsified the stated income; and (v) violated their stated appraisal standards and in many instances materially inflated the values of the underlying mortgaged properties in the loan origination and underwriting process.

114. The RAMP Certificates allowed for purchase of additional mortgage loans by the issuing trusts from GMAC after the initial closing of the offerings. The Offering Documents for these Certificates represented in substance that: "Any conveyance of subsequent mortgage loans on a subsequent transfer date is subject to certain conditions including, but not limited to: . . . GMAC Mortgage Corporation will select subsequent mortgage loans in a manner that it reasonably believes is not adverse to the interests of the holders of notes or the credit enhancer . . . ." On information and belief, these representations were false because GMAC knowingly or recklessly selected subsequent mortgage loans to convey to the issuing trusts for these Certificates that GMAC knew were underwritten in violation of GMAC's stated underwriting standards and were likely to default.

B. The GMAC Defendants Made Untrue Statements And Omissions Regarding Appraisals And LTV Ratios

1. The RAMP Certificates

115. The adequacy of the mortgaged properties as security for repayment of the loans was purportedly determined by appraisals. The Prospectus Supplements represented that "appraisals may be performed by appraisers independent from or affiliated with the GMAC Mortgage Corporation or their affiliates."

116. The Prospectus Supplements provided information regarding LTV ratios, in association with various loan groupings, including by loan type and documentation level, property type and geographical location. The RAMP Certificates Prospectus Supplements stated that:

> ***The mortgage loans included in the mortgage pool generally were originated subject to a maximum CLTV Ratio of 100.00%.*** Additionally, loans were generally originated with a maximum total monthly debt to income ratio of 45%, although variances are permitted based on compensating factors. There can be no assurance that the CLTV Ratio or the debt to income ratio for any mortgage loans will not increase from the levels established at origination.

2. The RALI Certificates

117. The adequacy of the mortgaged properties as security for repayment of the loans was purportedly determined by appraisals:

> The adequacy of the mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in the Seller Guide. Appraisers may be staff appraisers employed by the originator. The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

118. The representations regarding appraisals and LTV ratios were materially false and misleading in that they omitted to state that the appraisals were inaccurate because: (i) the appraisers were never independent from GMAC, which exerted pressure on appraisers to come back with pre-determined, preconceived, inflated and false appraisal values; (ii) the actual LTV ratios for numerous mortgage loans underlying the Certificates would have exceeded 100% if the underlying properties had been appraised by an independent appraiser as represented in the Offering Documents; and (iii) the forms of credit enhancement applicable to certain tranches of

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the Certificates were affected by the total value of the underlying properties, and thus were inaccurate as stated.

C. The GMAC Defendants Materially Misrepresented The Accuracy Of The Credit Ratings Assigned To The Certificates

119. The GMAC Defendants represented in the Offering Documents that all of the RAMP and RALI Certificates purchased by Plaintiffs were worthy of being rated "AAA," signifying that the risk of loss was virtually non-existent.

120. By providing ratings, the GMAC Defendants represented that they believed that the information provided to the rating agencies to support these ratings accurately reflected GMAC's underwriting guidelines and practices, and the specific qualities of the underlying loans. As stated in detail above, ¶¶ 64-74, this representation was false.

121. The GMAC Defendants further represented in the Prospectus Supplements, in sum or substance, that it was "a condition to the issuance of the" certificates that they be awarded the highest credit rating by at least two of the three leading rating agencies: S&P, Moody's or Fitch. The RAMP Certificates stated that "A securities rating addresses the likelihood of the receipt by the holders of the notes of distributions on the mortgage loans." The RALI Certificates similarly stated that the (a) "ratings assigned by Moody's . . . address the likelihood of the receipt by the Senior Certificate holders of all distributions to which they are entitled . . . and reflect its analysis of the riskiness of the mortgage loans"; (b) "the ratings assigned by Fitch to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of all distributions to which they are entitled under the transaction structure. . . . and reflect its analysis of the riskiness of the underlying mortgage loans and the structure of the transaction as described in the operative documents"; and (c) the S&P ratings

"address the likelihood of the receipt by certificateholders of payments required under the pooling and servicing agreement."

122. These statements regarding the ratings assigned to the Certificates were false because the GMAC Defendants stated the assigned ratings while knowing that misleading information was provided to the rating agencies by the GMAC Defendants to ensure AAA or otherwise investment grade ratings.

123. The falsity of these statements is further evidenced by the rapid downgrades of all of the GMAC Certificates within a few years of issuance, with all but one of the Certificates downgraded to junk. *See* Exhibit 2.

D. The GMAC Defendants Materially Misrepresented RAMP's and RALI's Transfer Of Good Title To The Mortgage Loans To The Issuing Trusts

124. The GMAC Defendants stated in each RAMP Certificate Prospectus Supplement that the Depositor RAMP, following the sale of the mortgage loans to it, "will then transfer the mortgage loans to the owner trustee, on behalf of the issuing entity. The issuing entity will then pledge all of its right, title and interest in the mortgage loans to the indenture trustee for the benefit of the noteholders and the credit enhancer."

125. Likewise, the GMAC Defendants stated in each RALI Certificate Prospectus Supplement that the Depositor RALI:

> *will transfer, convey and assign to the trustee or its nominee, which may be the custodian, all right, title and interest of the depositor in the mortgage securities and other property to be included in the trust for a series.* The assignment will include all principal and interest due on or with respect to the mortgage securities after the cut-off date specified in the accompanying prospectus supplement, except for any Spread. *The depositor will cause the mortgage securities to be registered in the name of the trustee or its nominee, and the trustee will concurrently authenticate and deliver the certificates.*

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126. These representations were false because, as alleged in detail in ¶¶ 75-86, the GMAC Defendants routinely failed to physically deliver the original promissory notes and security instruments for the mortgage loans to the issuing trusts, as required by applicable state laws and the PSAs. These representations were also false because the GMAC Defendants routinely failed to execute valid indorsements of the documents at the time of the purported transfer, as also required by applicable state laws and the PSAs. The issuing trusts therefore did not possess good title to many of the mortgage loans and lacked legal authority to enforce many of the mortgage loans against the borrowers in case of default.

VII. BECAUSE OF DEFENDANTS' CONDUCT, PLAINTIFFS HAVE SUFFERED LOSSES ON THEIR PURCHASES OF CERTIFICATES

127. The ratings on virtually all of the Certificates have since been downgraded. Nor are they marketable at the prices paid for them by Plaintiffs. As reflected in the attached Exhibit 2, which reflects the Certificates in which the Plaintiffs purchased interests, all but one of the GMAC Certificates, which were originally rated "AAA," have been downgraded to junk.

128. Further, the delinquency, bank ownership and foreclosure rates on the underlying mortgages have soared since issuance. As reflected in the attached Exhibit 3, the average percentage of GMAC loans that are currently 30 days or more delinquent, in foreclosure, or bank-owned exceeds 23%. Moreover, these current performance numbers do not reflect the number of loans which have been foreclosed since issuance and which are no longer included within the loan pools. Exhibit 3 reflects the original number of loans in the loan pools and the total number of loans which have been removed from the pools. Indeed, as reflected in Exhibit 3, since issuance, on average, 53% of the underlying loans in each trust have been dropped from the loan pools. A significant portion of those loans has caused significant collateral loss to the Certificates. For example, for RALI 2007-QS9, 42% of the initial 2,605 underlying loans have

been either removed from the pool or modified at a loss, causing a net loss of over $95 million, or 13.5% net loss to the collateral supporting the Certificates.

129. Statistical studies by others have similarly revealed that the problems in mortgage loans were tied to the abandonment of underwriting standards. The F.B.I. Mortgage Fraud Reports of 2007 (published in April 2008) reported on the results of a study of three million residential mortgages that found that between 30% and 70% of early payment defaults were linked to significant misrepresentations in the original loan applications. Loans containing egregious misrepresentations like the misrepresentations documented in the GMAC loan pools were five times as likely to default in the first six months than loans that did not.

130. Other parties' reviews of GMAC's full loan files have revealed even greater deviations. Third parties with access to the complete loan files for certain GMAC securitizations have performed additional analysis of the mortgage loans underlying GMAC's offerings. Their analyses provide additional strong evidence that essential characteristics of the mortgage loans underlying GMAC's MBS were misrepresented and omitted material information, and that the problems in GMAC's underwriting practices were systemic.

131. MBIA is a New York-based monoline insurer that wrote insurance on certain GMAC mortgage-backed securities offerings. MBIA conducted an investigation into GMAC's loan files after it was asked to make payments to certain other investors.

132. MBIA's analysis included an analysis of over 12,000 loan files for Residential Funding and GMAC Mortgage MBS offerings, as discussed in ¶¶ 55-62, and found that between 88% and 89% of the delinquent or charged-off loans reviewed by MBIA for Residential Funding and GMAC Mortgage, respectively, were not originated in material compliance with their stated underwriting guidelines.

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VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Common Law Fraudulent Misrepresentation Against The GMAC Defendants)

133. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

134. As alleged above, in the Offering Documents and in their public statements, Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made fraudulent and false statements of material fact, and omitted material facts necessary in order to make their statements, in light of the circumstances under which the statements were made, not misleading.

135. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew at the time they sold and marketed each of the Certificates that the foregoing statements were false or, at the very least, made the statements without knowing whether the statements were true.

136. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made these materially misleading statements and omissions for the purpose of inducing Plaintiffs to purchase the Certificates. Furthermore, these statements related to these Defendants' own acts and omissions.

137. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew that Plaintiffs were relying on their expertise, and they encouraged such reliance through the Offering Documents and their public representations, as described herein. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew that Plaintiffs would rely upon their representations in connection with Plaintiffs' decision to purchase the Certificates.

Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants were in a position of unique and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

138. It was only by making such representations that Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants were able to induce Plaintiffs to buy the Certificates. Plaintiffs would not have purchased or otherwise acquired the Certificates but for Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' fraudulent representations and omissions about the quality of the Certificates.

139. Plaintiffs justifiably, reasonably, and foreseeably relied on Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' representations and false statements regarding the quality of the Certificates.

140. As a result of the false and misleading statements and omissions, as alleged herein, Plaintiffs have suffered substantial damages.

141. Because Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants committed these acts and omissions maliciously, wantonly and oppressively, and because the consequences of these acts knowingly affected the general public, including but not limited to all persons with interests in the Certificates, Plaintiffs are entitled to recover punitive damages.

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SECOND CAUSE OF ACTION

(Common Law Reckless Misrepresentation Against The GMAC Defendants)

142. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

143. As alleged above, in the Offering Documents and in their public statements, Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made fraudulent and false statements of material fact, and omitted material facts necessary in order to make their statements, in light of the circumstances under which the statements were made, not misleading.

144. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made the materially misleading statements and omissions with conscious ignorance of the truth of the statements, or made the materially misleading statements with knowledge that the information relied on for the statements was not adequate or dependable enough to support the statements.

145. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made these materially misleading statements and omissions for the purpose of inducing Plaintiffs to purchase the Certificates. Furthermore, these statements related to these Defendants' own acts and omissions.

146. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew that Plaintiffs were relying on their expertise, and they encouraged such reliance through the Offering Documents and their public representations, as described herein. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew that Plaintiffs would rely

upon their representations in connection with Plaintiffs' decision to purchase the Certificates. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants were in a position of unique and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

147. It was only by making such representations that Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants were able to induce Plaintiffs to buy the Certificates. Plaintiffs would not have purchased or otherwise acquired the Certificates but for Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' reckless representations and omissions about the quality of the Certificates.

148. Plaintiffs justifiably, reasonably, and foreseeably relied on Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' representations and false statements regarding the quality of the Certificates.

149. As a result of the false and misleading statements and omissions, as alleged herein, Plaintiffs have suffered substantial damages.

150. Because Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants committed these acts and omissions maliciously, wantonly and oppressively, and because the consequences of these acts knowingly affected the general public, including but not limited to all persons with interests in the Certificates, Plaintiffs are entitled to recover punitive damages

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THIRD CAUSE OF ACTION

(Fraudulent Inducement Against The GMAC Defendants)

151. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

152. As alleged above, in the Offering Documents and in their public statements, Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made fraudulent and reckless false statements of material fact, and omitted material facts necessary in order to make their statements, in light of the circumstances under which the statements were made, not misleading.

153. This is a claim for fraudulent inducement against Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants.

154. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew at the time they sold and marketed each of the Certificates that the foregoing statements were false or, at the very least, made the statements without knowing whether the statements were true.

155. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants made these materially misleading statements and omissions for the purpose of inducing Plaintiffs to purchase the Certificates. Furthermore, these statements related to these Defendants' own acts and omissions.

156. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew that Plaintiffs were relying on their expertise, and they encouraged such reliance through the Offering Documents and their public representations, as described herein. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants knew that Plaintiffs would rely

upon their representations in connection with Plaintiffs' decision to purchase the Certificates. Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants were in a position of unique and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

157. It was only by making such representations that Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants were able to induce Plaintiffs to buy the Certificates. Plaintiffs would not have purchased or otherwise acquired the Certificates but for Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' fraudulent representations and omissions about the quality of the Certificates.

158. Plaintiffs justifiably, reasonably, and foreseeably relied on Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' representations and false statements regarding the quality of the Certificates.

159. By virtue of Residential Funding's, GMAC Mortgage's, Homecomings', Ally Bank's, Residential Securities', and the Depositor Defendants' false and misleading statements and omissions, as alleged herein, Plaintiffs have suffered substantial damages and are also entitled to a rescission of the sale of the Certificates.

FOURTH CAUSE OF ACTION

(Aiding And Abetting Fraudulent and Reckless Misrepresentation Against The GMAC Defendants)

160. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

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161. This is a claim against the above-named aiding and abetting Defendants for aiding and abetting the fraudulent and reckless misrepresentations by Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants. Each of these GMAC Defendants aided and abetted the fraud committed by all of the others among these GMAC Defendants.

162. The above-named aiding and abetting GMAC Defendants knew of the fraudulent and reckless misrepresentations made by each of the other GMAC Defendants on Plaintiffs. As alleged in detail above, each of the above-named aiding and abetting GMAC Defendants knew that the GMAC Certificates were not backed by high quality loans and were not underwritten according to GMAC's underwriting standards, participated in those violations and had actual knowledge of their own acts, or participated in and had actual knowledge of the GMAC Defendants' failure to convey good title to the mortgage loans underlying the GMAC Certificates to the issuing trusts.

163. Furthermore, the above-named aiding and abetting GMAC Defendants provided the other GMAC Defendants with substantial assistance in advancing the commission of the fraud. As alleged in detail above, each of the above-named aiding and abetting GMAC Defendants participated in the violations of GMAC's mortgage loan underwriting and appraisal standards, made false public statements about GMAC's mortgage loan underwriting and appraisal standards, provided false information about the mortgage loans underlying the GMAC Certificates to the credit rating agencies, provided false information for use in the Offering Documents, or participated in the failure to properly endorse and deliver the mortgage notes and security documents to the issuing trusts.

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164. It was foreseeable to the above-named aiding and abetting GMAC Defendants at the time they actively assisted in the commission of the fraudulent and reckless misrepresentations that Plaintiffs would be harmed as a result of their assistance.

165. As a direct and natural result of the fraudulent and reckless misrepresentations by Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants and the above-named aiding and abetting GMAC Defendants' knowing and active participation therein, Plaintiffs have suffered substantial damages.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation Against The GMAC Defendants)

166. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs above as if fully set forth herein, except any allegations that the Defendants made any untrue statements and omissions intentionally or recklessly. For the purposes of this Count, Plaintiff expressly disclaims any claim of fraud or intentional misconduct.

167. This is a claim for negligent misrepresentation against Residential Funding, GMAC Mortgage, Homecomings, Ally Bank, Residential Securities, and the Depositor Defendants (the "Negligent Misrepresentation Defendants").

168. Plaintiffs made 22 separate investments in seven GMAC Certificates that the GMAC Defendants securitized and sold. The Negligent Misrepresentation Defendants also originated or acquired, underwrote, and serviced all the loans in the Offerings.

169. Because the Negligent Misrepresentation Defendants arranged the Securitizations, and originated or acquired, underwrote, and serviced all of the underlying mortgage loans, they had unique and special knowledge about the loans in the Offerings. In particular, the Negligent Misrepresentation Defendants had unique and special knowledge and

expertise regarding the quality of the underwriting of those loans as well as the servicing practices employed as to such loans.

170. Because Plaintiffs could not evaluate the loan files for the mortgage loans underlying their Certificates, and because Plaintiffs could not examine the underwriting quality or servicing practices for the Mortgage Loans in the Securitizations on a loan-by-loan basis, they were heavily reliant on the Negligent Misrepresentation Defendants' unique and special knowledge regarding the underlying mortgage loans when determining whether to make each investment of Certificates. Plaintiffs were entirely reliant on the Negligent Misrepresentation Defendants to provide accurate information regarding the loans in engaging in that analysis. Accordingly, the Negligent Misrepresentation Defendants were uniquely situated to evaluate the economics of each Certificate.

171. Over the course of more than three years, for 22 separate GMAC investments, Plaintiffs relied on the Negligent Misrepresentation Defendants' unique and special knowledge regarding the quality of the underlying mortgage loans and their underwriting when determining whether to invest in the Offerings. This longstanding relationship, coupled with the Negligent Misrepresentation Defendants' unique and special knowledge about the underlying loans, created a special relationship of trust, confidence, and dependence between the Negligent Misrepresentation Defendants and Plaintiffs.

172. The Negligent Misrepresentation Defendants were aware that Plaintiffs relied on their unique and special expertise and experience and depended upon them for accurate and truthful information. The Negligent Misrepresentation Defendants also knew that the facts regarding GMAC's compliance with their underwriting standards were exclusively within their knowledge.

173. Based on their expertise, superior knowledge, and relationship with Plaintiffs, the Negligent Misrepresentation Defendants owed a duty to Plaintiffs to use reasonable care in providing complete, accurate, and timely information regarding the mortgage loans and the Certificates. The Negligent Misrepresentation Defendants breached their duty to provide such reasonable care and competence to Plaintiffs.

174. The Negligent Misrepresentation Defendants likewise made misrepresentations which they knew, or were negligent in not knowing at the time to be false, in order to induce Plaintiffs' investment in the Certificates. The Negligent Misrepresentation Defendants provided the Offering Documents to Plaintiffs in connection with the Certificates, for the purpose of informing Plaintiffs of material facts necessary to make an informed judgment about whether to purchase the Certificates in the Offerings. In providing these documents, Defendants knew that the information contained and incorporated therein would be used for a serious purpose, and that Plaintiffs, like other reasonably prudent investors, intended to rely on the information.

175. As alleged above, the Offering Documents contained materially false and misleading information.

176. The Negligent Misrepresentation Defendants should have known that the information in the Offering Documents was materially false and misleading.

177. Unaware that the Offering Documents contained materially false and misleading statements, Plaintiffs reasonably relied on those false and misleading statements when deciding to purchase the Certificates in the Offerings.

178. Plaintiffs purchased Certificates identified in Exhibit 1 from the Depositor Defendants and are therefore in privity with the Depositor Defendants for those purchases.

179. Based on the Negligent Misrepresentation Defendants' expertise and specialized knowledge, and in light of the false and misleading representations in the Offering Documents,

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the Negligent Misrepresentation Defendants owed Plaintiffs a duty to provide them with reasonable, complete, accurate, and timely information regarding the quality of the Certificates, and breached their duty to provide such information to Plaintiffs.

180. Plaintiffs reasonably relied on the information provided by the Negligent Misrepresentation Defendants and have suffered substantial damages as a result of their misrepresentations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

(a) Awarding compensatory and/or rescissionary damages in favor of Plaintiffs against the GMAC Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(b) Awarding punitive damages for Plaintiffs' common-law fraudulent and reckless misrepresentation claims;

(c) Awarding Plaintiffs their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other relief as the Court may deem just and proper.

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JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Dated: October 24, 2011

/s/ Brian F. Rice
RICE, MICHELS & WALTHER, LLP
Brian F. Rice (Atty. # 14468X)
Karin E. Peterson (Atty. # 185048)
206 East Bridge - Riverplace
10 Second Street, Northeast
Minneapolis, MN 55413
Tel.: (612) 676-2300
Fax: (612) 676-2319
brice@ricemichels.com
kpeterson@ricemichels.com

Liaison Counsel for Plaintiffs

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Gerald H. Silk
David L. Wales
Jai K. Chandrasekhar
Lauren A. McMillen
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444
jerry@blbglaw.com
dwales@blbglaw.com
jai@blbglaw.com
lauren@blbglaw.com

-and-

Blair Nicholas
12481 High Bluff Drive, Suite 300
San Diego, CA 92130
Tel: (858) 793-0070
Fax: (858) 793-0323
blairn@blbglaw.com

Counsel for Plaintiffs

Exhibit 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UNION CENTRAL LIFE INSURANCE COMPANY, AMERITAS LIFE INSURANCE CORP. and ACACIA LIFE INSURANCE COMPANY, Plaintiffs, vs. ALLY FINANCIAL, INC., RESIDENTIAL FUNDING SECURITIES, LLC, RESIDENTIAL CAPITAL LLC, RESIDENTIAL FUNDING COMPANY LLC, RESIDENTIAL ACCREDIT LOANS, INC., CITIGROUP, INC., CITIGROUP GLOBAL MARKETS INC., CITIMORTGAGE, INC., CITIGROUP GLOBAL MARKETS REALTY CORP., CITIGROUP MORTGAGE SECURITIES, INC., CITIGROUP MORTGAGE LOAN TRUST INC., DEUTSCHE BANK SECURITIES INC., GOLDMAN, SACHS & CO., GS MORTGAGE SECURITIES CORP., GOLDMAN SACHS MORTGAGE COMPANY, HSBC SECURITIES (USA) INC., INDYMAC RMBS, INC , MORGAN STANLEY, MORGAN STANLEY & CO. INCORPORATED, MORGAN STANLEY CAPITAL I INC., RBS SECURITIES, INC. SUNTRUST CAPITAL MARKETS, INC., UBS AG, UBS SECURITIES LLC, MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC., WAMU CAPITAL CORP., WASHINGTON MUTUAL MORTGAGE SECURITIES CORP., RANDAL COSTA, DOUGLAS R. KRUEGER, BRUCE J. PARADIS and DANIEL L. SPARKS, Defendants.	Civil Action No. 11-cv-02890-GBD AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS AND NEW YORK COMMON LAW FRAUD DEMAND FOR JURY TRIAL

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I. NATURE OF THE ACTION

1. The Union Central Life Insurance Company, Ameritas Life Insurance Corp. and Acacia Life Insurance Company (collectively, "Plaintiffs" or "Union Central") bring this action to recover losses suffered as a result of Defendants' fraudulent misconduct whereby they sold to Plaintiffs asset-backed securities (the "Certificates") pursuant to materially false and misleading statements made in Registration Statements and Prospectus Supplements filed with the United States Securities and Exchange Commission ("SEC") (collectively, the "Registration Statements").

2. The Certificates were supported by pools of residential mortgage loans generally secured by first or second liens on residential properties. The Registration Statements and other statements disseminated to Union Central (the "Offering Materials") were false and misleading in that they included false statements and/or omissions about the processes and practices used to select the pools of mortgage loans and the quality of those loans.

3. During 2005 through 2007 the sponsoring Defendants (collectively, "Defendants") established the trusts identified and listed in Exhibit 1 attached hereto (the "Trusts") to issue billions of dollars worth of certificates that were backed by mortgage loans they deposited in the Trusts. In selling these residential mortgage-backed securities ("RMBS") to Plaintiffs, Defendants who are the sponsors, depositors and underwriters for these RMBS, affirmatively and materially misrepresented the quality of the loans backing the Trusts, the procedures that had been used to review and screen those loans, the adequacy of the collateral supporting the loans and financial capacity and willingness of borrowers to repay the loans. Because the relevant safeguards had not been utilized and were not present, the loans deposited in the Trusts were materially different from the type Defendants had represented were being securitized and sold to Plaintiffs as properly secured and highly rated investments.

4. Defendants also concealed important information, including that outside firms that Defendants had hired to evaluate the loans had found a large percentage of their mortgage loans included in RMBS offerings during this time period did not conform to standards which the Defendants represented to investors had been used to originate the loans. As a result, Defendants actually knew about these deficiencies prior to securitization, yet they failed to require replacement loans for large numbers of the bad loans. They concealed this adverse information from Union Central and other investors. Defendants intended for Union Central to believe that Defendants' underwriting and due diligence procedures were being used to identify and exclude problem loans, not to simply waive through problem loans even when identified.

5. Defendants engaged in this concerted course of conduct while promoting a "race to the bottom" in the quality of loan origination because they were competing with each other for this profitable business. The Senate Permanent Subcommittee on Investigations ("Senate PSI") has found that banks, such as Defendants, were "the driving force behind the structured finance products that provided a steady stream of funding for lenders originating high risk, poor quality loans and that magnified risk throughout the U.S. financial system. The investment banks that engineered, sold, traded, and profited from mortgage related structured finance products were a major cause of the financial crisis." *See U.S. Senate Permanent Subcommittee or Investigations, Wall Street & The Financial Crisis: Anatomy of a Financial Collapse* (April 13, 2011) (the "Senate PSI Report").

6. The Senate PSI case study of defendant Washington Mutual's practice of abandoning proper loan underwriting found it to be typical of other banks in the mortgage securitization industry:

> Washington Mutual was not the only mortgage lender to fail during the financial crisis. Nor was its high risk lending practices unusual. To the contrary, the Subcommittee investigation indicates that Washington Mutual was emblematic of practices at a number of financial institutions that originated, sold, and securitized high risk home loans from 2004 to 2008.

7. As alleged herein, Defendants willfully abandoned prudent loan underwriting standards, while representing to Plaintiffs that the loans backing the Trusts had been properly underwritten with standards and procedures to verify the quality of the loans. Unbeknownst to Plaintiffs, Defendants were actually fueling the erosion of proper underwriting standards with their insatiable appetite for more mortgages to securitize and sell to investors. In the pursuit of higher profits, Defendants employed, financed, facilitated and accepted improper lending practices while abandoning the very loan underwriting guidelines they falsely represented to Plaintiffs were being utilized for the loans they securitized and sold to them.

8. The *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* prepared by the Financial Crisis Inquiry Commission ("FCIC Report") also concluded that financial institutions, such as Defendants here, were the driving force behind deteriorating loan underwriting standards when improperly securitizing bad loans and selling them to investors. As the FCIC Report put it: "We conclude collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis." The FCIC Report's conclusion is consistent with the detailed factual allegations set forth herein that show Defendants knowingly promoted the abandonment of proper loan underwriting in connection with the securitizations sold to Plaintiffs.

9. There was essential agreement between members of the FCIC that financial institutions, such as Defendants, ignored credit quality standards for mortgages they securitized. Three dissenting commission members explained in their separate Dissenting Statement: "There was a steady deterioration in mortgage underwriting standards (enabled by securitizers that lowered the credit quality of the mortgages they would accept, and credit rating agencies that overrated the subsequent securities and derivatives)." The Dissenting Statement continued:

> Mortgage originators took advantage of these lower credit quality securitization standards and the easy flow of credit to relax the underwriting discipline in the loans they issued. As long as they could resell a mortgage to the secondary market, they didn't care about its quality.

As alleged herein, Defendants engaged in this very same misconduct in connection with the RMBS Certificates they sold to Plaintiffs, while also concealing and failing to disclose this misconduct.

10. As loan originators, financiers of loan originators, loan securitizers and sellers of securitized loans, Defendants had the ability and power to influence and control the underwriting standards they employed and accepted in connection with the loan securitizations they sold to Plaintiffs. Defendants were the only parties to these RMBS transactions who not only had access to the loan files and other inside information, but who, through their investigations and practices, actually knew about the poor quality of the underwriting that had been used to make the loans.

11. Instead of diligently executing and complying with their responsibility as gatekeepers at each stage of the securitization process so as to enforce proper underwriting and accurately evaluate prospective borrowers' willingness and ability to repay the mortgage loans, Defendants knowingly securitized bad loans in order to increase the supply of loans needed to continue their profitable securitization business.

12. Those Defendants who were direct loan originators received many reports and were well aware that their loan officers and employees were not complying with the stated underwriting standards, and they frequently received internal reports, which were ignored or brushed aside, that loan officers and underwriters were approving defective loans and waiving underwriting requirements without a valid basis for doing so.

13. Defendants' due diligence, monitoring and investigations performed on the loan pools that they were originating and/or acquiring for securitization also conclusively demonstrated to them that prudent underwriting standards had been widely abandoned with respect to the loans in the

Trusts. As alleged below, a substantial percentage of loans that Defendants sampled and reviewed in connection with securitizations revealed the loans had not been properly underwritten and had been made to borrowers who would be unable to repay them.

14. Defendants did not disclose this extremely adverse information, which was only recently published in connection with the FCIC Report. Thus, in 2010, the truth began to be revealed to the public regarding Defendants' actual knowledge at the time of the securitizations of defects in the mortgage pools that supported the Certificates. After spending more than a year examining the causes of the financial crisis, in late 2010 the FCIC began disclosing its findings.

15. Defendant did not use their inside information, special knowledge and ability to halt the making and securitizing of bad loans by enforcing proper underwriting standards. Nor did they discontinue funding originators who engaged in wrongful loan origination practices. Rather, Defendants utilized their inside knowledge of the true conditions to gain additional economic advantage at the expense of investors such as Plaintiffs. For example, Defendants presented information regarding poor quality loans to the originators of the defective loans they were purchasing – not to fix the problem – but in order to negotiate reduced prices for loans they were depositing in the RMBS Trusts, thereby increasing their profits while leaving loans that were internally known to be defective in the trust they were selling to investors.

16. In other instances, Defendants used their inside information regarding defective loans in RMBS Trusts to take short positions regarding the underlying mortgages, and thereby profiting when the loans went into default and generated losses for RMBS purchasers. These Defendants were betting the value of the trust certificates would decline due to the poor quality of the underlying loans at the same time they were selling similar RMBS to Plaintiffs without disclosing what they knew about abandonment of the underwriting standards.

17. Plaintiffs would not have purchased these RMBS Certificates if Defendants had revealed the true conditions. When purchasing the Certificates, Plaintiffs sought investments that were conservative but also generated a reasonable yield. In purchasing the subject RMBS Plaintiffs relied upon Defendants' representations regarding the loan underwriting standards that had purportedly been applied and utilized to ensure quality loans were in the Trusts. Plaintiffs and their advisors relied on information presented in term sheets, Registration Statements and other statements Defendants provided to Plaintiffs regarding the mortgages and the underwriting standards, appraisals, loan-to-value ratios ("LTV"), debt-to-income ("DTI") ratios, owner-occupancy rates and ratings. These representations were material to Plaintiffs' investment decisions.

18. Because Defendants concealed their widespread abandonment of prudent loan underwriting, Plaintiffs were unaware of the substantially increased likelihood the subject loans would soon become non-performing and generate substantial losses flowing through the RMBS Trusts to Plaintiffs. And this is precisely what happened. Plaintiffs have not been compensated for the high level of concealed risk, which has now been actualized, that the Certificates actually posed.

19. Union Central has suffered large losses on its investments in the Certificates as a very high percentage of the loans have defaulted. Due to the lack of proper loan underwriting many of the Certificates have defaulted and are now worthless. The remainder of the Certificates have dropped significantly in value since the time of Union Central's purchases due to defects in the underlying mortgage loans. The Certificates still held by Union Central are no longer marketable at prices anywhere near the prices paid, as it is now clear that the Certificates were exposed to much more risk with respect to both the timing and absolute cash flow to be received than the Defendants' statements represented.

20. As further alleged below, Defendants committed egregious fraud with their materially false and misleading representations, and when omitting key information that would have been highly material to Union Central's decision to invest. Defendants recklessly or knowingly made these false and misleading statements and omissions as described below.

II. JURISDICTION AND VENUE

21. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331. Certain claims asserted herein arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act"), and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5]. Jurisdiction is conferred by §27 of the 1934 Act and venue is proper pursuant to §27 of the 1934 Act.

22. This Court also has jurisdiction over the common law claims of fraud and aiding and abetting pursuant to this Court's supplemental jurisdiction under 28 U.S.C. §1367(a).

23. This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332(a), as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

24. Venue is proper in this District because the violations of law complained of herein occurred in part in this District, including the dissemination of the materially false and misleading statements complained of herein, and Defendants conduct business in this District. The depositors of the mortgage loans for many of the Trusts had principal offices in New York, New York.

25. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

III. PARTIES

A. Plaintiffs

26. Plaintiffs are The Union Central Life Insurance Company, Ameritas Life Insurance Corp. and Acacia Life Insurance Company. Plaintiffs are indirect, fully owned subsidiaries of UNIFI Mutual Holding Company, which offers its clients a wide array of financial and insurance services. The Union Central Life Insurance Company and Ameritas Life Insurance Corp. are both Nebraska companies, with home offices in Lincoln, Nebraska. Acacia Life Insurance Company is a District of Columbia company, with home offices in Bethesda, Maryland.

27. Plaintiffs acquired Certificates in reliance on Defendants' false statements, including those in the Registration Statements and Prospectus Supplements, and have been damaged thereby. Plaintiffs purchased Certificates as described in Exhibit 1 attached hereto.

B. Defendants

1. WaMu

28. All of the Washington Mutual-affiliated Defendants described in §III.B.1. are referred to collectively as "WaMu." WaMu pooled mortgage loans and sold Certificates for the following Trust:

Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2005-3 Trust ("WMALT 2005-3 Trust")

29. Defendant Washington Mutual Mortgage Securities Corp. ("WMMSC"), was incorporated in Delaware and headquartered in Illinois. WMMSC was a wholly owned subsidiary of

Washington Mutual, Inc. ("WMI"), which in 2007, the last year it filed a Form 10-K with the SEC, recorded a net loss of $67 million.[1] WMMSC acted as the depositor for the WMALT 2005-3 Trust.

30. Defendant WaMu Capital Corp. ("WCC") is incorporated and headquartered in Washington and is a subsidiary of J.P. Morgan Chase & Co. WCC was a subsidiary of WMI. It is a registered broker-dealer with the SEC. WCC acted as underwriter in the sale of the Certificates for the WMALT 2005-3 Trust and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

2. Citi

31. All of the Citigroup-affiliated Defendants described in §III.B.2. are referred to collectively as "Citi." Citi pooled mortgage loans and sold Certificates for the following Trusts (collectively, "Citi Trusts"):

Citicorp Mortgage Securities Trust, Series 2007-5 ("CMSI 2007-5 Trust")
Citicorp Mortgage Securities Trust, Series 2007-8 ("CMSI 2007-8 Trust")
Citigroup Mortgage Loan Trust 2007-10 ("CMLT 2007-10 Trust")

32. Defendant Citigroup Inc. ("Citigroup") is a global diversified financial services holding company, incorporated under the laws of Delaware, and headquartered in New York. Citigroup does business in more than 160 countries and manages approximately 200 million customer accounts. All of the Citigroup-related Defendants are direct or indirect subsidiaries of Citigroup.

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[1] WMI's collapse in 2008 is considered the largest bank failure in U.S. history. (Source: *Wall Street Journal*, Sept. 26, 2008.) After the government seized WMI, J.P. Morgan Chase & Co. bought the crumbling bank for $1.9 billion.

33. Defendant Citigroup Global Markets Inc. ("CGMI") is a New York-incorporated and -headquartered company. As an SEC-registered broker-dealer, it is the brokerage and securities arm of defendant Citigroup. CGMI provides investment banking services to corporate, institutional, government, and retail clients. CGMI acted as underwriter in the sale of the Certificates for the Citi Trusts and in doing so drafted and disseminated certain of the Offering Materials, including but not limited to the Supplemental Prospectus.

34. As an active market-maker, CGMI's deals were not limited to Citi transactions. In addition, CGMI underwrote the RALI Series 2005-QS7 Trust and the RALI Series 2005-QS14 Trust, which are also at issue in this action. *See* §V.F.

35. Defendant CitiMortgage, Inc. ("CitiMortgage") is a New York corporation whose principal offices are in Connecticut and with major operations in Missouri. As the mortgage lending unit of Citigroup, it originated many of the mortgages in the CMSI 2007-5 and the CMSI 2007-8 Trusts. It also was the servicer for all three Citi Trusts and the sponsor for the CMSI 2007-5 and CMSI 2007-8 Trusts.

36. Defendant Citicorp Mortgage Securities, Inc. ("CMSI") is a Delaware corporation headquartered in Missouri. It is a wholly-owned subsidiary of CitiMortgage. CMSI acted as the depositor for the CMSI 2007-5 and CMSI 2007-8 Trusts.

37. Defendant Douglas R. Krueger ("Krueger") was President and a director of CMSI. Defendant Krueger signed the Form S-3 comprising part of the Registration Statements pursuant to the offerings of the CMSI 2007-5 and CMSI 2007-8 Trusts.

38. Defendant Citigroup Global Markets Realty Corp. ("CGMR") is a New York corporation headquartered in New York. It is an affiliate of defendant CGMI, the Citi Trusts' underwriter. CGMR acted as sponsor for the CMLT 2007-10 Trust.

39. Defendant Citigroup Mortgage Loan Trust Inc. ("CMLT") is a Delaware corporation headquartered in New York. It is an affiliate of defendant CGMR. CMLT engaged in the securitization of mortgage loans acquired by the Trust's sponsor, CGMR. CMLT acted as the depositor for the CMLT 2007-10 Trust.

40. Defendant Randall Costa ("Costa") was President and a director of CMLT during the relevant time period. Defendant Costa signed the Form S-3 comprising part of the Registration Statements pursuant to the offerings of the CMLT 2007-10 Trust.

3. Goldman

41. All of the Goldman-affiliated Defendants described in §III.B.3. are referred to collectively as "Goldman." Goldman pooled mortgage loans and sold Certificates for the following Trusts (collectively, "Goldman Trusts"):

GSR Mortgage Loan Trust 2006-7F ("GSR 2006-7F Trust")
GSR Mortgage Loan Trust 2006-9F ("GSR 2006-9F Trust")

42. Defendant Goldman, Sachs & Co. ("Goldman Sachs") is a full service investment banking and securities firm. Goldman Sachs is a New York partnership formed by Goldman Sachs Group, Inc., which is incorporated in Delaware and headquartered in New York, and Goldman Sachs & Co., LLC, whose sole member is Goldman Sachs Group, Inc. Goldman Sachs acted as underwriter in the sale of the Certificates for the Goldman Trusts and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited, to the Prospectus Supplement.

43. Defendant Goldman Sachs Mortgage Company ("GSMCo.") is a New York limited partnership. Its general partner is Goldman Sachs Real Estate Funding Corp., which is incorporated and headquartered in New York, and its limited partner is The Goldman Sachs Group, Inc., which is

incorporated in Delaware and headquartered in New York. GSMCo. was the sponsor for the Goldman Trusts.

44. Defendant GS Mortgage Securities Corp. ("GSMS") is a Delaware corporation headquartered in New York. It is a wholly-owned subsidiary of GSMCo. GSMS acquired mortgage loans and acted as the depositor for the Goldman Trusts.

45. Defendant Daniel L. Sparks ("Sparks") was Chief Executive Officer ("CEO") and a director of GSMS. during the relevant time period. Defendant Sparks signed the Form S-3 comprising part of the Registration Statements pursuant to the offerings of the Goldman Trusts.

4. IndyMac

46. Defendant IndyMac RMBS, Inc. ("IndyMac RMBS"), a Delaware corporation headquartered in California, was the wholly-owned subsidiary of IndyMac Bank, F.S.B. ("IndyMac Bank"), which was closed by the Federal Deposit Insurance Corporation ("FDIC") on July 11, 2008. IndyMac RMBS and its failed parent, IndyMac Bank, are referred to collectively as "IndyMac." IndyMac RMBS acquired mortgage loans and acted as the depositor for IndyMac IMJA Mortgage Loan Trust 2007-A1 ("IMJA 2007-A1 Trust").

5. Morgan Stanley

47. All of the Morgan Stanley-affiliated Defendants described in §III.B.3. are referred to collectively as "Morgan Stanley." Morgan Stanley pooled mortgage loans and sold Certificates for the Morgan Stanley Mortgage Loan Trust 2005-5AR ("MSM 2005-5AR Trust")

48. The Morgan Stanley parent, defendant Morgan Stanley ("MS") is incorporated in Delaware and headquartered in New York. MS is a global financial service firm that reported net revenues of $32.4 billion for 2011. All of the Morgan Stanley-related Defendants are direct or indirect subsidiaries of MS.

49. Defendant Morgan Stanley & Co. Incorporated ("MS&Co.") is an SEC-registered broker-dealer incorporated in Delaware and headquartered in New York. MS&Co. acted as underwriter in the sale of the Certificates for the MSM 2005-5AR Trust and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

50. Defendant Morgan Stanley Capital I Inc. ("MSCII"), a Delaware corporation headquartered in New York, is a wholly-owned subsidiary of defendant MS&Co. MSCII acted as the depositor for the MSM 2005-5AR Trust.

6. RALI

51. All of the RALI-affiliated Defendants described in §III.B.6. are referred to collectively as "RALI." RALI pooled mortgage loans and sold Certificates for the following Trusts (collectively, "RALI Trusts"):

RALI Series 2005-QA9 Trust
RALI Series 2005-QS7 Trust
RALI Series 2005-QS9 Trust
RALI Series 2005-QS14 Trust
RALI Series 2005-QA5 Trust
RALI Series 2006-QS2 Trust
RALI Series 2006-QS6 Trust
RALI Series 2006-QS18 Trust

52. Defendant Ally Financial, formerly known as GMAC, Inc. ("Ally") is a financial services company incorporated in Delaware and headquartered in Michigan. It maintains its longstanding relationship providing auto financing to automotive dealers and customers of General Motors Company, of which it had been a subsidiary. In its 2011 annual filing with the SEC, it reported that it was one of the largest residential mortgage companies in the United States. All of the RALI-related Defendants are direct or indirect subsidiaries of Ally.

53. Defendant Residential Capital LLC, formerly known as Residential Capital Corporation ("ResCap") is an indirect wholly owned subsidiary of Ally. ResCap is a Delaware limited liability company headquartered in Minnesota. As a real estate finance company, ResCap's business focused on the residential real estate market. From 2005 to 2006, according to *Inside Mortgage Finance*, it grew from being the fifth largest to the third largest issuer of non-conforming mortgage-backed securities in the United States, issuing more than $65 billion in securities. It was also ranked the sixth and seventh largest producer of residential mortgage loans in the United States in 2005 and 2006, respectively.

54. Defendant Residential Funding Securities, LLC ("RFS"), now known as Ally Securities LLC and also referred to in the Offering Materials as GMAC RFC Securities, is a Delaware limited liability company registered as a broker-dealer with the SEC. Its principal place of business is in New York. Prior to 2007, it was known as Residential Funding Securities Corporation. RFS acted as underwriter for all of the RALI Trusts, except for RALI Series 2005-QA9, and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

55. Defendant Residential Funding Company, LLC, formerly known as Residential Funding Corporation ("RFC") is a Delaware-organized limited liability company with its principal place of business in Minnesota. RFC was a subsidiary of ResCap, as well as the sole owner of HomeComings Financials, LLC ("HomeComings"), formerly known as HomeComings Financials Network, Inc., which originated many of the mortgages underlying the RALI Trusts. RFC acted as master servicer for the RALI Trusts.

56. Defendant Residential Accredit Loans, Inc. ("Residential Accredit") is a Delaware corporation with its principal place of business in Minnesota. It is also an indirect wholly-owned

subsidiary of ResCap and RFC. Residential Accredit acquired mortgage loans from RFC and acted as the depositor for the RALI Trusts.

57. Defendant Bruce J. Paradis ("Paradis") was President, CEO and a director of Residential Accredit during the relevant time period. Defendant Paradis signed the Forms S-3 comprising part of the Registration Statements pursuant to the offerings of the RALI Trusts.

7. UBS

58. All of the MASTR-affiliated Defendants described in §III.B.7. are referred to collectively as "UBS." UBS pooled mortgage loans and sold Certificates for the following Trusts (collectively, "MASTR Trusts"):

MASTR Asset Securitization Trust 2005-1 ("MASTR 2005-1")
MASTR Asset Securitization Trust 2005-2 ("MASTR 2005-2")
MASTR Asset Securitization Trust 2006-1 ("MASTR 2006-1")

59. Defendant UBS AG is a Swiss-organized bank with a global presence. UBS AG specializes in wealth management and investment banking. All of the MASTR-related Defendants are direct or indirect subsidiaries of UBS AG.

60. Defendant UBS Securities LLC ("UBS Securities") is a Delaware-registered limited liability company that engages in a nationwide securities business as a broker-deal registered with the SEC. UBS Securities' principal place of business is located in New York. Its members are UBS Americas Inc., which is incorporated in Delaware and headquartered in Connecticut, and UBS AG. UBS Securities acted as underwriter in the sale of the Certificates for the MASTR Trusts and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

61. As an active market-maker, UBS Securities' deals were not limited to MASTR transactions. In addition, UBS Securities underwrote the following Trusts:

CMSI 2007-5 Trust
IMJA 2007-A1 Trust
RALI 2005-QA9 Trust
RALI 2005-QS7 Trust
RALI 2005-QS9 Trust

62. Defendant Mortgage Asset Securitization Transactions, Inc. ("Mortgage Asset"), a Delaware corporation with its principal place of business in New York, is a wholly-owned limited purpose finance subsidiary of UBS Americas Inc. Mortgage Asset acted as the depositor for the MASTR Trusts.

8. HSBC

63. Defendant HSBC Securities (USA) Inc. ("HSBC Securities") is an investment banking firm that provides financial advisory services and is incorporated in Delaware and headquartered in New York. HSBC Securities and its parent, HSBC Holdings plc, are referred to collectively as "HSBC." HSBC Securities acted as underwriter in the sale of the Certificates for the IMJA 2007-A1 Trust and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

9. SunTrust

64. Defendant SunTrust Capital Markets, Inc. ("SCM"), now known as SunTrust Robinson Humphrey, Inc., is an SEC-registered broker-dealer that provides investment banking services. SCM is a Tennessee corporation whose headquarters are in Georgia. SCM is an affiliate of SunTrust Mortgages, Inc. ("SunTrust Mortgage"), an originator of mortgage loans. SCM, SunTrust Mortgage and their parent, SunTrust Banks, Inc., are referred to collectively as "SunTrust." SCM acted as underwriter in the sale of the Certificates for the MASTR 2006-1 Trust and in doing so,

drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

10. Deutsche Bank

65. Defendant Deutsche Bank Securities Inc. ("DB Securities") is a Delaware-incorporated investment bank that provides security brokerage services and is based in New York. It is a registered broker-dealer with the SEC. DB Securities and its parent, Deutsche Bank AG, are referred to collectively as "Deutsche Bank." DB Securities acted as underwriter in the sale of the Certificates for the RALI 2006-QS2 and RALI 2006-QSI8 Trusts and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

11. RBS

66. Defendant RBS Securities, Inc. ("RBS Securities"), a subsidiary of Greenwich Capital Holdings, Inc., was formerly known as Greenwich Capital Markets, Inc. and later changed its name to RBS Securities, Inc. in April 2009. It is incorporated in Delaware and headquartered in Connecticut. RBS Securities and its parent, The Royal Bank of Scotland Group plc, are referred to collectively as "RBS." RBS Securities acted as underwriter in the sale of the Certificates for the RALI 2005-QS14 and RALI 2006-QS6 Trusts and in doing so, drafted and disseminated certain of the Offering Materials, including, but not limited to, the Prospectus Supplement.

12. Defendant Groups

67. The Defendants identified in ¶¶35, 36, 38, 39, 43, 44, 46, 50, 56, 62 are referred to herein as the "Depositor Defendants" or "Sponsor Defendants."

68. The Defendants identified in ¶¶33, 42, 49, 54, 60 are referred to herein as the "Affiliated Underwriter Defendants."

69. The Defendants identified in ¶¶63-66 are referred to herein as the "Unaffiliated Underwriter Defendants."

70. The Defendants identified in ¶¶37, 40, 45, 57 are referred to herein as the "Individual Defendants." The Individual Defendants each held positions of responsibility with the respective Depositor Defendants and/or Underwriter Defendants. Each had control over other personnel employed within their organizations and affiliated organizations and involved in the issuance of their respective RMBS and each Individual Defendant had control over the contents of the respective Prospectus Supplements for those RMBS offerings.

71. The Affiliated Underwriter Defendants, Unaffiliated Underwriter Defendants and the Individual Defendants aided and abetted and/or participated with and/or conspired with the Depositor Defendants in connection with their respective RMBS underwriting and loan securitization activities at issue herein and in furtherance of the wrongful acts and course of conduct that caused the damages and injuries claimed herein and are responsible in some manner for the acts, occurrences and events alleged in this complaint.

IV. DEFENDANTS WERE CRITICAL PARTICIPANTS IN INDUSTRY-WIDE MISCONDUCT

A. Residential Mortgage Loan Borrowers

72. Borrowers who require funds to finance the purchase of a house or to refinance an existing mortgage apply for residential mortgage loans with a loan originator. These loan originators assess a borrower's ability to make payments on the mortgage loan based on, among other things, the borrower's Fair Isaac & Company ("FICO") credit score. Borrowers with higher FICO scores were able to receive loans with less documentation during the approval process, as well as higher LTV ratios. Based in part on a person's FICO score, a loan originator assesses a borrower's risk

profile to determine the interest rate for the loan, the amount of the loan, and the general structure of the loan.

73. A loan originator will issue a "prime" mortgage loan to a borrower who has a high credit score and who can supply the required documentation evidencing their income, assets, employment background, and other documentation that supports their financial health. Borrowers who are issued "prime" mortgage loans are deemed to be the most creditworthy and receive the best rates and structure on mortgage loans.

74. If a borrower has the required credit score for a "prime" mortgage loan, but does not supply supporting documentation of his financial health, then a loan originator will issue the borrower a loan referred to as a "low-doc" or Alt-A loan, and the interest rate on that loan will be higher than that of a prime mortgage loan and the general structure of the loan will not be as favorable as it would be for a prime borrower. Low doc or Alt-A loans are appropriate for borrowers who are self-employed or have large income streams that are frequently uneven and not subject to regular documentation.

75. A borrower will be classified as "sub-prime" if the borrower has a lower credit score and higher debt-to-equity ratio. Borrowers that have low credit ratings are unable to obtain a conventional mortgage because they are considered to have a larger than average risk of defaulting on a loan. For this reason, lending institutions often charge interest on sub-prime mortgages at a rate that is higher than a conventional mortgage in order to compensate themselves for assuming more risk. None of the Trusts were represented to have included subprime loans, while in fact many of the loans in the Trusts were made to borrowers who would not have qualified for even subprime loans if proper, diligent and prudent underwriting had actually been in place and utilized.

B. The Secondary Market

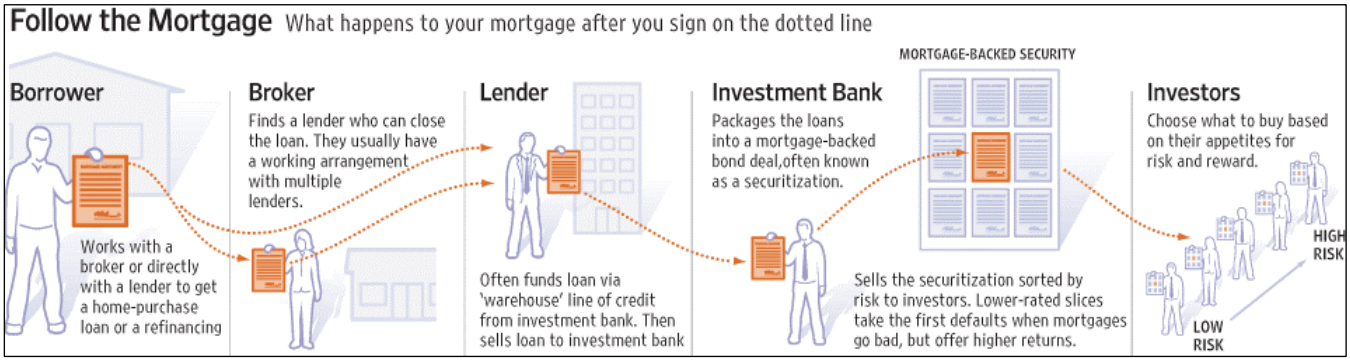
76. Traditionally, the model for a mortgage loan involved a lending institution (*i.e.*, the loan originator) extending a loan to a prospective home buyer in exchange for a promissory note from the home buyer to repay the principal and interest on the loan. The loan originator also held a lien against the home as collateral in the event the home buyer defaulted on the obligation. Under this simple model, the loan originator held the promissory note until it matured and was exposed to the concomitant risk that the borrower may fail to repay the loan. As such, under the traditional model, the loan originator had a financial incentive to ensure that (1) the borrower had the financial wherewithal and ability to repay the promissory note, and (2) the underlying property had sufficient value to enable the originator to recover its principal and interest in the event that the borrower defaulted on the promissory note.

77. Beginning in the 1990s, persistent low interest rates and low inflation led to a demand for mortgages. As a result, banks and other mortgage lending institutions took advantage of this opportunity, introducing financial innovations in the form of asset securitization to finance an expanding mortgage market. As discussed below, these innovations altered (1) the foregoing traditional lending model, severing the traditional direct link between borrower and lender, and (2) the risks normally associated with mortgage loans.

78. Unlike the traditional lending model, an asset securitization involves the sale and securitization of mortgages. Specifically, after a loan originator issues a mortgage to a borrower, the loan originator sells the mortgage in the financial markets to a third-party financial institution. By selling the mortgage, the loan originator obtains fees in connection with the issuance of the mortgage, receives upfront proceeds when it sells the mortgage into the financial markets, and thereby has new capital to issue more mortgages. The mortgages sold into the financial markets are

typically pooled together and securitized into what are commonly referred to as RMBS. In addition to receiving proceeds from the sale of the mortgage, the loan originator is no longer subject to the risk that the borrower may default – that risk is transferred with the mortgages to investors who purchase the RMBS.

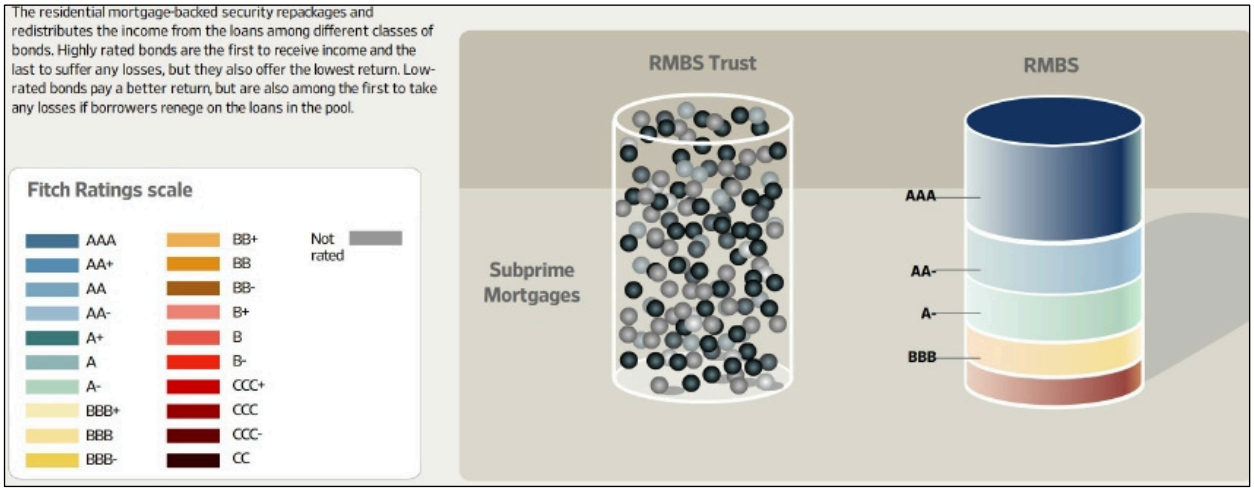
79. As illustrated below, in a mortgage securitization, mortgage loans are acquired, pooled together or "securitized," and then sold to investors in the form of RMBS, whereby the investors acquire rights in the income flowing from the mortgage pools:



80. When mortgage borrowers make interest and principal payments as required by the underlying mortgages, the cash-flow is distributed to the holders of the RMBS certificates in order of priority based on the specific tranche held by the RMBS investors. The highest tranche (also referred to as the senior tranche) is first to receive its share of the mortgage proceeds and is also the last to absorb any losses should mortgage-borrowers become delinquent or default on their mortgage.

81. In this RMBS structure, the senior tranches receive the highest investment rating by the rating agencies, usually AAA. After the senior tranche, the middle tranches (referred to as mezzanine tranches) next receive their share of the proceeds. In accordance with their order of priority, the mezzanine tranches were generally rated from AA to BBB by the rating agencies.

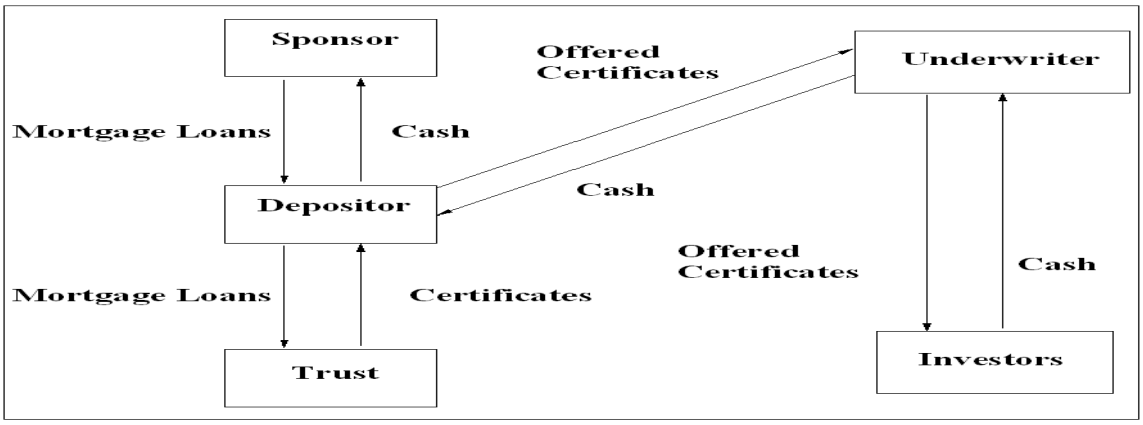
82. The process of distributing the mortgage proceeds continues down the tranches through to the bottom tranches, referred to as equity tranches. This process is repeated each month and all investors receive the payments owed to them so long as the borrowers are current on their mortgages. The following diagram illustrates the concept of tranches within an RMBS comprised of residential mortgages (often referred to as a residential mortgage-backed securities or RMBS:



(Source: *The Wall Street Journal*)

83. As illustrated below, in the typical securitization transaction, participants in the transaction are (1) the servicer of the loans to be securitized, often called the "sponsor," (2) the depositor of the loans in a trust or entity for securitization, (3) the underwriter of the RMBS, (4) the entity or trust responsible for issuing the RMBS, often called the "trust," and (5) the investors in the RMBS.

84. The securitization process begins with the sale of mortgage loans by the sponsor – the owner of the mortgages that it either originated or acquired – to the depositor in return for cash. The depositor then sells those mortgage loans and related assets to the trust, and in exchange, the trust issues certificates to the depositor. The depositor then works with the underwriter of the trust to price and sell the certificates to investors:



85. Thereafter, the mortgage loans held by the trusts are serviced, *i.e.*, principal and interest are collected from mortgagors, by the servicer, which earns monthly servicing fees for collecting such principal and interest from mortgagors. After subtracting a servicing fee, the servicer sends the remainder of the mortgage payments to a trustee for administration and distribution to the trust, and ultimately, to the purchasers of the RMBS certificates.

C. Securitizations

86. The Depositor Defendants acquired mortgage loan pools either from affiliated originators or unrelated third parties and transferred the mortgage pools to the Trusts in exchange for the Certificates. Many of the Certificates purchased by Union Central were issued by New York trusts. Each of the Trusts issued hundreds of million of dollars worth of certificates pursuant to the Registration Statements.

87. The Underwriter Defendants acquired the certificates from the Depositor Defendants and sold them to the investing public pursuant to the Registration Statements.

88. The Certificates were sold pursuant to Prospectus Supplements that were issued pursuant to Form S-3 Registration Statements, which were created as "shelf" registrations under Rule 415 of the Securities Act of 1933 ("1933 Act"). These shelf registration statements allowed

Defendants to rapidly access the capital markets with offerings of RMBS to investors, including Plaintiffs. Plaintiffs purchased Certificates arranged by the following depositors pursuant to Registration Statements:

(a) Defendant CMLT was the depositor for the following Trust:

Trust	Prospectus Date	Registration Statement No.
Citicorp Mortgage Securities Trust Series 2007-5	June 25, 2007	333-130333
Citicorp Mortgage Securities Trust Series 2007-8	September 26, 2007	333-130333

(b) Defendant CMSI was the depositor for the following Trusts:

Trust	Prospectus Date	Registration Statement No.
Citigroup Mortgage Loan Trust 2007-10	October 31, 2007	333-138237

(c) Defendant GSMSC was the depositor for the following Trusts:

Trust	Prospectus Date	Registration Statement No.
GSR Mortgage Loan Trust 2006-7F	July 27, 2006	333-132809
GSR Mortgage Loan Trust 2006-9F	October 26, 2006	333-132809

(d) Defendant Mortgage Asset was the depositor for the following Trusts:

Trust	Prospectus Date	Registration Statement No.
MASTR Asset Securitization Trust 2005-1	May 25, 2005	333-106982
MASTR Asset Securitization Trust 2005-2	October 25, 2005	333-124678
MASTR Asset Securitization Trust 2006-1	March 28, 2006	333-124678

(e) Defendant MSCI was the depositor for the following Trust:

Trust	Prospectus Date	Registration Statement No.
Morgan Stanley Mortgage Loan Trust 2005-5AR	August 29, 2005	333-125593

(f) Defendant Residential Accredit was the depositor for the following Trusts:

Trust	Prospectus Date	Registration Statement No.
RALI Series 2005-QA5 Trust	May 3, 2005	333-107959
RALI Series 2005-QA9 Trust	August 26, 2005	333-126732
RALI Series 2005-QS7 Trust	June 27, 2005	333-107959
RALI Series 2005-QS9 Trust	June 27, 2005	333-107959
RALI Series 2005-QS14 Trust	September 28, 2005	333-126732
RALI Series 2006-QS2 Trust	February 27, 2006	333-126732
RALI Series 2006-QS6 Trust	June 27, 2006	333-131213
RALI Series 2006-QS18 Trust	December 27, 2006	333-131213

(g) Defendant WMMSC was the depositor for the following Trust:

Trust	Prospectus Date	Registration Statement No.
Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2005-3	April 21, 2005	333-103345

(h) Defendant IndyMac RMBS was the depositor for the following Trust:

Trust	Prospectus Date	Registration Statement No.
IndyMac IMJA Mortgage Loan Trust 2007-A1	June 28, 2007	333-132042

89. The Defendants also filed various documents with the SEC, including Form 8-K and Form 10-K reports subsequent to the issuances. Those documents were incorporated by reference into and along with the Prospectus Supplements which comprise certain of the Registration Statements.

90. The Registration Statements that were filed with the SEC purport to describe the assets supporting the Certificates. Accurate information about the composition of the asset pool – including, importantly, the manner in which it was created – is the cornerstone of the disclosure required under the securities laws to enable investors to make informed decisions about the Certificates. Complete and accurate information is even more important in the context of selling

"asset-backed securities" such as the Certificates, because the performance of the Certificates is based almost entirely upon the quality of the assets the Depositor Defendants sold to the Trusts.

D. Financial Crisis Inquiry Commission

91. The FCIC was created to examine the causes of the recent financial and economic crisis in the United States. The FCIC spent more than a year examining the causes, with 19 days of public hearings, interviews of more than 700 witnesses and the review of millions of pages of documents. The FCIC released some findings in mid-2010 and issued its final Report in January 2011. The FCIC's findings revealed much of the intentional conduct which caused the crisis.

E. Clayton Holdings

92. Clayton Holdings, Inc. ("Clayton"), a Connecticut-based firm that analyzes home mortgages for banks, hedge funds, monoline insurance companies and government agencies, played an important role in the securitization process in that investment banks hired Clayton to analyze a subsection of the home mortgage loans to be securitized. Clayton performed this role and did find defects. However, Clayton's findings were largely ignored.

93. In late September 2010, Clayton provided its data to the FCIC. The FCIC held its last public hearing in Sacramento, where top Clayton executives testified under oath about the firm's role in the mortgage securitization chain. Note the following chart prepared as part of the FCIC inquiry, mentioning Clayton's findings with regard to many of the Defendants named herein:

Rejected Loans Waived in by Selected Banks

From January 2006 through June 2007, Clayton rejected 28% of the mortgages it reviewed. Of these, 39% were waived in anyway.

Financial Institution	A ACCEPTED LOANS *(Event 1 & 2)/ Total pool of loans*	B REJECTED LOANS *(Event 3)/ Total pool of loans*	C REJECTED LOANS WAIVED IN BY FINANCIAL INSTITUTIONS	D REJECTED LOANS AFTER WAIVERS *(B–C)*	E FINANCIAL INSTITUTION WAIVER RATE *(C/B)*
Citigroup	58%	42%	13%	29%	31%
Credit Suisse	68	32	11	21	33
Deutsche	65	35	17	17	50
Goldman	77	23	7	16	29
JP Morgan	73	27	14	13	51
Lehman	74	26	10	16	37
Merrill	77	23	7	16	32
UBS	80	20	6	13	33
WaMu	73	27	8	19	29
Total Bank Sample	**72%**	**28%**	**11%**	**17%**	**39%**

NOTES: From Clayton Trending Reports. Numbers may not add due to rounding.
SOURCE: Clayton Holdings

94. As noted above, many of the banks employed Clayton to perform reviews which the banks then disregarded in large measure. For example, Clayton discovered that 42% of Citigroup's pool of loans did not meet standards and Citigroup disregarded those findings for nearly a third of those loans. Thus, even though these banks and their officers had actual knowledge that a large percentage of the RMBS portfolio reviewed by Clayton failed to conform, they included many of these same loans in securitizations. Moreover, Clayton reviewed only a sample of the loans, leading Defendants invariably to the conclusion that there were thousands of additional defective loans which Clayton had not reviewed. Defendants concealed the information provided by Clayton about non-compliance and sold the RMBS to investors, including Union Central, who were unaware of the failure of many of the loans to conform to standards. In fact, the only use Defendants appear to have

had for Clayton's findings was to use the results as a negotiating point to reduce Defendants' costs of acquiring the loans. Nothing was disclosed to the ultimate RMBS certificate investors about Clayton's findings.

95. Certain of the Prospectus Supplements identified Clayton as providing services to the Defendants but concealed the exceptions Clayton identified and the fact that the Defendants had largely disregarded Clayton's findings.

F. Appraisal Manipulation

96. The FCIC Report also included testimony showing intentional manipulation of appraisal results by lenders in order to get more loans closed:

> Some real estate appraisers had also been expressing concerns for years. From 2000 to 2007, a coalition of appraisal organizations circulated and ultimately delivered to Washington officials a public petition; signed by 11,000 appraisers and including the name and address of each, it charged that lenders were pressuring appraisers to place artificially high prices on properties. According to the petition, lenders were "blacklisting honest appraisers" and instead assigning business only to appraisers who would hit the desired price targets. "The powers that be cannot claim ignorance," the appraiser Dennis J. Black of Port Charlotte, Florida, testified to the Commission.
>
> The appraiser Karen Mann of Discovery Bay, California, another industry veteran, told the Commission that lenders had opened subsidiaries to perform appraisals, allowing them to extract extra fees from "unknowing" consumers and making it easier to inflate home values. The steep hike in home prices and the unmerited and inflated appraisals she was seeing in Northern California convinced her that the housing industry was headed for a cataclysmic downturn. In 2005, she laid off some of her staff in order to cut her overhead expenses, in anticipation of the coming storm; two years later, she shut down her office and began working out of her home.

97. In written testimony before the United States House of Representatives Committee on Financial Services, Alan Hummel, Senior Vice President and Chief Appraiser of Forsythe Appraisals, LLC, testified about an independent study conducted in December 2006 by the October Research Corporation:

> This study found that 90 percent of appraisers were pressured by mortgage brokers, lenders, realty agents, consumers and others to raise property valuations to enable deals to go through. This was nearly double the abuse findings of a similar study three years ago. Moreover, the survey found that 75 percent of appraisers reported "negative ramifications" if they did not cooperate, alter their appraisal, to provide an artificial valuation.
>
> * * *
>
> Unfortunately, these parties with a vested interest in the transaction are often the same people managing the appraisal process within many financial institutions, and therein is a terrible conflict of interest. In this situation our members experience systemic problems with coercion. Appraisers are ordered to doctor their reports or else never see work from those parties again.

98. Similarly, Richard Bitner, a former executive of a subprime lender for fifteen years, testified in April 2010 before the FCIC that "the appraisal process [was] highly susceptible to manipulation," and that the rise in property values was in part due to "the subprime industry's acceptance of overvalued appraisals." New Century's Patricia Lindsay, a former wholesale lender, stated in her testimony to the FCIC on April 7, 2010 that appraisers "fear[ed]" for their "livelihoods," and therefore cherry-picked data "that would help support the needed value rather than finding the best comparables to come up with the most accurate value." Likewise, Jim Amorin, President of the Appraisal Institute, confirmed in his testimony to the FCIC on April 23, 2009 that "[i]n many cases, appraisers are ordered or severely pressured to doctor their reports and to convey a particular, higher value for a property, or else never see work from those parties again. . . . [T]oo often state licensed and certified appraisers are forced into making a 'Hobson's Choice.'"

99. The FCIC's January 2011 Report recounts the similar testimony of Dennis J. Black, an appraiser with 24 years of experience who held continuing education services across the country. "He heard complaints from the appraisers that they had been pressured to ignore missing kitchens, damaged walls, and inoperable mechanical systems. Black told the FCIC, 'The story I have heard

most often is the client saying he could not use the appraisal because the value was [not] what they needed.' The client would hire somebody else."

G. Deteriorating Mortgage Lending Practices

100. The FCIC also noted the deteriorating mortgage practices of several originators, many of whom originated loans in the Trusts as alleged herein:

> In 2005, examiners from the Fed and other agencies conducted a confidential "peer group" study of mortgage practices at six companies that together had originated $1.3 trillion in mortgages in 2005, almost half the national total. In the group were five banks whose holding companies were under the Fed's supervisory purview – Bank of America, Citigroup, Countrywide, National City, and Wells Fargo – as well as the largest thrift, Washington Mutual. The study "showed a very rapid increase in the volume of these irresponsible loans, very risky loans," Sabeth Siddique, then head of credit risk at the Federal Reserve Board's Division of Banking Supervision and Regulation, told the FCIC. A large percentage of their loans issued were subprime and Alt-A mortgages, and the underwriting standards for these products had deteriorated.

101. The FCIC also obtained testimony of key players in the securitization process. One such witness was Richard M. Bowen, III ("Bowen"), who was Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for Citifinancial Mortgage, an affiliate of Citi, and during 2006 and 2007 was Business Chief Underwriter for Correspondent Lending in the Consumer Lending Group and charged with the underwriting responsibility for over $90 billion annually of residential mortgage production. Bowen was responsible for over 220 professional underwriters. Bowen testified:

> My underwriting function was responsible to ensure that these mortgages met the credit standards required by Citi credit policy.
>
> * * *
>
> In mid-2006 I discovered that over 60% of these mortgages purchased and sold were defective. Because Citi had given reps and warrants to the investors that the mortgages were not defective, the investors could force Citi to repurchase many billions of dollars of these defective assets. This situation represented a large potential risk to the shareholders of Citigroup.

I started issuing warnings in June of 2006 and attempted to get management to address these critical risk issues. These warnings continued through 2007 and went to all levels of the Consumer Lending Group.

We continued to purchase and sell to investors even larger volumes of mortgages through 2007. And defective mortgages increased during 2007 to over 80% of production.

* * *

During 2006 and 2007 I witnessed many changes to the way the credit risk was being evaluated for these pools during the purchase processes. These changes included the Wall Street Chief Risk Officer's reversing of large numbers of underwriting decisions on mortgage loans from "turn down" to "approved." And variances from accepted Citi credit policy were made. Subprime mortgage pools, many over $300 million, were purchased even though the minimum credit-policy-required-criteria was not met.

Beginning in 2006 I issued many warnings to management concerning these practices, and specifically objected to the purchase of many identified pools. I believed that these practices exposed Citi to substantial risk of loss.

H. The Offering Materials Contained Detailed Information Regarding the Quality of the Loan Underlying the Certificates

102. The Offering Materials for each of the Trusts contained information and data regarding, for example, the particular features of the Certificates, the structure of the Trusts, the entities involved in the issuance, and the loans underlying the Certificates. The Offering Materials for the Certificates contained disclosures regarding, *inter alia*: (a) the underwriting standards pursuant to which the loans were originated; (b) the appraisal process for the underlying loans and LTV ratios based on such appraisals; (c) DTI ratios or standards acceptable for borrowers; (d) owner-occupancy rates for the subject collateral; and (e) credit ratings for the Certificates.

103. This data allowed investors, such as Union Central, to evaluate the quality of the Certificates. Investors, including Union Central, relied on the accuracy of this information in making their investment decisions to purchase the Certificates. Indeed, Union Central rejected over

90% of the Certificates that they reviewed and closely scrutinized these disclosures to ensure that the Certificates were of satisfactory quality.

104. So too, the credit rating agencies relied on the accuracy of this data in rating the Certificates. Even small changes to LTV ratios and owner-occupancy rates, for example, could materially alter the risk profile. Defendants were all well aware of how the rating agencies evaluated the Certificates and what kinds of loan pools would produce the desired ratings that were necessary to issue the Certificates.

105. The following paragraphs describe some of the essential metrics and standards that were included in all of the Offering Materials and were material to reasonable investors, including Union Central.

1. Underwriting Standards

106. The fundamental basis upon which RMBS are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the loans' collateral should the borrower default. If the borrowers cannot pay, and the collateral is insufficient, the investors incur losses. For this reason, the underwriting standards and practices of the mortgage originator that issued the loans backing the Certificates, and the representations in the Offering Materials regarding those standards, are critically important to the value of the securities, and to investors' decisions to purchase the securities.

107. The Offering Materials contained umbrella underwriting guidelines which would be applicable to all the loans underlying the Certificates, as well as more specific guidelines applicable to certain originators from whom the loans were purchased. These underwriting standards described the types of information collected from borrowers, the due diligence and verifications conducted on the borrower, as well as the acceptable credit standards for originating a loan. In the case of reduced

documentation or no documentation loans, the underwriting standards described compensating factors that were evaluated and/or restrictions on borrowers to whom such loans could be issued.

108. For each Certificate, the Offering Materials represented that underwriting standards were applied to ensure that a borrower had the capacity to repay the loan at issue.

2. Appraisals and Loan-to-Value Ratios

109. As represented in the Offering Materials, the underwriting and approval process for loans pooled in the Trusts required obtaining appraisals that generally complied with the Uniform Standards of Professional Appraisal Practices ("USPAP"). Accurate appraisal reports were one of the most important parts of a loan file because they supported the underwriter's determination of whether sufficient and appropriate collateral to back the mortgage transaction. If the appraiser overvalued the property, the loan amount would have been larger than it should be, and the investor's risk of loss in the event of foreclosure would be much greater.

110. An accurate appraisal is also critical to the determination of an LTV ratio. The LTV ratio affects the degree of risk involved in the loan – both the risk of default and the risk of loss in the event of a default. Borrowers are less likely to default on loans with low LTVs. A borrower who makes a large down-payment has a substantive investment in the property, and will therefore try harder to avoid foreclosure. When foreclosure is necessary, the investor is more likely to recover the entire debt if the LTV is lower. For these reasons, the Offering Materials described the LTV ratios of the loans underlying the Certificates, and generally described the LTV limits used in the underwriting of the loans.

111. The FCIC Report, as well as other recent reports, have revealed an industry-wide practice by which appraisals were manipulated in order to ensure that loans could be underwritten

regardless of the actual value of the property which was supposed to serve as collateral of the subject loan.

3. Debt-to-Income Ratios

112. DTI ratios are critical metrics in evaluating whether a borrower will be able to repay the contemplated loan. If a borrower has very high levels or debt, or low levels of income, or both, it is less likely that he or she will be able to repay the loan. This relationship is described best by the borrower's DTI ratio.

113. According to past industry norms, DTI ratios over 50% to 55% were considered excessive and high risk. Fannie Mae and Freddie Mac targeted DTI ratios at only 38%.

114. If a borrower misstates his or her income, or fails to disclose known debts, such misrepresentations will lead to understated DTI ratios, thus making a loan appear to be less risky than it really was.

4. Owner-Occupancy Rates

115. The Offering Materials contained aggregate information about the occupancy status of the loans underlying the Certificates. Occupancy status refers to whether the property securing the mortgage is the primary residence of the borrower, a second home, or an investment property.

116. The statements about occupancy status were material to investors' decisions to invest in the Certificates because occupancy status serves as an important indicator of the credit risk associated with a mortgage loan and the securities that the loan collateralizes. Borrowers who reside in mortgaged properties have more incentive to avoid default than borrowers who purchase homes as second homes or investment properties and live elsewhere. These borrowers are more likely to care for the primary residence to keep up the property's value by attending to maintenance and purchasing insurance. Thus, the percentage of loans in the collateral group of a securitization that

are not securitized by mortgage loans on owner-occupied residents is an important measure of the risk of the certificates sold in that securitization. Even small differences in the percentages of primary/owner-occupied, second home/secondary, and investment properties in the collateral group of a securitization can have a significant effect on the risk of each certificate sold in that securitization, and thus, are important to the decision of a reasonable investor whether to purchase any such certificate.

5. Ratings

117. Each of the tranches in the Certificates was assigned a rating from either Standard & Poor's Ratings Services ("S&P") or Fitch Ratings ("Fitch"). In determining how to rate each tranche, the rating agencies considered, *inter alia*: (i) the structure of the Certificate; (ii) the level of credit protection available to each tranche; and (iii) the quality of the loans underlying the Certificates.

118. The Defendants understood how the rating agencies assigned ratings, and specifically structured the Certificates so that each tranche would receive the desired ratings. Indeed, the Certificates' issuance was conditioned on obtaining the rating Defendants expected.

119. The rating agencies relied on the accuracy of the information Defendants provided in order to assign ratings to the Certificates. Since Defendants provided the rating agencies false and misleading information about the loans underlying the Certificates, the rating agencies would assign ratings that did not accurately reflect the risk of loss associated with such investments.

I. Loans Included in the Securitizations Were Generated Through Fraudulent and Reckless Origination Practices

120. Defendants and their originators engaged in fraudulent lending practices that were certain to lead to defaults by homeowners and losses for RMBS investors. In addition to the suspect origination practices used by subsidiaries or affiliates of the Depositor Defendants, the Defendants

also deposited into the Trust loans generated by some of the most aggressive loan originators in the business, including Bank of America ("BofA"), Countrywide Home Loans, Inc. ("Countrywide"), Greenpoint Mortgage Funding ("Greenpoint"), SunTrust Mortgage, Inc. ("SunTrust Mortgage"), CitiMortgage, IndyMac Bank, American Home Mortgage Corp. ("American Home"), PHH Mortgage Corporation ("PHH"), ABN AMRO Mortgage Group, Inc. ("ABN AMRO"), National City Mortgage Co. ("National City"), GMAC Mortgage Corporation ("GMAC Mortgage"), HomeComings Financial, LLC ("HomeComings") and Argent Mortgage Company, LLC ("Argent").

121. The practices employed by these originators and/or their brokers included encouraging borrowers to inflate their income levels in stated-income loans, concealing known situations where the home would not be owner occupied, and manipulating the appraisal process such that LTV ratios were false and misleading. These practices were so widespread that the Depositor Defendants were at a minimum reckless in continuing to include non-compliant loans in the portfolios. When Clayton provided information to the banks, many ***known*** problems were actually ignored. And some banks' internal procedures for avoiding problematic loans were ignored.

122. The improper practices of the originators are highlighted below:

1. BofA

123. BofA was an originator of mortgage loans in at least the following Trusts:

GSR Mortgage Loan Trust 2006-9F
MASTR Asset Securitization Trust 2005-1

124. Defendants' statements about BofA's underwriting standards and appraisal practices were false due to BofA's poor practices with respect to its mortgage lending. As the FCIC Report noted:

> Similarly, in examining Bank of America in 2007, its lead bank regulator, the Office of the Comptroller of the Currency (OCC), sampled 50 mortgages and found

16 with "quality assurance referrals" for suspicious activity for which no report had been filed with FinCEN. All 16 met the legal requirement for a filing.

125. While BofA's RMBS portfolio of Countrywide-originated loans is well known, loans originated by BofA prior to the acquisition of Countrywide were also problematic. When announcing settlement agreements between certain originators and mortgage giants Freddie Mac and Fannie Mae, Fannie Mae CEO Michael Williams said it continued to work to resolve other claims, including ones related to BofA-originated loans.

126. Documents produced in the FCIC investigation also showed that Bank of America waived in 60% of the loans Clayton had rejected in the seven 2006 and 2007 RMBS deals presented in the investigation.

2. Countrywide

127. Countrywide was an originator of mortgage loans in at least the following Trusts:

Citigroup Mortgage Loan Trust 2007-10
GSR Mortgage Loan Trust 2006-7F
GSR Mortgage Loan Trust 2006-9F
Morgan Stanley Mortgage Loan Trust 2005-5AR

128. Defendants' statements about Countrywide's underwriting standards and appraisal practices were false due to Countrywide's lending practices that abandoned all prudent loan underwriting practices. Countrywide was issuing or acquiring mortgages with limited documentation and/or excessive LTV ratios even where compensating factors were not demonstrated. Some borrowers with "No Doc" mortgage loans were wage earners who could have provided employment, income and asset verification, but were not required to do so because their actual income and assets would have been insufficient for the mortgage amounts.

129. Countrywide's appraisals were frequently inflated, reckless, contained predetermined values or were otherwise unreliable, which caused the LTV ratios to be misstated. This caused mortgages to be issued for borrowers with higher DTI ratios than was purportedly allowed.

130. Additionally, Countrywide and its brokers increasingly used non-traditional mortgage loans where the LTV ratios were over the stated limit due to "silent second" liens. In fact, for the mortgage loans generated under Countrywide's Streamlined Documentation Program, appraisals were not obtained at all, even though the mortgage loans obtained did, in fact, exceed 80% of the actual value of the subject property. The importance of legitimate appraisals was even more important under Countrywide's Expanded Underwriting Guidelines because these mortgage loans provided for loan amounts which reached 90%, 95% or even 100% in some cases. Given the inflated appraisals frequently provided, the undisclosed risk of mortgages exceeding home values was extreme. Countrywide's appraisal practices were intended to inflate the property value so that loans would close.

131. Numerous government reports and investigations have described rampant underwriting failures at Countrywide throughout the period of the Trusts at issue here. In addition, those reports and investigations have led to disclosures of admissions and acknowledgments made by top Countrywide executives of the abandonment of adherence to underwriting guidelines. In addition, the FCIC Report singled out Countrywide for its role in the financial crisis and specifically identified Countrywide in the Report's summary conclusions discussing the systemic breakdown in accountability and ethics:

> Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities. As early as September 2004, Countrywide executives recognized that many of the loans they were originating could result in "catastrophic consequences." Less than a year later, they noted that certain high-risk loans they were making could result not only in

> foreclosures but also in "financial and reputational catastrophe" for the firm. But they did not stop.

132. Courts, including the federal court that presided over a civil action that the SEC brought against Countrywide's former leaders, have considered allegations that Countrywide failed to comply with underwriting guidelines and abandoned accurate representations in their registration statements offering RMBS. These courts have found that the claims against Countrywide are facially valid and raise genuine issues of material fact.

133. On June 4, 2009, the SEC filed a complaint in the U.S. District Court for the Central District of California against Mozilo, Sambol and Sieracki for their fraudulent disclosures relating to Countrywide's purported adherence to conservative loan origination and underwriting guidelines, as well as insider trading by Mozilo. *See* Complaint, *SEC v. Mozilo*, No. 09-03994 (C.D. Cal. June 4, 2009) (Dkt. No. 1). On September 16, 2010, the District Court rejected the Defendants' motion for summary judgment, finding that the SEC had raised genuine issues of fact as to, among other things, whether the Defendants had misrepresented the quality of Countrywide's underwriting processes. In its decision, the court stated:

> The SEC has presented evidence that these statements regarding the quality of Countrywide's underwriting guidelines and loan production were misleading in light of Defendants' failure to disclose, *inter alia*, that: (1) As a consequence of Countrywide's "matching strategy," Countrywide's underwriting "guidelines" would end up as a composite of the most aggressive guidelines in the market. . . . and (2) Countrywide routinely ignored its official underwriting guidelines, and in practice, Countrywide's only criterion for approving a loan was whether the loan could be sold into the secondary market.
>
> For example, Countrywide's Chief Risk Officer, John McMurray, explained in his deposition that Countrywide mixed and matched guidelines from various lenders in the industry, which resulted in Countrywide's guidelines being a composite of the most aggressive guidelines in the industry . . . .
>
> SEC has also presented evidence that Countrywide routinely ignored its official underwriting to such an extent that Countrywide would underwrite ***any*** loan it could sell into the secondary mortgage market. According to the evidence

> presented by the SEC, Countrywide typically made four attempts to approve a loan. . . . As a result of this process, a significant portion (typically in excess of 20%) of Countrywide's loans were issued as exceptions to its official underwriting guidelines. . . . In light of this evidence, a reasonable jury could conclude that Countrywide all but abandoned managing credit risk through its underwriting guidelines, that Countrywide would originate any loan it could sell, and therefore that the statements regarding the quality of Countrywide's underwriting and loan production were misleading.

SEC v. Mozilo, No. 09-03994-JFW MANx, 2010 WL 3656068, at *10, *12-*14 (C.D. Cal. Sept. 16, 2010) (emphasis in original). After this decision was rendered, Messrs. Mozilo, Sambol, and Sieracki settled with the SEC, agreeing to pay substantial fines. *See* Press Release, "SEC, Former Countrywide CEO Angelo Mozilo to Pay SEC's Largest Ever Financial Penalty Against a Public Company's Senior Executive" (Oct. 15, 2010).

134. The SEC action surfaced internal Countrywide reports and e-mails among Countrywide employees that provide contemporaneous documentation of Countrywide's routine failure to comply with its underwriting guidelines. Emails from CEO Mozilo himself admitted Countrywide's lack of compliance with its own underwriting guidelines. *See* Ex. 28 at 1 to Declaration of Lynn M. Dean in Support of Plaintiff Securities and Exchange Commission's Opposition to Defendants' Motion for Summary Judgment or Adjudication ("Dean Decl."): Part 4, *SEC v. Mozilo*, No. 09-03994 (C.D. Cal. Aug. 16, 2010) (Dkt. No. 230-2). In early 2006, HSBC had begun to contractually force Countrywide to buy back loans that did not comply with underwriting guidelines. In an April 13, 2006 e-mail, Mozilo wrote to Sieracki and others that he was concerned that his company had originated the HSBC loans "with serious disregard for process [and] compliance with guidelines," resulting in the delivery of loans "with deficient documentation." Ex. 16 at 2 to Dean Decl.: Part 3, *SEC v. Mozilo*, No. 09-03994 (C.D. Cal. Aug. 16, 2010) (Dkt. No. 227-5). Mozilo further stated, "I have personally observed a serious lack of compliance within our

origination system as it relates to documentation and generally a deteri[or]ation in the quality of loans originated versus the pricing of those loan[s]." *Id*.

135. In addition to the SEC action, Countrywide has been sued in numerous state enforcement actions for abandoning underwriting standards and engaging in unfair and deceptive practices in connection with loan origination.

136. In *People v. Countrywide Financial Corp.*, the Attorney General for the State of California filed a civil action on behalf of Countrywide borrowers in California against Countrywide and its senior executives. Countrywide faces statutory claims for false advertising and unfair competition based on a plan to increase the volume of mortgage loans for securitization without regard to borrower creditworthiness. Complaint, *People v. Countrywide Financial Corp.*, No. LC081846 (Cal. Super. Ct., L.A. County June 25, 2008) (Dkt. No. 3).

137. In *People v. Countrywide Financial Corp.*, the Attorney General for the State of Illinois filed a civil suit on behalf of Illinois borrowers against Countrywide and Mozilo. Asserting state consumer protection and unfair competition statutory claims, the Illinois Attorney General alleged that, beginning in or around 2004, Countrywide engaged in unfair and deceptive practices, including loosening underwriting standards, structuring unfair loan products with risky features and engaging in misleading marketing and sales practices. Complaint, *People v. Countrywide Financial Corp.*, No. 08CH22994 (Ill. Cir. Ct. Ch. Div., Cook County June 25, 2008).

138. In *Connecticut v. Countrywide Financial Corp.*, the Connecticut Insurance Commissioner commenced a civil action asserting that Countrywide violated state unfair and deceptive practices law by deceiving consumers into obtaining mortgage loans for which they were not suited and could not afford. Complaint, *Connecticut v. Countrywide Financial Corp.*, No. 1207 (Conn. Super. Ct., Hartford July 28, 2008).

139. In *Florida v. Countrywide Financial Corp.*, the Florida Attorney General commenced a civil action asserting unfair practices claims against Countrywide and Mozilo. The Florida Attorney General alleged that, since January 2004, Countrywide conducted a scheme to originate subprime mortgage loans to unqualified borrowers and relatedly engaged in securities law violations. The Attorney General further alleged that Countrywide violated state statutory lender laws by falsely representing that Countrywide had originated each mortgage loan in accordance with its underwriting guidelines and that each borrower had the ability to repay the mortgage loan. Complaint, *Florida v. Countrywide Financial Corp.*, No. 08-30105 (Fla. Cir. Ct. 17th Judicial Circuit June 30, 2008).

140. In *Indiana v. Countrywide Financial Corp.*, the State of Indiana filed a civil action asserting that Countrywide violated the state's unfair and deceptive practices law from 2005 through 2008 by deceiving consumers into obtaining mortgage loans for which they were not suited and could not afford. Complaint, *State of Indiana, County of Steuben v. Countrywide Financial Corp.*, No. 76C01-0808-PL-0952 (Ind. Cir. Ct. Aug. 22, 2008).

141. On October 6, 2008, these states, plus 23 others, all joined in a settlement with Bank of America, pursuant to which Bank of America (as the successor-in-interest to the Countrywide Defendants) agreed to pay $150 million for state foreclosure relief programs and loan modifications for borrowers totaling $8.4 billion. *See* Press Release, "Securities and Exchange Commission, Bank of America Agrees in Principle to ARS Settlement" (Oct. 8, 2008).

142. This is but a small subset of the many civil actions filed by investors, government entities, insurers, trustees and other parties that have sued Countrywide for similar conduct.

3. Greenpoint

143. Greenpoint was an originator of mortgage loans in at least the following Trust:

Citigroup Mortgage Loan Trust 2007-10

144. Defendants' statements about Greenpoint's underwriting standards and appraisal practices were false due to Greenpoint's lending practices that systematically ignored such underwriting standards.

145. Greenpoint was the nation's seventh largest originator of Alt-A mortgages. Greenpoint routinely granted guidelines exceptions – even where compensating factors did not exist and the borrower could not qualify. Many of the loans were granted by the over 18,000 brokers who were approved to transact with Greenpoint – a large enough number that Greenpoint could not exercise any realistic degree of control. Typically, new brokers were actively monitored for only the first five to seven loans submitted, usually during only the mortgage's first 90 days of being approved.

146. According to one Greenpoint sales manager, Greenpoint's philosophy was "if we can sell it, we will originate it." To that end, Greenpoint originated loans whose attributes diverged significantly from underwriting guidelines. Greenpoint had a practice of allowing its staff and outside brokers to inflate appraisal values, thereby distorting the LTV ratios referred to in the Prospectus Supplement. According to a former Greenpoint senior review appraiser, whose job was to evaluate the appraisers' appraisal reports, the appraiser received bonuses if they exceeded their quotas – resulting in "many crummy appraisals." The former senior review appraiser recalled being under continual pressure to approve appraisal reports because compensation increased for the mortgage brokers, account executives, branch sales representatives, and branch office managers for each loan that closed.

147. Further, Greenpoint did not verify the income of borrowers as represented in the Registration Statements but had a reputation in the industry for cutting corners on underwriting. In

fact, a former Greenpoint broker service representative supervisor recalled that ascertaining whether the borrower could repay the loan was unnecessary for Greenpoint's loan program, and that it was "fairly common" for mortgage loans to be approved where the borrower would not be able to repay. The supervisor recounted instances where if a loan failed to gain approval, an account executive would improperly re-open the application with a new loan number as stated income loan. On other occasions, according to the supervisor, to hide that fact that a borrower had previously submitted an application that failed, the account executive would alter the social security number by one digit or misspell the name by one letter, and then correct the errors after the loan was approved.

148. The Office of the Comptroller of the Currency ("OCC") later ranked Greenpoint as the thirteenth worst subprime originator in the country for mortgages originated from 2005 to 2007, according to its "Worst Ten in the Worst Ten" analysis.

4. SunTrust Mortgage

149. SunTrust Mortgage was an originator of mortgage loans in at least the following Trusts:

Citigroup Mortgage Loan Trust 2007-10
GSR Mortgage Loan Trust 2006-9F
MASTR Asset Securitization Trust 2006-1

150. Defendants' statements about SunTrust Mortgage's underwriting standards and appraisal practices were false due to SunTrust Mortgage's lending practices. Plaintiffs hereby incorporate by reference the allegations regarding SunTrust's abandonment of underwriting guidelines as set forth in §V.G.5.

5. CitiMortgage

151. CitiMortgage was an originator of mortgage loans in at least the following Trusts:

Citicorp Mortgage Securities Trust, Series 2007-5

Citicorp Mortgage Securities Trust, Series 2007-8
Citigroup Mortgage Loan Trust, Series 2007-10

152. Citi's statements about CitiMortgage's underwriting standards for its loans and the loans it acquired, as well as its appraisal practices were false due to CitiMortgage's systematic disregard of underwriting standards, corroborated by Clayton's findings of improper lending practices. Plaintiffs hereby incorporate by reference the allegations regarding Citi's abandonment of underwriting guidelines as set forth in §V.B.

6. IndyMac

153. IndyMac was the originator of mortgage loans in at least the following Trust:

IndyMac IMJA Mortgage Loan Trust 2007-A1

154. IndyMac RMBS's statements about IndyMac's underwriting standards and appraisal practices were false due to IndyMac's actual lending practices. Plaintiffs hereby incorporate by reference the allegations regarding IndyMac's abandonment of underwriting guidelines as set forth in §V.D.

7. American Home

155. American Home was an originator of mortgage loans in at least the following Trust:

Citigroup Mortgage Loan Trust 2007-10

156. Defendants' statements about American Home's underwriting standards and appraisal practices were false due to American Home's actual lending practices.

157. In order to post desired loan production, American Home was as a matter of course granting exceptions even where "compensating factors" did not exist. American Home's business was dependent on continually increasing volume. Thus, it became even more aggressive in early 2007 when American Home made $16.7 billion in mortgage loans. A third of its mortgages were

Payment Option ARMs which allowed borrowers to make payments that were less than the interest amount accruing on the loan, resulting in the difference being added to the principal balance each month. American Home granted exceptions as a matter of course because its business relied on volume as it was paid a fee for each loan and it was transferring securitization of these mortgages and not retaining the mortgage loans as assets on its own balance sheet.

158. A former American Home operations manager confirmed that American Home rarely if ever verified income before closing a loan and emphasized that the borrower's ability to repay the loan was not a consideration at American Home.

159. Moreover, granting loans under stated-income applications relied significantly on accurate appraisals, which American Home did not obtain. A former vice president at American Home, whose job was overseeing the mortgage loans' appraisals, said that appraisal fraud was a common problem at American Home and recalled that loan officers pressured appraisers to come up with the "right number."

160. American Home's loans were particularly popular with speculators who would not occupy the homes, which would decrease the borrowers' "willingness" to pay the debt if home prices did not appreciate to the borrowers' expectations. American Home subsequently suffered losses itself when borrowers whose incomes American Home had not verified began to default on little-money-down loans at an accelerated pace.

161. The OCC subsequently ranked American Home as the eleventh worst subprime originator for the years 2005 through 2007 according to its "Worst Ten in the Worst Ten" analysis.

8. PHH

162. PHH was an originator of mortgage loans in at least the following Trust:

GSR Mortgage Loan Trust 2006-9F

163. Defendants' statements about PHH's underwriting standards and appraisal practices were false due to PHH's lending practices.

164. PHH, which was spun-off from Cendant Corporation in 2005, was a private label mortgage provider which was the lender behind certain realtors that offered mortgage loans. PHH acquired loans from these realtors, but did not routinely perform the thorough review represented. The lack of a thorough review was critical since the structure of the arrangement was that the real estate agents were pushing both the home and the mortgage on the borrower. Real estate agents would always push valuations in order to get the deal done and have the deal look attractive to the actual lender. PHH looked the other way on inflated real estate values in order to keep its big corporate clients happy. PHH was extremely aggressive in making loans, promising same-day loan decisions and a best-price guarantee wherein it would beat any lender's price or pay the borrower $500. The mortgage loans PHH held on to had suffered declines in value by late 2007 with many of the declines related to loans with origination flaws.

9. ABN AMRO

165. ABN AMRO ("AAMG") was an originator of mortgage loans in at least the following Trust:

Citicorp Mortgage Securities Trust, Series 2007-5

166. Defendants' statements about ABN AMRO's underwriting standards and appraisal practices were false due to ABN AMRO's lending practices.

167. Citigroup acquired ABN AMRO in January 2007. ABN AMRO had a reputation as an extremely aggressive lender and had settled litigation regarding fraudulently inflated appraisals used to close residential mortgage loans. Before the collapse of the housing market and the risky lending practices came to light, ABN AMRO offered a "Fastest Loan Yet" program, which allowed

select brokers to approve loans on their own with much less documentation than more traditional loans.

10. National City

168. National City was an originator of mortgage loans in at least the following Trusts:

Citigroup Mortgage Loan Trust 2007-10
GSR Mortgage Loan Trust 2006-9F
RALI Series 2005-QS7 Trust
RALI Series 2005-QS9 Trust
RALI Series 2005-QS14 Trust
RALI Series 2006-QS6 Trust
RALI Series 2006-QS2 Trust
RALI Series 2006-QS6 Trust
RALI Series 2006-QS18 Trust

169. Defendants' statements about National City's underwriting standards and appraisal practices were false due to National City's actual lending practices that abandoned underwriting standards.

170. National City's strategy intended to take advantage of the interest rate spread on subprime mortgages which could be sold to third parties at a premium to their origination cost. Thus, National City sought to originate mortgages at an increasing rate, heedless of underwriting standards. As the *bnet.com* blog noted on October 27, 2008:

> The pattern is too familiar. Two profitable, respected banks with limited exposure to mortgages get greedy and try to cash in on the subprime craze. Both end up ready to go out of existence.
>
> That's the case with National City Bank of Cleveland and Wachovia of Charlotte, N.C.
>
> Not that long ago, National City was a pillar of the Cleveland business society. Founded in 1845, the bank reliably loaned money and took in deposits. Mortgages brought in a small 5 percent of total profit. Then in the latter boom years of the late 1990s, National City wanted to put its profits on afterburner. So in 1999, it bought California subprime lender First Franklin. Within a few years, mortgages

> were half of National City's profit and the bank was the country's sixth biggest housing lender.
>
> * * *
>
> By 2005, it was obvious the subprime initiative had become toxic. But the bank did nothing to correct what would prove a fatal mistake.

171. National City granted exceptions to guidelines in many circumstances – not just where compensating factors existed. The exceptions were granted so that the borrower could qualify even without compensating factors. National City acquired many loans from mortgage brokers but did little verification of information in applications, and brokers were able to get loans approved that were inconsistent with National City's underwriting guidelines. In January 2008, National City stopped purchasing loans from brokers. PNC Financial Services purchased the struggling company in October 2008 with TARP funds.

11. GMAC Mortgage

172. GMAC Mortgage was the originator of mortgage loans in at least the following Trusts:

RALI Series 2006-QS2 Trust
RALI Series 2006-QS6 Trust
RALI Series 2006-QS18 Trust

173. GMAC Mortgage is an affiliate of defendant RFC and an indirect, wholly owned subsidiary of defendant Ally. Defendants' statements about GMAC Mortgage's underwriting standards and appraisal practices were false due to the actual practices GMAC Mortgage used to generate mortgage loans.

174. Plaintiffs hereby incorporate by reference the allegations regarding RALI's abandonment of underwriting guidelines as set forth in §V.F.

12. HomeComings

175. HomeComings was the originator of mortgage loans in at least the following Trusts:

RALI Series 2005 QA5 Trust
RALI Series 2005 QA9 Trust
RALI Series 2005-QS7 Trust
RALI Series 2005-QS9 Trust
RALI Series 2005-QS14 Trust
RALI Series 2006-QS2 Trust
RALI Series 2006-QS6 Trust
RALI Series 2006-QS18 Trust

176. HomeComings is a subsidiary of defendant RFC and an indirect, wholly-owned subsidiary of defendant Ally. Defendants' statements about HomeComings' underwriting standards and appraisal practices were false due to the actual practices HomeComings used to generate mortgage loans. Plaintiffs hereby incorporate by reference the allegations regarding RALI abandonment of underwriting guidelines as set forth in §V.F.

13. Argent

177. Argent was the originator of mortgage loans in at least the following Trust:

Citigroup Mortgage Loan Trust 2007-10

178. Defendants' statements about Argent's underwriting standards and appraisal practices were false due to Argent's actual lending practices that systematically abandoned underwriting standards. The OCC named Argent as the third worst subprime originator for the years 2005 through 2007, according to its "Worst Ten in the Worst Ten" analysis. Once a unit of Ameriquest Mortgage Co, it was taken over by CitiMortgage in August 2007, and according to a much later *New York Times* article, the purchase was likened internally by Citi bankers to "catching a falling knife."

179. The FCIC Report related that an Argent Vice President Orson Benn ("Benn") was at the center of a "criminal ring scamming homeowners in the Tampa area." The scheme involved

trolling neighborhoods looking for elderly homeowners who they thought likely had substantial equity in their homes. After duping the homeowners into filling out forms, the perpetrators would use the information to take out false home equity loans in the homeowners' names.

180. The Miami Herald reported on December 7, 2008 that Benn also "tutor[ed] Florida mortgage brokers in the art of fraud," including teaching brokers "how to doctor credit reports, coach[ing] them to inflate income on loan applications, and help[ing] them invent phantom jobs for borrowers." In all, Benn's network approved more than $550 million in Florida home loans and helped Argent to become the nation's largest provider of mortgages for low-credit score borrowers. Benn went to prison for his role in the fraud. In his court testimony, he stated that at Argent, "[t]he accuracy of loan applications was not a priority" since "Argent made money bundling the mortgages and selling them to investors on Wall Street."

181. Mortgage fraud permeated Argent's underwriting practices. In 2011, Cuyahoga County Prosecutor in Ohio indicted former Argent managers, supervisors, and underwriters for falsifying nearly 13 million dollars worth of mortgage loans in the Cleveland area. On loans for 100 houses, Argent falsified the mortgage loan documents that had not met Argent's standards such that they could be approved.

182. During an interview for an article entitled "The Subprime House of Cards" now published on *Cleveland.com* on May 11, 2008, Jacqulyn Fishwick recalled that during her two years employed at an Argent loan processing center near Chicago, she "'saw some stuff I didn't agree with.'" She stated she witnessed "account managers remove documents from files and create documents by cutting and pasting them."

183. In an article entitled "Silencing the Whistle-blowers" for *The Investigative Fund* on May 10, 2010, Steve Jernigan told his experience working as a fraud investigator for Argent in its

California headquarters. He sent an appraiser to Indiana to check on a subdivision that Argent had made loans on. The appraiser reported back to Jernigan: '"I'm standing in the middle of a cornfield."' The loan applications, in other words, had been made up. When Jernigan pulled the loan files for the subdivision's properties, he found that each original appraisal report had attached a photo of the same house.

184. Jernigan continued to find problems within Argent. Ultimately, his investigation "led him higher up Argent's food chain, to a senior executive who had been 'pretty much turning a blind eye' to whether the loans were on the up-and-up." At that point, Jernigan said, upper management made it clear he had gone too far. He recalled that he '"was pulled into an office"' where a supervisor '"looked me straight in the eye and said: "You've got to stop."'"

V. DEFENDANTS KNOWINGLY MADE FALSE AND MISLEADING STATEMENTS REGARDING THE CERTIFICATES THEY WERE SELLING TO UNION CENTRAL

185. The Offering Materials pursuant to which each of the Certificates were sold contained knowingly false statements about the underlying mortgage loans, including the underwriting standards through which the loans were originated, the appraisals used, the owner-occupancy statistics, and the DTI ratios. The Offering Materials also included false statements about the credit ratings these Certificates merited. Union Central relied to its detriment on these representations.

A. Washington Mutual

1. WaMu's Securitizations

186. Union Central purchased a Certificate sponsored by WaMu on April 29, 2005, representing an investment of approximately $4.3 million:

CUSIP	Description	Issuing Entity	Issue Date	Purchase Date
9393365Q2	WMALT 2005-3 B3	Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2005-3	4/1/2005	4/29/2005

187. Washington Mutual Mortgage Pass-Through Certificates, WMALT 2005-3 was a $533 million deal comprising 2,448 fixed rate mortgages with mostly 30-year terms.

2. False and Misleading Statements in WaMu's Offering Materials

a. False and Misleading Statements About Compliance with Underwriting Standards

188. In addition to WaMu-originated loans, WMMSC deposited into the WMALT 2005-3 Trust loans that had been acquired from mortgage brokers and other originators. WaMu's Offering Materials represented that "each Lender must have experience in originating and servicing conventional residential mortgages and must have a net worth acceptable to the Company." In order to be approved as a seller, WaMu evaluated "certain criteria, including the Lender's depth of mortgage origination experience, servicing experience and financial stability."

189. Unbeknownst to Plaintiffs, WaMu deposited and securitized loans into the WMALT 2005-3 Trust even though the loans had been issued to borrowers regardless of their willingness and ability to repay them – loans that were often based on false verification of employment, overstated income, inflated appraisals, understated debt to loan ratios and/or exceptions to underwriting criteria that had no valid justification.

190. The Offering Materials represented that the mortgage loans owned by the Trust were originated in accordance with WaMu's underwriting standards:

> The Mortgage Loans to be included in each Mortgage Pool will be subject to the various credit, appraisal and underwriting standards described herein. The Company's credit, appraisal and underwriting standards with respect to certain

> Mortgage Loans will generally conform to those published in the Company's Selling Guide . . . .

191. The Offering Materials assured investors that underwriting standards were enacted to ensure that a borrower's ability to repay the debt could be meaningfully evaluated:

> All of the credit, appraisal and underwriting standards will provide an underwriter with sufficient information to evaluate the borrower's repayment ability and the adequacy of the Mortgaged Property as collateral. . . .
>
> The Company's underwriting standards are intended to evaluate the prospective Mortgagor's credit standing and repayment ability, and the value and adequacy of the proposed Mortgaged Property as collateral. . . .
>
> The Company's underwriting standards generally follow guidelines acceptable to Fannie Mae and Freddie Mac.

192. The Offering Materials made material misrepresentations regarding the purported processes used to screen loans in the Trust and directly relating to the purported quality of the loan in the Trust. For instance, WaMu represented:

> The Mortgage Loans to be purchased by Washington Mutual Mortgage Securities Corp. (the 'Company') for inclusion in a Mortgage Pool will be screened and underwritten in accordance with the standards set forth herein under 'The Company – Mortgage Purchase Program' and ' – Credit, Appraisal and Underwriting Standards.' The Mortgage Loans in each Mortgage Pool will be originated by or purchased from lending institutions which meet the requirements set forth under 'The Company – Mortgage Purchase Program' (such institutions, 'Sellers').

b. False and Misleading Statements About Appraisals and LTV Ratios

193. The Offering Materials represented that the underlying mortgaged properties would provide adequate security for the mortgage loans, based in part on the appraised value of the properties securing the mortgage loans underlying the Certificates.

194. The Offering Materials for the Certificates represented that WaMu required and relied upon independent appraisals to determine the adequacy of the underlying collateral. For example, the Offering Materials stated:

> In determining the adequacy of the property as collateral, an independent appraisal is made of each property considered for financing. The appraiser is required to inspect the property and verify that it is in good condition and that construction, if new, has been completed. The appraisal is based on the appraiser's judgment of values, giving appropriate weight to both the market value of comparable homes and the cost of replacing the property

195. The Prospectus also contains representations concerning the LTV ratios of the mortgage loans underlying each securitization. Specifically, the weighted average original LTV ratio was disclosed as being 71%.

c. False and Misleading Statements About Debt-to-Income Ratios

196. The Offering Materials stated that in the course of the loan application process, borrowers were generally required to provide information regarding their assets, liabilities and income in order to determine the borrowers' ability to repay the debt.

197. Where provided, such information was converted in DTI ratios, which were a material part of the underwriting process, and specific DTI ratios for the loans underlying the Certificates were utilized by the rating agencies to determine the ratings for the Certificates in the Trust.

d. False and Misleading Statements About Owner-Occupancy

198. The WaMu Defendants' Offering Materials contained specific disclosures about the occupancy status of the loans underlying the Certificates.

199. The Offering Materials stated that 1,954 out of the 2,448 loans were for owner-occupied primary properties. The remaining 494 loans were purportedly second homes or non-owner occupied properties.

e. False and Misleading Statements About Ratings

200. WaMu represented that the ratings of the Certificates as set forth in the Offering Materials was a condition to their issuance, and that the ratings reflected the likelihood that investors would receive the distributions to which they were entitled:

> The offered certificates are required to receive the ratings from Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and Moody's Investors Service, Inc. indicated under 'Certificate Ratings' in this prospectus supplement. The ratings on the offered certificates address the likelihood of the receipt by holders of the offered certificates of all distributions on the underlying mortgage loans to which they are entitled.

201. The Offering Materials also set forth the specific ratings for the Certificate purchased by Union Central. The Certificate was rated BBB by S&P and Baa2 by Moody's Investors Service, Inc. ("Moody's").

3. WaMu's Statements Were Knowingly False and Misleading

202. WaMu knew, or was reckless in not knowing, that the statements identified above were materially false and misleading and/or omitted material facts necessary to make the statements made not misleading. As set forth herein, WaMu had actual knowledge that the stated underwriting guidelines were not being adhered to.

a. Underwriting Standards Had Been Abandoned

203. While the Offering Materials set forth detailed underwriting guidelines that were supposed to be applied in evaluating borrowers and loans, in fact the stated underwriting guidelines had been abandoned by the loan originators.

204. WaMu's statements about loan underwriting practices for the mortgage loans in the WMALT 2005-3 Trust were materially false and misleading because the relevant lending practices for those loans were designed to increase new loan volume with little or no consideration for whether the borrower could repay the loan. In addition, WaMu did not exert much control, if any,

over loan officers and others who did the loans included in the WMALT 2005-3 Trust. WaMu effectively waived through loans that were internally known to be fraudulent. A high percentage of the underlying mortgage loans never should have been made because borrowers lacked the willingness and ability to repay them.

205. Further, WaMu knew that the originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default. Instead, the originators approved loans they knew were based on falsified information and that did not comply with any of the stated underwriting guidelines.

(1) Skyrocketing Default Rates Are Evidence of Abandoned Underwriting

206. The Certificates purchased by Union Central was supposed to be a stable, long-term investment backed by investment-grade credit ratings. However, the extraordinary default rates on the mortgage loans underlying Union Central's Certificate is prima facie evidence that the stated underwriting standards and loan characteristics represented in the Offering Materials were materially false and misleading.

207. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses, for the Certificates purchased by Union Central as of June 2009:

Certificate	Original Deal Size	Delinquent, Bankruptcy Foreclosure, REO Actual Bal.	Collateral Cumulative Losses
WMALT 2005-3	$533,527,878	$40,853,692	$3,444,628

208. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of

delinquency, bankruptcy and foreclosure and cumulative losses would be far lower than the current rates. Indeed, Moody's highest expected collateral rate for the life of the Trust was $3.8 million.

209. The defaults and related drop in value of the Certificate are due to WaMu's wrongdoing, and not because of the general change in economic conditions. Economic studies confirm this common-sense conclusion. For instance, BasePoint Analytics LLC, a recognized fraud analytics and consulting firm, analyzed over three million loans originated between 1997 and 2006 (the majority being 2005-2006 vintage), including 16,000 examples of non-performing loans that had evidence of fraudulent misrepresentation in the original applications. Their research found that as much as 70% of early payment default loans contained fraud misrepresentations on the application.

(2) Appraisals and LTV Ratios Were Inflated

210. The descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in the Offering Materials, and in violation of any legitimate appraisal standards, many of the loans underlying the Certificates had been approved through the use of manipulated appraisals that guaranteed that the collateral property would be valued at a price sufficient to support the loan.

211. For instance, the plaintiffs in *FHFA v. JP Morgan Stanley, et al.*, No. 11-CV-06188-PKC (S.D.N.Y. Sept. 2, 2011), conducted an automated valuation model ("AVM") analysis of a sample of the property underlying the WaMu offerings at issue in that litigation. *FHFA v. JP Morgan* Complaint (Dkt. No. 1), ¶¶348-353. AVM's are routinely used in the industry as a way of valuing properties during prequalification, origination portfolio review and servicing.

212. The Federal Housing Finance Agency's ("FHFA") analysis demonstrates that the valuation of the loans underlying the Certificates were materially and consistently inflated, and

therefore that the stated LTV ratios were materially overstated, which in turn greatly increased the risk of default for the loans underlying the Certificates. The FHFA analyzed twenty-four WaMu securitizations issued between 2005 and 2007, including securitizations bearing substantially similar characteristics as the Certificate purchased by Plaintiffs. For example, two of the transactions analyzed by the FHFA which were similar to Plaintiffs' securitization, the WMALT 2005-9 and WMALT 2005-10 Trusts, represented that 89.08% and 94.88%, respectively, of the loans had LTV ratios of less than 80%. However, the FHFA's analysis showed the true percentage of loans having LTV ratios of 80% or less was a mere 77.70% and 72.62%. While none of the certificates were supposed to contain loans that had an LTV ratio over 100%, the FHFA's analysis found that a significant number of loans had LTV ratios of over 100% – in other words, the value of the loan was more than the value of the property. With respect to the WMALT 2005-9 and WMALT 2005-10 Trusts, the FHFA found LTV ratios greater than 100% in 3.72% and 6.39% of the loans, respectively.

213. The FHFA's analysis of similar WaMU Trusts issued in the same time period as WAMU 2005-3 reflect the WaMu Defendants' wrongful practice of accepting inflated appraisals in connection with their loan securitizations. As alleged below, Washington Mutual's internal documents confirm the WaMu Defendants abandoned prudent loan underwriting which would have halted such practices.

(3) Owner-Occupancy Rates Were Falsified

214. The FHFA loan-level analysis of thousands of loans securitized by WaMu at the same time as the Certificates at issue here, confirm that WaMu's RMBS Offering Materials routinely misstated the owner-occupancy rates of the loans underlying the Certificates. The *FHFA v. JP Morgan* plaintiffs undertook a sophisticated analysis to determine whether a given borrower actually

occupied the property as claimed. *FHFA v. JP Morgan* Complaint, ¶¶340-347. For each offering, the *FHFA v. JP Morgan* plaintiffs analyzed tax records, credit records, bills, property records and lien records, to determine whether a borrower was actually living in the property subject to the loan.

215. The results of the *FHFA v. JP Morgan* plaintiffs' analysis is further indication that the percentage of owner-occupied properties disclosed by WaMu in their Offering Materials was false and that the true rate was much lower. For each of the WaMu Trusts at issue in the *FHFA v. JP Morgan* action, the percentage of owner-occupied properties was overstated by between 6% and 14%.

(4) Ratings Were False

216. When assigning ratings to the securities the rating agencies relied on the accuracy of the information provided by WaMu, including the descriptions of the underwriting standards and the data concerning DTI ratios, LTV ratios and owner-occupancy statistics. However, because the information supplied by WaMu was materially false and misleading, the ratings assigned to the certificates did not provide an accurate evaluation of the risk of default.

217. In 2009, Moody's downgraded WMALT 2005-3 tranche B3 to junk status with a "C" rating, explaining the downgrade was "triggered by rapidly increasing delinquencies, higher severities, slower prepayments and mounting losses in the underlying collateral." Currently this B-3 tranche is not rated by Moody's because it has defaulted entirely.

b. WaMu Knew that Underwriting Standards Were Being Abandoned

218. WaMu had actual knowledge that the mortgage loans underlying the Certificates it sold to Union Central did not comply with the stated underwriting guidelines contained in the Offering Materials. Further, WaMu knew that the quantitative and qualitative data contained in the Offering Materials was materially false and misleading.

219. The Senate PSI issued a case study of the WaMu Defendants' misconduct, which it described as "how one bank's strategy for growth and profit led to the origination and securitization of hundreds of billions of dollars in poor quality mortgages that undermined the U.S. financial system." The Senate PSI Report noted that WaMu "engaged in a host of shoddy lending practices that contributed to a mortgage time bomb."

220. Washington Mutual Inc.'s Chief Credit Officer during 1999-2005, James G. Vanasek ("Vanasek"), testified before the Senate PSI, stating:

- Causes of the residential credit crisis included "self interest, failure to adhere to lending policies [and] untested product innovations."
- "[R]apidly increasing housing prices masked the risks of a changing product mix and deteriorating underwriting . . . until . . . 2007."
- In 2004, Washington Mutual's advertising tagline was '"The power of yes"' implying that Washington Mutual would "find some way to make a loan."
- A "continual problem" at Washington Mutual was that "line managers, particularly in the mortgage area, not only authorized but encouraged policy exceptions."

221. The Senate PSI case study concluded that these wrongful loan origination and mortgage securitization practices were caused in part by a compensation structure that rewarded employees for this conduct. This rewarding of employees for making bad loans extended to the top executives with WaMu. In this regard, the Senate PSI case study concluded that WaMu CEO Kerry K. Killinger ("Killinger") received $100 million in compensation during 2003-2008 as a result of overseeing practices that created a "Mortgage Time Bomb."

222. The Senate PSI made specific findings in its case study of "Washington Mutual Practices That Created a Mortgage Time Bomb," including the following findings of improper practices that are directly contrary to the representations made to Plaintiffs in connection with their purchase of the WMALT 2005-3 Trust Certificates:

- Targeting Higher Risk Borrowers
- Steering Borrowers to Higher Risk Home Loans
- Increasing Sales of High Risk Home Loans to Wall Street
- Qualifying Borrowers By Ability to Make Initial Low Payments
- Ignoring Signs of Fraudulent Borrower Information
- Presuming Rising Home Prices When Approving Loans
- Making Loans that Are Dependent on Refinancing to Work
- Using Lax Controls Over Loan Approvals
- Offering Higher Pay for Making Higher Risk Home Loans
- Rewarding Employees for Loan Volume over Loan Quality
- Securitizing Home Loans Identified as Likely to Fail
- Securitizing Home Loans Identified as Fraudulent

223. WaMu's December 21, 2004 Board of Directors Discussion materials entitled "Asset Allocation Initiative: Higher Risk Lending Strategy and Increased Credit Risk Management" explained that the business plan was to originate and acquire more loans made to higher risk borrowers. This high risk strategy was based on '"Expanded Criteria"' for loan approval, utilizing "higher loan to value ratios" and '"'"No Income" loan documentation type.'" The Board presentation recognized that such diminishing of loan underwriting standards would present '"Higher uncertainty about ability to pay or "stated income" documentation type"' and '"[H]igher uncertainty about willingness to pay or collateral value."' More than 75% of the loans that WMMSC deposited into the WMALT 2005-3 Trust were these reduced documentation or no documentation loans.

224. WaMu's January 2005 Board of Directors Finance Committee Discussion materials entitled "Higher Risk Lending Strategy – 'Asset Allocation Initiative'" similarly discussed the strategy of abandoning prudent underwriting standards: '"In order to generate more sustainable,

consistent, higher margins within Washington Mutual, the 2005 Strategic Plan calls for a shift in our mix of business, increasing our Credit Risk tolerance while continuing to mitigate our Market and Operational Risk positions."' Its substantial increase in "Credit Risk tolerance" allowed for WaMu's origination of higher risk loans as well as riskier loans "purchased through our Specialty Mortgage Finance [SMF] program."

225. WaMu understood the anticipated negative impact from effectively foregoing prudent loan underwriting standards, as noted in a January 2005 Washington Mutual Board of Directors Discussion presentation entitled "Higher Risk Lending Strategy and Increased Credit Risk Management:"

> Although we expect the Higher Risk Lending strategy to result in increased financial returns, owing to wider loan pricing spreads, actual performance is subject to notable credit risks:
>
> - The potential for unexpected high credit-related losses increases roughly in proportion to the increase in expected credit-related losses.
> - Additional capital will need to be set aside for the higher potential for unexpected losses. If actual performance is worse than expected, the measured potential for unexpectedly high losses would increase further, and additional capital would need to be held.

226. On March 10, 2005 WaMu's CEO, Killinger, sent an e-mail to Vanasek, highlighting the declining underwriting standards in the face of a housing bubble:

> I suspect the toughest thing for us will be to navigate through a period of high home prices, ***increased competitive conditions for reduced underwriting standards***, and our need to grow the balance sheet. I have never seen such a high risk housing market as market after market thinks they are unique and for whatever reason are not likely to experience price declines. This typically signifies a bubble.

227. Vanasek responded to Killinger's March 10 e-mail by acknowledging the seriousness of the bubble that was being fueled by reckless loan origination practices and the ongoing loan securitization process:

> I could not agree more. All the classic signs are there and the likely outcome is probably not great. We would all like to think the air can come out of the balloon slowly but history would not lean you in that direction.

228. Notwithstanding their awareness of the industry-wide race to the bottom with respect to the abandonment of prudent loan underwriting standards, WaMu continued to securitize and sell bad loans to the public, including the WMALT 2005-3 Trust sold to Union Central in April 2005.

229. An April 27, 2006 e-mail from Steve Rotella ("Rotella") (WaMu Bank COO) to Killinger admitted that "much of the paper [*i.e.*, loans] we originated in the 05 growth spurt was low quality." These are the same bad loans securitized in the WMALT 2005-3 Trust whose Certificates Plaintiffs purchased.

230. As Michael Liu, a Washington Mutual Portfolio Analyst/Trader reported in his February 14, 2007 e-mail analyzing Option ARM loan delinquencies, "Loans originated in 2004 and 2005 represent the highest amount of 3 PPD and nonaccrual."

231. In an effort to protect itself from the increased credit risk resulting from the abandonment of prudent loan underwriting standards, WaMu securitized and sold the bad high risk loans to the investing public, including Plaintiffs. WaMu's "Higher Risk Lending Strategy 'Asset Allocation Initiative"' directed the Credit Policy Committee to "[u]tilize approved credit risk management tactics when necessary, including NPL [non-performing loan] sales or other credit enhancements." The WaMu Defendants directly participated in these "credit risk management tactics" by securitizing bad loans in the WMALT 2005-3 Trust whose Certificates they then marketed and sold to Plaintiffs in April 2005.

232. WaMu securitized and sold improperly-underwritten loans to investors in order to get those problem loans off WaMu's balance sheet. As recounted in Bethany McLean & Joe Nocera, *All the Devils Are Here – The Hidden History of the Financial Crisis* 217 (2010): "In a 2005 memo

about Washington Mutual, the FDIC summed up the prevailing sentiment: 'Management believes, however, that the impact on WMB [of a housing downturn] would be manageable, since the riskiest segments of production are sold to investors, and that these investors will bear the brunt of a bursting housing bubble.'" By placing high risk, bad loans in the WMALT 2005-3 Trust, WaMu Defendants wrongfully saddled Plaintiffs with that burden.

233. The Senate PSI case study similarly concluded that WaMu knew of deficiencies in their loan origination and securitization practices, since those operations had been subject to repeated internal and governmental criticisms:

> Over the years, both Long Beach and Washington Mutual were repeatedly criticized by the bank's internal auditors and reviewers, as well as its regulators, OTS and the FDIC, for deficient lending and securitization practices.

234. The Senate PSI found that WaMu knowingly securitized delinquency-prone and fraudulent loans without disclosing this adverse information to investors:

> At times, WaMu selected and securitized loans that it had identified as likely to go delinquent, without disclosing its analysis to investors who bought the securities, and also securitized loans tainted by fraudulent information, without notifying purchasers of the fraud that was discovered.

235. This highly improper conduct was ongoing at the very time when WaMu securitized bad loans in the WMALT 2005-3 Trust and then sold Trust Certificates to Plaintiffs on April 29, 2005.

236. A November 17, 2005 WaMu internal memo from Nancy Gonseth to Vanasek, Cheryl Feltgen (Division Executive, Chief Risk Officer – Home Loans) and others recounts the "sustained history of confirmed fraud findings over the past three years:"

> Due to a ***sustained history of confirmed fraud findings over the past three years from the Emerging Markets and Retail Broker Program*** areas, the Home Loans Risk Mitigation Team recently conducted a targeted review of the loans originated in two Southern California Community Fulfillment Centers (CFCs). . . .

> The purpose of the review was to establish a factual basis for determination as to whether or not a broad, systemic pattern of mortgage fraud was present in the Emerging Markets and Retail Broker Loan programs . . . .
>
> Based on this targeted review program, an extensive level of loan fraud exists in the Emerging Markets CFCs, virtually all of it stemming from employees in these areas circumventing bank policy surrounding loan verification and review. Of the 129 detailed loan reviewed that have been conducted to date, ***42% of the loans reviewed contained suspected activity or fraud, virtually all of it attributable to some sort of employee malfeasance or failure to execute company policy. In terms of employee activity enabling this perpetration of fraud, the following categories of activity appeared most frequently: inconsistent application of credit policy, errors or negligence, process design flaws, intentional circumvention of established processes, and overriding automated decisioning recommendations***. (Emphasis in original.)

237. An earlier August 30, 2005 internal WaMu e-mail chain between Ann Tierney (Washington Mutual Credit Risk Management) and Vanasek and others recounted the improper loan underwriting practices used by those responsible for originating home loans within WaMu's operations. One sample of 83 loans showed that 58% of those loans "contained confirmed fraud findings." Forty percent of these loans "involve[d] employment and/or income misrepresentation." In a second sample of 48 loans "83% of total loans reviewed contained confirmed fraud findings." Thirty-five percent of these loans also contained "employment and/or income misrepresentation."

238. WaMu's awareness of the systematic abandonment of prudent loan underwriting practices is confirmed by their corporate documents. The January 2005 Washington Mutual Board of Director Discussion entitled "Higher Risk Lending Strategy and Increased Credit Risk Management" discussed problems in the Specialty Mortgage Finance unit that acquired loans from third party loan originators for securitization and sale to investors: "The SMF management team is small and hence lacks depth; analytical/portfolio credit functions also are understaffed." The presentation explained the Specialty Mortgage Finance unit needed better technology to ensure proper oversight of loan underwriting: "SMF could benefit from more advanced technology in the

areas of underwriting due diligence, servicing oversight, and portfolio financial and credit risk management."

239. As the Senate PSI case study found, WaMu securitized and sold bad loans acquired from third parties. WaMu likewise originated bad loans for securitization:

> In addition to problems with its subprime lending, Washington Mutual suffered from lending and securitization deficiencies related to its own mortgage activities. It received, for example, repeated criticisms for unsatisfactory underwriting procedures, loans that did not meet credit requirements, and loans subject to fraud, appraisal problems and errors. For example, a 2005 internal investigation found that loans originated from two top loan producing offices in southern California contained an extensive level of fraud caused primarily by employees circumventing bank policies. Despite fraud rates in excess of 58% and 83% at those two offices, no steps were taken to address the problems, and ***no investors who purchased loans originated by those offices were notified in 2005 of the fraud problem***.

240. More than 26% of the aggregate principle balance of the loans that WMMSC deposited in the WMALT 2005-3 Trust were from California. Rather than disclose its ongoing practice of having its California loan officers make fraud-tainted loans to securitize for sale to investors, WaMu sold the WMALT 2005-3 Trust Certificates to Plaintiffs in April 2005, while concealing this extremely adverse information. As alleged above, WaMu stated just the opposite when telling Plaintiffs the loans in the WMALT 2005-3 Trust had been properly screened and underwritten.

241. Instead of taking serious steps to correct these improper loan origination and securitization practices by employing proper loan underwriting practices to stamp out the internally known fraud-tainted loans, WaMu took steps to reduce and further abandon prudent underwriting standards to increase the production of high risk loans, as alleged above.

242. An internal WaMu power-point presentation entitled Retail Fraud Risk Overview dated November 16, 2005, identified numerous failures to adopt, follow and enforce proper loan

underwriting practices. This report noted: "Fraud findings do not differ between the retail broker and retail lending programs and principally relate to misrepresentation of loan qualifying data." The report stated that on average, "78% of the funded retail broker loans reviewed were found to contain fraud," while "[o]n average 67% of the retail funded loans reviewed contain fraud, however, YTD finding indicate a rising trend." Specific examples of bad loans were also discussed, including loans where "[t]he credit package was found to be completely fabricated. Throughout the process, red flags were over-looked, process requirements were waived, and exceptions to policy were granted." Another sampled loan file contained an appraisal report that "appears to contain false data regarding the subject property's site and building sizes. This information significantly influenced the final statement of appraised value, and the resulting maximum loan amount on this cash out refinance." Many of the sampled loan files contained misrepresentations of the borrower income, including a file where "Borrower's qualifying income was inflated $1200 per month, with notes that this decision is consistent with WaMu's credit policy." This report also identified numerous "Process and Control Weaknesses," including "Inconsistent application of credit policy," "Process design flaws," Intentional circumvention of established processes," "Overriding automated decisioning recommendations," and "Technology (Optis) limitations."

243. WaMu made no serious effort to correct the widespread practice of failing to properly screen loans before securitizing and selling them to investors. Rather, they lowered the underwriting standards, thereby institutionalizing a company-wide policy that essentially ignored and disregarded prudent loan underwriting standards and practices.

244. Even years later WaMu had still failed to correct these problems. An August 2007 WaMu internal memo entitled "Home Loans Wholesale Specialty Lending – FPD [First Payment Defaults] 2007 Targeted Review" that was distributed to Killinger (Chairman & CEO), Rotella

(President & COO), David Schneider (President Home Loans), and numerous other high-ranking Washington Mutual executives, noted that "[t]he overall system of credit risk management activities and process has major weaknesses resulting in unacceptable level of credit risk," and two "high" priority causes for this long-standing situation were noted:

- (High) Ineffectiveness of fraud detection tools – 132 of the 187 (71%) files were reviewed by Risk Mitigation for fraud. Risk Mitigation confirmed fraud on 115 files and could not confirm on 17 of the files, but listed them as "highly" suspect. This issue is a repeat finding with CCR [Corporate Credit Review]

- (High) Weak credit infrastructure impacting credit quality. Credit weakness and underwriting deficiencies is a repeat finding with CCR. . . . Findings from the CCR FPD review in relation to credit quality:

    - 132 of the 187 loans sampled were identified with red flags that were not addressed by the business unit

    - 80 of the 112 (71%) stated income loans were identified for lack of reasonableness of income

    - 87 files (47%) exceeded program parameters in place at the time of approval

    - 133 (71%) had credit evaluation or loan decision errors present

    - 25 (13%) had title report issues that were not addressed

    - 28 (14%) had income calculations errors and 35 (19%) had income documentation errors

    - 58 (31%) had appraisal discrepancies or issues that raised concerns that the value was not supported

245. WaMu knew they were securitizing and selling loans that had not passed minimal loan underwriting procedures to weed out borrowers who lacked the willingness and ability to pay back the loans. Years after WaMu had consciously abandoned prudent loan underwriting practices in order to take on additional credit risk, Rotella wrote to Killinger on August 23, 2007, acknowledging "we sure made some mistakes." Rotella's e-mail went on to explain:

> I said the other day that HLs [*i.e.*, Washington Mutual internal Home Loan unit] (the original prime only) was the worst managed business I had seen in my career.
>
> * * *
>
> I would also note that the credit staff and infrastructure of HL was poor and has had to be rebuilt almost from the ground up. EDE [*i.e.*, Enterprise Decision Engine which was to supposed to have standardized and centralized decision strategies and increased risk management control over strategy execution] was not working well. Mark Hillis was a part time and ineffective chief credit officer, and most credit authority was held at the center including underwriting and appraisal. Cheryl arrived on the scene around early 2006 and huge strides have been made. ***But we are still not close to where we need to be*** and accountability is not clear between center and line.
>
> * * *
>
> The lesson here, as above, is that the ***lack of strong credit staff and analytics contributed to spotty underwriting discipline*** and a lack of insights into possible policy changes as we moved into HL production. ***Without beating a dead horse, Tom and I worried about our stated desire to take on more credit risk and the weak staff and infrastructure in ERM*** [*i.e.*, Enterprise Risk Management which was supposed to have provided oversight to insure prudent lending] (center and business) if a credit downturn occurred.

246. Because WaMu had drastically lowered its own loan underwriting standards at the same time that its underwriting and monitoring of third-party loan underwriting was essentially non-existent, WaMu knew, or was grossly reckless in not knowing, that the loans securitized and sold to Plaintiffs in the WMALT 2005-3 Trust were – to a very high degree – destined to fail because they had not been properly screened or underwritten.

247. Similar loan underwriting deficiencies existed at WaMu's affiliate Long Beach Mortgage Company ("Long Beach Mortgage"), which during the relevant time period was a wholly-owned subsidiary of WaMu Bank. On January 14, 2004 the FDIC reported to WaMu on its visitation to Long Beach Mortgage and the "unsatisfactory underwriting practices" that existed there. The FDIC Report discussed a review of approximately 4,000 Long Beach Mortgage loans where it was found that more than 76% of them were deficient – 800 of the loans were found to be

"unsaleable" and 2250 of the sampled loans "contained deficiencies requiring remediation prior to sale." The president of Long Beach Mortgage explained to the FDIC investigators "that the problems were largely attributable to management's decision to integrate LBMC's sub prime loan origination and servicing operations into WMI's prime home lending program." Yet, the problems with Long Beach Mortgage's improper loan screening practices continued unabated until that business was essentially dead. In an August 21, 2007 e-mail COO Rotella responded to yet another internal analysis showing that "Long Beach Mortgage Loan Origination & Underwriting (REQUIRES IMPROVEMENT)" by saying: "This seems to me to be the ultimate in bayonetting the wounded, if not the dead. Not only do we already have a MRBA from the OTS on this, but the [Long Beach Mortgage] business is essentially gone."

248. WaMu's systemic failure to adopt, implement, or enforce proper loan underwriting practices constituted "business as usual" throughout the period 2004 to 2008. An April 4, 2008 Washington Mutual report to the OTC confirmed allegations by AIG/UG regarding fraudulent loan origination practices in connection with 25 loans made between 2004 and 2007, while specifically conceding: "CFI verified that the AIG reported elements of loan fraud did occur within [Washington Mutual's] Montebello CFC loan origination process."

249. A July 22, 2008 OTS Exam Summary for WaMu further confirmed the existence of these long-standing failures to implement proper loan underwriting procedures. The OTS found for WaMu's loan screening operations: "Lack of Income Reasonableness Guidance and Controls," "Lack of Income Analysis Procedures for Stated Income Loans," "Measures to address reasonableness of stated income were not implemented in home equity originations," and "WaMu (non appraisal) employees were able to inappropriately influence values of appraisals." As the above evidence reflects, these problems were known for years internally by WaMu, but no proper

steps were ever taken to address and change them. And proper corrective action would never occur, because two months later the FDIC took over WaMu Bank due to its ongoing loss of billions of dollars stemming from the conduct alleged herein. In September 2008, the FDIC sold WaMu Bank to JP Morgan Chase Bank, further evidencing the intractable loan underwriting and loan acquisition problems within WaMu's operations throughout this period.

250. The Senate PSI case study concluded that WaMu's improper loan origination, acquisition and securitization practices were typical of other financial institutions, such as the many Defendants in this case, who also engaged in these wrongful practices.

(1) WaMu Had Actual Knowledge of the Defective Loans They Were Securitizing

251. Documents recently released by Clayton confirm that there were rampant underwriting violations in the loan pools contained in the Certificates. As the FCIC described, in the internal Clayton "Trending Report" made public by the Government in conjunction with testimony given in September 2010, WaMu received regular reports regarding defective loans, and 19% of the loans Clayton reviewed for WaMu "failed to meet guidelines." These loans were not subject to any proper "exceptions," as they did not have any "compensating factors." Rather, these loans were plainly defective.

252. Despite such a high level of nonconforming loans, WaMu nevertheless continued utilizing, and indeed funding, the same originators who had placed the nonconforming loans in the pools and "waived in" to its pools 29% of those toxic loans that Clayton had identified as being outside the guidelines. Such waivers were never disclosed to Union Central or any of the investors who purchased WaMu certificates.

253. Clayton's data demonstrates that underwriting guidelines were being routinely violated, and that WaMu was informed of such violations. The hidden "waiver" of rejected loans

that were not subject to any compensating factors was an omission that rendered the WaMu Defendants' disclosures regarding their underwriting and due diligence processes materially misleading. As the FCIC Report concluded:

> [M]any prospectuses indicated that the loans in the pools either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of Grade 3 Event loans were waived in.
>
> * * *
>
> [O]ne could reasonably expect [the untested loans] to have many of the same deficiencies, and at the same rate, as the sampled loans. Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few of the loans were reviewed, raising the question of whether the disclosures were materially misleading, in violation of the securities laws.

(2) WaMu Knew that Ratings Were False

254. The Certificate purchased by Plaintiffs received a BBB credit rating from S&P and a Baa2 rating from Moody's, indicating the rating agencies' view of its risk profile. The ratings were material to reasonable investors, including Union Central, because the ratings provided additional assurances that investors would receive the expected interest and principal payments. The Certificates would have been unmarketable to investors like Union Central and would not have been issued but for the provision of these ratings. As the Offering Materials stated:

> It is a condition to the issuance of the offered certificates that they receive ratings from S&P and Moody's as indicated.

255. The Offering Materials represented that the rating agencies conducted an analysis designed to assess the likelihood of delinquencies and defaults in the underlying mortgage pools and issued ratings accordingly. The Offering Materials stated:

> The ratings assigned to this issue do not constitute a recommendation to purchase or sell these securities. Rather, they are an indication of the likelihood of the payment of principal and interest as set forth in the transaction documentation.

256. These representations were false. The ratings given to the Certificate by S&P and Moody's were based on the loan profiles supplied to the agencies by WaMu. But as discussed above, most (if not all) of the key components of that data were false because WaMu failed to enforce and adhere to the disclosed underwriting standards and permitted and accepted manipulated appraisals of the properties underlying the mortgage pools. As such, WaMu essentially pre-determined the ratings by feeding inaccurate information into the ratings system. WaMu failed to disclose that the ratings would be based entirely on unreliable information provided by WaMu itself.

4. WaMu Capital Corp.'s Liability as an Underwriter of the WaMu Certificate

257. WCC made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by WCC in the sale of certificates to investors.

258. As underwriter, WCC edited, drafted and controlled the content of the WMALT 2005-3 Trust's Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, WCC received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, WCC then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

259. WCC, as a subsidiary within WaMu, had knowledge that WaMu, as alleged in §V.A, failed to adhere to underwriting standards when it pooled mortgage loans for its RMBS, including for the WMALT 2005-3 Trust, and provided distorted information to the rating agencies that was purposefully manipulated to meet the targeted rating. Further, WCC, knew or was reckless in not knowing, of the defective loans in the WMALT 2005-3 Trust as a result of its due diligence

performed as an underwriter for the WMALT 2005-3 Trust. WCC had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans WaMu deposited in the WMALT 2005-3 Trust had a practice of routinely and systematically disregarding the stated underwriting standards.

260. WCC also knew that mortgage loans deposited into the WMALT 2005-3 Trust were not properly underwritten because WCC was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to the WMALT 2005-3 Trust, WCC underwrote and sold many other such WaMu RMBS to investors and had in that context gained inside knowledge of the poor quality loan underwriting.

B. Citi

1. Citi's Securitizations

261. In 2007, Union Central purchased Certificates from the three Citi Trusts. For the CMSI 2007-5 and CMSI 2007-8 Trusts, Citi issued RMBS backed by fixed-rate, non-conforming, prime, residential first-mortgage loans that defendant CitiMortgage either both originated and purchased from others. For the CMLT 2007-10 Trust, Citi issued RMBS backed by fixed-rate and adjustable-rate mortgage residential first-mortgage loans, while the Group 1 loans, which supported the Certificates that Union Central bought, were fixed-rate mortgages.

262. The CMSI 2007-5 Trust was a $342.9 million deal; the CMSI 2007-8 Trust was a $296.1 deal; and the CMLT 2007-10 Trust was a $1.12 billion deal.

263. CGMI underwrote the Certificates from CMSI and CMLT and sold them to the Union Central pursuant to the Registration Statements.

Trust	Registration Statement No.	Registration Statement Date
CMSI 2007-5	333-130333	December 15, 2005

CMSI 2007-8	333-130333	December 15, 20015
CMLT 2007-10	333-138237	October 25, 2006

264. The following purchases made by Union Central represent a total investment of over $13.6 million:

CUSIP	Certificate	Issuing Entity	Depositor	Underwriter(s)	Issue Date	Purchase Date
17312KAT9	CMSI 2007-5 B1	Citicorp Mortgage Securities Trust, Series 2007-5	CMSI	CGMI and UBS Securities LLC	6/1/2007	12/19/2007
17312DAL2	CMSI 2007-8 B1	Citicorp Mortgage Securities Trust, Series 2007-8	CMSI	CGMI and Banc of America Securities LLC	9/1/2007	10/3/2007
17313QAC2	CMLT 2007-10 B1	Citigroup Mortgage Loan Trust 2007-10	CMLT	CGMI	10/1/2007	1/22/2008

2. False and Misleading Statements in Citi's Offering Materials

a. False and Misleading Statements About Compliance with Underwriting Standards

265. Citi originated and acquired from other originators the underlying mortgages for the Citi Trusts. The Offering Materials represented that each of the mortgage sellers and originators applied underwriting standards that were designed to ensure that the borrower could repay the loan, and thus an investor like Union Central would see a full return on its investment.

(1) CMSI 2007-5 Trust and CMSI 2007-8 Trust

266. The Prospectus Supplements for both CMSI Trusts represented that the subject "[m]ortgage loan underwriting assesses a prospective borrower's ability and willingness to repay, and the adequacy of the property as collateral for, a requested loan."

267. Defendant CitiMortgage originated approximately 48% of the CMSI 2007-5 Trust, AAMG originated approximately 39%.[2]

268. The CMSI 2007-5 Offering Materials represented: "These [third-party] organizations originated the mortgage loans under guidelines that are substantially in accordance with CitiMortgage's guidelines for its own originations." Further, "CitiMortgage believes that AAMG's, Provident Funding's and SIRVA Mortgage's underwriting procedures for the mortgage loans included in this series are not materially different from CitiMortgage's own underwriting procedures for similar loans."

269. For the CMSI 2007-8 Trust, CitiMortgage originated and sold to the Trust 70% of the underlying mortgages. Third-party organizations originated the remainder.

270. Citi represented in its CMSI 2007-8 Offering Materials that "[t]hese [third-party] organizations originated the mortgage loans under guidelines that are substantially in accordance with CitiMortgage's guidelines for its own originations." Further, "[s]ome mortgage loans acquired by CitiMortgage from other organizations and included in the pools may have been originated by these organizations, and some may have been purchased by these organizations from other persons. CitiMortgage believes that these organizations' underwriting procedures for the mortgage loans included in this series, whether originated or purchased by these organizations, are not materially different from CitiMortgage's own underwriting procedures for similar loans."

271. For both the CMSI 2007-5 and CMSI 2007-8 Trusts, the Offering Materials also represented: "Third-party originators must be experienced in originating mortgage loans of the types in the pool in accordance with accepted practices and prudent guidelines."

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[2] As of March 1, 2007, AAMG became a wholly-owned subsidiary of CitiMortgage.

272. Citi also represented that its own review of the third-party originations would ensure the capacity of the borrower to repay the loan and the adequacy of the collateral:

> The underwriting policies and guidelines of third-party originators (which for purposes of this prospectus includes AAMG) may differ from those of the affiliated originators. In purchasing third-party loans, CitiMortgage will review a sample of the loans to determine whether they generally conform to CitiMortgage's underwriting standards. CitiMortgage will fully or partly credit score or re-underwrite the third-party loans to determine whether the original underwriting process adequately assessed the borrower's ability to repay and the adequacy of the property as collateral, based on CitiMortgage's underwriting standards.

273. With respect to the loans in the CMLT 2007-10 Trust, Citi represented that:

> All mortgage loans will have been subject to underwriting standards acceptable to the depositor and applied as described below. Each mortgage loan seller, or another party on its behalf, will represent and warrant that mortgage loans purchased by or on behalf of the depositor from it have been originated by the related originators in accordance with such underwriting standards.
>
> Unless otherwise specified in the related prospectus supplement, the underwriting standards are applied by the originators to evaluate the borrower's credit standing and repayment ability, and the value and adequacy of the mortgaged property as collateral.

274. Citi represented in its CMLT 2007-10 Trust's Offering Materials that American Home, Argent, Countrywide, and PennFed originated the majority of the underlying mortgages, while the other third-party originators listed sold them less than 20%. Citi represented in its Offering Materials that the third parties from whom it bought the mortgages each had applied underwriting standards designed to ensure that the borrower could repay the loan.

(i) American Home

275. The Offering Materials described the underwriting guidelines American Home used to originate the loans that it sold to the Trust. According to the Offering Materials, American Home's underwritings were designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> American Home's underwriting philosophy is to weigh all risk factors inherent in the loan file, giving consideration to the individual transaction, borrower profile, the level of documentation provided and the property used to collateralize the debt. These standards are applied in accordance with applicable federal and state laws and regulations. Exceptions to the underwriting standards may be permitted where compensating factors are present.
>
> * * *
>
> American Home underwrites a borrower's creditworthiness based solely on information that American Home believes is indicative of the applicant's willingness and ability to pay the debt they would be incurring.

(ii) Argent

276. The Offering Materials described the underwriting guidelines Argent used to originate the loans that it sold to the Trust. According to the Offering Materials, Argent's underwritings were designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> The mortgage loans originated by Argent Mortgage Company, LLC (the "Argent Mortgage Loans") were originated generally in accordance with the underwriting standards described below (the "Argent Underwriting Guidelines"). The Argent Underwriting Guidelines are primarily intended to evaluate: ***(1) the applicant's credit standing and repayment ability and (2) the value and adequacy of the mortgaged property as collateral***. On a case-by-case basis, Argent may determine that, based upon compensating factors, a loan applicant warrants an exception to the requirements set forth in the Argent Underwriting Guidelines. Compensating factors may include, but are not limited to, loan-to-value ratio, debt-to-income ratio, good credit history, stable employment history, length at current employment and time in residence at the applicant's current address. It is expected that a substantial number of the mortgage loans to be included in the mortgage pool will represent such underwriting exceptions.

(iii) Countrywide

277. The Offering Materials described the underwriting guidelines Countrywide used to originate the loans that it sold to the Trust. According to the Offering Materials, Countrywide's underwritings were designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> Countrywide Home Loans' underwriting standards are applied in accordance with applicable federal and state laws and regulations.
>
> * * *
>
> Countrywide Home Loans' underwriting standards are applied by or on behalf of Countrywide Home Loans to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral.

(iv) PennFed

278. The Offering Materials described the underwriting guidelines PennFed used to originate the loans that it sold to the Trust. According to the Offering Materials, PennFed's underwritings were designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> These mortgage loans were underwritten generally using Freddie Mac and Fannie Mae guidelines, although loan amounts might have exceeded agency limits. The Company's non-conforming underwriting guidelines were similar to those of Freddie Mac and Fannie Mae, but exceptions might have been permitted where compensating factors were present. . . . The Company evaluated the borrower's ability to make monthly payments, past credit history and the value of the property securing the loan.

b. False and Misleading Statements About Appraisals and LTV Ratios

279. The Offering Materials represented that the underlying mortgaged properties would provide adequate security for the mortgage loans, based in part on the appraised value of the properties securing the mortgage loans underlying the Certificates. The adequacy of the mortgaged properties as security for repayment of the loans will have generally been determined by appraisals, conducted in accordance with pre-established guidelines.

280. Each securing property was to be appraised by a qualified and diligent appraiser, and each appraisal was required to satisfy that the property value can support the principal balance of the

mortgage loan. In general, appraisals were to be in conformity with USPAP, as adopted by the Appraisal Standards Board of the Appraisal Foundation.

281. The CMSI 2007-5 and 2007-8 Trusts represented that the appraisals of the third-party originated loans had to be independent:

> Each appraisal is conducted by an independent fee appraiser. The appraiser personally visits the property and estimates its market value on the basis of comparable properties. . . . The independent appraisers do not receive any compensation dependent upon either the amount of the loan or its consummation.

282. The CMLT 2007-10 Trust Offering Materials stated: "In determining the adequacy of the property as collateral, an appraisal is made of each property considered for financing, except in the case of new manufactured homes, as described under 'The Trust Funds.'" Each appraiser is selected in accordance with predetermined guidelines established for appraisers. The appraiser is required to inspect the property and verify that it is in good condition and that construction, if new, has been completed."

283. The Offering Materials for the CMLT 2007-10 also contained representations pertaining to the primary originators' appraisals.

284. Regarding American Home, Citi's Offering Materials represented:

> Every mortgage loan is secured by a property that has been appraised by a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. The appraisers perform on-site inspections of the property and report on the neighborhood and property condition in factual and specific terms. Each appraisal contains an opinion of value that represents the appraiser's professional conclusion based on market data of sales of comparable properties and a logical analysis with adjustments for differences between the comparable sales and the subject property and the appraiser's judgment. In addition, each appraisal is reviewed for accuracy and consistency by American Home's vendor management company or an underwriter of American Home or a mortgage insurance company contract underwriter.

285. Regarding Argent, Citi's Offering Materials represented:

> The Argent Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and requires (i) an appraisal of the mortgaged property which conforms to the Uniform Standards of Professional Appraisal Practice and are generally on forms similar to those acceptable to Fannie Mae and Freddie Mac and (ii) a review of such appraisal, which review may be conducted by a representative of Argent or a fee appraiser and may include a desk review of the original appraisal or a drive-by review appraisal of the mortgaged property.

286. Regarding Countrywide, Citi's Offering Materials represented:

> Except with respect to the mortgage loans originated pursuant to its Streamlined Documentation Program, whose values were confirmed with a Fannie Mae proprietary automated valuation model, Countrywide Home Loans obtains appraisals from independent appraisers or appraisal services for properties that are to secure mortgage loans. The appraisers inspect and appraise the proposed mortgaged property and verify that the property is in acceptable condition. Following each appraisal, the appraiser prepares a report which includes a market data analysis based on recent sales of comparable homes in the area and, when deemed appropriate, a replacement cost analysis based on the current cost of constructing a similar home. All appraisals are required to conform to Fannie Mae or Freddie Mac appraisal standards then in effect.

287. Regarding PennFed, Citi's Offering Materials represented: "Properties securing real estate loans were appraised by a licensed in-house appraiser or independent appraisers, all of whom were approved by the Company's Board of Directors."

288. Citi's Offering Materials also provided specific information regarding the weighted average LTV ratios of the loans underlying the Certificates:

Certificates	LTV Ratio
CMSI 2007-5	69.60%
CMSI 2007-8	70.48%
CMLT 2007-10	68.02%

c. False and Misleading Statements About Debt-to-Income Ratios

289. Citi's Offering Materials for the Citi Trusts contained numerous statements regarding the evaluation of DTI ratios for the borrowers whose loans comprised the Trusts. Absent

compensating factors, the Offering Materials described the manner in which the loan originators evaluated DTI ratios for borrowers.

290. Citi represented in the Offering Materials for the CMSI 2007-5 and 2007-8 Trusts that the originators for the underlying mortgages would decide as part of their lending guidelines "whether the prospective borrower has enough monthly income to meet monthly obligations on the proposed loan and related expenses as well as the prospective borrower's other financial obligations and monthly living expenses." The CMLT 2007-10 made substantially the same representation.

291. Additionally, the CMLT 2007-10 Trust provided additional details for some of the loan originators practices regarding DTI.

292. For example, Citi represented that loans originated by American Home, "the underwriter must evaluate the borrower's ability to manage all recurring payments on all debts, including the monthly housing expense." Similarly, Argent-originated loans required, according to the Citi Offering Materials, that "[d]uring the underwriting process, Argent review[] and verif[y] the loan applicant's sources of income (except under certain stated income documentation programs such information may not be independently verified), calculate[] the amount of income from all such sources indicated on the loan application, [and] calculate[] the debt-to-income ratio to determine the applicant's ability to repay the loan," among other procedures. PennFed purportedly "evaluated the borrower's ability to make monthly payments."

293. The CMLT 2007-10 Offering Materials provided even greater detail for loans originated by Countrywide:

> [A] prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the "debt-to-income" ratios) are within acceptable limits. . . . The maximum acceptable debt-to-

income ratio, which is determined on a loan-by-loan basis varies depending on a number of underwriting criteria, including the Loan-to-Value Ratio, loan purpose, loan amount and credit history of the borrower.

* * *

Under its Standard Underwriting Guidelines, Countrywide Home Loans generally permits a debt-to-income ratio based on the borrower's monthly housing expenses of up to 33% and a debt-to-income ratio based on the borrower's total monthly debt of up to 38%.

* * *

Under its Expanded Underwriting Guidelines, Countrywide Home Loans generally permits a debt-to-income ratio based on the borrower's monthly housing expenses of up to 36% and a debt-to-income ratio based on the borrower's total monthly debt of up to 40%; provided, however, that if the Loan-to-Value Ratio exceeds 80%, the maximum permitted debt-to-income ratios are 33% and 38%, respectively.

d. False and Misleading Statements About Owner-Occupancy

294. Citi specifically disclosed owner-occupancy statuses for the underlying mortgages in the Offering Materials because it is an indicator of the borrowers' likelihood to stay current with their payments, passed through to investors.

295. The following chart provides the Trusts' disclosures:

Certificate	Owner-Occupied/Primary Residence	Secondary Residence/ Vacation Home	Investor
CMSI 2007-5	94.11%	5.89%	0%
CMSI 2007-8	94.21%	5.67%	0.12%
CMLT 2007-10	95.31%	4.67%	0.02%

e. False and Misleading Statements About Ratings

296. The Offering Materials for each Citi Trust stated that the ratings of the Certificates as set forth in the Prospectus was a condition to their issuance, and that the ratings reflected the likelihood that investors would receive the distributions to which they were entitled.

297. The CMSI 2007-5 and CMSI 2007-8 Trusts represented:

> The offered certificates will not be sold unless the rating agencies have rated the offered certificates as shown [in the Prospectus].
>
> * * *
>
> The ratings of Standard & Poor's Ratings Services (*S&P*) on mortgage pass-through certificates address the likelihood of the receipt by certificate holders of timely payments of interest and the ultimate return of principal. S&P's ratings take into consideration the credit quality of the mortgage pool, including any credit support providers, structural and legal aspects associated with the certificates, and the extent to which the payment stream on the mortgage pool is adequate to make payments required under the certificates. . . .
>
> The ratings of Moody's Investors Service, Inc. (*Moody's*) on mortgage pass-through certificates address (1) the likelihood of the receipt by certificate holders of all distributions to which they are entitled and (2) the structural, legal and issuer aspects associated with the certificates, including the nature of the underlying mortgage loans and the credit quality of any credit support provider. . . .
>
> The ratings assigned by Fitch Ratings (*Fitch*) to mortgage pass-through certificates address the likelihood of the receipt by certificate holders of timely payments of interest and the ultimate return of principal. Fitch's ratings reflect its analysis of the riskiness of the underlying mortgage loans and the structure of the transaction as described in the operative documents.

298. The information given to the rating agencies was critical in determining, among other items, the Trusts' rating. The Citi Offering Materials disclose: "Once CitiMortgage agrees to sell a mortgage loan pool to an underwriter for securitization, the underwriter, in conjunction with the rating agencies for the series, determines the size, interest rates, and payment order for the classes of certificates comprising the series."

299. Likewise, the CMLT 2007-10 Trust represented:

> It is a condition to the issuance of the Offered Certificates that the Offered Certificates receive not lower than the ratings [listed in the Prospectus] from Fitch Ratings, or Fitch and Standard & Poor's, a division of The McGraw-Hill Companies, Inc., or S&P.
>
> * * *
>
> The ratings assigned to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of all distributions to which the certificateholders are entitled. The rating process addresses structural and legal

aspects associated with the certificates, including the nature of the underlying mortgage loans.

300. The Offering Materials also set forth the specific ratings for the Certificates that Union Central purchased:

Certificate	Rating
CMSI 2007-5 B1	AA
CMSI 2007-8 B1	AA
CMLT 2007-10 B1	AA

301. In obtaining these ratings for the subject Certificates, Citi concealed the adverse information alleged herein from the rating agencies. Had the rating agencies known the true value of the loans underlying the Certificates, the Certificates would have been rated significantly lower, or not at all.

3. Citi's Statements Were Knowingly False and Misleading

302. Citi knew, or was reckless in not knowing, that the statements identified above were materially false and misleading and/or omitted material facts necessary to make the statements made not misleading. As set forth herein, Citi had actual knowledge that the stated underwriting guidelines were not being adhered to and rather than provide truthful information and disclosures to Union Central and other investors, used such knowledge to reap massive profits for itself by betting against the very products they were selling investors.

a. Citi Knew that Underwriting Standards Had Been Abandoned

303. While the Offering Materials set forth detailed underwriting guidelines that were supposed to be applied in evaluating borrowers and loans, in fact as Citi was aware, the stated underwriting guidelines had been abandoned by the loan originators and by Citi when depositing the loans in the Trusts.

304. The originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default. Instead, the originators, using Citi's own financing and encouraged by Citi and other investment banks' insatiable appetite for acquiring loans regardless of their quality, approved loans which they knew were based on falsified information and which did not comply with any of the stated underwriting guidelines.

305. CitiMortgage had abandoned all prudent underwriting practices with respect to the loans that it had originated and included in the subject Trusts, as alleged herein.

306. AAMG had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.9.

307. American Home had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.7.

308. Argent had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.13,

309. Countrywide had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.2.

310. Greenpoint had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.3.

311. National City had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.10.

312. SunTrust Mortgage had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Citi for inclusion in the subject Trusts, as alleged above at §IV.I.4.

b. Citi's CEO Knew and Condoned Citi's Issuance of RMBS with Defective Loans

313. Charles Prince ("Prince") served as CEO of Citigroup from 2003 to 2007, and he admitted in his testimony before the FCIC, that Citi's "[s]ecuritization could be seen as a factory line." He conceded that mortgages of "lower and lower quality" went into the securitization process. The result he explained was that since "the raw material going into it was actually bad quality, it was toxic quality, and that is what ended up coming out the other end of the pipeline." Plaintiffs suffered substantial damages coming out of the other end of the pipeline as a result this factory line Citi used to securitize toxic loans sold to unknowing investors.

314. On March 7, 2008, Prince testified to Congress that "lending patterns began to deteriorate pretty significantly in 2006." By the spring of 2007, when reports reached the CEO that almost 20% of the borrowers in some of the securitized pools of mortgages had defaulted on their first payment, the CEO admitted that "most of the damage had already been done." Despite knowledge of the severely deteriorated loan standards, Citi continued to package loans for securitization to investors such as Union Central.

4. Citi Knew the Problems in the Mortgages Underlying the RMBS

315. In the fallout of the financial crisis, Prince was not the only Citi executive to admit to Citi's defective RMBS practices. Bowen was Citi's Senior Vice President and Chief Underwriter for Correspondent and Acquisitions for Citifinancial Mortgage from 2002 through 2005, and in 2006 was promoted to Business Chief Underwriter for Correspondent Lending in the Consumer Lending

Group. In his position he was charged with overseeing the underwriting of over $90 billion a year of residential mortgage production by over 220 professional underwriters, giving him first-hand knowledge of Citi's underwriting practices.

316. The mortgages Bowen's group underwrote originally came through correspondent channels. Thus, their underwriting responsibility was to ensure that the third-party originators' credit standards met Citi's requirements.[3] But as Bowen detailed in testimony to the FCIC on April 7, 2010, Citi increasingly approved mortgages that Citi's underwriting standards should have barred.

317. According to Bowen's FCIC testimony, in mid-2006 he discovered that over 60% of the mortgages purchased and sold to investors were defective. Beginning in June 2006, Bowen repeatedly informed Citi's management by "weekly reports, emails, and discussions," but his warnings went ignored. Bowen told the FCIC that by 2007 "defective mortgages increased . . . to over 80% of production." These were the toxic loans that Citi securitized and sold to Plaintiffs without properly disclosing Citi knew these loans had not been properly underwritten.

318. Notwithstanding Citi's awareness that as high as 80% of the 2007 production consisted of defective mortgages, Citi securitized these loans and sold them to investors, including Plaintiffs.

319. Susan Mills ("Mills"), the head of the Mortgage Finance group at CGMI, which was part of the team responsible for the securitization and underwriting of RMBS, told the FCIC in an interview that she had noticed increasing delinquencies in 2006. She therefore installed a

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[3] Third-party originations made up 52% of the mortgages in the CMSI 2007-5 Trust, 30% of the CMSI 2007-8 Trust, and 100% of the CMLTI 2007-10 Trust.

surveillance group to track the loans that her team purchased. Nevertheless, from 2005 to 2007, Mills reported to the FCIC, early payment default rates nearly tripled from 2% to around 6%.

320. Citi waived through bad loans that did not meet prudent underwriting guidelines. For loans intended for Wall Street, Bowen testified that during 2006 and 2007 he "witnessed many changes to the way the credit risk was being evaluated for these pools during the purchase process." Notably, "[t]hese changes included the Wall Street Chief Risk Officer's reversing of large numbers of underwriting decisions on mortgage loans from 'turn down' to 'approved.'"

321. Bowen's testimony is consistent with an e-mail he sent to Citi's senior officers on November 3, 2007. He attached this e-mail to his written testimony. His e-mail warned that mortgage loans securitized and sold to investors often are "either outside of policy criteria or have documentation missing from the files," while explaining that during "2006-7 there were pools of mortgage loans aggregating $10 billion which were purchased from large mortgage companies with significant numbers of files identified as 'exceptions' (higher risk and substantially outside of our credit policy criteria)."

322. Bowen explained that for approximately $50 billion of mortgage loans originated through the correspondent channel by third parties, the underwriting was delegated to the third-party originator. Citi's Quality Assurance department, which reported to Bowen, was supposed to sample these loans to ascertain whether the third-party's underwriting "agreed" with what would have been the result had Citi underwrote the loan. But Bowen testified that "Citi policy require[d] that a minimum of 95% of the loans purchased" through this channel "must be assigned the 'agree' decision." In fact, over half of the files reported as "agree" were missing policy-required documents, such as proof of income documentation.

323. Bowen's testimony to the FCIC is confirmed by Sherry A. Hunt, a Citi whistleblower with first-hand knowledge of Citi's defective mortgage underwriting. In Hunt's whistleblower letter to the SEC dated May 24, 2011, which was attached to her *qui tam* complaint, she wrote:

> The position I accepted with CitMortgage [sic] in November 2004 was as Chief Underwriter and Vice President over the correspondent channel. The move proved to be disastrous to my career. . . .
>
> I will not go into all of the details here, but one would just need to watch the testimony of Richard Bowen III to the Financial Crisis Inquiry Commission in April 2010 and know that what he is stating is the truth, and that truth came from me alerting him to the issues. He was my manager.

See United States of America, ex rel, Sherry A. Hunt, v. Citigroup, Inc., et al., No. 1:11-cv-05473 (S.D.N.Y.) (Dkt. No. 19).

324. Citi systematically securitized loans originated by third parties that did not meet prudent underwriting standards and had been initially declined for this reason – before these toxic loans were waived through the factory line system. As Bowen explained in his November 3, 2007 e-mail, "[t]hese exceptions were approved by the Wall Street Channel Chief Risk Officer, many times over underwriting objections and with the files having been turned down by underwriting." Citi waived through these defective loans, allowing them to continue on Citi's securitization factory line.

a. Citi Securitized Imprudent Loans to Get Them Off Its Books and to Avoid the Risk of Default

325. In August 2005, according to Bill Beckmann ("Beckmann"), president and COO of CitiMortgage Inc., there was a Citi initiative to transition the company to a broader origination strategy. Citi brought under one "silo" its three mortgage businesses, which represented prime, subprime and home equity. Carl Levinson, who was appointed president and CEO of the Consumer Finance Group, was placed at the head of the merged mortgage companies. The upshot of the merger, explained Beckmann, was that Citi dispensed with the distinctions it had made among the

processing of its various types of mortgages. "Especially as the traditional prime market gets smaller," Beckmann said "we're beginning to see those lines blur."

326. As another managing director at CitiMortgage, Bradley J. Brunts, explained, Citi shifted its strategy toward making and acquiring more high risk loans by no longer viewing the nonprime business as a "niche business" but rather as one that was increasingly a "volume business." With the integration of these businesses, higher risk loans such as Alt-A mortgages grew from nil to 25% of CitiMortgage's overall business. As Beckmann put it, "our absolute focus for growth is alt-A" in 2006.

327. Citi was able to reduce the credit risk it faced from this shift in strategy by securitizing and selling these higher risk loans that it did not want to hold on its books. Thus, CitiMortgage's Alt-A loans would "go to market" through defendant CGMI, who would pool loans rejected by CitiMortgage into RMBS to be sold to investors. As Beckmann admitted, "[t]here are loans that maybe we wouldn't feel comfortable with [putting] in our portfolio, but the Street is happy with."

328. Beckmann further elaborated that defendant CitiMortgage's alliance with defendant CGMI was especially useful when making bulk purchases from a correspondent. In the past, he explained, if Citi only offered to purchase $70 million of a pool of $100 million from a correspondent, the correspondent would take its business to another customer who had offered to purchase $90 million of the pool. Because CGMI pushed the loans off on investors of RMBS trusts, "Citi can bid more robustly and not get stuck with the kicks – the loans we didn't want to take."

b. Other Employees Confirm Citi's Lack of Adequate Due Diligence

329. Citi knew the goal was to approve as many mortgages as possible for the mortgage pools, to the detriment of credit quality. To that end, witnesses such as a former senior underwriter

for CitiMortgage said "conventional lending ideas went out the window." Former Citi employees described Citi's underwriting standards as "too loose" and "too easy-going," allowing for "very aggressive" lending practices.

330. For example, a former regional sales manager for Citigroup's wholesale mortgage loan division described the steady deterioration in credit quality that started around 2005. He said he witnessed the increasing prevalence of interest-only, stated income, and 100% LTV mortgages. A former senior underwriter also remembered maximum LTV ratios at 100%. Another former senior underwriter, noted that in the spring of 2007, Citi even permitted mortgages for borrowers with FICO scores as low as 500, confirmed by a different senior underwriter who recalled that even in late 2007, minimum FICO scores were still around 580. The result, according to a former senior underwriter was that "almost anything would pass."

331. If the loose underwriting standards did not let the mortgages waive through, Citi's policy was to lean on its underwriters. Underwriters described the pressure they were under to approve mortgages. One former senior underwriter explained that if she found a loan to be problematic, the response from her "team lead" was to tell her to "look at it again." Underwriters understood, she said, that we should "find a way to accept it."

c. Skyrocketing Default Rates Are Further Evidence of Abandoned Underwriting

332. The Certificates sold to Union Central were supposed to be stable, long-term investments backed by investment-grade credit ratings. However, the extraordinary defaults on the mortgage loans underlying Union Central's Certificates is prima facie evidence that the stated underwriting standards and loan characteristics represented in the Offering Materials were materially false and misleading.

333. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses, for each of the Certificates purchases by Union Central as of June 2010:

Certificate	Original Deal Size	Delinquent, Bankruptcy, Foreclosure, REO Actual Balance	Collateral Cumulative Loss
CMSI 2007-5	$342,935,690	$16,139,620	$997,385
CMSI 2007-8	$296,050,563	$13,326,153	$1,877,023
CMLT 2007-10	$206, 824,470	$7,308,254	$657,223

334. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of delinquency, bankruptcy and foreclosure would be far lower than the current rates. Indeed, Moody's maximum expected collateral losses for the life of the CMSI 2007-5 Certificate was only $1.55 million. Moody's maximum expected collateral losses for the life of the CMSI 2007-8 Certificate was $1.49 million.

d. Appraisals and LTV Ratios Were Inflated

335. The descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in the Offering Materials, and in violation of any legitimate appraisal standards, many of the loans underlying the Certificates had been approved through the use of manipulated appraisals that guaranteed that the collateral property would be valued at a price sufficient to support the loan. Citi's practices have been confirmed through modeling by other parties whose data demonstrates that appraisals used in connection with Citi securitizations in 2006 were routinely inflated.

336. For instance, the plaintiffs in *Allstate Ins. Co., et al. v. CitiMortgage, Inc., et al.*, Index No. 650432/2011 (Sup. Ct. N.Y. Feb. 17, 2011), conducted a sophisticated loan-level analysis

using AVM technology to parse over 9,000 mortgages underlying trusts that were substantially similar to the Citi offerings at issue in that litigation. *Allstate v. CitiMortgage* Complaint (Dkt. No. 2), ¶¶121, 130-137. AVM's are routinely used in the industry as a way of valuing properties during pre-qualification, origination portfolio review and servicing.

337. The *Allstate v. CitiMortgage* plaintiffs' analysis demonstrates that the valuation of the loans underlying their certificates were materially and consistently inflated, and therefore that the stated LTV ratios were materially overstated, which in turn greatly increased the risk of default for the loans underlying those certificates. The chart below summarizes their findings:

Trust	Represented Weighted Average LTV	Actual Weighted Average LTV	Prospectus Understatement
CMLTI 2006-4	70.30%	73.91%	3.61%
CMALT 2006-A7	70.65%	82.03%	11.38%
CRMSI 2007-02	79.04%	93.30%	14.26%
CRMSI 2006-03	78.08%	90.53%	12.45%
CRMSI 2007-01	79.39%	87.61%	8.22%

338. Even worse, while none of the certificates were supposed to contain loans that carried an LTV ratio over 100%, Allstate's analysis found that a significant number of loans indeed had LTV ratios of over 100% - in other words, the value of loan was more than the value of the property.

Trust	Percentage of Loans Represented to Have LTVs greater than 100%	Actual Percentage of Loans with LTVs Greater than 100%
CMLTI 2006-4	0.00%	9.25%
CMALT 2006-A7	0.00%	12.36%
CRMSI 2007-02	0.00%	36.61%
CRMSI 2006-03	0.00%	32.28%
CRMSI 2007-01	0.00%	31.36%

339. The FHFA also performed a similar AVM review to determine the accuracy of the reported LTV ratios in the Citi securitizations at issue in its case. The FHFA's review confirms that for every Citi securitization analyzed, the percentage of loans with LTV ratios of 80% or less was overstated. Further, the percentage of loans with LTVs of over 100% ranged from 5.61% to as high as 16.71%. *FHFA* Complaint, ¶¶113-118

e. Citi Knew that Appraisals Purposefully Overstated Home Values to Hit Sponsors' Targets

340. Citi knew that appraisers overstated property valuations, thereby decreasing stated LTV ratios, through the manipulation of the appraisals conducted on the underlying properties. Instead of conducting appraisals designed to accurately value the subject property in compliance with the USPAP or the practices set forth herein, many of the appraisals conducted on the underlying properties, if they were conducted at all, were designed to hit valuation targets that would allow loans to be funded and sold in RMBS.

341. As set forth in §§IV.F. and IV.H.2., Citi was a participant in the defendant-wide practice of pressuring appraisers to misstate appraisals in order to ensure that loans were funded regardless of the quality of the underlying collateral.

f. Citi Falsified Debt-to-Income Ratios

342. The statements contained in the Offering Materials regarding the acceptability and evaluation of DTI ratios, as well as many of the specific DTI ratios disclosed, were materially false and misleading. In fact, Citi and its originators knew that borrowers routinely falsified their stated incomes in order to have loans approved.

343. In the case of stated income loans, for example, Citi and its originators knew that many borrowers claimed incomes that did not come anywhere near a reasonable level for their stated occupations.

344. Plaintiffs have examined certain of the loans contained in the CMSI 2007-8 and the CMLT 2007-10 Trusts and found numerous examples of loans where Citi accepted falsified DTI ratios and where obvious signs of fraud or misrepresentations were ignored.

(1) CMSI 2007-8

345. The CMSI 2007-8 Trust included a $480,000 loan to purchase a primary residence in Casa Grande, Arizona in June 2007. Public records indicate that the borrower's DTI ratio was over 160%, rather than the 47.52% listed in the loan schedule. According to public records, the borrower did not occupy the property, contrary to what was listed in the loan schedule. Furthermore, the borrower failed to disclose another property purchase in the month preceding the note's completion for the mortgage in the CMSI 2007-8 Trust.

346. Another mortgagor in this Trust refinanced for $100,000 a primary residence in Temple City, CA. The loan schedule listed the borrower's DTI as 33.75%, but in fact, it was 73%. Within just five months of completing the refinancing, the borrowers entered into a third lien loan, and then shortly thereafter filed for bankruptcy.

347. The CMSI 2007-8 Trust also contained a cash-out refinance loan dated August 2007 on a $568,000 first mortgage of a primary residence in Poulsbo, Washington. This borrower's stated DTI was 65.21%, which is extremely high where the industry norm considers 50%-55% to be excessive. But even this was an understatement, because public records reveal that the borrower's DTI should have been listed as over 100%.

348. In another example, the CMSI 2007-8 Trust included a mortgage for the purchase in September 2007 of a $545,000 home in Houston, Texas. The borrower was a driver for a satellite parking company at an airport. Before the mortgage was in the Trust, the borrower had purchased three other homes. Though his DTI should have been in excess of 600%, the loan schedule

accompanying the Trust listed this borrower's DTI as 38.95%. Also diverging from the representation in the loan schedule was the fact that the property was not owner-occupied.

(2) CMLT 2007-10

349. The CMLT 2007-10 Trust contained a cash-out refinance mortgage for $600,000 originated by National City Mortgage in February 2007 in Dallas, Texas. Incredibly, the borrowers had completed other cash-out/refinance transactions during the years of 2001, 2002, 2003, 2004, and 2005. Within four months of completing this loan, the borrowers filed for bankruptcy, which filing revealed that the borrowers were involved in litigation concerning outstanding debts for the borrowers' businesses. Nevertheless, Citi allowed this mortgage to pass its underwriting review. The listed DTI on the loan schedule was 45.23%; in fact, the borrowers' DTI should have been listed between 68%-89%.

350. Another loan originated by National City Mortgage in the CMLT 2007-10 Trust was for a cash-out/refinance of a property in Lake Almanor, California in February 2007. The property had undergone a series of refinancings in the previous years to the subject loan. The borrower was elderly and subsisted on social security. The listed DTI was overstated by almost 100% – what should have been at least 84% was listed as 42.32% in the loan schedule.

g. Owner-Occupancy Rates Were Falsified

351. In addition to the examples above demonstrating that the Offering Materials misrepresented the owner-occupancy rates of subject properties underlying Citi Trusts, other parties' loan-level analysis of thousands of loans Citi securitized at the same time as the Certificates at issue here, further confirm Citi's practice of routinely permitting and using misstated owner-occupancy rates for loans underlying its RMBS Certificates.

352. In addition to their LTV analysis, the *Allstate v. CitiMortgage* plaintiffs undertook a sophisticated analysis to determine whether a given borrower actually occupied the property as claimed. *Allstate v. CitiMortgage* Complaint, ¶¶118-129. As part of the *Allstate v. CitiMortgage* plaintiffs' analysis of over 9,000 mortgage loans underlying their Certificates, they reviewed tax records, credit records, bills, property records and lien records, to determine whether a borrower was actually living in the property subject to the loan. The results of the *Allstate v. CitiMortgage* plaintiffs analysis demonstrates that the percentage of owner-occupied properties disclosed by Citi in their prospectuses was consistently false and that the true rate was much lower. The following chart shows the results of their analysis:

Trust	Percentage of Owner-Occupied Properties Represented in Prospectus	Estimated Actual Percentage of Owner-Occupied Properties in the Pool	Prospectus Overstatement
CMLT 2006-04	69.6%	57.7%	11.9%
CMLT 2007-WFHE2	94.2%	81.8%	12.3%
CMALT 2006-A7	88.4%	75.2%	13.2%
CRMSI 2007-02	98.7%	93.7%	5.0%
CRMSI 2006-03	98.6%	96.0%	2.6%
CRMSI 2007-01	99.2%	96.1%	3.1%

353. In addition to Allstate, Citi has been sued by the FHFA. *FHFA, et al. v. Citigroup, Inc., et al.*, No. 1:11-cv-06196 (S.D.N.Y. Sept. 2, 2011).

354. The FHFA performed a similar analysis to determine whether the owner-occupancy rates disclosed in the prospectuses for Citi securitizations at issue there were accurate. According to the FHFA's review, most of the Citi securitizations understated the percentage of non-owner-occupied properties (*FHFA v. Citigroup* Complaint (Dkt. No. 1), ¶¶109-112):

Trust (with Supporting Loan Group)	Reported Percentage of Non-Owner Occupied Properties	Actual Percentage of Non-Owner-Occupied Properties	Prospectus Understatement of Non-Owner Occupied Properties
CMLT 2005-10 (Group 1-3)	27.65%	39.98%	11.73%
CMLT 2005-7 (Group 1-2)	14.95%	30.32%	15.37%
CMLT 2005-HE3 (Group 1)	7.92%	21.17%	13.25%
CMLT 2005-HE4 (Group 1)	14.65%	27.94%	13.29%
CMLT 2006-AR2 (Group I-1)	11.25%	25.25%	14.01%
CMLT 2006-AR5 (Group 1-2)	10.74%	27.43%	16.69%
CMLT 2006-WF1 (Group I)	41.92%	48.17%	6.25%
CMLT 2006-WF2 (Group I)	39.90%	47.45%	7.55%`
CMLT 2007-AR7 (Group 2)	63.77%	68.80%	5.03%

5. Citi Knew that Underwriting Standards Were Being Abandoned

355. Citi had actual knowledge that the loans it securitized in the Trusts sold to Union Central did not comply with the stated underwriting guidelines contained in the Offering Materials, and that the quantitative and qualitative data contained in the Offering Materials was materially false and misleading. Indeed, Citi used this knowledge to profit from the defective loans it securitized by taking short positions on securities sold to its clients, and by pocketing discounts on defective loans sold by the very originators whose operations Citi sustained through its warehouse funding.

a. Citi Had a Company-Wide Practice of Securitizing Loans that Had Not Been Properly Underwritten

356. Unbeknownst to Plaintiffs, Citi had a company-wide practice of originating and acquiring home loans without using proper underwritten practices to determine whether the borrower had the willingness and intent to repay the loans. Citi's CEO during the relevant time period subsequently admitted to the FCIC that Citi employed a factory line system to securitize toxic mortgages. Similarly, other high-ranking executives have now admitted that Citi was aware during the relevant time period that 80% of its loans were not properly underwritten. Indeed, it was Citi's business strategy to securitized these high risk loans to get them off its books to avoid the risk of default, but it failed to disclose to investors that these loans had never been properly underwritten.

b. Based on Its Own Review of the Underlying Loans, Citi Defendants Had Actual Knowledge of the Defective Loans They Securitized

357. Citi's Offering Materials represented that Citi reviewed the adequacy of the loan seller's underwriting guidelines, including its mortgage loan origination processes, systems and quality control procedures. Citi represented that its "[t]hird-party originators must be experienced in originating mortgage loans of the types in the pool in accordance with accepted practices and prudent guidelines." In addition to the originators' own review of acquired loans, the Offering Materials also stated that Citi would re-underwrite sample pools of the loans it purchased to determine whether they were originated in compliance with applicable underwriting guidelines:

> For mortgage loans acquired in a bulk purchase from a financially sound mortgage loan originator, the affiliated originator will review the selling originator's underwriting policies and procedures for compliance with the affiliated originator's or Fannie Mae/Freddie Mac underwriting standards and will credit score each loan. The affiliated originator will also conduct a limited mortgage loan file review. . . .
>
> . . . In purchasing third-party loans, CitiMortgage will review a sample of the loans to determine whether they generally conform to CitiMortgage's underwriting standards. CitiMortgage will fully or partly credit score or re-underwrite the third-

party loans to determine whether the original underwriting process adequately assessed the borrower's ability to repay and the adequacy of the property as collateral, based on CitiMortgage's underwriting standards.

358. Citi had knowledge that at least two of its regular third-party originators failed to adhere to underwriting standards. In 2007 Citi acquired Argent and Ameriquest Mortgage Co. Due diligence in these acquisition processes would have alerted Citi to the deteriorated standards used by these two companies, which the OCC later ranked as the third and ninth worst originators, respectively, for the period of 2005 through 2007. Argent originated more than 20% of the mortgage loans in the CMLTI 2007-10 Trust.

c. Based on a Third-Party Review, Citi Had Actual Knowledge of the Defective Loans They Were Securitizing

359. The FCIC received testimony and reports from Clayton, a third-party due diligence firm hired "to identify, among other things, whether the loans met the originator's stated underwriting guidelines." Documents recently released by Clayton, including its internal "Trending Report" released by the government in conjunction with testimony given in September 2010, confirm that there were rampant underwriting violations in the loan pools contained in the Certificates. These documents reveal that from January 2006 through June 2007, Citi received regular reports from Clayton regarding its defective loans, and 42% of the loans Clayton reviewed for Citi "failed to meet guidelines." These loans were not subject to any proper "exceptions," as they did not have any "compensating factors." Rather, these loans were plainly defective. Nevertheless, Citi knowingly waived in 31% – almost a third of these defective loans into its RMBS trusts. Such waivers were never disclosed to Union Central or any of the investors who purchased Citi Certificates, and Citi continued using, and indeed, funding these originators.

360. Moreover, since Clayton reviewed only a sample of the loans, the invariable conclusion for Defendants was that there were thousands of additional defective loans which Clayton had not reviewed. Yet Citi purposefully concealed the information provided by Clayton from investors while, at the same time, it used the Clayton information about the defective loans to force loan originators to accept lower prices for the loan pools. Thus, Clayton's underwriting analyses were not used for the benefit of the investors, but exploited by Citi for greater profits at investors' expense.

361. That Citi waived through almost a third of the loans that Clayton's analyses said should be rejected is significant evidence that Citi was aware of the deteriorated quality of the loans and the underwriting for its RMBS trusts. Clayton's data demonstrates that underwriting guidelines were being routinely violated, and that Citi was well aware this was occurring.

362. Indeed, Citi conducted due diligence on all the originators from which it purchased loans, and on the loans included in the offerings, reviewed compliance with the approved underwriting guidelines. The results of these reviews the originators would have confirmed that the loan originators were routinely violating the stated underwriting standards and that a large number of the loans Citi securitized did not comply with the stated underwriting standards.

d. Citi Used Its Knowledge of Defective Loans to Secure Further Profits for Itself at the Expense of Investors

363. Citi's due diligence reviews were not used to protect investors from defective loans. Rather, Citi forced loan originators to accept lower prices for the loan pools, therefore providing further profit for Citi. According to the September 2010 FCIC testimony of Clayton's former president, D. Keith Johnson, the investment banks would use the exception reports to force a lower price for itself, and not to benefit investors at all:

> I don't think that we added any value to the investor, the end investor . . . to get down to your point. I think only our value was done in negotiating the purchase between the seller and securitizer. Perhaps the securitizer was able to negotiate a lower price, and could maximize their buying but we added no value to the investor and to the rating agencies.

364. Citi continued purchasing bad loans from originators as part of its massive, profit-generating RMBS machine. One profit center was Citi's warehouse lending channel, where it provided "warehouse" lines of credits to lenders who would use these funds to originate loans that Citi would then acquire from the warehouse lender.

365. Because Citi would only be paid back on its warehouse lines of credit if the warehouse lenders monetized the loans they were originating, Citi would acquire these loans from the warehouse lenders and then securitized them so as to monetize the transaction. This incentive structure created a system whereby Citi needed to purchase and securitize the loans it acquired in the warehouse channel in order for it to be repaid on its lines of credit, regardless of the quality of the loans being originated by the warehouse lenders.

366. Citi needed to accept these loans with little or no objection to keep the warehouse channel supplied with capital to pay fees and interest owed on the lines of credit. Citi also wanted to protect its business relationships with the recipients of the warehouse credit lines in order to ensure a steady flow of loans for securitization. In addition, mortgage originators would not maintain a relationship with a bank that consistently kicked out large numbers of loans. As a result, Citi accepted loans from originators in the warehouse channel regardless of the quality of those loans.

367. Citi's position as a source of "warehouse" lines of credit gave it unique knowledge of the conditions under which mortgage loans were originated. The lines of credit allowed Citi to control the origination practices of these lenders and gave Citi an inside look into the true quality of the loans they originated. As one industry publication explained, warehouse lenders like Citi have

"detailed knowledge of the lender's operations." Kevin Connor, *Wall Street and the Making of the Subprime Disaster*, at 11 (Nov. 2007).

e. Citi Willfully Abandoned Prudent Loan Underwriting to Increase Profits and Grow Its Business

368. According to Bowen, Citi engaged in these wrongful practices in order to accomplish Citi management's mandate for increased growth and market share of the its real estate lending segment.

369. CitiMortgage was one of Citi's primary in-house mortgage originators who originated mortgages in the subject Trusts. Beckmann, President and COO of CitiMortgage, told *Mortgage Banking Magazine* in December 2006 that in a single quarter in 2006, CitiMortgage grew from "fifth-largest to third-largest [mortgage banking company] in the rankings," surpassing Chase Home Loans and Washington Mutual. He exclaimed, "We are growing at double-digit growth rates in an industry that is contracting a bit." To accomplish this extraordinary growth in the RMBS market, Citi actively abandoned prudent loan underwriting and due diligence practices.

370. Meanwhile, as Citi pushed for greater volumes of mortgage loans, it "dramatically reduce[d] the number of employees" in the name of efficiency, resulting in what Bowen described as a "challenging underwriting environment."

371. Citi's forsaken loan quality in its aggressive drive for growth is confirmed by the assessment of the Federal Reserve Bank of New York. In its annual report of inspection for 2007 sent to Citi's Board of Directors on April 15, 2008, the Federal Reserve downgraded Citi's performance from satisfactory to fair. Among other criticisms, it found that "senior management at the firm allowed its drive for additional revenue growth to eclipse proper management of risk, while Risk Management failed to serve as an effective check against these decisions."

372. Citi's former CEO Prince admitted his unease with the abandonment of proper underwriting practices.[4] In a memoir, former Treasury Secretary Hank Paulson detailed the account of a dinner party held in June 2007 with several captains of Wall Street, including Jamie Dimon of J.P. Morgan, Lloyd Blankfein of Goldman Sachs and Prince. Paulson wrote: "All were concerned with excessive risk taking in the markets and appalled by the erosion of underwriting standards." But it was Prince who "asked whether, given the competitive pressures, there wasn't a role for regulators to tamp down some of the riskier practices." As the former Treasury secretary put it, "[b]asically, [Prince] asked: 'Isn't there something you can do to order us not to take all of these risks?'"

373. Abandonment of prudent loan underwriting would result in substantial damages to investors once the bubble burst – a bubble that was being fueled by the systemic lack of proper loan underwriting practices. Notwithstanding its awareness of the situation, Citi continued its wrongful loan origination and securitization practices because in the short run there was money to be made. Just prior to the ensuing financial meltdown brought about by these wrongful practices, Prince described Citi's strategy for its leveraged loan business: "When the music stops, in terms of liquidity, things will be complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing." Citi reaped enormous profits applying this cavalier strategy to its structured finance business, including the RMBS that Plaintiffs purchased.

374. For years Citi's securitization "factory" was a boon to the bottom line of many of its different businesses. For example, CMLTI and CMSI, as depositors, received as payment a

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[4] Citi's CEO Prince received a $38 million severance package following the announcement that Citi's total subprime exposure was $55 billion – $42 billion more than it had told investors just three weeks earlier – and for which Citi would have to post an $8 to $11 billion loss.

percentage of the total dollar amount in the securitized trust offering. CGMI, as underwriter, received a commission based on the amount of Certificates sold to investors. Meanwhile, Citigroup increased its earnings.

375. When the music stopped, however, Citi's wrongful abandonment of prudent loan underwriting caused serious and widespread financial damage to Plaintiffs and other investors. Indeed, Citi's loan underwriting practices were so atrocious and widespread that even Citi itself still held a significant number of bad loans on its books that it had failed to securitize and sell to investors. As a result, Citi itself had to write down $1.6 billion of these bad mortgage loans.

f. Citi Admitted to Underwriting Quality Control Failures in a Settlement with the Government

376. Citi's abandonment of prudent loan underwriting was so widespread and ingrained within its corporate culture that it even engaged in these wrongful practices in connection with underwriting and originating mortgage loans that were insured by the U.S. Department of Housing and Urban Development ("HUD"), even through it owed a fiduciary duty to HUD.

377. The U.S. government brought an action against Citi on behalf of HUD relating to Citi's longstanding practice of failing to conduct proper due diligence in connection with its mortgage loan practices. Thus, the federal government alleged in *United States of America ex rel. Sherry A. Hunt v. Citigroup, Inc., et al.*, No. 11-cv-05473 (S.D.N.Y. Feb. 15, 2012) (Dkt. No. 12), that starting in 2004, when Citi moved its quality control department "in-house," and lasting at least until 2011, Citi failed to conduct adequate reviews of mortgages it had originated that were insured by the Federal Housing Administration ("FHA"), an entity of HUD.

378. In the government's case against Citi, the government allegations drew on the experiences and statements of Sherry A. Hunt, a Citi whistleblower with first-hand knowledge:

> Citi's quality control reports became – and remain – a battleground within Citi, with those in Citi's business production units applying what they describe as 'brute force' to pressure Citi's quality control managers to downgrade their findings. Indeed, Citi's own director of quality control described the business personnel's conduct as 'nothing short of abuse and bordering on fraudulent actions.'

379. That the business production units pressured the quality control department to ignore poorly underwritten loans meant Citi failed to maintain an adequate self-reporting system for fraud or other material underwriting violations, as required by HUD. Thus, as the government alleged, its records showed that "[f]rom 2005 to 2010, Citi failed to report even a ***single loan*** that it had originated or underwritten itself. Instead, in the rare cases where Citi did actually self-report a loan, the loan was always one that Citi had purchased from another lender" (emphasis in original).

380. The U.S. government further alleged that Citi's quality control program failed to prevent reckless lending and pressured quality-control managers to change negative reviews of a poorly underwritten mortgage. In particular, it alleged:

> Since 2004, Citi has endorsed nearly 30,000 mortgages for FHA insurance, totaling more than $4.8 billion in underlying principal obligations. Of those loans, 9,363 (or more than 30% percent [sic]) have defaulted. Citi's default rate soared to more than 47% for loans originated in 2006 and 2007. In other words, nearly every other loan Citi endorsed for FHA insurance in the critical years leading up to the financial crisis defaulted, resulting in foreclosures and evictions and ultimately depressed real estate values, all to the detriment of the national housing market and the national economy. Moreover, of the loans Citi originated in 2007, over 10.5% went into early payment default. HUD has already paid nearly $200 million in insurance claims on loans that Citi originated or underwrote since 2004. A substantial percentage of those claims resulted from loans that were ineligible for FHA insurance and never should have been insured.

381. In February 2012, Citi settled with the government for $158.3 million. As part of the settlement, Citi admitted that during the period January 1, 2004 to the date the settlement was signed, "CitiMortgage failed to comply fully with all HUD-FHA requirements with respect to certain loans" and "CitiMortgage endorsed for FHA mortgage insurance . . . certain loans that did not meet underwriting requirements contained in HUD's handbooks and mortgagee letters, and therefore were

not eligible for FHA mortgage insurance." Citi's admitted underwriting failures in regards to FHA loans are representative of its firm-wide conduct and practice of abandoning prudent loan underwriting.

g. Citi Sought to Profit from Lack of Proper Underwriting by Shorting Related RMBS

382. Citi sought to further profit from its knowledge that mortgage loans it had securitized or packaged into securities were likely to default because they had not been properly underwritten. Based on Citi's inside knowledge of these wrongful practices, it secretly sold short the very same securities it was selling to investors without disclosing it was taking a short position in these investments because it was expected that they would decline in value once the underlying poorly underwritten loans began to go into default.

383. Based on this wrongful conduct, the SEC brought a complaint against Citi on October 19, 2011 which details Citi's practice of creating collateralized debt obligation ("CDO") securities that were backed by residential mortgages, where Citi expected these mortgages to default, and Citi was secretly shorting these securities in order to profit from this undisclosed adverse information. The SEC alleges Citi's "marketing materials failed to disclose to investors that Citigroup had exercised significant influence over the selection of $500 million of the assets in the . . . investment portfolio, and that Citigroup had retained a short position in those assets." By effectively shorting mortgages it knew were poorly underwritten, Citi knowingly stacked the deck in its favor so it could gain hundreds of millions of dollars when the bad mortgages ultimately flopped.

6. Citigroup Global Markets Inc.'s Liability as an Underwriter of the Citi Certificate

384. CGMI made the false and misleading statements alleged above, which were contained in the Prospectus Supplements endorsed and used by CGMI in the sale of certificates to investors.

385. As underwriter, CGMI edited, drafted and controlled the content of the Citi Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, CGMI received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, CGMI then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

386. CGMI, an affiliate of the other Citi Defendants, engaged in the concerted action of issuing RMBS, and had knowledge that Citi, as alleged herein, failed to adhere to underwriting standards when it pooled mortgage loans for its RMBS, including for the Citi Trusts. It also participated in providing distorted information to the rating agencies that was purposefully manipulated to meet the targeted rating. Further, CGMI, knew or was reckless in not knowing, of the defective loans in the Citi Trusts as a result of its due diligence performed as an underwriter for the Citi Trusts. CGMI had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans Citi deposited in the Citi Trusts had a practice of routinely and systematically disregarding the stated underwriting standards.

387. CGMI also knew that mortgage loans deposited into the Citi Trusts were not properly underwritten because CGMI was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to Citi's corporate-wide abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to the Citi Trusts, CGMI underwrote and sold many other Citi RMBS to investors and had in that context gained inside knowledge of the poor quality loan underwriting.

7. UBS's Liability as an Underwriter of the Citi Certificate

388. UBS Securities was also a maker of the false and misleading statements alleged above regarding the CMSI 2007-5 Trust, which were contained in the Prospectus Supplement endorsed and used by UBS Securities in the sale of certificates to Union Central.

389. As underwriter, UBS Securities edited, drafted and controlled the content of the CMSI 2007-5 Trust Offering Materials, including with respect to the material misstatements and omissions alleged above in §V.B. In connection with its due diligence on the offering of the Certificates sold to Plaintiffs, UBS Securities received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, UBS Securities then used and disseminated these false and misleading Offering Materials to plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

390. UBS Securities also knew that mortgage loans deposited into the CMSI 2007-5 Trust were not properly underwritten because UBS Securities was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged in Section V.G. In addition to the CMSI 2007-5 Trust, UBS Securities underwrote and sold many other defective RMBS to investors, as Plaintiffs allege below, and had in that context gained inside knowledge of the poor quality loan underwriting used in connection with the CMSI 2007-5 Trust.

C. Goldman Sachs

1. Goldman's Securitizations

391. Union Central purchased Certificates sponsored by Goldman Sachs on February 27, 2007. Union Central made the following two purchases representing a total investment of approximately $11 million:

CUSIP	Description	Issuing Entity	Issue Date	Purchase Date
36298NBZ6	GSR 2006-7F M1	GSR Mortgage Loan Trust 2006-7F	7/1/2006	02/27/2007
3622X7AU0	GSR 2006-9F M1	GSR Mortgage Loan Trust 2006-9F	10/1/2006	02/27/2007

392. GSR Mortgage Loan Trust 2006-9F was a $1.31 billion deal comprising 2,539 purportedly fixed-rate mortgages with either 30-year or 15-year terms. GSR Mortgage Loan Trust 2006-7F was a $606.9 million deal comprising 983 purportedly fixed-rate mortgages with primarily 30-year terms.

2. False and Misleading Statements in Goldman's Offering Materials

a. False and Misleading Statements About Compliance With Underwriting Standards

393. As sponsor of the securitizations, Goldman either originated the underlying mortgages through its Conduit Program, or purchased the underlying mortgage loans from other originators, primarily Bank of America, Countywide, National City, SunTrust Mortgage and Washington Mutual. The Offering Materials represented that each of the loan sellers applied underwriting standards which were designed to ensure that borrowers could repay their loans.

(1) Bank of America

394. The Goldman Offering Materials described the underwriting guidelines BofA used to originate the loans that it sold to the trust. According to the Offering Materials, all origination

channels required borrowers to provide sufficient information to allow Bank of America to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> Regardless of the channel in which the loan was originated, a mortgage application is completed containing information that assists in evaluating the mortgagor's credit standing, capacity to repay the loan and adequacy of the mortgaged property as collateral for the loan.
>
> * * *
>
> Each mortgage loan underwritten to Bank of America's general underwriting standards is underwritten in accordance with guidelines established in Bank of America's Product and Policy Guides (the "Product Guides"). These underwriting standards applied by Bank of America in originating or acquiring mortgage loans are intended to evaluate the applicants' repayment ability, credit standing, and the adequacy of the mortgage property as collateral for the mortgage loan. The underwriting standards as established in the Product Guides are continuously updated to reflect prevailing conditions in the residential market, new mortgage products, and the investment market for residential mortgage loans.

(2) Countrywide

395. The Goldman Offering Materials described the underwriting guidelines Countrywide used to originate the loans that it sold to the trust. According to the Offering Materials, Countrywide's loan underwriting was designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> Countrywide Home Loans' underwriting standards are applied by or on behalf of Countrywide Home Loans to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral.

(3) National City

396. The Goldman Offering Materials described the underwriting guidelines National City used to originate the loans that it sold to the trust. According to the Offering Materials, National City's loan underwriting was designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> National City's underwriting standards are applied to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral.

397. The Goldman Offering Materials also described policies, procedures, and quality control programs in place at the bank to ensure compliance with National City's underwriting and other standards:

> National City Mortgage utilizes comprehensive, detailed policies and procedures available to all employees through the company's Intranet. These policies and procedures consist of operations policies and procedures manuals, underwriting manuals, product guidelines, the index of credit policy statements and the company's responsible lending policy.
>
> Corporate asset quality measures including statistical audits, targeted reviews, investor audits, quality and compliance reviews for branches with higher defect rates and production action plans are applied across the organization.

(4) SunTrust Mortgage

398. The Goldman Offering Materials described the underwriting guidelines which SunTrust Mortgage used to originate the loans that it sold to the trust. According to the Offering Materials, SunTrust Mortgage's loan underwriting was designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> SunTrust underwriting guidelines generally follow standard Fannie Mae guidelines. They are designed to evaluate the borrower's capacity to repay the loan, to evaluate the credit history of the borrower, to verify the availability of funds required for closing and cash reserves for fully documented loans, and to evaluate the acceptability and marketability of the property to be used as collateral.

(5) Washington Mutual

399. The Goldman Offering Materials described the underwriting guidelines which Washington Mutual used to originate the loans that it sold to the trust. According to the Offering Materials, Washington Mutual's loan underwriting was designed to evaluate the capacity of the borrower to repay the loan and the adequacy of the collateral:

> WaMu's underwriting guidelines generally are intended to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral.

(6) Statements Regarding Goldman's Review of Underwriting Standards

400. Goldman assured investors that it was an active and experienced securitization sponsor who since 2001 had successfully sponsored the securitization of approximately $130 billion of residential mortgage loans with various risk profiles.

401. The Offering Materials stated that Goldman had conducted a thorough review of these loan sellers prior to acquiring any mortgage loans:

> Prior to acquiring any mortgage loans, GSMC will conduct a review of the related mortgage loan seller. GSMC's review process consists of reviewing select financial information for credit and risk assessment and underwriting guideline review, senior level management discussion and background checks. The scope of the loan due diligence will depend on the credit quality of the mortgage loans.

402. In addition, Goldman represented that it reviewed the adequacy of the loan seller's underwriting guidelines, including its mortgage loan origination processes, systems and quality control procedures:

> The underwriting guideline review considers mortgage loan origination processes and systems. In addition, such review considers corporate policy and procedures relating to the [Home Owner's Equity Protection Act] and state and federal predatory lending, origination practices by jurisdiction, historical loan level loss experience, quality control practices, significant litigation and material investors.

b. False and Misleading Statements About Appraisals and LTV Ratios

403. The Goldman Offering Materials represented that the underlying mortgaged properties would provide adequate security for the mortgage loans, based in part on the appraised value of the properties securing the mortgage loans underlying the Certificates. The adequacy of the mortgaged properties as security for repayment of the loans will have generally been determined by appraisals, conducted in accordance with pre-established guidelines.

404. Each securing property was to be appraised by a qualified, independent appraiser, and each appraisal was required to satisfy applicable government regulations and be on forms acceptable to Fannie Mae and Freddie Mac. As required by Fannie Mae and Freddie Mac, and as represented

by the underwriting standards set forth in certain of the Prospectus Supplements, the appraisals were to be in conformity with the USPAP, as adopted by the Appraisal Standards Board of the Appraisal Foundation. The Registration Statements expressly stated that "All appraisals [must] conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation."

405. As represented in the Goldman Offering Materials, the LTV ratio of a mortgage loan at any time is the fraction, expressed as a percentage, the numerator of which is the outstanding principal balance of the mortgage loan and the denominator of which is the collateral value of the related mortgaged property. The collateral value of a mortgage property, other than with respect to housing contracts and certain mortgage loans the proceeds of which are used to refinance an existing loan, is the lesser of: (a) the appraised value determined in an appraisal obtained by the originator at origination of such loan; or (b) the sales price for such property.

406. The Goldman Prospectus Supplements also provided information regarding the weighted average LTV ratio of the loans underlying the Certificates. The 2006-9F Prospectus Supplement stated that the weighted average original LTV ratio for all mortgage loans was 70.41%. The 2006-7F Prospectus Supplement stated that the weighted average original LTV ratio for all mortgage loans was 73%.

c. False and Misleading Statements About Debt-to-Income Ratios

407. The Goldman Offering Materials contained numerous statements regarding the evaluation of DTI ratios for the borrowers whose loans populated the trusts. Absent compensating factors, the Offering Materials described the manner in which the loan originators evaluated DTI ratios for borrowers.

408. For example, with respect to both Goldman Trusts, the Offering Materials described Countrywide's practices as follows:

> [A] prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the "debt-to-income" ratios) are within acceptable limits.
>
> * * *
>
> Under its underwriting guidelines, Countrywide Home Loans generally permits a debt-to-income ratio based on the borrower's monthly housing expenses of up to 33% and a debt-to-income ratio based on the borrower's total monthly debt of up to 38%.

409. The Goldman Offering Materials described Bank of America's practices as follows:

> As part of the underwriting evaluation, the applicant's "Debt-to-Income Ratio" is calculated as the amount of the monthly debt obligations (including the proposed new housing payment and related expenses such as property taxes and hazard insurance) to his or her gross monthly income. Bank of America's Debt-to-Income Ratio guidelines are based on the loan instrument, loan term, Credit Score, loan-to-value ratio, property type, and occupancy characteristics of the subject loan transaction.

410. The Goldman Offering Materials described Washington Mutual's practices as follows:

> In evaluating a prospective borrower's ability to repay a mortgage loan, the loan underwriter considers the ratio of the borrower's mortgage payments, real property taxes and other monthly housing expenses to the borrower's gross income (referred to as the "housing-to-income ratio" or "front end ratio"), and the ratio of the borrower's total monthly debt (including non-housing expenses) to the borrower's gross income (referred to as the "debt-to-income ratio" or "back end ratio").

411. The DTI ratios were a material part of the underwriting process, and specific DTI ratios for the loans underlying the Goldman Certificates were set forth in their Offering Materials.

d. False and Misleading Statements About Owner-Occupancy

412. The Offering Materials contained specific disclosures about the occupancy-rate status of the loans underlying the Certificates.

413. The Series 2006-7F Offering Materials stated that 912 out of the 983 loans, or 92.7% of the aggregate principal balance of the mortgage loans, were for owner-occupied properties. The remaining 71 loans were purportedly for second homes. No loans were described being for investment properties.

414. The Series 2006-9F Offering Materials stated that 2,136 out of the 2,359 loans, or 90.93% of the aggregate principal balance of the mortgage loans, were for owner-occupied properties. 171 of the remaining loans were for second homes and 52 were for investment.

e. False and Misleading Statements About Ratings

415. The Offering Materials for both Trusts stated that the issuance of the Certificates was conditioned on obtaining the ratings as set forth in the Prospectus Supplement. Further, the ratings reflected the likelihood that investors would receive the distributions to which they were entitled:

> It is a condition to the issuance of the securities of each series offered by this prospectus and by the related prospectus supplement that the nationally recognized statistical rating agency or agencies specified in the prospectus supplement shall have rated the securities in one of the four highest rating categories.
>
> Ratings on mortgage-backed securities address the likelihood of receipt by securityholders of all distributions on the underlying mortgage loans or other assets. These ratings address the structural, legal and issuer-related aspects associated with such securities, the nature of the underlying mortgage loans or other assets and the credit quality of the guarantor, if any.

416. The Offerings Materials also set forth the specific ratings for the Certificates purchased by Union Central. Both certificates were rated AA+ by Fitch.

417. In obtaining these ratings for the subject Certificates, Goldman concealed the adverse information alleged herein from the rating agencies. Had the rating agencies known the true value of

the loans underlying the Certificates, the Certificates would have been rated significantly lower, or not at all.

3. Goldman's Statements Were Knowingly False and Misleading

418. Goldman knew, or was reckless in not knowing, that the statements identified above were materially false and misleading and/or omitted material facts necessary to make the statements made not misleading. As set forth herein, the Goldman Defendants had actual knowledge that the stated underwriting guidelines were not being adhered to and, rather than provide truthful information and disclosures to Union Central and other investors, it used that knowledge to reap massive profits for itself by betting against the very home mortgage securities Goldman was selling to investors.

a. Goldman Knew that Underwriting Standards Had Been Abandoned

419. While the Offering Materials set forth detailed underwriting guidelines which were supposed to have been used to evaluate borrowers, the value of the underlying property and whether to make the loans, in fact the stated underwriting guidelines had been abandoned by the loan originators.

420. The originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default. Instead, the originators, using Goldman's own financing and encouraged by Goldman and other investment banks' insatiable appetite for acquiring loans regardless of their quality, approved loans which they knew were based on falsified information and which did not comply with any of the stated underwriting guidelines.

421. Countrywide had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Goldman for inclusion in the subject Trusts, as alleged above at §IV.I.2.

422. Washington Mutual had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Goldman for inclusion in the subject Trusts, as alleged above at §V.A.

423. SunTrust had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Goldman for inclusion in the subject Trusts, as alleged at §V.G.5.

424. National City had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Goldman for inclusion in the subject Trusts, as alleged above at §IV.I.10.

425. Other parties who have had access to the actual loan files in Goldman loan securitization from the relevant time period have confirmed that improperly underwritten loans were routinely securitized by Goldman during this period. A review of Goldman origination standards in connection with a similar 2007 home equity trust, issued by Goldman around the same time as those sold to Plaintiffs in this case, reflects Goldman's wrongful practice of including loans in securitizations regardless of whether they met the required quality levels that would have been maintained if originators had used proper loan underwriting practices. In 2011, CIFG Assurance North America, Inc. sued Goldman for fraud and breach of contract. *CIFG Assurance N.Am. v. Goldman, Sachs & Co.*, Index No. 652286/2011 (Sup. Ct. N.Y. Aug. 16, 2011) (Dkt. No. 1-1). Generally, CIFG alleges that Goldman made numerous false and misleading statements in connection with an RMBS for which CIFG provides insurance. CIFG hired an outside consultant to conduct an analysis of 491 non-performing loans within the loan portfolio. The consultant

determined that approximately 80% of the loans in the sample "did not comply with [Goldman's] representations and warranties."

(1) Skyrocketing Default Rates Are Evidence of Abandonment of Underwriting Standards

426. The Certificates purchased by Union Central were supposed to be stable, long-term investments backed by investment-grade credit ratings. However, the extraordinary number of defaults on the mortgage loans underlying Union Central's Certificates is prima facie evidence that the stated underwriting standards and loan characteristics represented in the Offering Materials were materially false and misleading.

427. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses, for the Certificates purchased by Union Central as of June 2010:

Certificate	Original Deal Size	Delinquent, Bankruptcy Foreclosure, REO Actual Bal.	Collateral Cumulative Losses
2006-7F	$609,955,387	$84,657,748	$6,429,957
2006-9F	$1,397,058,850	$115,003,783	$10,713,540

428. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of delinquency, bankruptcy and foreclosure would be far lower than the current rates. Indeed, Moody's maximum expected collateral losses for the life of the GSR 2006-7F Certificate was only $2.44 million. Moody's maximum expected collateral losses for the life of the GSR 2006-9F Certificate was $5.52 million.

(2) Appraisals and LTV Ratios Were Inflated

429. The descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in the Offering Materials, and in

violation of any legitimate appraisal standards, many of the loans underlying the Certificates had been approved through the use of manipulated appraisals that guaranteed that the collateral property would be valued at a price sufficient to support the loan. Such practices have been confirmed through modeling by other parties who experienced similar Goldman RMBS issued in the same time period as Plaintiffs, and it demonstrates that appraisals used in connection with Goldman securitizations in 2006 were routinely inflated.

430. For instance, the plaintiffs in *Allstate Ins. Co. v. Goldman, Sachs & Co., et al.*, Index No. 652273/2011 (Sup. Ct. N.Y. Aug. 15, 2011), conducted an AVM analysis of a sample of the property underlying the Goldman offerings at issue in that litigation. *Allstate v. Goldman* Complaint (Dkt. No. 1), ¶¶100-111. The *Allstate v. Goldman* plaintiffs' analysis demonstrates that the valuation of the loans underlying the certificates were materially and consistently inflated, and therefore that the stated LTV ratios were materially overstated, which in turn greatly increased the risk of default for the loans underlying the certificates. For example, the loan pools at issue in that case, *i.e.*, GSAA 2006-13, GSAMP 2006-HE7 and GSAMP 2006-HE5, were issued around the same time as those sold to plaintiffs and they similarly contained false representations regarding the loans' LTV ratios. Specifically, the GSAA 2006-13, GSAMP 2006-HE7 and GSAMP 2006-HE5 trusts were represented to have weighted average LTV ratios of 74%, 77% and 80.5% respectively. However, the *Allstate v. Goldman* plaintiffs' analysis showed the actual weighted average LTV ratios were significantly higher at 82%, 89% and 88.3% respectively.

431. Similarly, while none of the certificates where supposed to contain loans that had a LTV ratio over 100%, the *Allstate v. Goldman* plaintiffs' analysis found that a significant number of loans had LTV ratios of over 100% – in other words, the value of the loan was more than the value of the property. With respect to the GSAA 2006-13, GSAMP 2006-HE7 and GSAMP 2006-HE5

certificates, the *Allstate v. Goldman* plaintiffs found LTV ratios greater than 100% in 7.6%, 24.6%, 20.6% of the loans in those respective trusts.

432. Consistent with *Allstate v. Goldman*'s analysis showing Goldman Defendants routine practice of securitizing loans with misstated LTV ratios, the FHFA performed a similar review to determine if the LTV ratios disclosed in the forty Goldman securitizations at issue in its case against Goldman were accurate. *FHFA v. Goldman Sachs & Co., et al.*, No. 11-CV-6198 (S.D.N.Y. Sept. 2, 2011). The FHFA found that for every securitization they analyzed, the percentage of loans having LTV ratios 80% or less was overstated. Further, the percentage of loans having LTV's of over 100% ranged from 2% to as high as 23%. *FHFA v. Goldman* Complaint (Dkt. No. 1), ¶¶113-118

433. As alleged above, Goldman had inside knowledge regarding the lack of proper underwriting practices, including that its loan originators used flawed appraisals that overstated property values in order to meet the targeted loan amount regardless of true valuation considerations.

434. Many of the loans in the subject Trusts had overstated property valuations, thereby decreasing stated LTV ratios, as a result of the manipulation of the appraisals conducted on the underlying properties. Instead of conducting appraisals designed to accurately value the subject property in compliance with the USPAP, Goldman accepted appraisals conducted on the underlying properties that, if they were conducted at all, were designed to hit valuation targets to allow loans to be funded and sold in RMBS.

(3) Debt-to-Income Ratios Were Falsified

435. The statements contained in the Offering Materials regarding the acceptability and evaluation of DTI ratios, as well as many of the specific DTI ratios disclosed, were materially false and misleading. In fact, Goldman and the originators knew that borrowers routinely falsified their stated incomes in order to have loans approved.

436. In the case of stated income loans, for example, Goldman and the originators knew that many borrowers claimed incomes that did not come anywhere near a reasonable level for their stated occupations.

437. Plaintiffs have examined certain of the loans contained in the 2007-7F and 2006-9F Trusts and found numerous examples of loans where DTI ratios were falsified and where obvious signs of fraud or misrepresentations were either accepted or ignored.

438. The 2006-7F Trust included a $560,000 loan to refinance a primary residence in Modys, Maryland in May 2006. Prior to the refinancing, the borrower had competed three cash-out transactions in 2001, 2003 and then 2004. While the 2006-7F securitization reported a DTI ratio for this borrower of 38%, the borrower's DTI was in fact no less than 142%.

439. The 2006-7F Trust included a $617,250 loan for a primary residence in Aledo, Texas in May 2006. The property in question was disclosed as being a primary residence, in spite of the fact that the borrower had purchased two separate properties in the three months prior to Aledo property and obtained loans for over $1 million for the two prior properties. Public records indicate that the borrower was a 23-year old with a high school education residing in Maryland. All three properties had early payment defaults and had to be sold in foreclosure.

440. The 2006-7F Trust included a $700,000 loan for a cash-out refinance on a primary residence in Santa Clarita, California in May 2006. The 2006 cash-out refinance was the third cash-our transaction completed by the borrowers since 2002. The refinancings appear to have been attempts to prop up a failing business which reported losses of over $125,000 in 2006, the year that the loan was originated. Given the borrowers' negative income, their DTI ratio would have been infinite.

(4) Owner-Occupancy Rates Were Falsified

441. In addition to the examples above relating to Goldman's misrepresentations regarding the owner-occupancy rates of subject properties underlying the Trusts, the *Allstate v. Goldman* plaintiffs' loan-level analysis of thousands of loans securitized by Goldman at the same time as the loan securitizations at issue here, further reveals Goldman's widespread practice of including loans in its securitizations without accurately disclosing the true owner-occupancy rates with respect to the underlying loans.

442. The *Allstate v. Goldman* plaintiffs undertook a sophisticated analysis to determine whether a given borrower actually occupied the property as claimed. *Allstate v. Goldman* Complaint, ¶¶90-99. For each offering, the *Allstate v. Goldman* plaintiffs "analyzed between 1,444 and 1,600 randomly-selected loans from within the collateral pool." They then analyzed tax records, credit records, bills, property records and lien records, to determine whether a borrower was actually living in the property subject to the loan.

443. The results of the *Allstate v. Goldman* plaintiffs' analysis demonstrates that the percentage of owner-occupied properties disclosed by Goldman in their prospectuses was consistently false and that the true rate was much lower. The following chart shows the results of their analysis:

Certificate	% Represented in Prospectus	Actual %	Overstatement
GSAMP 2006-HE7	91.9%	82.2%	9.7%
GSAMP 2006-HE5	92.2%	82.1%	10.1%
GSAMP 2006-S4	88.0%	75.3%	12.7%
GSAMP 2006-S3	94.0%	81.6%	12.4%
GSAA 2006-13	77.8%	69.5%	8.3%

444. In addition to *Allstate*, Goldman has been sued by the FHFA. *FHFA v. Goldman*, No. 11-CV-6198 (S.D.N.Y.).

445. The FHFA performed a similar analysis to determine whether the owner-occupancy rates disclosed in the Prospectuses for the forty Goldman securitizations at issue there were accurate. According to the FHFA's review, most of the Goldman securitizations understated the percentage of owner-occupied properties by approximately 8%-12%.

b. Goldman Knew that Underwriting Standards Were Being Abandoned

446. Goldman had actual knowledge that the loans it securitized in the Trusts sold to Union Central did not comply with the stated underwriting guidelines contained in the Offering Materials, and that the quantitative and qualitative data contained in the Offering Materials was materially false and misleading. Indeed, Goldman utilized this knowledge to profit from the defective loans it securitized by taking short positions on securities sold to its clients, and by pocketing discounts on defective loans sold by the very originators whose operations Goldman sustained through its warehouse funding.

(1) Goldman Had Actual Knowledge of the Defective Loans They Were Securitizing

447. Documents recently released by Clayton confirm that there were rampant underwriting violations in the loan pools contained in the Goldman Certificates. As the FCIC described, in the internal Clayton "Trending Report" made public by the government in conjunction with testimony given in September 2010, Goldman Sachs received regular reports regarding defective loans, and 23% of the loans Clayton reviewed for Goldman "failed to meet guidelines." These loans were not subject to any proper "exceptions," as they did not have any "compensating factors." Rather, these loans were plainly defective.

448. Despite such a high level of nonconforming loans, Goldman nevertheless continued utilizing, and indeed funding, the same originators who had supplied these defective loans for Goldman's securitizations and it "waived in" to its pools 29% of those toxic loans that Clayton had identified as being outside the guidelines. These baseless waivers were never disclosed to Union Central or any of the investors who purchased Goldman certificates.

449. Clayton's data demonstrates that underwriting guidelines were being routinely violated, and that Goldman was informed of such violations. Indeed, Goldman conducted due diligence on all the originators from whom it purchased loans, and for loans included in the offerings, to determine whether there was compliance with the approved underwriting guidelines. The results of these reviews confirmed that the loan originators were routinely violating the stated underwriting standards and that a large number of the loans Goldman securitized did not comply with the stated underwriting standards.

450. The Offering Materials stated that Goldman conducted due diligence on the lenders who originated the loans, and reviewed their underwriting standards:

> Prior to acquiring any mortgage loans, GSMC will conduct a review of the related mortgage loan seller. GSMC's review process consists of reviewing select financial information for credit and risk assessment and underwriting guideline review, senior level management discussion and background checks. The scope of the loan due diligence will depend on the credit quality of the mortgage loans.

451. In addition, the Offering Materials represented that Goldman reviewed the adequacy of the loan seller's underwriting guidelines, including its mortgage loan origination processes, systems and quality control procedures:

> The underwriting guideline review considers mortgage loan origination processes and systems. In addition, such review considers corporate policy and procedures relating to HOEPA and state and federal predatory lending, origination practices by jurisdiction, historical loan level loss experience, quality control practices, significant litigation and material investors.

452. The Offering Materials also stated that Goldman would re-underwrite sample pools of the loans it purchased to determine whether they were originated in compliance with applicable underwriting guidelines. For example, in both Prospectus Supplements, Goldman explained that it had the option to re-underwrite a sample of the RMBS loan pool:

> We may, in connection with the acquisition of mortgage loans, re-underwrite the mortgage loans based upon criteria we believe are appropriate depending to some extent on our or our affiliates' prior experience with the lender and the servicer, as well as our prior experience with a particular type of loan or with loans relating to mortgaged properties in a particular geographical region. A standard approach to re-underwriting will be to compare loan file information and information that is represented to us on a tape with respect to a percentage of the mortgage loans we deem appropriate in the circumstances.

453. The Senate PSI Report confirms that Goldman routinely conducted due diligence on the mortgage loan pools that it purchased and securitized. Specifically, it noted: "Goldman, either directly or through a third party due diligence firm, routinely conducted due diligence review of the mortgage loan pools it bought from lenders or third party brokers for use in its securitizations." These reviews revealed to Goldman that its loan originators Countrywide, Washington Mutual, SunTrust and others had abandoned prudent loan underwriting practices.

(2) Goldman Used Its Knowledge of Defective Loans to Secure Further Profits for Itself at the Expense of Investors

454. Goldman did not use its due diligence reviews to protect investors from defective loans. Rather, Goldman used its knowledge that loans in its securitization were of extremely poor quality due to the lack of proper underwriting to force loan originators to accept lower prices for the loan pools, thereby providing itself even greater profits when it sold the defective loan pools to investors such as Plaintiffs. According to the September 2010 FCIC testimony of Clayton's former president, D. Keith Johnson, the investment banks would use the exception reports to force a lower price for itself, and not to benefit investors at all:

> I don't think that we added any value to the investor, the end investor . . . [t]o get down to your point. . . . I think only our value was done in negotiating the purchase between the seller and securitizer. Perhaps the securitizer was able to negotiate a lower price, and could maximize their buying but we added no value to the investor and to the rating agencies.

FCIC Staff Int'v with D. Keith Johnson, Clayton Holdings, LLC (Sept. 2, 2010), *available at* http://fcic.law.stanford.edu/resource/interviews; *see also* Senate PSI Report at 484 n.2036 ("Goldman or a third party due diligence firm it hired typically examined a sample of the loans. Based on the number of problem loans found in the sample, Goldman or the due diligence firm extrapolated the total percentage of problem loans likely to be contained in the pool. This information was then factored into the price Goldman paid for the pool.").

455. Despite the large number of defective loans Goldman knew were being produced by its originators, Goldman continued purchasing loans from such originators as part of its massive RMBS machine that generated records profits for Goldman. Indeed, Goldman provided "warehouse" lines of credits to many originators which were used to fund the defective loans which were ultimately sold to Goldman. Such warehouse loans were repaid when the originator's loan pool was sold to Goldman for securitization. As the FCIC discussed:

> Under Paulson's leadership, Goldman Sachs had played a central role in the creation and sale of mortgage securities. From 2004 through 2006, the company provided billions of dollars in loans to mortgage lenders; most went to the subprime lenders Ameriquest, Long Beach, Fremont, New Century, and Countrywide through warehouse lines of credit, often in the form of repos. During the same period, Goldman acquired $53 billion of loans from these and other subprime loan originators, which it securitized and sold to investors.

456. Goldman's position as a source of "warehouse" lines of credit gave it unique knowledge of the conditions under which mortgage loans were originated. The lines of credit allowed Goldman to control the origination practices of these lenders and gave Goldman an inside look into the true quality of the loans they originated. As one industry publication explained,

warehouse lenders like Goldman have "detailed knowledge of the lender's operations." Kevin Connor, *Wall Street and the Making of the Subprime Disaster*, at 11 (Nov. 2007).

457. Such warehouse lines gave Goldman the inside knowledge regarding the loans that were generated using Goldman funds. Because of its financial arrangements with warehouse lenders, Goldman was incentivized to buying the loans that secured its warehouse lines regardless of their quality and the results of Goldman's due diligence. Indeed, Goldman needed to purchase the loans with little or no objection to keep the lenders supplied with capital to pay fees and interest owed on the lines of credit. It was also important to Goldman that it protect its business relationships with warehouse lenders in order to ensure a steady flow of loans for securitization.

458. According to a former Goldman Sachs Client Relationship Manager, who from 2005 to 2008 served as a liaison between Goldman personnel who bought loans for securitization and the loan originators, Goldman freely purchased loans for securitization that they knew were "bad loans." According to this former employee, Goldman did so because they knew they would be able to pass the risk of default or non-payment to the buyers of the certificates, thereby making a profit while avoiding the risk.

(3) Goldman Shorted the Very RMBS It Was Selling to Its Clients

459. Goldman's scienter is also demonstrated by the way in which it treated the financial products it sold to investors such as Union Central. The FCIC Report found that Goldman used a variety of pejorative terms to describe the products it sold to its customers, including characterizing certain deals as "junk," "dogs," "big old lemons," and "monstrosities." Indeed, putting its money where its mouth was, Goldman began an aggressive campaign to profit from the failure of the toxic RMBS it sold to investors such as Union Central.

460. In 2006, Goldman began to take an increasingly negative view of the housing market. Goldman's sophisticated and powerful proprietary models analyzed trends in the performance of hundreds of thousands of mortgages that collateralized its RMBS, and those models and the superior access to data regarding the underlying mortgage positions on its books gave Goldman unique knowledge that those securities were not as safe as their offering materials and ratings represented to investors. In fact, Goldman's models and data showed that the RMBS [would] decline up to 70 percent from their face amounts. In his book, *Money and Power: How Goldman Sachs Came to Rule the World,* 494-95 (2011) William D. Cohan explained:

> [Goldman's RMBS] model could analyze all the underlying mortgages and value the cash flows, as well as what would happen if interest rates changed, if prepayments were made, or if the mortgages were refinanced. The model could also spit out a valuation if defaults suddenly spiked upward . . . . [Goldman's] proprietary model was telling [Goldman] that it would not take much to wipe out the value of tranches of a mortgage-backed security that had previously looked very safe, at least in the estimation of the credit-rating agencies that had been paid (by Wall Street) to rate them investment grade. . . . By tweaking the various assumptions based on events that seemed increasingly likely, [Goldman's] models were showing a marked decrease in the value of mortgage-related securities. "[Goldman's] models said even if you don't believe housing prices are going to go down, even if we apply low-probability scenarios about it going negative . . . there's no way this stuff can be worth anywhere near one hundred [cents on the dollar]". . . . [Goldman's] models had them pegged anywhere between 30 cents and 70 cents.

461. According to a former Goldman employee, these models as well as other information in Goldman's exclusive possession showed "the writing on the wall in this market as early as 2005," Gretchen Morgenson & Louise Story, "Banks Bundled Bad Debt, Bet Against It and Won," *N.Y. Times*, Dec. 24, 2009, and into the "the early summer of 2006," Senate PSI Report at 398. Goldman exploited its asymmetric access to, and possession of, information about the weakness in the mortgage loans collateralizing the Certificates it marketed and sold.

462. To reduce its massive financial exposure to the subprime mortgage market, Goldman began looking for ways to short the market (*i.e.*, to make investments which would rise in value

and/or make payments to Goldman as the subprime mortgage market declined). Its shorting strategies included the purchase of credit default swap protection on the very RMBS positions it sold into the market. Goldman bet that the RMBS would decline in value and/or default, thereby requiring its swap counterparty to pay Goldman.

463. As a recent magazine article explained, "Goldman was like a car dealership that realized it had a whole lot full of cars with faulty brakes. Instead of announcing a recall, it surged ahead with a two-fold plan to make a fortune: first, by dumping the dangerous products on other people, and second, by taking out life insurance against the fools who bought the deadly cars." Matt Taibbi, "The People vs. Goldman Sachs, *Rolling Stone*, May 26, 2011, *available at* http://www.rollingstone.com/politics/news/the-people-vs-goldman-sachs-20110511.

464. As the Senate PSI Report explained, throughout 2006 and 2007, Goldman used its shorting strategy as a way to reduce its own mortgage risk while continuing to create and sell mortgage-related products to its clients. In 2006, Goldman made a massive $9 billion bet that a similar mortgage-backed asset it sold to investors like Union Central would collapse. Senate PSI Report at 419. The $9 billion short bet was placed in 2006 by Goldman's mortgage department. Goldman's net short position in 2007 rose as high as $13.9 billion. *Id.* at 430. Goldman "sold RMBS and CDO securities to its clients without disclosing its own net short position against the subprime market or its purchase of CDS contracts to gain from the loss in value of some of the very securities it was selling to its client."

465. For example, on March 9, 2007, Goldman's Sparks wrote: "Our current largest needs are to execute and sell our new issues – CDOs and RMBS – and to sell our other cash trading positions. . . . I can't overstate the importance to the business of selling these positions and new issues." A leading structured finance expert reportedly called Goldman's practice "the most cynical

use of credit information that I have ever seen," and compared it to "buying fire insurance on someone else's house and then committing arson." FCIC Report; Senate PSI Report. As the Senate PSI found and stated in their Report, Goldman "sold RMBS securities to customers at the same time it was shorting the securities and essentially betting that they would lose value."

466. According to the FCIC Report, Goldman's mortgage business earned a record $266 million in the first quarter of 2007, "driven primarily by short positions, including a $10 billion short position on the bellwether ABX BBB index, whose drop the previous November had been the red flag that got Goldman's attention."

(4) Government Investigation

467. Goldman has been the subject of numerous criminal and regulatory probes related to its mortgage securitization and securities underwriting practices. *See* Susan Pulliam, Kara Scannell, Aaron Lucchetti, Serena Ng, "Wall Street Probe Widens," *Wall St. J.*, May 13, 2010 at A1 (reporting on federal criminal and regulatory investigations of whether Goldman and others "misled investors about their roles in mortgage-bond deals"). These investigations further confirm that Goldman's misrepresentations were not mere isolated, innocent mistakes, but the result of the company's widespread corporate practices and policies that amounted to reckless or intentional misconduct.

468. For example, Goldman's misconduct prompted the Attorney General of Massachusetts to examine whether Goldman:

- failed to ascertain whether loans purchased from originators complied with the originators' stated underwriting guidelines;
- failed to take sufficient steps to avoid placing problem loans into securitization pools;
- failed to correct inaccurate information in securitization trustee reports concerning repurchases of loans; and
- failed to make available to potential investors certain information concerning allegedly unfair or problem loans, including information obtained during loan due

diligence and the pre-securitization process, as well as information concerning Goldman Sachs' practices in making repurchase claims relating to loans in and out of securitizations.

469. Goldman settled with the Commonwealth of Massachusetts, paying it $60 million. In announcing the settlement, the Massachusetts Attorney General stated that Goldman did not take "sufficient steps to avoid placing problem loans in securitization pools." Goldman was also required to forgive all or portions of the balances on many loans it had bought and securitized, which resulted in tens of millions of dollars in additional expenses to Goldman for its wrongful practices.

470. Similarly, the Senate PSI Report concluded that Goldman "knowingly sold high risk, poor quality mortgage products to clients around the world, saturating financial markets with complex, financially engineered instruments that magnified risk and losses when their underlying assets began to fail." The Senate PSI Report also found: "Goldman originated and sold RMBS securities that it knew had poor quality loans that were likely to incur abnormally high rates of default."

471. On September 1, 2011, the Federal Reserve Board sanctioned Goldman Sachs for "a pattern of misconduct relating to deficient practices" in its former mortgage unit, Litton Loan Servicing LP. ("Litton"), including those involving "robo-signing" – a practice often necessitated by the failure to execute and transfer loan documents when depositing loans in RMBS Trusts. As a result of this sanction, Goldman must retain an independent consultant to review certain foreclosure proceedings initiated by Litton. The Federal Reserve has also announced that it believes monetary sanctions are appropriate against Goldman and plans to announce monetary penalties. Goldman's "pattern of misconduct" is further evidence that Goldman Sachs knew of the weakness in the mortgage loans collateralizing the securitizations and had both an ability and willingness to exploit it.

472. On February 27, 2012, Goldman announced in a Form 10-K that it had received a Wells notice from the Securities and Exchange Commission, notifying it that the SEC intends to bring an enforcement action against them. According to media reports, the Wells notice related to mortgage securitizations similar, if not identical, to the loan securitizations that Goldman sold to Plaintiffs.

4. Goldman, Sachs & Co.'s Liability as an Underwriter of the Goldman Certificates

473. Goldman Sachs made the false and misleading statements alleged above, which were contained in the Prospectus Supplements endorsed and used by Goldman Sachs in the sale of Certificates to investors.

474. As underwriter, Goldman Sachs edited, drafted and controlled the content of the Goldman Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, Goldman Sachs received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, Goldman Sachs then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

475. Goldman Sachs, as a subsidiary within Goldman, had knowledge that Goldman, as alleged in §V.C: (1) failed to adhere to underwriting standards when it pooled mortgage loans for its RMBS, including for the Goldman Trusts; and (2) provided distorted information to the rating agencies that was purposefully manipulated to meet the targeted rating. Further, Goldman Sachs, knew or was reckless in not knowing, of the defective loans in the Goldman Trusts as a result of its due diligence performed as an underwriter for the Goldman Trusts. Goldman Sachs had access to

the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans Goldman deposited in the Goldman Trusts had a practice of routinely and systematically disregarding the stated underwriting standards.

476. Goldman Sachs also knew that mortgage loans deposited into the Goldman Trusts were not properly underwritten because Goldman Sachs was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with its securitization of loans, as alleged herein. In addition to the Goldman Trusts, Goldman Sachs underwrote and sold many other such RMBS to investors and had in that context gained inside knowledge of the poor quality loan underwriting being routinely employed and accepted by its affiliates.

D. IndyMac

1. The IndyMac Securitization

477. Union Central purchased a Certificate sponsored by IndyMac on September 17, 2007. Union Central made the following purchase representing a total investment of approximately $3.8 million:

CUSIP	Description	Issuing Entity	Issue Date	Purchase Date
456652AM8	IMJA 2007-A1 B1	Indymac IMJA Mortgage Loan Trust 2007-A1	6/1/2007	9/17/2007

478. IndyMac IMJA 2007-A1 was a $260 million deal comprising 407 purportedly conventional fixed-rate mortgages with 30-year terms.

2. False and Misleading Statements in IndyMac's Offering Materials

a. False and Misleading Statements About Compliance with Underwriting Standards

479. IndyMac stated in its Offering Materials for IMJA 2007-A1 that the majority of the Trust's loans with IMJA 2007-A1 Trust were originated through IndyMac's Conduit program, or were purchased from "Mortgage Professionals," who were required to comply with IndyMac's underwriting guidelines. The Offering Materials represented that all loan sellers were both initially and periodically reviewed thereby giving IndyMac direct notice of their practices:

> IndyMac Bank approves each mortgage loan seller prior to the initial transaction on the basis of the seller's financial and management strength, reputation and prior experience. Sellers are periodically reviewed and if their performance, as measured by compliance with the applicable loan sale agreement, is unsatisfactory, IndyMac Bank will cease doing business with them.

480. The Offering Materials described the underwriting guidelines which IndyMac utilized in originating and purchasing the loans that it deposited in the Trust:

> Mortgage loans that are acquired by IndyMac Bank are underwritten by IndyMac Bank according to IndyMac Bank's underwriting guideline.
>
> * * *
>
> IndyMac Bank's underwriting criteria for traditionally underwritten mortgage loans includes an analysis of the borrower's credit history, ability to repay the mortgage loan and the adequacy of the mortgaged property as collateral. Traditional underwriting decisions are made by individuals authorized to consider compensating factors that would allow mortgage loans not otherwise meeting IndyMac Bank's guidelines.

b. False and Misleading Statements About Appraisals and LTV Ratios

481. The Offering Documents represented that the underlying mortgaged properties would provide adequate security for the mortgage loans, based in part on the appraised value of the properties securing the mortgage loans underlying the Certificates.

482. The Offering Materials stated that appraisals were generally required to be made in accordance with the USPAP:

> To determine the adequacy of the property to be used as collateral, an appraisal is generally made of the subject property in accordance with the Uniform Standards of Profession Appraisal Practice. The appraiser generally inspects the property, analyzes data including the sales prices of comparable properties and issues an opinion of value using a Fannie Mae/Freddie Mac appraisal report form, or other acceptable form. In some cases, an automated valuation model (AVM) may be used in lieu of an appraisal. AVMs are computer programs that use real estate information, such as demographics, property characteristics, sales prices, and price trends to calculate a value for the specific property. The value of the property, as indicated by the appraisal or AVM, must support the loan amount.

483. As represented in the Offering Documents, the LTV ratio of a mortgage loan at any time is the fraction, expressed as a percentage, the numerator of which is the outstanding principal balance of the mortgage loan and the denominator of which is the collateral value of the related mortgaged property. The collateral value of a mortgage property, other than with respect to housing contracts and certain mortgage loans the proceeds of which are used to refinance an existing loan, is the lesser of: (a) the appraised value determined in an appraisal obtained by the originator at origination of such loan; or (b) the sales price for such property.

484. The Prospectus Supplements also provided information regarding the weighted average LTV ratio of the loans underlying the Certificates. The Offering Materials stated that the average original LTV ratio for all mortgage loans was 68.27%, and that all but one loan had an LTV ratio below 80%.

c. False and Misleading Statements About Debt-to-Income Ratios

485. The Offering Materials specifically set forth the DTI ratios for each of the loans included in the IMJA 2007-A1 Trust. With one exception, no borrowers were reported as having DTI ratios in excess of 50%.

d. False and Misleading Statements About Owner-Occupancy

486. The IMJA 2007-A1 Offering Materials contained specific disclosures about the occupancy-rate status of the loans underlying the certificates.

487. The Offering Materials stated that 395 out of the 407 loans, or 96.5% of the aggregate principal balance of the mortgage loans, were for owner-occupied properties. Nine loans were purportedly for second homes. Three loans were described being for investment properties.

e. False and Misleading Statements About Ratings

488. The Offering Materials for the Certificates stated that the ratings of the Certificates as set forth in the Prospectus was a condition for their issuance, and that the ratings reflected the likelihood that investors would receive the distributions to which they were entitled:

> It is a condition to the issuance of the Class B-1, Class B-2 and Class B-3 Certificates that they be rated at least AA, A and BBB, respectively, by S&P.
>
> The ratings assigned by S&P to mortgage pass-through certificates address the likelihood of the receipt of all distributions on the Mortgage Loans by the certificateholders under the agreements pursuant to which the certificates are issued. S&P's ratings take into consideration the credit quality of the mortgage pool . . . .

489. The Offering Materials also set forth the specific ratings for the Certificates purchased by Union Central. The Certificates were rated AA by S&P.

3. Defendants' Statements Were Knowingly False and Misleading

490. IndyMac knew, or was reckless in not knowing, that the statements identified above were materially false and misleading and/or omitted material facts necessary to make the statements made not misleading. As set forth herein, IndyMac Defendant had actual knowledge that the stated underwriting guidelines were not being adhered to.

a. Underwriting Standards Had Been Abandoned

491. While the Offering Materials set forth detailed underwriting guidelines that were supposed to be applied in evaluating borrowers and loans, in fact the stated underwriting guidelines had been abandoned by the loan originators.

492. IndyMac abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default. Instead, IndyMac approved loans which they knew were based on falsified information and which did not comply with any of the stated underwriting guidelines. IndyMac's former CEO, Michael Perry ("Perry") admitted, according to a complaint filed by the FDIC, that IndyMac had failed to engage in '"common sense underwriting,"' instead relying on other underwriting methods that were open to rampant manipulation.

493. According to the FDIC, Perry also admitted that IndyMac's loosening of credit guidelines and lending standards were to blame for IndyMac's spectacular decline in 2007 and 2008. "In an April 19, 2007 e-mail . . . . Perry confirmed: 'Yes, we loosened our credit guidelines too much over the past year or so . . . ." Complaint, *FDIC v. Michael Perry*, No. 11-5561 (C.D. Cal. July 6, 2011).

494. The FDIC also describes a handwritten list by Perry of "'Big Mistakes'" made at IndyMac, further demonstrating the falsity of the Offering Materials statements. The list of '"Big Mistakes,"' included "[g]iving up on documenting income," "[s]econdary selling loans that they knew did not meet our reps and warranties (in particular conduit)," "[c]onduit justifying not investing in basic infrastructure, controls [and] discipline through strong volumes and profits," and "[l]ittle to no overall command and control of credit risk."

(1) Skyrocketing Default Rates Are Evidence of Abandoned Underwriting

495. The IndyMac Certificates purchased by Union Central were supposed to be stable, long-term investments backed by investment-grade credit ratings. However, the extraordinary default rates on the mortgage loans underlying those Certificates is prima facie evidence that the stated underwriting standards and loan characteristics represented in the IndyMac Offering Materials were materially false and misleading.

496. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses, for the Certificates purchases by Union Central as of June 2010:

Certificate	Original Deal Size	Delinquent, Bankruptcy Foreclosure, REO Actual Bal.	Collateral Cumulative Losses
2007-1	$262,509,068	$25,498,892	$5,460,863

497. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of delinquency, bankruptcy and foreclosure would be far lower than the current rates.

(2) Appraisals and LTV Ratios Were Inflated

498. The IndyMac Offering Materials' descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in those Offering Materials, and in violation of any legitimate appraisal standards many of the loans underlying the Certificates had been approved through the use of manipulated appraisals that falsely guaranteed that the collateral property would be valued at a price sufficient to support the loan.

499. An Audit Report on the failure of IndyMac published by the Department of Treasury's Office of Inspector General found serious problems with IndyMac's auditing practices:

> We also found weaknesses with property appraisals obtained to support the collateral on the loans. For example, among other things, we noted instances where IndyMac officials accepted appraisals that were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP). We also found instances where IndyMac obtained multiple appraisals on a property that had vastly different values. There was no evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser. As illustrative of these problems, the file for one 80/20, $1.5 million loan we reviewed contained several appraisals with values ranging between $639,000 and $1.5 million. There was no support to show why the higher value appraisal was the appropriate one to use for approving the loan.

500. A lawsuit filed against IndyMac further confirms that IndyMac violated its underwriting guidelines by artificially inflating the appraised values of properties. In *Cedeno v. IndyMac Bancorp, Inc.*, et al., No. 06-CV-6438 (JGK) (S.D.N.Y. July 20, 2007), the plaintiff, a residential home mortgage borrower, sued IndyMac and alleged that it had improperly and systematically selected and coerced various appraisal professionals so as to generate greater loan volumes. These appraisers would perform faulty and defective appraisal services that inflated the value of residential properties and thereby allowed IndyMac to complete more real estate transactions and obtain greater profits.

501. Cedeno, in her Amended Class Action Complaint (filed on July 20, 2007), alleged, based on confidential witnesses, that "IndyMac threatened and retaliated against appraisers and management firms that failed to give in to pressure to meet the target appraisal values by IndyMac and to inflate the appraisal values." The practice of encouraging inflated appraisal values resulted in borrowers incurring more mortgage debt than necessary and/or more mortgage debt than the borrower could afford. In order to accomplish this, IndyMac had to override stated lending practices and internal/operational controls, as described in the *Cedeno* Complaint:

> Specifically, Defendants allowed Production Personnel to improperly influence Credit\Valuation Personnel. Production Personnel threatened and intimidated Credit\Valuation Personnel to approve inflated appraisals received from outside appraisal companies or appraisal management firms. Contrary to Defendants'

representations to Plaintiff and members of the Class, Defendants failed to provide the necessary insulation and separation between Production Personnel and Credit/Valuation Personnel.

According to a confidential witness, IndyMac executives, including the chief appraiser, were aware and allowed the improper influence Production Personnel placed on their own Credit\Valuation Personnel to choose appraisers and to approve appraisals obtained from third party appraisal companies or appraisal management firms willing to supply IndyMac with inflated appraisals.

Indeed, according to this confidential witness, Credit/Valuation Personnel at IndyMac were told not to reject inflated or otherwise improper appraisals and were threatened or told by Production Personnel that they would be terminated if they failed to do so.

According to another confidential witness, IndyMac was in fact operating its appraisal review department under pressure to make the values that IndyMac's loan officers and processing department were pushing. This confidential witness further stated that employees of IndyMac exerted pressure to make sure loans would be approved regardless of accurate appraisal values.

502. As set forth in §§IV.F. and V.2.b., IndyMac was a party to the Defendant-wide practice of pressuring appraisers to misstate appraisals in order to ensure that loans were funded regardless of the quality of the underlying collateral. Instead of conducting appraisals designed to accurately value the subject property in compliance with the USPAP, many of the appraisals conducted on the underlying properties in the IndyMac Trust were designed to hit valuation targets that would allow loans to be funded.

(3) Debt-to-Income Ratios Were Falsified

503. The statements contained in the Offering Materials regarding the acceptability and evaluation of DTI ratios, as well as many of the specific DTI ratios disclosed, were materially false and misleading. In fact, IndyMac knew that borrowers routinely falsified their stated incomes in order to have loans approved.

504. Confidential witnesses cited in a securities class action complaint against IndyMac, *Tripp v. IndyMac*, No. 07-1635 (C.D. Cal. Feb. 16, 2010) confirm these IndyMac practices.

According to one confidential witness, "loan sales representatives solicited 'fraudulent' letters from CPAs in connection with the purported verification of customer income." This witness allegedly stated that "it was obvious that the letters were fraudulent, and that he/she repeatedly reported the fraud" to upper management and was ignored.

505. Another confidential witness in the *Tripp* case described so-called '"Disneyland Loans,"' approved by IndyMac. The *Tripp* Complaint (Dkt. No. 227) alleges: "These loans were called Disneyland Loans, referring to a loan issued to a Disneyland cashier who claimed in his/her application that he/she earned $90,000 a year . . . . As another example of a particularly egregious 'Disneyland Loan,' [the confidential witness] related the story of a $500,000 loan that was issued for 'swamp lands' in Florida, to a 26 year old first time home buyer with a reported income of $26,000 per year and $15.00 in a bank account."

506. Plaintiffs have examined certain of the loans contained in the 2007-A1 Trust and found numerous examples of loans where DTI ratios were falsified and where obvious signs of fraud or misrepresentations were ignored by IndyMac.

507. The 2007-A1 Trust included a $550,040 loan to refinance a primary residence in Totowa, New Jersey in March 2007. While the 2007-A1 securitization reported a DTI ratio for this borrower of 44.7%, the borrower's DTI was in fact no less than 103%.

508. The 2007-A1 Trust included a $644,040 loan to refinance a primary residence in Carlsbad, California in March 2007. While the 2007-A1 securitization reported a DTI ratio for this borrower of 34%, the borrower's DTI was in fact no less than 819% in 2007 and no less than 92% in 2006.

509. The 2007-A1 Trust included a $575,500 loan to refinance a primary residence in Brooks, Georgia in March 2007. While the 2007-A1 securitization reported a DTI ratio for this

borrower of 29.8%, the borrower's DTI was in fact no less than 1457%. Further, while the mortgage loan schedule stated that the subject properties were to be owner occupied for one year, this borrower did not live in the subject property at the time the loan was issued or anytime thereafter.

510. The IMJA 2007-A1 Trust included a $650,000 loan to refinance a primary residence in Gaithersburg, Maryland in May 2007. While the 2007-A1 securitization reported a DTI ratio for this borrower of 38.5%, the borrower's DTI was in fact no less than 237%. Further, while the mortgage loan schedule stated that the subject properties were to be owner occupied for one year, this borrower moved out of the subject property five months prior to the refinance.

b. Defendants Knew that Underwriting Standards Were Being Abandoned

511. IndyMac had actual knowledge that the loans it securitized in the Trusts sold to Union Central did not comply with the stated underwriting guidelines contained in the Offering Materials, and that the quantitative and qualitative data contained in the Offering Materials was materially false and misleading.

(1) IndyMac Had Actual Knowledge of the Defective Loans They Were Securitizing

512. IndyMac performed monthly quality control audits of its loan production, starting as early as 1994 and continuing through at least August 2007. Each month, IndyMac's Post Production Quality Control ("PPQC") unit selected samples of IndyMac's total loan production and assessed each loan to determine whether the borrower or a third party, such as the mortgage broker or appraiser, misrepresented information in obtaining the loans.

513. A complaint filed by the SEC against IndyMac's former Executive Vice President and CFO, S. Blair Abernathy, provides significant detail about the operations of the PPQC. *SEC v. Abernathy*, No. 11-1308 (C.D. Cal. Feb. 11, 2011). According to the SEC, the PPQC identified

misrepresentations including the following categories: (1) occupancy; (2) appraisals; (3) income; (4) employment; (5) assets; (6) credit (undisclosed liabilities); and (7) transaction ("straw buyer").

514. Before finding that a misrepresentation had been made, the PPQC would develop actual proof that the information provided on the loan application was false. PPQC prepared monthly reports which were distributed within IndyMac. According to the SEC, the report detailed (1) the sample's defect rate, which ranged from 10% to 22% from September 2005 through August 2007; (2) compared the defect rate to prior periods; (3) stated the percentage of loans that contained misrepresentations – which ranged from 12% to 18% from January 2007 through August 2007. The PPCQ monthly reports also broke down the findings by business unit, including IndyMac's Conduit program. Finally, the PPQC reports attached spreadsheets that provided loan-by-loan detail of the PPQC's findings.

515. These PPQC reports provided IndyMac with actual knowledge that it had a widespread and systemic practice of making defective loans which did not comply with the underwriting standards set forth in the Offering Materials.

(2) The Office of Thrift Supervision Specifically Warned IndyMac that It Was Securitizing Defective Loans

516. IndyMac knew that loans originated through their Conduit program, which was the single largest source of loans for the IMJA 2007-A1 Certificates, were routinely defective. A lawsuit filed by the FDIC against IndyMac's former CEO, Perry, describes a January 8, 2007, OTS Report of Examination, which Perry reviewed regarding serious problems in IndyMac's Conduit division. In this report, the OTS found "significant internal control weaknesses with the Conduit Division. These Weaknesses were well documented in the [Bank's] 2006 and 2007 internal audit reports." The report stated:

> [R]equisite controls for loan production did not keep pace with growth, as evidenced by two consecutive "needs improvement internal audits. The Divisions lack of effective internal controls is well documented in the related 2006 and 2007 internal audits, with many repeat criticism noted. Specifically the Conduit Division failed to: (1) adequately monitor sellers and related exposure; (2) obtain trading approvals according to Bank policy; (3) ensure seller agreements were reviewed by legal staff and properly executed; (4) document compensating factors supporting the purchase of loans not meeting IndyMac guidelines; (5) perform minimum due diligence on all loan pools purchased; and (6) resolve collateral deficiencies identified on a pre-funding basis in a timely manner."

517. Indeed, IndyMac was aware in the period leading up to its sale of the Certificates to Union Central that loan delinquencies were skyrocketing. According to the FDIC, the Bank's Thrift Financial Reports showed "substantial increases in first lien delinquencies on loans 30-89 days past due and still accruing, increasing 128% from the second to the ***fourth*** quarter of 2006" (emphasis in original). "Further non-accrual loans also began to trend significantly upward indicated a low delinquency cure rate. Non-performing assets as a percentage of total assets increased 73% between the fourth quarter of 2006 and the first quarter of 2007."

4. UBS's Liability as an Underwriter of the IndyMac Certificates

518. UBS Securities made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by UBS Securities in the sale of Certificates to Plaintiffs.

519. As underwriter, UBS Securities edited, drafted and controlled the content of the IMJA 2007-A1 Trust's Offering Materials, including with respect to the material misstatements and omissions alleged above in §V.D. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, UBS Securities received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, UBS Securities then used and disseminated these false and

misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

520. UBS Securities also knew that mortgage loans deposited into the IMJA 2007-A1 Trust were not properly underwritten because UBS Securities was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to the IMJA 2007-A1 Trust, UBS Securities underwrote and sold many other such RMBS to investors and had in that context gained inside knowledge of the poor quality loan underwriting.

5. HSBC's Liability as an Underwriter of the IndyMac Certificates

521. Defendant HSBC Securities (USA) Inc. ("HSBC Securities") is an SEC-registered broker-dealer and an indirect wholly-owned subsidiary of HSBC Holdings Plc. ("HSBC"). It is incorporated in Delaware and its principal place of business is 425 Fifth Avenue New York, NY.

522. HSBC Securities acted as the underwriter in the sale of Certificates from the IndyMac IMJA Mortgage Loan Trust 2007-A1. As underwriter, it drafted and disseminated the IMJA 2007-A1 Offering Materials, which contained false and misleading statements about the quality of the underlying mortgages and the underwriting performed by IndyMac and its originators.

523. HSBC Securities was privy to the defendant-wide practice of securitizing loans that had not been properly underwritten. According to the FCIC, HSBC was the largest subprime lender in the United States. The Dissenting Statement of three FCIC members included within the official FCIC Report reflects that HSBC and its affiliates engaged in the rampant practice of originating mortgage loans that borrowers could not repay:

> Fueled by cheap credit, firms like Countrywide, Washington Mutual, Ameriquest, and HSBC Finance originated vast numbers of high-risk, nontraditional mortgages that were in some cases deceptive, in many cases confusing, and often beyond borrowers' ability to repay.

524. Based upon knowledge of its own practices, as well as those of its competitors, and based on its due diligence investigation as an underwriter, HSBC Securities was well aware that the mortgage loans in the IMJA Mortgage Loan Trust 2007-A1 were defective because a large percentage of borrowers could not afford the subject loans which would not have been made if they had been properly underwritten.

525. Indeed, at the same time that HSBC Securities was represented to Plaintiffs that the subject loans had been properly underwritten, HSBC was making provisions for writing down the bad loans that it held on its own books. Based on HSBC Securities' knowledge of how those loans had been underwritten, it was internally aware that the widespread race to the bottom with respect to underwriting standards would result in substantial losses for whomever acquired the subject loans.

526. HSBC Securities' knowledge of the abandonment of prudent loan underwriting is further evidenced by FHFA allegations that HSBC systematically underwrote and issued RMBS that HSBC knew contained mortgage loans that did not meet underwriting standards. According to the *FHFA* Complaint, Fannie Mae and Freddie Mac purchased $6.2 billion RMBS put together by HSBC affiliates. *FHFA v. HSBC North America Holdings Inc.*, No. 1:11-cv-06189 (S.D.N.Y. Sept. 2, 2011). After conducting an AVM analysis, the FHFA found that HSBC understated the occurrence of non-owner occupied property by approximately 10% and for one trust HSBC understated owner-occupancy in as many as 13% of all the loans. *FHFA v. HSBC* Complaint (Dkt. No. 1), ¶¶93-96.

527. The FHFA's analysis found that HSBC understated the true percentage of loans with an LTV Ratio at 80% or less, often by twenty percentage points or more. *Id.*, ¶100. According to

the FHFA's analysis, HSBC understated the number of loans with LTV ratios over 100%. Contrary to what had been represented, the FHFA's analysis found all of those HSBC-affiliated RMBS contained at least 9.41% LTVs over 100%, including one trust with 39.51%. *Id.*, ¶¶98-101.

528. HSBC Securities' affiliate HSBC Bank USA also appears to have been involved in the improper marketing of RMBS that contained defective loans. It has been recently reported that HSBC Bank USA received subpoenas from the SEC and the U.S. Attorney's Office, Southern District of New York, as well as a Civil Investigative Demand from the Massachusetts State Attorney General, regarding its involvement in the issuance of RMBS.

529. HSBC paid $5.25 million to settle NCUA's suit arising out of HSBC's sale of RMBS to five failed corporate credit unions.

530. As a signatory to the Offering Materials, HSBC Securities represented that the statements in the IMJA 2007-A1 Trust Offering Materials were true. But it had access to the loan tapes, both for IMJA 2007-A1 Trust, and as a result, it knew, or was reckless in not knowing, that the loan originators routinely and systematically disregarded underwriting standards for the loans that were pooled into this securitization.

E. Morgan Stanley

1. Morgan Stanley's Securitizations

531. Union Central purchased a Certificate sponsored by Morgan Stanley on September 22, 2005, representing an investment of approximately $12.2 million:

CUSIP	Description	Issuing Entity	Issue Date	Purchase Date
61748HLS8	MSM 2005-5AR B1	Morgan Stanley Mortgage Loan Trust 2005-5AR	8/1/2005	9/22/2005

532. Morgan Stanley Mortgage Loan Trust 2005-5AR was a $1.49 billion deal comprising 4,637 purportedly hybrid adjustable rate mortgages with mostly 30-year terms.

2. False and Misleading Statements in Morgan Stanley's Offering Materials

a. False and Misleading Statements About Compliance With Underwriting Standards

533. As sponsor of the securitizations, Morgan Stanley either originated the underlying mortgages through its Morgan Stanley Mortgage Capital, Inc. ("MSMC") and Morgan Stanley Credit Corporation ("MSCC") entities, or purchased the underlying mortgage loans from other originators, primarily Countrywide, National City and Wachovia Mortgage Loans ("Wachovia").

534. The Offering Materials represented that all of the mortgage loans deposited in the Trusts were originated in accordance with MSMC, MSCC and National City's underwriting standards which were purportedly designed to ensure the soundness of the underlying loans and the willingness and ability of borrowers to repay them.

(1) Morgan Stanley

535. With respect to mortgages acquired from MSMC for deposit into the MSM 2005-5AR Trust, the Prospectus Supplement promised investors that the underwriting of those loans had collected various financial information about the borrowers to ensure that they could repay the loans:

> [E]ach mortgagor will have been required to complete an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, the mortgagor will have furnished information with respect to its assets, liabilities, income (except as described below), credit history, employment history and personal information, and furnished an authorization to apply for a credit report which summarizes the mortgagor's credit history with local merchants and lenders and any record of bankruptcy. The mortgagor may also have been required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts.

536. The Prospectus Supplement for the MSM 2005-5AR Trust also promised investors that only borrowers who could replay the loans had received them:

> Based on the data provided in the application and certain verification (if required), a determination is made by the original lender that the mortgagor's

> monthly income (if required to be stated) will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property such as property taxes, utility costs, standard hazard insurance and other fixed obligations other than housing expenses.

537. Further, the Offering Materials assured investors that all MSMC loans included in the securitization were issued in substantial compliance with the underwriting standards, and that any deviation from specific criteria was justified by sufficient compensation factors: "[C]ertain exceptions to the loan purchasing guidelines described herein are made in the event that compensating factors are demonstrated by a prospective borrower."

538. The Prospectus Supplement further represented that MSCC's loan underwriting had collected a variety of financial information about borrowers to ensure loans were only made to those who could repay them:

> [A] potential borrower may submit a written or telephone application which provides pertinent information about the applicant's ability to repay the proposed loan. Information supporting the potential borrower's assets, liabilities, income and expenses is required. Such information typically includes verification of income, deposits and mortgage payment history. Additionally, MSCC obtains and reviews a property appraisal, title policy, a credit bureau report of the applicant's credit history, analysis of income supporting repayment ability and proof of insurance coverage.

539. The Prospectus Supplement for the MSM 2005-5AR Trust also promised investors that only borrowers who could repay the loans had received them:

> A potential borrower's ability to make the proposed loan payments is measured by the applicant's income, credit, residence stability and assets. One test to determine this ability is the debt-to-income ratio, which is the borrower's total monthly debt service divided by total monthly gross income. MSCC typically allows for a debt-to-income ratio of 45%. Debt-to-income exceptions must be approved by the appropriate level underwriter, and supported by compensating factors.

(2) Countrywide

540. Morgan Stanley's Prospectus Supplement stated that all loans originated by Countrywide had been originated in compliance with their underwriting guidelines as well as applicable federal and state law:

> All of the mortgage loans originated or acquired by Countrywide Home Loans, Inc. have been originated or acquired in accordance with its credit, appraisal and underwriting standards. Countrywide Home Loans' underwriting standards are applied in accordance with applicable federal and state laws and regulations.

541. Further, the Prospectus Supplement stated that the Countrywide underwriting standards were designed to evaluate a potential borrower's ability to repay the loan:

> Countrywide Home Loans' underwriting standards are applied by or on behalf of Countrywide Home Loans to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral. Under those standards, a prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the "debt to income" ratios) are within acceptable limits.

(3) National City

542. With respect to loans acquired from National City deposited in the Trust, the Prospectus Supplement represented that the loan originators had collected a variety of financial information about a borrower to ensure they could repay the loan:

> Generally, each mortgagor will have been required to complete an application designed to provide to the lender pertinent credit information concerning the mortgagor. The mortgagor will have given information with respect to its assets, liabilities, income (except as described below), credit history, employment history and personal information, and will have furnished the lender with authorization to obtain a credit report which summarizes the mortgagor's credit history.

543. The Prospectus Supplement also stated that its National City's underwriting standards were designed to ensure that borrowers could repay their loans, and that exceptions to those underwriting standards were granted only when compensating factors were present:

> The National City underwriting standards are applied to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral. These standards are applied in accordance with the applicable federal and state laws and regulations. Exceptions to the underwriting standards are permitted where compensating factors are present.

b. False and Misleading Statements About Appraisals and LTV Ratios

544. The Offering Documents represented that the underlying mortgaged properties would provide adequate security for the mortgage loans, based in part on the appraised value of the properties securing the mortgage loans underlying the Certificates.

545. Morgan Stanley's Offering Materials for the MSM 2005-5AR Trust represented that Morgan Stanley required and relied upon valid and accurate appraisals to determine the adequacy of the underlying collateral. For example, with respect to loans originated by MSMC, the Offering Materials stated:

> The adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal in accordance with pre-established appraisal procedure guidelines for appraisals established by or acceptable to the originator. All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to FNMA and/or FHLMC.

546. Similarly, the Morgan Stanley Offering Materials stated that "[t]he adequacy of the mortgaged property as security for the proposed mortgage loan will generally be determined by an appraisal acceptable to MSCC. Appraisals are conducted by independent appraisers acceptable to MSCC."

547. With respect to Countrywide's appraisal standards, the Offering Materials stated:

> [Countrywide] obtains appraisals from independent appraisers or appraisal services for properties that are to secure mortgage loans. The appraisers inspect and appraise the proposed mortgaged property and verify that the property is in acceptable condition. Following each appraisal, the appraiser prepares a report which includes a market data analysis based on recent sales of comparable homes in the area and, when deemed appropriate, a replacement cost analysis based on the current cost of constructing a similar home. All appraisals are required to conform to Fannie Mae or Freddie Mac appraisal standards then in effect.

548. With respect to National City's appraisal standards, the Offering Materials stated:

> Each National City mortgaged property has been appraised by a qualified independent appraiser. All appraisals are required to conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standard Board of the Appraisal Foundation. Each appraisal must meet the requirements of Fannie Mae and Freddie Mac. The requirements of Fannie Mae and Freddie Mac require, among other things, that the appraiser, or its agent on its behalf, personally inspect the property inside and out, verify whether the property was in good condition and verify that construction, if new, had been substantially completed. The appraisal generally will have been based on prices obtained on recent sales of comparable properties, determined in accordance with Fannie Mae and Freddie Mac guidelines. In certain cases an analysis based on income generated from the property or a replacement cost analysis based on the current cost of constructing or purchasing a similar property may be used.

549. With respect to Wachovia's appraisal standards, the Offering Materials stated:

> Appraisal reports must be ordered by Wachovia. Appraisals provided by the borrower or any other interested third party are not acceptable. Appraisals cannot be greater than 120 days old at closing. Any appraisal older than 120 days must be supported by a re-certification of value by the appraiser or by a new appraisal.
>
> Underwriters review appraisals in accordance with stated guidelines. Appraisal guidelines for jumbo loans are generally very similar to appraisal guidelines for conforming loans, i.e. standard Fannie Mae/Freddie Mac guidelines.
>
> Appraisals must be ordered from an appraiser who is approved by Wachovia. Underwriters must ensure that the appraisal has been provided by an appraiser on the approved appraiser list and that the appraiser does not appear on either the Wachovia Mortgage Corporation Watch or Suspended Appraiser List.

550. Morgan Stanley's Prospectus Supplement also contains misrepresentations concerning the LTV ratios of the mortgage loans underlying each securitization. Specifically, the weighted average original LTV ratio for Loan Groups 2-4, which corresponded to Plaintiffs' Certificate, were disclosed as being between 73%-76% when in fact they were much higher than that due to the inflated appraisals.

c. False and Misleading Statements of Borrowers' Debt-to-Income Ratios

551. Morgan Stanley's Offering Materials contained numerous statements regarding the evaluation of DTI ratios for the borrowers whose loans comprised the Trusts. Absent compensating

factors, the Offering Materials described the manner in which the loan originators evaluated DTI ratios for borrowers.

552. For example, the Morgan Stanley Offering Materials stated as follows:

> A potential borrower's ability to make the proposed loan payments is measured by the applicant's income, credit, residence stability and assets. One test to determine this ability is the debt-to-income ratio, which is the borrower's total monthly debt service divided by total monthly gross income. MSCC typically allows for a debt-to-income ratio of 45%. Debt-to-income exceptions must be approved by the appropriate level underwriter, and supported by compensating factors.

553. The Offering Materials described Countrywide's practices as follows:

> [A] prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the monthly gross income (the "debt to income" ratios) are within acceptable limits.
>
> * * *
>
> Under its Standard Underwriting Guidelines, Countrywide Home Loans generally permits a debt-to income ratio based on the borrower's monthly housing expenses of up to 33% and a debt-to-income ratio based on the borrower's total monthly debt of up to 38%.

554. The DTI ratios were a material part of the loan underwriting process, and specific DTI ratios for the loans underlying the Certificates were utilized by the rating agencies to determine the ratings for the Certificates in the Trust.

d. False and Misleading Statements About Owner-Occupancy

555. The Offering Materials contained specific disclosures about the occupancy-rate status of the loans underlying the Certificates. The Offering Materials stated that 1,234 out of the 1,660 loans, or 78.08% of the aggregate principal balance of the mortgage loans, were for owner-occupied primary properties. The remaining 426 loans were purportedly for second homes or investment properties.

e. False and Misleading Statements About Ratings

556. The Offering Materials for the Certificates stated that the ratings of the Certificates as set forth in the Prospectus was a condition to their issuance, and that the ratings reflected the likelihood that investors would receive the distributions to which they were entitled:

> It is a condition of the issuance of the Certificates that they receive the respective ratings set forth on page iii of this prospectus supplement by [S&P] and Moody's].
>
> The ratings assigned to mortgage pass-through certificates address the likelihood of the receipt of all payments on the Mortgage Loans by the related Certificateholders under the agreements pursuant to which such certificates are issued. . . . Such ratings take into consideration the credit quality of the related Mortgage Pool, including any credit support providers, structural and legal aspects associated with such certificates, and the extent to which the payment stream on the Mortgage Pool is adequate to make the payments required by such certificates.

557. The Offerings Materials also set forth the specific ratings for the Certificates purchased by Union Central. The Certificates were rated AA by S&P and Aa2 by Moody's.

558. In obtaining these ratings for the subject Certificates, Morgan Stanley concealed the adverse information alleged herein from the rating agencies. Had the rating agencies known the true value of the loans underlying the Certificates, the Certificates would have been rated significantly lower, or not at all.

3. Morgan Stanley's Statements Were Knowingly False and Misleading

559. Morgan Stanley knew, or was reckless in not knowing, that the statements identified above were materially false and misleading and/or omitted material facts necessary to make the statements made not misleading. As alleged herein, the Morgan Stanley Defendants had actual knowledge of widespread abandonment of prudent underwriting guidelines with respect to the mortgage loans deposited in the Trust.

a. Underwriting Standards Had Been Abandoned

560. While the Offering Materials set forth detailed underwriting guidelines which were supposed to be applied in evaluating borrowers and loans, in fact the stated underwriting guidelines had been abandoned by the loan originators.

561. Morgan Stanley knew that the originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default. Instead, the originators approved loans which they knew were based on falsified information and which did not comply with any of the stated underwriting guidelines.

562. Countrywide had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Goldman for inclusion in the subject Trusts, as alleged above at §IV.I.2.

563. National City had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to Goldman for inclusion in the subject Trusts, as alleged above at §IV.I.10.

564. Morgan Stanley's practice of securitizing loans that did not meet the required underwriting standards has been confirmed by parties who have had direct access to the loan files for securitizations similar to and issued by Morgan Stanley at the same time as those sold to Plaintiffs. For example, MBIA is a New York-based monoline insurer that wrote insurance on a similar Morgan Stanley securitization, MSM 2007-9SL, covering any default of borrowers' payments of principal and interest on the loans in that Trust. MBIA conducted an investigation into the underwriting practices by examining the loan files after it experienced a large number of borrower defaults covered by its MSM 2007-9SL insurance policy. In carrying out its review of the

approximately 3,053 loan files, MBIA found that 96.6% of them did not comply with the required underwriting guidelines.

565. MBIA found the following widespread departures from the required underwriting guidelines consistent with the Morgan Stanley Defendants' standard operating procedure during the relevant period of securitizing poorly underwritten and imprudently granted loans:

(a) [DTI] ratio in excess of program guidelines;

(b) [Combined LTV] ratio in excess of maximum permitted guidelines;

(c) The credit score of the borrower does not meet program guidelines for [combined LTV] ratio and loan amount;

(d) Unreasonable stated income in application, *i.e.*, the borrower's or co-borrower's salary is unreasonable on the face of the application and/or is not substantiated by the borrower's or co-borrower's credit/asset profile;

(e) The appraisal conducted for the mortgaged property does not support the value of the property;

(f) 12 month seasoning requirements were not met, *i.e.*, the loan was not approved using the lower of the original purchase or appraised value of the property within the last 12 months;

(g) The appraisal of the property was not contained in the file;

(h) The borrower's full 12 month housing history was not verified;

(i) A minimum of one year's mortgage or rental payment history was not documented in the file;

(j) The credit report of the borrower was not contained in the file; and

(k) Missing sufficient down payment funds, closing costs and/or reserves.

566. Similar types of defects as those found by MBIA were also present in the Certificate purchased by Union Central, as has been confirmed by Plaintiffs' own investigation and as reflected by the pervasive nature of Morgan Stanley's misconduct during this period, as alleged herein.

(1) Skyrocketing Default Rates Are Evidence of Abandoned Underwriting

567. The Certificate purchased by Union Central was supposed to be a stable, long-term investment backed by investment-grade credit ratings. However, the extraordinary number of defaults of mortgage loans underlying Union Central's Certificate is prima facie evidence that Morgan Stanley's representations that the loans had been prudently underwritten were materially false and misleading.

568. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses, for each of the Certificate purchases by Union Central as of June 2010:

Certificate	Original Deal Size	Delinquent, Bankruptcy Foreclosure, REO Actual Bal.	Collateral Cumulative Losses
MSM 2005-5AR	$1,501,718,224	$151,456,158	$50,008,241

569. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of delinquency, bankruptcy and foreclosure and cumulative losses would be far lower than the current rates. Indeed, Moody's maximum expected collateral losses for the life of the MSM 2005-5AR Certificate was only $15 million.

(2) Appraisals and LTV Ratios Were Inflated

570. The descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in the Offering Materials, and in violation of any legitimate appraisal standards, many of the loans underlying the Certificates had been approved through the use of manipulated appraisals that guaranteed that the collateral property would be valued at a price sufficient to support the loan. Such practices have been confirmed by

modeling performed by other litigants who experienced similar Morgan Stanley conduct, which demonstrates that appraisals used in connection with Morgan Stanley securitizations in 2006 were routinely inflated. For instance, the plaintiffs in *FHFA. v. Morgan Stanley, et al*., Index No. 652440/2011 (Sup. Ct. N.Y. Sept. 2, 2011), conducted an AVM analysis of a sample of the property underlying the Morgan Stanley offerings at issue in that litigation. *FHFA v. Morgan Stanley* Complaint (Dkt. No. 1), ¶¶98-102.

571. The FHFA's analysis demonstrates that the valuation of the loans underlying the certificates were materially and consistently inflated, and therefore that the stated LTV ratios were materially overstated, which in turn greatly increased the risk from default on the loans underlying the certificates. FHFA analyzed 33 Morgan Stanley securitizations issued between 2005 and 2007, including securitizations bearing substantially similar characteristics as the 2005-5AR Certificate purchased by Plaintiffs. For example, two of the transactions analyzed by the FHFA which were similar to Plaintiffs' securitization, MSM 2005-7 and MSM 2005-10, included representations that 97.49% and 97.71% respectively of the loans in those trusts had LTV ratios of less than 80%. However, FHFA's analysis showed the true percentage of loans having LTV ratios of 80% or less was a mere 56.29% and 64.07%.

572. While none of those certificates where supposed to contain loans that had an LTV ratio over 100%, the FHFA's analysis found that a significant number of loans had LTV ratios of over 100% – in other words, the value of loan was more than the value of the property. With respect to the MSM 2005-7 and MSM 2005-10 trusts, the FHFA found LTV ratios greater than 100% in 3.45% and 3.12% of the loans, respectively.

573. The Massachusetts Attorney General found similar misconduct by Morgan Stanley with respect to loans originated by New Century. In June 2010, the Massachusetts Attorney General

entered into an Assurance of Discontinuance ("AOD") with MS&Co. stemming from the Massachusetts' Attorney General's investigation into the financing, purchase, and securitization of residential mortgage loans by the Morgan Stanley Defendants and their affiliates during the period of late 2005 through early 2007. *In re Morgan Stanley & Co.*, No. 10-2538 (Mass. Dist. Cl. June 24, 2010). The Massachusetts Attorney General found that the Morgan Stanley Defendants partnered with one of the largest subprime lenders in the country, New Century, off-loading tens of thousands of loans the Morgan Stanley Defendants knew or should have known did not comply with their stated underwriting guidelines.

574. The Massachusetts Attorney General found during its due diligence that "Morgan Stanley employed so-called broker price opinions or 'BPOs' to check the value of the properties. In a BPO, a local broker evaluates the property and provides an indicated value and some additional information." According to the Massachusetts Attorney General, based on the BPO-checked value, "31% of the New Century loans on properties checked via BPOs in the valuation diligence process and securitized by Morgan Stanley in 2006 and 2007 had CLTV ratios" greater than 100%.

575. As set forth in §§IV.H.2. and IV.F., Morgan Stanley was a party to the Defendant-wide practice of pressuring appraisers to misstate appraisals in order ensure that loans were funded regardless of the quality of the underlying collateral.

(3) Debt-to-Income Ratios Were Falsified

576. The statements contained in the Offering Materials regarding the acceptability and evaluation of DTI ratios, as well as many of the specific DTI ratios that were disclosed, were materially false and misleading. In fact, Morgan Stanley knew that borrowers routinely falsified their stated incomes in order to have loans approved, and this adverse information was readily

apparent from even a cursory review of the loan files – files that Plaintiffs did not have, and still do not have, direct access to.

577. Plaintiffs have examined certain of the loans contained in the 2005-AR5 Trust and found numerous examples of loans where DTI ratios were falsified and where obvious signs of fraud or misrepresentations were ignored.

578. The 2005-5AR Trust included a $288,800 loan for the purchase of a primary residence in Fair Oaks, California in May 2005. While the 2005-5AR securitization reported a DTI ratio for this borrower of 43.4%, the borrower's DTI was in fact no less than 91%.

579. The 2005-5AR Trust included a $400,000 loan for a cash-out refinance of a primary residence in Washington, DC. in July 2005. While the 2005-5AR securitization reported a DTI ratio for this borrower of 27.81%, the borrower's DTI was in fact no less than 106%.

580. The 2005-5AR Trust included a $460,000 loan for the purchase of a primary residence in Bloomfield, New Jersey in May 2005. The borrower defaulted on the mortgage just four months later in October 2005. While the 2005-5AR securitization reported a DTI ratio for this borrower of 41.3%, the borrower in fact had no income in 2005 therefore their DTI ratio was infinite.

581. Plaintiffs' findings regarding the loans in the subject Trust are consistent with Morgan Stanley's practice during this time period of securitizing bad loans, and are consistent with the results of a Massachusetts Attorney General investigation. As a result of its investigation, the Massachusetts Attorney General discovered that Morgan Stanley routinely accepted mortgage loans for inclusion in securitizations despite misrepresentations of the stated income for mortgages purchased by MS&Co. from New Century:

> In 2005, Morgan Stanley employees were aware that stated income loans were among the riskiest newly originated subprime loans Morgan Stanley purchased

> and that such loans were among the most likely subprime loans to become delinquent or default. After rejecting a number of loans with overstated income in one New Century loan pool, one of Morgan Stanley's employees described the stated income method as overused to the point of abuse. Any inaccuracy in stated income, would affect the reported DTI ratios, because income is the denominator of the DTI ratio.

(4) Owner-Occupancy Rates Were Falsified

582. The FHFA has also performed loan-level analysis of thousands of loans securitized by Morgan Stanley at the same time as it securitized loans for the Certificates at issue here, and found that Morgan Stanley's RMBS Offering Materials routinely misstated the owner-occupancy rates of the loans underlying the certificates. In addition to their LTV analysis, the FHFA undertook a sophisticated analysis to determine whether a given borrower actually occupied the property as claimed. *FHFA v. Morgan Stanley* Complaint, ¶¶94-97. For each offering, the FHFA analyzed tax records, credit records, bills, property records and lien records, to determine whether a borrower was actually living in the property subject to the loan.

583. The results of the *FHFA v. Morgan Stanley* plaintiffs' analysis further confirms that Morgan Stanley had a practice of securitizing loans where the owner-occupancy-rate was being misstated in the Offering Materials. For each of the certificates at issue in the *FHFA v. Morgan Stanley* action, the percentage of owner-occupied properties was overstated by between 7% and 15%. With respect to the MSM 2005-7 and MSM 2005-10 certificates, the FHFA found owner-occupancy rates were overstated by 11.45% and 14.35% respectively.

(5) Ratings Were False

584. The rating agencies relied on the accuracy of the information provided by Morgan Stanley, including the underwriting standards and the data concerning DTI ratios, LTV ratios and owner-occupancy statistics, in assigned ratings to the securities. However, because the information

supplied by Morgan Stanley was materially false and misleading, the ratings assigned to the Certificates did not provide an accurate evaluation of the risk of default.

585. Indeed, as set forth below, Morgan Stanley knew that the ratings were materially false and misleading because they pressured the rating agencies to use outdated and inaccurate ratings models in order to ensure that the Certificates received the ratings they desired.

b. Morgan Stanley Knew that Underwriting Standards Were Being Abandoned

586. As alleged above, Morgan Stanley had actual knowledge that the loans it securitized in the Trusts it sold to Union Central did not comply with the stated underwriting guidelines contained in the Offering Materials, and that the quantitative and qualitative data contained in the Offering Materials was materially false and misleading. The Morgan Stanley Defendants had further knowledge that the underwriting standards were being abandoned for the loans in the subject Trust for the reasons alleged below.

(1) Morgan Stanley Had Actual Knowledge of the Defective Loans They Were Securitizing

587. Documents recently released by Clayton confirm that there were rampant underwriting violations in the loan pools contained in the Morgan Stanley Certificates. As the FCIC described in the internal Clayton "Trending Report" made public by the Government in conjunction with testimony given in September 2010, Morgan Stanley received regular reports regarding defective loans, and ***37%*** of the loans Clayton reviewed for Morgan Stanley "failed to meet guidelines." These loans were not subject to any proper "exceptions," as they did not have any "compensating factors." Rather, these loans were plainly defective.

588. Despite such a high level of defective loans, Morgan Stanley continued utilizing, and indeed funding, the same originators who had placed the nonconforming loans in the pools.

Furthermore, Morgan Stanley "waived in" to its pools ***56% of those toxic loans that Clayton had identified as being outside the guidelines***. This practice of completely disregarding loan underwriting standards was never disclosed to Union Central or any of the investors who purchased Morgan Stanley Certificates.

589. The Clayton data demonstrates that underwriting guidelines were being routinely violated, and that Morgan Stanley was informed of such violations. Morgan Stanley's secret "waiver" of rejected loans into its RMBS Trust without any compensating factors was an omission that rendered the Morgan Stanley Defendants' disclosures regarding their underwriting and due diligence processes materially misleading. As the FCIC Report concluded:

> [M]any prospectuses indicated that the loans in the pool either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of Grade 3 Event loans were waived in.
>
> * * *
>
> [O]ne could reasonably expect [the untested loans] to have many of the same deficiencies, at the same rate, as the sampled loans. Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few of the loans were reviewed, raising the question of whether the disclosures were materially misleading, in violation of the securities laws.

(2) Morgan Stanley Knew that Ratings Were False

590. The Certificate purchased by Plaintiffs received a AA credit rating from S&P and a Aa2 rating from Moody's, indicating the rating agencies' view of its risk profile based on the information provided by Morgan Stanley. The ratings were material to reasonable investors, including Union Central, because the ratings provided additional assurances that investors would receive the expected interest and principal payments. The Certificates would have been unmarketable to investors like Union Central and would not have been issued but for the provision of these ratings. As the Prospectus stated:

> It is a condition of the issuance of the Certificates that they receive the respective ratings set forth on page iii of this prospectus supplement by [S&P] and Moody's].

591. The Offering Materials represented that the rating agencies conducted an analysis designed to assess the likelihood of delinquencies and defaults in the underlying mortgage pools and issued ratings accordingly. The Morgan Stanley Offering Materials stated:

> The ratings assigned to mortgage pass-through certificates address the likelihood of the receipt of all payments on the Mortgage Loans by the related Certificateholders under the agreements pursuant to which such certificates are issued. . . . Such ratings take into consideration the credit quality of the related Mortgage Pool, including any credit support providers, structural and legal aspects associated with such certificates, and the extent to which the payment stream on the Mortgage Pool is adequate to make the payments required by such certificates.

592. These representations were false. The ratings given to the Morgan Stanley Certificates by S&P and Moody's were based on the loan profiles supplied to the agencies by the Morgan Stanley Defendants. But as discussed above, most (if not all) of the key components of that data were false because the Defendants failed to adhere to their disclosed underwriting standards and manipulated the appraisal of the properties underlying the mortgage pools. As a result, Morgan Stanley essentially pre-determined the ratings by feeding inaccurate information into the ratings system. This rendered misleading Morgan Stanley's representations concerning the ratings for the MSM 2005-5AR Trust because they failed to disclose that the ratings were based entirely on unreliable information provided by Morgan Stanley.

593. In addition, the Senate PSI recently released documents from the internal files of the Morgan Stanley Defendants detailing how the Morgan Stanley Defendants manipulated the credit rating agencies to achieve their desired rating results. The Senate PSI reported that investment banks, including Morgan Stanley, "were pressuring [the rating agencies] to ease rating standards" on RMBS. This included the banks' practice of blacklisting ratings analysts who refused to provide

favorable credit ratings to the toxic mortgage portfolios they were off-loading to investors such as Union Central.

594. One of the strategies employed by the Morgan Stanley Defendants was to leverage past accommodations provided by the rating agencies to the Morgan Stanley Defendants arguing that because the agencies had loosened their standards in the past, they must do so again. As set forth in the Senate PSI Report:

> An exception made one time often turned into further exceptions down the road. In August 2006, for example, an investment banker from Morgan Stanley tried to leverage past exceptions into a new one, couching his request in the context of prior deals:
>
> When you went from [model] 2.4 to 3.0, there was a period of time where you would rate on either model. I am asking for a similar 'dual option' window for a short period. I do not think this is unreasonable.
>
> A frustrated S&P manager resisted, saying: "You want this to be a commodity relationship and this is EXACTLY what you get." But even in the midst of his defense, the same S&P manager reminded the banker how often he had granted exceptions in other transactions: "How many times have I accommodated you on tight deals? Neer, Hill, Yoo, Garzia, Nager, May, Miteva, Benson, Erdman all think I am helpful, no?"

595. The Senate PSI Report further details how the Morgan Stanley Defendants stonewalled the rating agencies once the agencies determined their ratings models needed to be more conservative and pressured the rating agencies not to apply more conservative standards to previously issued securities. The Senate PSI reported:

> Moody's and S&P updated their RMBS and CDO models with more conservative criteria in 2006, but then used the revised models to evaluate only new RMBS and CDO transactions, bypassing the existing RMBS and CDO securities that could have benefited from the new credit analysis. Even with respect to the new RMBS and CDOs, investment banks sought to delay use of the revised models that required additional credit enhancements to protect investment grade tranches from loss. For example, in May 2007, Morgan Stanley sent an email to a Moody's Managing Director with the following:
>
> "Thanks again for your help (and Mark's) in getting Morgan Stanley up-to-speed with your new methodology. As we discussed last Friday, please find below a

> list of transactions with which Morgan Stanley is significantly engaged already (assets in warehouses, some liabilities placed). We appreciate your willingness to grandfather these transactions [under] Moody's old methodology."

596. If the Morgan Stanley Defendants had not successfully delayed the implementation of the more stringent rating methodologies, investors such as Union Central would not have been misled into believing the securities they were purchasing were worthy of AA ratings. The delay caused damage not only to Union Central but to the entire financial system. As the Senate PSI reported:

> Instead [of applying the more stringent methodologies to previously issued securities when it became clear that those were the appropriate methodologies], the credit rating agencies waited until 2007, when the high risk mortgages underlying the outstanding RMBS and CDO securities incurred record delinquencies and defaults and then, based upon the actual loan performance, instituted mass ratings downgrades. Those sudden mass downgrades caught many financial institutions and other investors by surprise, leaving them with billions of dollars of suddenly unmarketable securities. The RMBS secondary market collapsed soon after, and the CDO secondary market followed.

597. The Morgan Stanley Defendants' misconduct in the ratings process is currently subject to a criminal investigation by the New York Attorney General. The SEC is also reportedly investigating the matter.

(3) Reports of Former Employees Show that Morgan Stanley Knew Its Statements Were False

598. Former employees of Morgan Stanley and its subsidiaries have provided further corroborating evidence that Morgan Stanley and its subsidiaries intentionally ignored signs of fraud and underwriting violations in the loans they securitized.

599. According to a former MSMC employee who worked as both a Quality Control Analyst and a Pre-Funding Quality Control and Fraud Investigations Manager from 2003 into 2006, MSMC failed to comply with their loan purchasing guidelines. This former employee was responsible for reviewing loans that MSMC considered acquiring for securitization and then

preparing an audit report that provided detailed pre-purchase information about the loans – including flagging any potential fraud in the origination of the loan (such as a borrower providing a salary that was excessive for a given job title) or other indicators that the loan was unlikely to be repaid.

600. According to the former employee, MSMC's automated due diligence system could examine many relevant data fields for potential red flags with respect to individual loans. However, the former employee explained that senior management, including MSMC's co-heads Kevin Rodman and Steve Rudner, were choosing to "turn off" an increasing number of data fields, making the reports less detailed. It also resulted in manipulating the percentage score issued by the automated system to make the loans look safer than they were.

601. MSMC also purchased loans that were riskier, *i.e.*, less likely to be repaid, than MSMC's guidelines permitted, as the loans exceeded MSMC's limit for LTV ratios. Further, loan originators presented MSMC with loans that the originator claimed to be Alt-A, but instead were riskier subprime loans disguised as Alt-A loans. These loans were securitized and represented to be Alt-A loans when they in fact Morgan Stanley knew they were not.

602. According to the former MSMC employee, MSMC was "production-based" and was more concerned with acquiring loans for securitization than whether borrowers could repay the loans. Contrary to MSMC's stated loan purchasing guidelines, MSMC was not concerned with determining whether borrowers' income was sufficient to repay the loans. In fact, MSMC failed to adhere to its loan purchasing guidelines in order to purchase as many loans as possible because it was worried that if MSMC did not purchase the loans a competitor would.

603. Morgan Stanley failed to disclose that its approved loan originators implemented policies designed to extend mortgages to borrowers regardless of whether they were able to meet their obligations under the mortgage, such as:

(a) Coaching borrowers to misstate their income on loan applications to qualify for larger mortgage loans under the underwriters' underwriting standards, including directing applicants to no-doc loan programs when their income was insufficient to qualify for full documentation loan programs;

(b) Steering borrowers to loans that exceeded their borrowing capacity;

(c) Encouraging borrowers to borrow more than they could afford by suggesting No Income No Assets ("NINA") and Stated Income Stated Assets ("SISA") loans when they could not qualify for full documentation loans based on their actual incomes;

(d) Approving borrowers based on "teaser rates" for loans despite knowing that the borrower would not be able to afford the "fully indexed rate" when the adjustable loan rate adjusted; and

(e) Allowing non-qualifying borrowers to be approved for loans under exceptions to the underwriters' underwriting standards based on so-called "compensating factors" without requiring documentation for or determining the validity of such compensating factors.

604. Further, Morgan Stanley failed to disclose that the originators of loans purchased by MSMC and the agents of these originators – such as mortgage brokers – were so aggressive in approving and funding the mortgage loans that many of the mortgage loans were made to borrowers who had either not submitted or had openly altered the required documentation. Moreover, in many instances the income/employment verifications that were purportedly completed by the originators were insufficient because the lenders' clerical staff typically did not have proper verification skills, the mortgage brokers or their agents often completed verifications that were suspect, and oftentimes verifications were provided by inappropriate contacts at the borrower's place of employment (*e.g.*, a friend of the borrower would complete the verification instead of human resources). Unbeknownst to investors, including Union Central, these undisclosed practices had the effect of dramatically increasing the risk profile of the Certificates.

605. Similarly, those borrowers who were required to submit stated income applications would include income levels which were routinely inflated to extreme levels, relative to their stated job titles, in order to get the mortgage loans approved and funded. For instance, a former MSMC

employee recalled MSMC purchasing loans extended to people whose stated occupation could not possibly provide the income stated on the loan application. The former MSMC employee provided a hypothetical but typical example of a borrower whose stated occupation was pre-school teacher but whose stated income was $200,000 per year. According to the former MSMC employee, when red flags such as these were raised, MSMC would often fail to consider the information and purchase the loan anyway. Indeed, the existence of this type of extreme stated income inflation was corroborated in a study cited by the Mortgage Asset Research Institute which found that almost all stated-income loans exaggerated the borrower's actual income by 5% or more, and more than half increased the amount by more than 50%.

606. Morgan Stanley knew that its appraisals were false and that therefore the stated LTV ratios were also false. According to the former MSMC employee, Morgan Stanley management ignored information indicating that the loans MSMC was considering for purchase were not originated pursuant to MSMC's stated loan purchasing guidelines. For example, the former employee red-flagged a number of loans purportedly made for completed homes in Maricopa County, Arizona because the homes had been sold numerous times within a short time span for ever increasing sales prices. When the former employee visited the purported location of these homes, she noted that there were no homes built there nor were there any other homes in the area. The employee determined that the "sales" of these "homes" were merely transactions back and forth between builders to artificially inflate their value. When the former employee notified her MSMC superiors of her findings, they failed to consider this information and purchased these bad loans (and many others) anyway.

607. A former MSCC employee provided similar evidence regarding the underwriting process employed by MSCC. According to a former MSCC Underwriter who worked at MSCC

from January 2006 to October 2007, an underwriter's role at MSCC was a "joke" because MSCC's goal for underwriters was to approve and close as many loans as possible rather than determine whether a borrower could repay the loan. The former underwriter explained that because most of MSCC's applicants were already Morgan Stanley clients with assets invested in Morgan Stanley, MSCC was "bending over backwards" to make sure the clients' loans were approved. MSCC was not concerned with the ability of these existing clients to repay their loans but merely wanted to retain them as clients. According to the former underwriter, MSCC feared that if MSCC did not approve loan applications submitted by its existing clients, the clients would withdraw the assets they had invested with Morgan Stanley and put them with another company such as Lehman Brothers or Goldman Sachs. Due to these concerns, MSCC was incredibly lax in its underwriting and did not scrutinize the prospective borrower's credit profile.

608. MSCC's loan underwriting policies were very problematic, according to the former underwriter. Once a loan application reached the underwriter, it was considered "unprofessional" to question the applicant's stated income relative to the applicant's stated job title. Thus, far from scrutinizing a borrower's information, underwriters who had reservations about an applicant's stated income level remained quiet and did not even check the applicant's stated income against information contained in publicly available websites such as salary.com. The former underwriter explained that stated income loans would close within three hours of application submission because there was nothing in the application to verify.

609. To ensure that loans were approved, MSCC put its underwriters on a strict quota system. According to the former underwriter, MSCC underwriters were expected to approve a certain number of loans each day, week and month. If they did not, the underwriters would be terminated. In addition, MSCC underwriters were incentivized to approve as many loans as possible

as opposed to detecting bad loans. For instance, an underwriter who approved 25% more loans than required by his or her quota would receive a bonus equal to 25% of his or her salary. Given this incentive system, the underwriters at MSCC rarely denied a loan application.

610. Similarly, while MSCC stated that appraisals were conducted by independent appraisers, the former MSCC employee reported that there was a conflict of interest with the appraisals used by MSCC. According to the MSCC employee, MSCC rarely required or paid for full appraisals, which are comprehensive and include a physical inspection of the interior and exterior of the home, as well as pictures. The majority of the time MSCC only required FAVs (field asset verification) or EAVs (estimated appraisal value). The MSCC employee explained that FAVs are also called "drive bys" because it only requires that a realtor drive by and look at the home from the outside and then make a comparison based upon other home values in the neighborhood. The EAV is based only on a comparison of the values of other homes in the neighborhood and no human eyes look at the home. The former employee reported that many of their appraisals were not performed by licensed appraisers, but rather by realtors who had an incentive to inflate the value of the appraisals to achieve higher commission on their future home sales.

(4) Other Actions Against Morgan Stanley Confirm the Former Employees' Accounts

611. The reports from former employees discussed above are consistent with reports from former Clayton and Morgan Stanley employees set forth in other actions pending against Morgan Stanley.

612. For example, plaintiffs in *Allstate Insurance Company et al. v. Morgan Stanley & Co. et al.*, Index No. 651840/2011 (Sup. Ct. N.Y. July 5, 2011), conducted interviews of several Clayton or Morgan Stanley employees whose statements provide additional evidence that the Morgan Stanley Defendants systematically disregarded their underwriting guidelines during the relevant period.

613. The *Allstate v. Morgan Stanley* plaintiffs spoke to a former Clayton official who worked as a Clayton due diligence underwriter from 2003 through 2007 and conducted due diligence on loans for the Morgan Stanley Defendants. This former Clayton official

> confirmed that Morgan Stanley made exceptions on loans with high DTIs, and purchased loans even though borrowers' DTI ratios were not based on the fully indexed rate, but on the initial teaser rate . . . . Morgan Stanley did not consider the borrower's ability to pay the full rate after the initial teaser rate expired, and would purchase and securitize interest-only loans in which borrowers were qualified at the initial start rate.

614. The *Allstate v. Morgan Stanley* plaintiffs also spoke to a former Morgan Stanley and Clayton employee with intimate knowledge of the Morgan Stanley Defendants' due diligence and loan purchasing practices who "confirmed that Morgan Stanley employees were well aware of the poor quality of loans Morgan Stanley purchased and securitized and said that Morgan Stanley transaction managers would discuss the impact of DTI levels at weekly meetings." This employee witness provided detailed information to the *Allstate v. Morgan Stanley* plaintiffs regarding the depth of the Morgan Stanley Defendants' misconduct:

> Morgan Stanley would itself degrade the quality of the RMBS by turning "full documentation" loans – which require the borrower to validate the income and other information in the loan application – into "stated income" loans, where such proof of income is not required, in order to pay a lower price to acquire the loan and increase its own profit. . . . [T]his was Morgan Stanley's way of exploiting the fact that it routinely purchased loans that never should have been originated in the first place, knowing that these originators would capitulate because they depended on Morgan Stanley's willingness to continue buying their product. Similarly, when a full documentation loan showed that the borrower's income was insufficient, Morgan Stanley would shred the documentation, and tell the originator to get a new, "stated" income, that made the loan appear reasonable. . . . Morgan Stanley did this to increase its own profits, which were dependent on the spread between what Morgan Stanley paid for a given loan pool and what it received from selling those loans into a securitization.

615. The *Allstate* plaintiffs also interviewed a former Morgan Stanley employee who served as a distressed asset manager at Morgan Stanley from January 2007 to June 2008. According

to this confidential witness, "all of the loans he looked at had some deficiencies." This confidential witness was formerly director of risk and compliance at Lydian Trust Securities ("Lydian") from June 2003 to October 2005. Lydian performed reviews of Morgan Stanley loans that were to be included in securitizations. According to the *Allstate* plaintiffs, this confidential witness said that

> Morgan Stanley was not concerned with underwriting compliance because Morgan Stanley knew that the defectively originated loans could be sold to investors. . . . Morgan Stanley executives met with Lydian and made clear to Lydian that Morgan Stanley wanted loans; Morgan Stanley wanted fulfillment. As such, [this confidential witness] explained that while auditing loans for Morgan Stanley, reporting deficiencies and exceptions on loans was pointless because Morgan Stanley was willing to accept loans on an exception basis. . . . [A]t least 80% of the loans that [this confidential witness] reviewed contained deficiencies and should not have been purchased.

4. Morgan Stanley & Co.'s Liability as an Underwriter of the Morgan Stanley Certificate

616. MS&Co. made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by MS&Co. in the sale of certificates to investors.

617. As underwriter, MS&Co. edited, drafted and controlled the content of the MSM 2005-5AR Trust's Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, MS&Co. received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject trusts. As underwriter, MS&Co. then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

618. MS&Co., as an affiliate of the other Morgan Stanley Defendants, had knowledge that Morgan Stanley, as alleged herein, (1) failed to adhere to underwriting standards when it pooled

mortgage loans for its RMBS, including for the MSM 2005-5AR Trust; and (2) provided distorted information to the rating agencies that was purposefully manipulated to meet the targeted rating. Further, MS&Co. knew, or was reckless in not knowing, of the defective loans in the MSM 2005-5AR Trust as a result of its due diligence performed as an underwriter for the MSM 2005-5AR Trust. MS&Co. had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans Morgan Stanley deposited in the MSM 2005-5AR Trust had a practice of routinely and systematically disregarding the stated underwriting standards.

619. MS&Co. also knew that mortgage loans deposited into the MSM 2005-5AR Trust were not properly underwritten because MS&Co. was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to the MSM 2005-5AR Trust, MS&Co. underwrote and sold many other RMBS sponsored by Morgan Stanley and had in that context gained inside knowledge of the Company-wide poor quality loan underwriting standards and practices.

F. RALI

1. Description of the RALI Certificates

620. Union Central purchased Certificates on several occasions in 2005 and 2006 from various Trusts whose depositor was defendant Residential Accredit.

621. The following purchases made by Union Central represent a total investment of over $31.5 million:

CUSIP	Certificate	Issuing Entity	Depositor	Underwriter(s)	Issue Date	Purchase Date
76110H5E5	RALI 2005-QA5 M-3	RALI Series 2005-QA5 Trust	Residential Accredit	RFS	4/1/2005	9/27/2005
7661118FQ6	RALI 2005-QA9	RALI Series	Residential	UBS Securities	8/1/2005	9/9/2005

	M-1	2005-QA9 Trust	Accredit	LLC ("UBS");		
761118AQ1	RALI 2005-QS7 M-3	RALI Series 2005-QS7 Trust	Residential Accredit	CGMI; RFS; UBS	6/1/2005	7/14/2005
761118BK3	RALI 2005-QS9 M-3	RALI Series 2005-QS9 Trust	Residential Accredit	Bear, Stearns & Co. Inc; UBS; RFS	6/1/2005	7/19/2005
761118JU3	RALI 2005-QS14 I-M-1	RALI Series 2005-QS14 Trust	Residential Accredit	Deutsche Bank Securities Inc. ("DB"); RFS; J.P. Morgan Securities Inc.	9/1/2005	11/13/2007
761118VP0	RALI 2006-QS2 II-M-1	RALI Series 2006-QS2 Trust	Residential Accredit	(RBS) Greenwich Capital Markets, Inc. ("RBS"); RFS	2/1/2006	11/13/2007
74922EBE8	RALI 2006-QS6 II-M-1	RALI Series 2006-QS6 Trust	Residential Accredit	DB; Lehman Brothers Inc.; RFS	6/1/2006	11/13/2007
74922RBF6	RALI 2006-QS18 II-M-1	RALI Series 2006-QS18 Trust	Residential Accredit	RBS; RFS; CGMI	12/1/2006	1/9/2007
74922RBG4	RALI 2006-QS18 II-M-2	RALI Series 2006-QS18 Trust	Residential Accredit	RBS; RFS; CGMI	12/1/2006	1/9/2007
74922RBH2	RALI 2006-QS18 II-M-3	RALI Series 2006-QS18 Trust	Residential Accredit	RBS; RFS; CGMI	12/1/2006	1/9/2007

2. False and Misleading Statements in RALI's Offering Materials

a. RALI Issued False and Misleading Statements About Compliance with Underwriting Standards

622. RALI falsely assured investors in each of the RALI Series Trusts' Offering Materials that it and its originators had complied with underwriting standards for the mortgages in the collateral pool.

623. The RALI Offering Materials falsely represented that RALI expected its originators to comply with underwriting procedures consistent with applicable law:

> The depositor [*i.e.*, defendant Residential Accredit] expects that the originator of each of the mortgage loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.

624. The Prospectuses also falsely represented the review done by the RFC, whose function was to gather the mortgages from the originators and sell them to the depositor (defendant Residential Accredit) to be placed in the collateral pool for the RMBS.

> The level of review by Residential Funding Corporation, if any, will vary depending on several factors. Residential Funding Corporation, on behalf of the depositor, typically will review a sample of the mortgage loans purchased by Residential Funding Corporation for conformity with the applicable underwriting standards and to assess the likelihood of repayment of the mortgage loan from the various sources for such repayment, including the mortgagor, the mortgaged property, and primary mortgage insurance, if any. . . . In addition, Residential Funding Corporation may conduct additional procedures to assess the current value of the mortgaged properties. Those procedures may consist of drive-by appraisals, automated valuations or real estate broker's price opinions. . . . In its underwriting analysis, Residential Funding Corporation may also consider the applicable Credit Score of the related mortgagor used in connection with the origination of the mortgage loan, as determined based on a credit scoring model acceptable to the depositor.

625. The Prospectuses for each of the other Certificates contained the same representations regarding RFC's underwriting before selling to Residential Accredit.

626. The RALI Offering Materials' statements also misled investors about defendant Residential Accredit's use of underwriting standards. For example, the RALI 2005-QA5 Prospectus represented:

> With respect to the depositor's underwriting standards, as well as any other underwriting standards that may be applicable to any mortgage loans, such underwriting standards typically include a set of specific criteria by which the underwriting evaluation is made. However, the application of the underwriting standards does not imply that each specific criterion was satisfied individually. Rather, a mortgage loan will be considered to be originated in accordance with a given set of underwriting standards if, based on an overall qualitative evaluation, the loan is in substantial compliance with the underwriting standards. For example, a mortgage loan may be considered to comply with a set of underwriting standards, even if one or more specific criteria included in the underwriting standards were not satisfied, if other factors compensated for the criteria that were not satisfied or if the mortgage loan is considered to be in substantial compliance with the underwriting standards.

627. The Prospectuses for each of the other Certificates contained the same misrepresentations about compensation factors.

(1) RALI's Expanded Criteria Program

628. The RALI Trusts were composed predominately of Alt-A mortgages. RALI promised investors that these mortgages conformed to their "Expanded Criteria Program" and that Program's "Seller's Guide" for underwriting. In fact, the Program's title was a misnomer. Instead of "expanding" criteria, the Program permitted a lax review requiring reduced criteria. Undisclosed to investors was the fact that RALI hid behind the Expanded Criteria Program's loosened standards in order to underwrite mortgages without regard to ***any*** criteria at all.

629. In choosing originators of mortgages under the purview of the Expanded Criteria Program, RFC was supposed to adhere to the qualifications in the program's Seller's Guide. According to the RALI 2005-QA5 Trust:

> In determining whether to approve a mortgage collateral seller, Residential Funding Corporation generally considers, among other things: the financial status of the mortgage collateral seller; the previous experience of the mortgage collateral seller in originating mortgage loans and its potential origination volumes; the prior delinquency and loss experience of the mortgage collateral seller (if available); the underwriting standards employed by the mortgage collateral seller and its quality control procedures; and, if applicable, the servicing operations of the mortgage collateral seller.

630. Describing the Expanded Criteria Program's underwriting standards, RALI represented in the RALI 2005-QA5 Trust:

> In accordance with the Seller Guide, the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information, which may have been supplied solely in the application, regarding its assets, liabilities, income (except as described below), credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy. The mortgagor may also be required to authorize verifications of

> deposits at financial institutions where the mortgagor had demand or savings accounts. . . .
>
> Based on the data provided in the application and certain verifications, if required, a determination is made by the original lender that the mortgagor's monthly income, if required to be stated, will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations.

631. RALI further represented in the Prospectus for RALI Series 2005-QA5:

> Prior to assigning the mortgage loans to the depositor, Residential Funding will have reviewed the underwriting information provided by the mortgage collateral sellers for most of the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the Seller Guide.

632. The above misrepresentations were repeated in the other RALI Prospectuses.

633. Finally, RALI also represented in its Offering Materials that it hired third parties to review compliance with its underwriting criteria: "A portion of the mortgage loans typically will be reviewed by Residential Funding Corporation or by a designated third party for compliance with applicable underwriting criteria."

b. RALI Issued False or Misleading Statements About Appraisals and LTV Ratios

634. RALI misrepresented the validity and accuracy of the appraisals used for loans packaged into RMBS it sold to Plaintiffs. In each of the RALI Trust's Offering Materials, RALI purported to describe the role of appraisals: "The adequacy of a mortgaged property as security for repayment of the related mortgage loan generally is determined by an appraisal in accordance with appraisal procedure guidelines described in the Seller Guide." In fact, any determination that the collateral was adequate for supporting the loan was false because appraisals were systematically inflated.

635. With respect to the RALI Series 2005-QA5 Trust, the Prospectus stated:

> The appraisal procedure guidelines generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed. The appraisal will have considered a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property or replacement cost analysis based on the current cost of constructing or purchasing a similar property. The appraiser is required to consider a market data analysis of recent sales of comparable properties and, when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property.

636. The Prospectuses for each of the Certificates contained the same representations regarding the manner in which appraisals were conducted with respect to loans underlying the Certificates.

637. The RALI Series 2005-QA5 Prospectus also stated:

> The underwriting standards applied by an originator typically require that the underwriting officers of the originator be satisfied that the value of the property being financed, as indicated by an appraisal or other acceptable valuation method as described below, currently supports and is anticipated to support in the future the outstanding loan balance.

638. Each of the other Prospectuses for the RALI Series Trusts contained the same representation regarding the originators' assessment of the appraisal value in relation to the loan.

639. Despite RALI's knowledge of distortions in the LTV ratios, due to inflated appraisals, the RALI Series Trusts' Prospectuses provided investors with the inaccurate weighted average LTV ratios of the underlying mortgage pools. The chart below sets forth the disclosed LTV ratios for the RALI Certificates:

Certificates	LTV Ratio[5]
RALI 2005-QA5 M-3	76.29%
RALI 2005-QA9 M-1	76.76%

[5] *Denotes that the relevant Class of Loans is supported by a sub-group of loans rather than the entire underlying pool. The LTV ratio is listed accordingly.

Certificates	LTV Ratio[5]
RALI 2005-QS7 M-3	77.03%
RALI 2005-QS9 M-3	76.55%
RALI 2005-QS14 I-M-1	67.33%*
RALI 2006-QS2 II-M-1	65.89%*
RALI 2006-QS6 II-M-1	66.90%*
RALI 2006-QS18 II-M-1, II-M-2, and II-M-3	64.89%*

640. RALI further represented in each Prospectus for the Trusts at issue: "Under the depositor's underwriting standards, a mortgage collateral seller is usually permitted to provide secondary financing to a mortgagor contemporaneously with the origination of a mortgage loan, provided that the combined LTV ratio is not greater than 100%."

c. RALI Issued False and Misleading Statements about the Underlying Borrowers' Ability to Support the Loans

641. RALI's Offering Materials contained misstatements concerning whether the borrowers for the underlying mortgages could maintain their loan payments in relation to their income.

642. For example, the Prospectus for RALI Series 2005-QA5 represented: "Once all applicable employment, credit and property information is received, a determination is made as to whether the prospective borrower has sufficient monthly income available to meet the borrower's monthly obligations on the proposed mortgage loan and other expenses related to the home, including property taxes and hazard insurance, and other financial obligations and monthly living expenses."

643. The other RALI Trusts made substantially the same representation. These statements were false because RALI discarded underwriting standards and failed to properly evaluate borrowers' ability to pay their mortgages.

d. RALI Issued False and Misleading Statements About Owner Occupancy

644. The Offering Materials contained specific disclosures about the occupancy status of the loans underlying the Certificates. The following chart sets forth the occupancy status disclosed by RALI with respect to the certificates:[6]

Certificates	Primary Residence	Secondary/ Vacation Residence	Investment Property	Total Number of Loans	Percentage of Owner Occupied Loans
RALI 2005-QA5 M-3	637	22	126	785	83.11%
RALI 2005-QA9 M-1	1,972	68	445	2,485	83.49%
RALI 2005-QS7 M-3	1,225	46	664	1,935	77.16%
RALI 2005-QS9 M-3	1,456	43	496	1,995	77.63%
RALI 2005-QS14 I-M-1*	517	38	237	792	69.59%
RALI 2006-QS2 II-M-1*	455	32	292	779	65.71%
RALI 2006-QS6 II-M-1*	380	20	163	563	74.79%
RALI 2006-QS18 II-M-1, II-M-2, and II-M-3*	373	30	116	519	76.90%

645. As alleged below, the data provided by RALI as set forth in the above table was materially misstated because owner-occupancy rates for the property that collaterized the loans in the Trust were materially lower than represented which greatly increase the risk of substantial default and loss on such loans.

e. RALI Issued False and/or Misleading Statements About the Removal of Mortgages

646. The Offering Materials represented that the trustees of the RALI Series Trusts reviewed the mortgage documents in order to remove any materially defective mortgages. The following statement is found in the Prospectus for RALI 2006-QS18, and is substantially similar to statements describing the trustee's removal power found in the other RALI Series Trusts' Prospectuses:

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[6] *Denotes that the relevant Class of Loans is supported by a sub-group of loans rather than the entire underlying pool. The owner occupancy levels are listed accordingly.

> Within 45 days after receipt thereof, the trustee or the custodian, as applicable, will review the mortgage notes delivered to it. If any such mortgage note is found to be defective in any material respect, the trustee or the custodian shall promptly notify [RFC] or the designated seller, if any, and the depositor. If [RFC] or the designated seller, as the case may be, cannot cure the defect within 60 days. . . . RFC] or designated seller, as applicable will be obligated no later than 90 days after such notice . . . to either repurchase the related mortgage loan . . . from the trustee or substitute a new mortgage loan.

In fact, RALI knew that defective mortgage loans were not being removed from the Trusts.

f. RALI Issued False and/or Misleading Statements Regarding the Ratings of its Trusts

647. For RALI to sell its RMBS, it was necessary that its tranches be rated as disclosed in the Prospectuses. Each Prospectus contained substantially the same language making the sale of RMBS conditional on achieving the stated rating in the Prospectus for a tranche: "It is a condition of the issuance of the [specified Class of] Certificates that they be rated not lower than [the specified rating] by [S&P, Moody's or Fitch]."[7]

648. Since the sale of its RMBS was conditioned on achieving a certain rating, RALI solicited evaluations from credit rating agencies on the probability of default for the underlying mortgage pool. The representations regarding the three credit rating agencies' ratings were substantially the same among the RALI Series Trusts:

- *Moody's*: The ratings assigned by Moody's to the offered Certificates address the likelihood of the receipt by the offered certificateholders of all distributions to which they are entitled under the pooling and servicing agreement. Moody's ratings reflect its analysis of the riskiness of the mortgage loans and the structure of the transaction as described in the pooling and servicing agreement.

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[7] For example, the Prospectus for RALI 2005-QA9 states: "It is a condition of the issuance of the Class M-1, Class M-2 and Class M-3 Certificates that they be rated not lower than 'AA,' 'A' and 'BBB,' respectively, by Standard & Poor's, and 'Aa2,' 'A2' and 'Baa2,' respectively, by Moody's." As another example, the Prospectus for RALI 2005-QS7 states: "It is a condition of the issuance of the Class M-1, Class M-2 and Class M-3 Certificates that they be rated not lower than 'AA,' 'A' and 'BBB', respectively, by Fitch."

- *S&P*: The ratings assigned by S&P to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of payments required under the pooling and servicing agreement. S&P's ratings take into consideration the credit quality of the mortgage pool, structural and legal aspects associated with the Certificates, and the extent to which the payment stream in the mortgage pool is adequate to make payments required under the Certificates.

- *Fitch*: The ratings assigned by Fitch to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of all distributions to which they are entitled under the transaction structure. Fitch's ratings reflect its analysis of the riskiness of the underlying mortgage loans and the structure of the transaction as described in the operative documents.

649. According to RALI's representations in its Prospectuses, the assigned credit ratings reflected the likelihood that investors like Union Central would receive the distributions to which they were entitled. Put simply, the rating was supposed to describe the riskiness of the investment in the tranche.

650. In reliance on the representations in the Prospectuses, Union Central purchased Certificates from RALI rated "investment grade," with many of the Certificates receiving an almost perfect rating – supposedly meaning that the obligor has a very strong capacity to meet its financial commitments. For example, S&P assigned "AA" to many of the RALI Series Trusts at issue. The following table sets forth the ratings of the Certificates when purchased by Union Central:

Certificate	Original Rating
RALI 2005-QA5 M-3	BBB
RALI 2005-QA9 M-1	AA
RALI 2005-QS7 M-3	BBB
RALI 2005-QS9 M-3	BBB
RALI 2005-QS14 I-M-1	AA
RALI 2006-QS2 II-M-1	AA
RALI 2006-QS6 II-M-1	AA
RALI 2006-QS18 II-M-1	AA
RALI 2006-QS18 II-M-2	A
RALI 2006-QS18 II-M-3	BBB

651. In obtaining these ratings for the subject Certificates, RALI concealed the adverse information alleged herein from the rating agencies. Had the rating agencies known the true value of

the loans underlying the Certificates, the Certificates would have been rated significantly lower, or not at all.

3. Defendants' Statements Were Knowingly False and Misleading

652. RALI knew, or was reckless in not knowing, that the statements identified above were materially false and misleading, and/or it had omitted material facts necessary to make the statements made not misleading. As set forth herein, RALI had actual knowledge that the stated underwriting guidelines were not adhered to and, rather than provide truthful information and disclosures to Union Central and other investors, used such knowledge to reap massive profits for itself.

a. RALI Abandoned Its Underwriting Standards

653. Despite the representations regarding compliance with the underwriting guidelines, in actuality, RALI's loan originators had – with the knowledge, if not approval, of RALI – abandoned the stated underwriting guidelines with respect to loans in the subject Trusts.

654. RALI's originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate: (1) the borrowers' ability to repay the debt; and (2) the lender and/or investors' ability to recover against the pledged collateral in the event of a default. Instead, originators, using RALI's financing and encouraged by RALI and other investment banks' insatiable appetite for mortgages to feed their loan securitization businesses, approved loans they knew were based on falsified information and did not comply with any of the stated underwriting guidelines.

655. In fact, in its 2011 Form 10-K, Ally admitted that its underwriting practices were inadequate: "The total exposure of the applicable Mortgage Companies to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting

standards and risk-mitigation actions implemented in 2008 and forward." In reaction to the damage done by its RMBS business, Ally discontinued its activities in "lending to real estate developers and homebuilders in the United States and the United Kingdom; purchasing, selling and securitizing nonconforming residential mortgage loans (with the exception of U.S. prime jumbo mortgage loans) in both the United States and internationally; and certain conforming origination channels closed in 2008 and our mortgage reinsurance business."

b. The Skyrocketing Default Rates on RALI Trusts Are Evidence of Abandoned Underwriting

656. The Certificates purchased by Union Central were supposed to be stable, long-term investments backed by investment-grade credit ratings. However, the extraordinary number of defaults on the mortgage loans underlying Union Central's Certificates is prima facie evidence that the stated underwriting standards and loan characteristics represented in the Offering Materials were materially false and misleading.

657. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses as of June 2010, for certain RALI Certificates purchased by Union Central:

Certificate	Original Deal Size	Delinquent, Bankruptcy, Foreclosure, REO Actual Balance	Collateral Cumulative Losses
RALI 2005-QA5	$236,761,800	$7,083,339	$4,564,844
RALI 2005-QA9	$650,482,392	$73,332,830	$10,602,032
RALI 2005-QS7	$369,979,162	$33,499,972	$5,883,848
RALI 2005-QS9	$370,978,359	$31,286,652	$3,712,571
RALI 2005-QS14 (Group 1)	$130,938,205	$4,267,392	$474,243
RALI 2006-QS2 (Group 2 and 3)	$131,448, 942	$8,456,630	$178,560
RALI 2006-QS6 (Group 2)	$106,652,100	$6,982,926	$407,716
RALI 2006-QS18	$104,211,498	$8,477,978	$1,364,709

658. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of delinquency, bankruptcy and foreclosure would be far lower than the current rates. Moody's maximum expected collateral losses for the life of the certificates, where known, is set forth in the table below:

Certificate	Maximum Expected Loss
RALI 2005-QA5	N/A
RALI 2005-QS14	$589 221.92
RALI-2006-QS2	N/A
RALI-2006-QS6	NA
RALI 2005-QS7	$2 774 843.72
RALI 2005-QS9	$2 596 848.51
RALI-2005-QA9	$5 854 341.53
RALI-2006-QS18	N/A

c. RALI Used Inflated Appraisals and LTV Ratios

659. The RALI Offering Materials' descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in the Offering Materials, and in violation of any legitimate appraisal standards, RALI used appraisals that had been manipulated and inflated to guarantee that the collateral property would be valued at a price sufficient to support the loan.

660. Recent analyses using modeling performed by other parties who purchased RALI RMBS during the relevant period confirm that appraisals connected with RALI's securitizations in 2005-2006 were routinely inflated. For instance, the plaintiffs in *Mass. Mutual Life Ins. Co. v. Residential Funding Co.*, No. 3:11-cv-30035 (D. Mass. Feb. 9, 2011) ("*Mass. Mutual*"), conducted an AVM analysis of a sample of the property underlying the RALI offerings at issue in that litigation. *Mass. Mutual* Complaint (Dkt. No. 1), ¶¶74-181. The RALI securitizations at issue in the

Mass. Mutual case occurred at the same time and are essentially similar to the securitizations sold to Plaintiffs. The *Mass. Mutual* plaintiffs' analysis demonstrates that valuation of loans underlying their certificates were materially and consistently inflated, and as a result, the stated LTV ratios were materially overstated, which in turn greatly increased the risk of default on those loans.

661. The *Mass Mutual* Plaintiffs' AVM analysis revealed that all of the RALI loan pools at issue in the *Mass. Mutual* case should have disclosed significantly higher weighted average LTV ratios. The following chart summarizes the findings of the *Mass. Mutual* plaintiffs' forensic review:

Trust	Weighted Average LTV of the Collateral Loans as Represented in the Offering Materials	Actual Weighted Average LTV Per Forensic Review	Percentage of Collateral Loans with LTV of Greater than 90%	Actual Percentage of Collateral Loans with LTV of Greater than 90 Per Forensic Review
RALI 2005-QO3	73.84%	81.35%	0.51%	16.56%
RALI 2005-QO4	74.25%	83.71%	1.21%	19.81%
RALI 2006-QA6	76.97%	85.58%	1.01%	18.84%
RALI 2006-QO1	74.51%	84.06%	1.61%	24.71%
RALI 2006-QO3	74.31%	85.53%	1.22%	20.94%
RALI 2006-QO14	74.27%	83.10%	.92%	21.64%
RALI 2006-QO5	74.67%	84.15%	1.26%	19.54%
RALI 2006-QO6	74.66%	85.69%	1.56%	23.98%
RALI 2006-QO9	75.15%	89.46%	.54%	32.42%

662. The FHFA also brought a lawsuit against the RALI Defendants regarding more than $6 billion in RMBS purchased from Trusts sponsored and underwritten by RALI. *FHFA v. Ally Financial Inc., et al.*, No. 11-7010 (S.D.N.Y.) ("*FHFA v. RALI*") originally filed in the Supreme Court of the State of New York, Index No. 652441/2011 (Sept. 2, 2011). The FHFA performed a similar AVM review to determine the accuracy of the LTV ratios in the RALI Trusts at issue there. The FHFA found that for every securitization they analyzed, the percentage of loans having LTV

ratios 80% or less was overstated. Further, the percentage of loans having LTVs of over 100% ranged from 2% to as high as 23%. *FHFA v. RALI* Complaint, ¶¶99-104.

663. Property valuations were overstated, thereby decreasing stated LTV ratios, through the manipulation of the appraisals conducted on the underlying properties. Instead of conducting appraisals designed to accurately value the subject property in compliance with USPAP, many of the appraisals conducted on the underlying properties, if they were conducted at all, were designed to hit valuation targets that would allow loans to be funded and sold in RMBS.

664. As set forth in §§IV.F. and IV.H.2., RALI was a participant in the routine practice of pressuring appraisers to misstate appraisals in order to ensure that loans were funded regardless of the quality of the underlying collateral.

d. RALI Falsified Debt-to-Income Ratios

665. RALI's Offering Materials materially misstated the thoroughness of RALI's evaluation of whether the borrowers' income would be able to cover their mortgage debt. In addition, RALI systematically understated the DTI ratios provided in RALI's loan schedules, even though it knew the rating agencies relied on that misstated data for their ratings.

666. RALI and its originators knew that borrowers routinely falsified their stated incomes in order to have loans approved. In the case of stated income loans, for example, RALI and its originators knew that many borrowers claimed incomes that did not come anywhere near a reasonable level for their stated occupations.

667. Plaintiffs have examined certain of the loans contained in the RALI 2005-QA9, RALI 2005-QS7, RALI 2005-QS9, and RALI 2006 QS18 Trusts and found numerous examples of loans where DTI ratios were falsified and where obvious signs of fraud or misrepresentations were either accepted or ignored.

(1) RALI 2005-QA9

668. This Trust contained a loan from April 2005 meant to refinance what was claimed to be a primary residence in Draper, Utah. However, when the borrower went bankrupt ***within six months*** of completing the loan, the borrower listed a different primary address on the bankruptcy filings. That there was a failure by RALI to investigate the borrower's ability to keep up with its mortgage payments is clear here. Not only did bankruptcy occur immediately following the mortgage's closure, but the stated DTI is 33% on the mortgage loan schedule was significantly lower than the borrower's true DTI, which was in excess of 102% to 115%.

669. Another loan in this Trust was for refinancing a primary residence in Minneapolis, Minnesota in June 2005. Had RALI diligently investigated this loan file they would have found that within three months of the refinancing, the borrower had taken on two other debts that were over $100,000. Even more egregiously, based on public records, the borrower had negative income for 2005, reflecting a potentially ***infinite*** DTI, rather than the 38% reported in the loan schedule.

670. Plaintiffs' investigation uncovered another loan from this Trust that had potentially infinite DTI, though the loan schedule reported a DTI of 42%. This mortgage, dated May 2005, was meant to provide 100% financing for a couple's property in Lathrop, California. The mortgage was in the name of the wife. Because her name was on the purchase papers, only her income should have been considered to qualify her for the loan. However, public records list her occupation as a "homemaker" suggesting RALI failed to fully investigate the source of income that would support the mortgage. Even with the total income the couple reported from employment and unemployment disbursements, it should have been obvious that the income could not likely support the debt.

(2) RALI 2005-QS7

671. Another loan included in the Trust was dated May 2005 for a property in Memphis, Tennessee. Based on available public records, the loan was to refinance one of the thirty-nine investment properties from which the borrower ended up incurring over $2.5 million in secured debt owed. The borrower was a self-employed contractor who, despite any apparent prior experience in investing or managing property, went on a purchasing spree from 2003 to 2005 with a credit score of 632 and no reported income in 2005. Without an income, the borrower's DTI was infinite, not the reported 38%.

(3) RALI 2005-QS9

672. A mortgage included in this Trust was for the purchase in May 2005 of a home in Springfield, Illinois as an investment property. The filing used "stated/easy" documentation and listed a DTI of 28%. In fact, the borrower's DTI exceed 100%. The property was one among several properties purchased by the borrower over the preceding three years; however, preceding property purchases were apparently not disclosed on the filing. In addition, the borrower was an agent of the originator, which under typical underwriting guidelines, should have required full documentation since the transaction was not at arm's length. However, the borrower exploited the stated-doc loan to more easily obtain the property while the originator booked a profit on the transaction, and it was then securitized and sold to investors, including Plaintiffs.

673. This Trust also included a mortgage dated August 2004 for a property in Jasper, Georgia. The borrower's credit score was 655 and the recorded DTI was 41%. However, according to public records, the borrower's true DTI was 530%. Also, contrary to the representation on the loan schedule, the property was not owner occupied within sixty days of closing. Instead, the property continued to be under construction for more than six months.

674. Another loan refinanced a property in Bay City, Michigan in May 2005. Based on public records, the borrower's DTI was 86% rather than the 44% reported on the loan schedule. Yet another loan dated April 2005 to purchase property in Wesley Chapel, Florida listed a DTI of 35% when public records indicated a DTI as high as 132%. The borrower for that loan had to obtain a second lien on the property within one year of completing the mortgage put into the Trust.

(4) RALI 2006-QS18

675. The RALI 2006-QS18 Trust included the refinance in November 2006 of a home in Stone Mountain, Georgia. The lender was HomeComings, a RALI affiliate. Despite underwriting guidelines, the borrower had not had a stable and continuing income for the two years prior to the loan's extension. Additionally, underwriting guidelines generally disapprove a borrower who started a business within one month prior to the completion of the loan. This borrower, however, had apparently started a real estate investment business through an LLC within the month prior to completing the loan. Further demonstrating the lack of diligent underwriting, the borrower for this mortgage had a credit score of 643 and a DTI in excess of 136%, misstated as 41%. By the time the borrower filed for bankruptcy, the borrower held eighteen mortgages, including refinancings that the borrower would complete sometime within two months of obtaining the initial loan.

676. Another mortgage pooled into the Trust refinanced a property in Lawndale, California. The lender was HomeComings, and according to public records, the borrower had a credit score of 629 and an occupation involving janitorial services. The borrower already owned four properties at the time the loan was completed and had a reported DTI of 50% – well above the industry's accepted level. Yet even with the many red flags that a proper due diligence review should have revealed, the loan was allowed into the Trust.

677. RALI's rush to securitize mortgages resulted in granting loans to borrowers who could not keep up with payments on their mortgages. Further, RALI's failure to screen out bad loans meant that the false DTIs included in the loan schedules distorted the ratings assessed by the rating agencies for the Trusts. Investors, such as Plaintiffs, who had relied on the distorted ratings in purchasing the Certificates, suffered losses when the borrowers inevitably became delinquent.

e. RALI Falsified Owner-Occupancy Rates

678. In addition to the above examples which demonstrate that RALI's Offering Materials misrepresented the owner-occupancy rates of subject properties underlying the Trusts, other litigants' loan-level analysis of thousands of loans securitized by RALI at the same time as the Certificates at issue here, also show RALI's widespread practice of routinely misstating owner-occupancy rates with respect to the loans underlying RALI RMBS offerings during the relevant time period. In addition to their LTV analysis, the *Mass. Mutual* plaintiffs undertook a sophisticated forensic analysis to determine whether a given borrower actually occupied the property as claimed. *Mass. Mutual* Complaint, ¶¶182-203. The *Mass. Mutual* plaintiffs analyzed tax records, credit records, bills, property records and lien records, to determine whether a borrower was actually living in the property subject to the loan.

679. The results of the *Mass. Mutual* plaintiffs' analysis demonstrates that the percentage of owner-occupied properties disclosed by RALI in their Prospectuses was consistently false and that the true rate was much lower, and thus those RMBS investments were much less safe than RALI led investors to believe. This was highly material because borrowers are more likely to keep up with their payments on a property in which they live than on a second home or investment property. The following chart shows the results of their analysis:

Certificate	% Represented in Offering Materials as Primary Residences	Actual %	Overstatement
RALI 2005-QO3	84.16%	73.26%	10.90%
RALI 2005-QO4	79.62%	68.17%	11.45%
RALI 2006-QA6	72.96%	60.42%	12.54%
RALI 2006-QO1	81.65%	70.86%	10.79%
RALI 2006-QO3	84.66%	75.49%	9.17%
RALI 2006-QO4	84.37%	72.98%	11.39%
RALI 2006-QO5	85.31%	75.12%	10.19%
RALI 2006-QO6	85.57%	73.21%	12.36%
RALI 2006-QO9	83.86%	71.05%	12.81%

680. As part of its allegations against the RALI Defendants, the FHFA conducted a similar analysis that found RALI had vastly understated the percentage of non-owner-occupied properties. ¶98. The following chart summarizes these FHFA findings:

Certificate (with Supporting Loan Group)	% Represented in Offering Materials as Non-Owner Occupied Residences	Actual %	Understatement
RALI 2005-QO4 (Group I)	18.32%	30.52%	12.19%
RALI 2006-QO4 (Group I)	20.86%	32.62%	11.76%
RALI 2006-QO5 (Group I)	18.87%	29.53%	10.66%
RALI 2006-QO8 (Group II)	18.22%	29.00%	10.78%
RALI 2006-QO9 (Group II)	19.01%	30.22%	11.21%

681. RALI engaged in a consistent pattern of misconduct designed to make the mortgages underlying its securitizations appear to be much safer investments than they actually were. By concealing the fact that there were fewer owner-occupied properties in the Trusts – and therefore that there was a much greater likelihood that borrowers who defaulted on their loan would never cure the default but rather would abandon the property – RALI deceptively made the Trusts appear to be safer investments than they actually were.

f. RALI Knew that Its Originators Violated Underwriting Guidelines

682. While the RALI Offering Materials set forth detailed underwriting guidelines which were supposed to have been applied in evaluating borrowers whose loans were in the Trusts, in fact the stated underwriting guidelines had been abandoned by the loan originators.

683. RALI's originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default.

684. HomeComings had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to RALI for inclusion in the subject Trusts, as alleged above at §IV.I.

685. Before placing the mortgages into pools for securitization, RALI knew that the quality of the loans did not meet prudent underwriting practices and standards because it also analyzed those loans to determine which ones it would securitize and get off its books. ResCap's 2006 Form 10-K described RALI's decision-making process with respect to whether to retain mortgages on its books or to get them off its book through securitizations sold to investors:

> Our portfolio of residential mortgage loans held for investment and interests that continue to be held from our securitization activities includes some residential mortgage loans we own directly, having decided to hold these loans in our portfolio instead of selling them through whole-loan sales or securitizations. A decision to retain certain assets in our portfolio is dependent upon a variety of factors, including the type of mortgage product, the interest rate environment, general economic conditions, the availability of efficient funding sources and other factors in the capital markets. These factors impact our assessment of the value of the asset and its ability to generate revenues over time.

686. RALI securitized a large percentage of its high-risk, bad loans that had not been properly underwritten and which it knew would go into default, result in losses and would not generate revenues over time, and to avoid this risk it purposefully put those assets into securitizations for investors.

687. RALI also had access to and reviewed the underlying mortgages and actual loan tapes for the loan securitizations sold to Plaintiffs. As part of that review process RALI learned the loans

had not been properly underwritten but it willfully disregarded that the loans did not meet the stated underwriting standards.

688. Indeed, RALI's wrongful loan securitization practice is also confirmed by others' investigations. MBIA Insurance found that "[a]t least 89% of the 4,104 delinquent or charged-off loans" of the RMBS it insured for RALI "were not originated in material compliance with GMAC Mortgage's Underwriting Guidelines." Complaint, *MBIA Insurance Corp. v. GMAC Mortgage, LLC (f/k/a/ GMAC Mortgage Corporation)*, Index No. 600837/2010 (Sup. Ct. N.Y. Apr. 1, 2010) (Dkt. No. 2), ¶6. In another complaint against Defendant RFC, MBIA found that less than 7% of 1,847 mortgage loans reviewed were originated in material compliance with RFC's representations and warranties. Complaint, *MBIA Insurance Corp. v. Residential Funding Co., LLC*, Index No. 603552/2008 (Sup. Ct. N.Y. Dec. 4, 2008) (Dkt. No. 1), ¶47.

689. Ally's 2011 Form 10-K discloses that as a result of its practice of securitizing bad loans Ally had paid out $91 million of original unpaid principal balance through settlements, repurchases, indemnification payments, and rescinded claims due to the junk mortgages it originated and underwrote as of year end 2011.

g. RALI Knew that Its In-House Originator Participated in Discriminatory/Predatory Lending

690. HomeComings, a wholly owned subsidiary of Defendant RFC, was the source of many of the underlying mortgages RALI packaged in the RALI Series Trusts. In a letter dated January 22, 2009, the Federal Trade Commission ("FTC") reported its findings from an "extensive" investigation conducted of HomeComings.[8] The FTC staff concluded that HomeComings had

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[8] *See* http://www.ftc.gov/os/closings/090122homecomingfinancialclosingletter.pdf.

systematically set higher prices on mortgages for African-American and Hispanic borrowers.[9] The FTC's investigation found that "Homecomings originated the vast majority of its loans through independent brokers" who HomeComings permitted "to assess discretionary charges." Taking advantage of HomeComings' policy, brokers charged African-American and Hispanic borrowers "substantially more for home purchase and refinance loans than similarly-situated non-Hispanic whites" by tacking on higher fees charged at origination or by charging higher interest rates, from which brokers earned greater yield spread premiums from HomeComings. The FTC determined that the disparities based on race in discretionary charges were "substantial, statistically significant, and [could not] be explained by any legitimate underwriting or credit characteristics." By making these loans more expensive than they should have been, HomeComings increased the likelihood of default.

691. According to the FTC's letter, these practices violated federal law – in direct contravention of the representations RALI made in its Offering Materials that its originations complied with federal law. Furthermore, these violations properly should have been stopped by HomeComings' and RALI's quality control over the brokers and the mortgages processed for securitization. The fact that these wrongful practices could thrive within RALI's operations is further indication that RALI had discarded its underwriting standards to ensure the faster accumulation of mortgages, particularly those with higher interest rates, for its RMBS.

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[9] The letter was to inform that the FTC staff had closed the investigation of HomeComings because it had ceased originating mortgages and its indirect parent company, ResCap, had indicated in a filing with the SEC that HomeComings would likely soon cease to be a going concern. In fact, Ally reported in its 2011 Form 10-K that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations." Furthermore, much of its former business has been extinguished.

h. RALI Purposefully Loosened Its Underwriting Standards to Grow Its Warehouse Lending Program

692. Defendant ResCap was the parent to RFC and Residential Accredit. Its mortgage business featured an enormous multi-billion dollar warehouse lending operation. Warehouse lending provided financing to originators who did not have access to saving deposits and other loan funding sources. It also provided access to and control over originators' underwriting practices. Using RALI's financing the originators were then able to make mortgage loans and sell them back to RALI.

693. Because of its financial arrangements with warehouse lenders, ResCap was essentially committed to buying the loans that secured its warehouse lines regardless of their quality and the results of ResCap's due diligence. ResCap purchased the loans with little or no objection to keep the lenders supplied with capital for paying the fees and interest owed on the lines of credit. It was also important to ResCap that it protect its business relationships with warehouse lenders in order to ensure a steady flow of loans for securitization.

694. Warehouse lenders like ResCap had the ability to put back a loan that failed to meet underwriting standards, but ResCap knew that too many rejections would financially starve those originators. As a result, ResCap was incentivized to accept defective mortgages for RALI securitizations.

695. In fact, ResCap reported in its 2005 Form 10-K filed with the SEC: "We believe we are the largest provider of warehouse lending facilities to correspondent lenders and other mortgage originators in the United States." ResCap claimed this leadership position again in its 2006 Form 10-K. ResCap's lucrative business was fueled by permitting the funding of more and more mortgages, which were then securitized and sold to investors, regardless of whether those loans had been properly underwritten.

696. Furthermore, RALI's position as a source of "warehouse" lines of credit gave it unique knowledge of the conditions under which mortgage loans were originated. The lines of credit allowed RALI to control the origination practices of these lenders and gave RALI an inside look into the true quality of the loans they originated.

(i) Government Investigations Confirm that RALI Failed to Properly Underwrite the Mortgages in the RMBS

697. RALI has been the subject of numerous criminal and regulatory probes related to its mortgage underwriting practices. These investigations further confirm that RALI's misrepresentations were not mere isolated, innocent mistakes, but the result of the company's reckless or intentional misconduct.

698. As Ally reported in its 2011 Form 10-K filed with the SEC, the Federal Reserve Board ("FRB") and FDIC conducted an examination of Ally and ResCap, among other related Ally entities. The FRB entered an FDIC Consent Order on April 13, 2011 requiring the Ally entities "to make improvements to various aspects of [their] residential mortgage loan-servicing business, including compliance programs, internal audit, communications with borrowers, vendor management, management information systems, employee training, and oversight by the boards of the Ally Entities." The Consent Order also requires Ally to "retain independent consultants to conduct a risk assessment related to mortgage servicing activities and, separately, to conduct a review of certain past residential mortgage foreclosure actions."

699. Government-sponsored Freddie Mac and Fannie Mae have also brought actions against Ally, requiring certain of the RALI Defendants to repurchase $285 million of original unpaid principal for mortgages originated in 2004-2008. In addition, certain RALI Defendants made one-time payments to Freddie Mac and Fannie Mae in exchange for a release from repurchase obligation

for mortgage loans sold to the GSEs prior to June 30, 2010. The agreement however, does not release RALI from private label RMBS. (According to the FCIC report, Freddie Mac put back $453 million delinquent loans to Ally.) Indeed, the FHFA, as conservator for Freddie Mac, has brought a lawsuit against RALI for its failed $6 billion investment in Ally Trusts. *FHFA v. RALI* Complaint.

700. Further, on June 29, 2011, the SEC and United States Department of Justice ("DOJ") issued subpoenas as part of an investigation involving Ally's issuance of RMBS. According to a news article on the investigation, the DOJ sought "documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." The SEC investigated "payments Ally received from mortgage originators in exchange for Ally agreeing not to make [the originators] buy the loans back if the borrowers didn't make payments."

701. RALI's abandonment of prudent loan underwriting also had a negative impact on its own financial condition because RALI was unable to securitize and remove from its own books all the bad loans it was originating and acquiring during 2005 through 2007. The United States government continues to control a 74% stake in Ally after bailing it out and as a result of its wrongful conduct. Meanwhile, in March 2012, despite $17 billion taxpayer dollars sunk into Ally, it failed the Federal Reserve's "stress-test."

4. Residential Funding's Liability as an Underwriter of the RALI Certificates

702. RFS made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by RFS in the sale of certificates to investors.

703. As underwriter, RFS edited, drafted and controlled the content of the RALI Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the RALI

Certificates to Plaintiffs, RFS received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, RFS then disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

704. RFS, as a subsidiary within RALI, had knowledge that RALI, as alleged herein, failed to adhere to underwriting standards when it pooled mortgage loans for its RMBS, including for the RALI Trusts, and provided distorted information to the rating agencies that was purposefully manipulated to meet the targeted rating. Further, RFS knew, or was reckless in not knowing, of the defective loans in the RALI Trusts as a result of its due diligence performed as an underwriter for the RALI Trusts. RFS had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans RALI deposited in the RALI Trusts had a practice of routinely and systematically disregarding the stated underwriting standards.

705. RFS also knew that mortgage loans deposited into the RALI Trusts were not properly underwritten because RFS was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to the RALI Trusts, RFS underwrote and sold many other RALI RMBS and had in that context gained inside knowledge of its improper loan securitization practices that were also used for the Trusts.

5. UBS's Liability as an Underwriter of the RALI Certificates

706. UBS Securities made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by UBS Securities in the sale of certificates to investors.

707. As underwriter, UBS Securities edited, drafted and controlled the content of the RALI 2005-QA9, RALI 2005-QS7 and RALI 2005-QS9 Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above in §V.F. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, UBS Securities received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject trusts. As underwriter, UBS Securities then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

708. UBS Securities also knew that mortgage loans deposited into the RALI 2005-QA9, RALI 2005-QS7 and RALI 2005-QS9 Trusts were not properly underwritten because UBS Securities was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged in Section V.G. In addition to the RALI 2005-QA9, RALI 2005-QS7 and RALI 2005-QS9 Trusts, UBS Securities underwrote and sold many other RMBS, including as alleged below in Section V.G., and had in that context gained inside knowledge of the poor quality loan underwriting.

6. Citigroup Global Markets, Inc's Liability as an Underwriter of the RALI Certificates

709. CGMI made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by CGMI in the sale of Certificates to Plaintiffs.

710. As underwriter, CGMI edited, drafted and controlled the content of the RALI 2005-QS7 and RALI 2005-QS14 Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above in §V.F. In connection with its due diligence conducted

in connection with the offering of the Certificates to Plaintiffs, CGMI received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, CGMI then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

711. CGMI also knew that mortgage loans deposited into the RALI 2005-QS7 and RALI 2005-QS14 Trusts were not properly underwritten because CGMI was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged in Section V.B. In addition to the RALI 2005-QS7 and RALI 2005-QS14 Trusts, CGMI underwrote and sold many other such RMBS to investors and had in that context gained inside knowledge of the poor quality loan underwriting.

7. Deutsche Bank's Liability as an Underwriter of the RALI Certificates

712. DB Securities acted as the underwriter in the sale of Certificates from the RALI 2006-QS2 and RALI 2006-QS18 Trusts. DB Securities made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by DB Securities in the sale of those Certificates to Plaintiffs.

713. As underwriter, DB Securities edited, drafted and controlled the content of the RALI 2006-QS2 and RALI 2006-QS18 Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, DB Securities received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject Trusts. As underwriter, DB Securities then used and disseminated

these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

714. DB Securities knew, or was reckless in not knowing, of the defective loans in the RALI 2006-QS2 and RALI 2006-QS18 Trusts as a result of its due diligence performed as an underwriter of these RMBS offerings. DBS Securities had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans RALI deposited in the RALI 2006-QS2 and RALI 2006-QS18 Trusts had a practice of routinely and systematically disregarding the stated underwriting standards.

715. During the relevant time period in 2006, DB Securities also routinely engaged in the wrongful practice of underwriting and selling to investors securitizations of toxic mortgages. As a result of this misconduct regarding other RMBS, DB Securities was made aware that loan originators in connection with the RALI 2006-QS2 and RALI 2006-QS18 Trusts had a practice of failing to comply with the stated underwriting standards.

716. DB Securities was a sophisticated market-maker and subsidiary of Deutsche Bank AG (Deutsche Bank), which provided DB Securities with institutional and inside knowledge regarding the quality of the underwriting for the mortgage loans in the RALI Trusts. Deutsche Bank was a major player in the RMBS market and participated in virtually every aspect of the securitization process. Deutsche Bank had subsidiaries that originated loans, including MortgageIT Inc. ("MortgageIT") and DB Home Lending LLC. Deutsche Bank provided warehouse financing to other loan originators where those loans were then acquired and securitized into RMBS. Deutsche Bank acted as sponsor, depositor, trustee and underwriter for RMBS, and it arranged, structured and marketed CDOs, as well as the credit default swaps ("CDSs") that shorted its structured products.

717. Deutsche Bank's loan underwriting standards were similarly defective. When Clayton reviewed a sample of Deutsche Bank's mortgage loans from January 2006 through June 2007, it rejected 35% of the loans outright because they failed to meet underwriting guidelines and did not have any compensating factors. But for the loans Clayton rejected outright, Deutsche Bank waived through the securitization process an astonishing 50% that ended up in its RMBS trusts sold to investors.

718. As an affiliate of Deutsche Bank, DB Securities was party to a corporate-wide practice and process of creating RMBS with loans that did not meet prudent underwriting standards and then selling those toxic RMBS to investors. DB Securities engaged in a similar process when selling the RALI 2006-QS2 and RALI 2006-QS18 Trust Certificates to Plaintiffs without disclosing the true facts surrounding the underlying loans.

719. As detailed in a complaint filed by the DOJ, Deutsche Bank was aware of serious lapses in MortgageIT's loan underwriting practices, including the chronic failure to verify basic information concerning its borrowers, such as income and employment status. *See United States v. Deutsche Bank AG, et al.*, No. 11-CIV-2976 (S.D.N.Y.). The DOJ alleges Deutsche Bank failed to review the early payment defaults on the subprime loans it originated, as it was required to by its fiduciary duty to HUD to maintain its Direct Endorsement Lender status. Deutsche Bank's poorly-underwritten HUD-guaranteed loans are reportedly expected to cost the government more than $1 billion.

720. In July 2010, the Financial Industry Regulatory Authority fined Deutsche Bank $7.5 million for misrepresenting the delinquency rates of mortgages that it securitized into RMBS during the 2006-2007 time period.

721. Deutsche Bank also profited from its awareness of the lack of proper loan underwriting. After Deutsche Bank packaged and sold mortgage loans with inferior – or no – underwriting into its RMBS and then re-packaged them into CDOs, Deutsche Bank simultaneously shorted certain of these deals by purchasing CDS on the very same mortgage-backed investment it was selling to investors. Greg Lippmann ("Lippmann"), Deutsche Bank's head CDO trader, and his team sold CDOs to clients while failing to disclose that Deutsche Bank had bet against those deals by purchasing CDSs on them.

722. At the same time that DB Securities was selling RALI 2006-QS2 and RALI 2006-QS18 Certificates to Plaintiffs, Deutsche Bank was betting against residential mortgages and mortgage- backed investments because it was well aware of the widespread problems with loan underwriting practices and that a high percentage of these types of poorly underwritten mortgage loans would fail. Deutsche Bank's internal documents reveal that by 2006, Lippmann was describing the CDO business as a "Ponzi scheme," and he recommended shorting deals that were made up of RMBS, which he described as "pigs," "horrible," and "crap." In a September 2006 internal communication Lippmann described the mortgage-backed product Deutsche Bank was selling to investors as the "crap we shorted." In a December 2006 internal e-mail regarding another RMBS transaction he wrote to a trader "DOESN'T THIS DEAL BLOW," to which the trader replied "yes it blows I am seeing 20-40% writedowns."

723. As a signatory to the Offering Materials, DB Securities represented that the relevant statements contained in the RALI 2006-QS2 and RALI 2006-QS18 Offering Materials were true and correct. But as the above facts indicate, DB Securities knew, or it was reckless in not knowing, that these Trusts were riddled with loans where originators had systematically disregarded prudent loan underwriting standards. Thereafter, the RALI depositor and sponsor and DB Securities underwriter

had jointly waived these bad loans through the securitization process. DB Securities knew the loans in the RALI 2006-QS2 and RALI 2006-QS18 Trusts had a high risk of defaulting, but it failed to accurately disclose the risks to Plaintiffs. As Deutsche Bank knew, or was reckless in not knowing, was highly likely based on its inside information, Plaintiffs suffered millions of dollars in losses when the bad loans subsequently failed.

8. RBS'S Liability as an Underwriter of the RALI Certificates

724. Defendant RBS Securities, Inc. ("RBS Securities"), formerly known as both Greenwich Capital Markets, Inc. and RBS Greenwich Capital, is a broker-dealer registered with the SEC. It is a Delaware corporation headquartered in Connecticut, and is a wholly owned subsidiary of Greenwich Capital Holdings, Inc., which is an indirect wholly owned subsidiary of The Royal Bank of Scotland Group plc ("RBS Group"). RBS underwrote the RALI 2006-QS6 Trust.

725. RBS Securities acted as the underwriter in the sale of Certificates from the RALI 2006-QS6 Trust. As underwriter, it drafted and disseminated the RALI 2006-QS6 Offering Materials, which contained false and misleading statements about the quality of the underlying mortgages and the underwriting standards applied by RALI and its loan originators in connection with the sale of Certificates to Plaintiffs.

726. RBS Securities knew, or was reckless in not knowing, of the defective loans in the RALI 2006-QS6 Trust as a result of its due diligence performed as an underwriter of this RMBS offering. RBS Securities had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans RALI deposited in RALI 2006-QS6 Trust had a practice of routinely and systematically disregarding the stated underwriting standards.

727. RBS Securities also knew that mortgage loans deposited into the RALI 2006-QS6 Trust were not properly underwritten because RBS Securities was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to the RALI 2006-QS6 Trust, RBS Securities had underwritten and sold many other such RMBS to investors and had gained inside knowledge of the poor quality loan underwriting in that context too.

728. RBS Securities also participated in the improper securitization and sale of these RMBS to Plaintiffs in order to grow its profits. In its 2006 Form 20-F Annual Report filed with the SEC, RBS Group touted that it "ranked first among managers of global asset-backed and mortgage backed securitizations."

729. As a result of their participation in the securitizing of improperly underwritten loans, such as those deposited in the RALI 2006-QS6 Trust, RBS Group and RBS Securities have subsequently faced significant litigation relating to such matters. In five lawsuits filed by the FHFA (against Ally, Countrywide, JP Morgan, Morgan Stanley and Nomura) RBS Securities is a named defendant based on its underwriting of RMBS for the sponsors of the RMBS at issue in those cases.

730. The National Credit Union Administration Board, an independent government agency, as the liquidating agent of the U.S. Central Federal Credit Union, has also brought suit against RBS Securities and other Defendants based on allegedly false statements made in RMBS offerings. *Nat'l Credit Union Admin. Bd. v. RBS Securities, Inc., et al.*, No. 2:11-cv-2340 (D. Kans. June 20, 2011).

731. In another lawsuit brought by Massachusetts Mutual Life Insurance Company against RBS Securities and its affiliates, it is alleged that of the 10 securitizations in which Mass. Mutual

purchased Certificates, approximately 25% or more of the loans had defaulted, with one securitization reaching a default level of more than 50%. Complaint, *Mass. Mutual v. RBS Fin. Prods. Inc. et al.*, 3:11-cv-30044 (D. Mass. Feb. 24, 2011), ¶6.

732. The *Mass. Mutual v. RBS* plaintiffs conducted an industry-standard AVM analysis of the underlying loans there in securitizations by RBS Securities affiliates, and it further indicates RBS Securities was party to a widespread corporate practice of selling RMBS offerings that were replete with bad loans made with deficient underwriting practices. The chart below summarizes the *Mass. Mutual v. RBS* plaintiffs' findings:

Trust	Sellers	Weighted Average LTV of Collateral Loans Represented in Offering Materials	Actual Values of LTV	% of Collateral Loans with LTV Greater than 90% As Represented in Offering Materials	Actual % with LTV Greater than 90%	% of Loans Liquidated, Foreclosed Upon, in Default or Delinquent
DSLA Mortgage Loan Trust 2005-AR3	Greenwich Capital Financial Products, Inc. ("GCFP") (Seller); Greenwich Capital Acceptance, Inc. ("GCA") (Depositor); RBS Securities (Underwriter)	71.62%	75%	0%	8.75%	16.53%
DSLA Mortgage Loan Trust 2005-AR6	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	73.63%	78.20%	1.44%	13.85%	24.58%
Harborview Mortgage Loan Trust 2005-8	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	77.54% (Group 1-A1)	83.64% (Group 1-A1)	6.52% (Group 1-a1)	23.59% (Group 1-A1)	22.01%
Harborview Mortgage Loan Trust 2005-13	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	77.60%	86.355	5.21%	18.04%	21.60%
HarborView Mortgage Loan Trust 2006-4	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	75.94%	87.87%	8.12%	24.04%	35.35%
Soundview Home Loan Trust 2006-WF1	GCFP (Sponsor); Financial Asset Securities Corp. (Depositor); RBS	82.74%	93.10%	(n/a)	(n/a)	35.97%

Trust	Sellers	Weighted Average LTV of Collateral Loans Represented in Offering Materials	Actual Values of LTV	% of Collateral Loans with LTV Greater than 90% As Represented in Offering Materials	Actual % with LTV Greater than 90%	% of Loans Liquidated, Foreclosed Upon, in Default or Delinquent
	Securities (Underwriter)					
HarborView Mortgage Loan Trust 2006-SB1	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	72.22%	81.49%	0.94%	19.75%	29.95%
RBSGC Mortgage Loan Trust 2007-A	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	73.38%	83.37%	7.17%	19.27%	24.62%
RBSGC Mortgage Loan Trust 2007-B	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	72.35% (Pool 1); 63.65% (Pool 2)	80.96% (Pool 1); 84.10% (Pool 2)	7.47% (Pool 1); 2.33% (Pool 2)	16.88% (Pool 1); 18.14% (Pool 2)	17.52%
HarborView Mortgage Loan Trust 2007-2	GCFP (Sponsor); GCA (Depositor); RBS Securities (Underwriter)	76.41%	90.42%	4.59%	34.38%	50.25%

733. In October 2010 the SEC commenced an inquiry into the document deficiencies and repurchase requests associated with RBS Group securitizations. The SEC converted the inquiry into a formal investigation in January 2011 and expanded its probe to include information related to early payment defaults. RBS Group also disclosed in its filings that the SEC had begun a non-public, formal investigation in March 2008 of the Group's sub-prime securities and RMBS exposures. In December 2010, the SEC expanded its investigation to include CDOs.

734. In June 2009 the Massachusetts Attorney General initiated an investigation that included RBS Group and sought information regarding residential mortgage lending practices and the sale and securitization of residential mortgage loans. In November 2011, RBS Group settled with the Massachusetts Attorney General for $52 million.

735. RBS Group also faces ongoing investigations led by the New York State Attorney General and the Nevada State Attorney General regarding similar RMBS issues.

736. As a signatory to the Offering Materials, RBS Securities represented that the relevant statements at issue herein contained in the RALI 2006-QS6 Trust were true. But as the above facts indicate, RBS Securities knew, or it was reckless in not knowing, that the RALI 2006-QS6 Trust was loaded with bad loans where originators had systematically disregarded underwriting standards and the depositor, sponsor and underwriter had all waived these bad loans through the securitization process. As a result of this fraudulent misconduct, these bad loans were destined to fail, just as they subsequently did, to serious detriment of Plaintiffs.

G. UBS

1. UBS's Securitizations

737. Union Central purchased three certificates sponsored by UBS between June 2005 and April 2006, representing an investment of approximately $13 million:

CUSIP	Description	Issuing Entity	Issue Date	Purchase Date
57643MKV5	MASTR 2005-1 B3	MASTR Asset Securitization Trust 2005-1	5/1/2005	6/10/2005
57643MMX9	MASTR 2006-1 B1	MASTR Asset Securitization Trust 2006-1	3/1/2006	4/6/2006
57643MLQ5	MASTR 2005-2 B1	MASTR Asset Securitization Trust 2005-2	10/1/2005	11/8/2005

738. The UBS Trusts were $273-$416 million deals comprising fixed-rate mortgages with mostly 30-year terms.

2. False and Misleading Statements in UBS' Offering Materials

a. False and Misleading Statements About Compliance with Underwriting Standards

739. As sponsor of the securitizations, the UBS Defendants either originated the underlying mortgages through UBS's own programs, or purchased the underlying mortgage loans from other originators, including Bank of America, JP Morgan Chase and SunTrust Mortgage. The

Offering Materials represented that each of the loan sellers applied underwriting standards which were designed to ensure that the borrower could repay the loan.

740. The UBS Prospectus Supplement for each Certificate stated that the originators had collected various financial information about a borrower to ensure that the borrower could repay the loan:

> Generally, each borrower will have been required to complete an application designed to provide to the original lender pertinent credit information concerning the borrower. . . .
>
> Based on the data provided in the application and certain verification (if required), a determination is made by the original lender that the borrower's monthly income (if required to be stated) will be sufficient to enable the borrower to meet its monthly obligations on the mortgage loan and other expenses related to the property such as property taxes, utility costs, standard hazard insurance and other fixed obligations other than housing expenses.

741. Similarly, with respect to MASTR 2006-1, the Offering Materials stated the following regarding SunTrust Mortgage's underwriting standards:

> SunTrust underwriting guidelines generally follow standard Fannie Mae guidelines. They are designed to evaluate the borrower's capacity to repay the loan, to evaluate the credit history of the borrower, to verify the availability of funds required for closing and cash reserves, and to evaluate the acceptability and marketability of the property to be used as collateral. . . .
>
> The real estate lending processes for one-to four-family mortgage loans follow standard procedures, designed to comply with applicable federal and state laws and regulations. SunTrust requires that the borrower's sources of income have the probability of continuance, are stable sources and are sufficient to support repayment of the mortgage loan requested. A borrower is required to complete an application designed to provide pertinent information about the borrower, the property to be financed and the type of loan desired.

b. False and Misleading Statements About Appraisals and LTV Ratios

742. The UBS Offering Documents represented that the underlying mortgaged properties would provide adequate security for the mortgage loans, based in part on the appraised value of the properties securing the mortgage loans underlying the Certificates. The Offering Materials for the

UBS Certificates represented that Defendants required and relied upon industry-standard appraisals to determine the adequacy of the underlying collateral. For example, the Offering Materials for each of the UBS Certificates stated:

> The adequacy of the mortgaged property as security for repayment of the related Loan will generally have been determined by an appraisal in accordance with pre-established appraisal procedure standards for appraisals established by or acceptable to the originator. All appraisals conform to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and must be on forms acceptable to Fannie Mae and/or Freddie Mac. . . . The appraisal procedure standards generally will have required the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property was in good condition and that construction, if new, had been substantially completed.

743. Similarly, with respect to loans originated by SunTrust, the 2006-1 Prospectus stated:

> To determine the acceptability and marketability of the mortgaged property as collateral, generally an independent appraisal is made of each mortgaged property considered for financing. An appraiser is required to inspect the mortgaged property and verify that it is in acceptable condition and that construction, if recent, has been completed. The evaluation is based on the appraiser's estimate of value, giving appropriate weight to both the market value of comparable housing, as well as the cost of replacing the mortgaged property. The underwriting guidelines require that the value of the mortgaged property being financed, as indicated by the independent evaluation, currently supports and is anticipated to support in the future the outstanding loan balance and provides sufficient value to mitigate the effects of adverse shifts in real estate values, although there can be no assurance that such value will support the outstanding loan balance in the future.

744. The Prospectus also contains representations concerning the LTV ratios of the mortgage loans underlying each securitization. Specifically, the 2005-1, 2005-2 and 2006-1 Certificates disclosed LTV ratios of 66.5%, 65.9%, and 67.7%, respectively. These representations were false.

c. False and Misleading Statements About Debt-to-Income Ratios

745. The Offering Materials stated that in the course of the loan application process, borrowers were generally required to provide information regarding their assets, liabilities and

income in order to determine the borrowers' ability to repay the debt. For example, the Offering Materials for each of the Certificates stated:

> As part of the description of the borrower's financial condition, the borrower will have furnished information with respect to its assets, liabilities, income (except as described below), credit history, employment history and personal information, and furnished an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy

746. Where provided, such information was converted into DTI ratios, which were a material part of the underwriting process, and specific DTI ratios for the loans underlying the Certificates were utilized by the rating agencies to determine the ratings for the certificates in the Trust.

d. False and Misleading Statements About Owner-Occupancy

747. The Offering Materials contained specific disclosures about the occupancy-rate status of the loans underlying the Certificates.

748. The Series 2005-1 Offering Materials stated that 490 out of the 506 loans, or 96.8% of the aggregate principal balance of the mortgage loans, were for owner-occupied properties. Fourteen of the remaining loans were purportedly for second homes and four were for investment.

749. The Series 2005-2 Offering Materials stated that 651 out of the 698 loans, or 94.5% of the aggregate principal balance of the mortgage loans, were for owner-occupied properties. Twenty-three of the remaining loans were for second homes and 23 were for investment.

750. The Series 2006-1 Offering Materials stated that 745 out of the 810 loans, or 92.6% of the aggregate principal balance of the mortgage loans, were for owner occupied properties. Forty-three of the remaining loans were for second homes and 22 were for investment.

e. False and Misleading Statements About Ratings

751. The Offering Materials for the UBS Certificates stated that the ratings of the Certificates as set forth in the Prospectus for a condition to their issuance, and that the ratings reflected the likelihood that investors would receive the distributions to which they were entitled:

> It is a condition to the original issuance of the offered certificates that each class of offered certificates will have received the ratings set forth on the table beginning on page S-6 of this prospectus supplement.
>
> * * *
>
> A securities rating addresses the likelihood of the receipt by the certificateholders of distributions on the offered certificates.
>
> * * *
>
> The ratings assigned by the Rating Agencies to mortgage pass-through certificates address the likelihood of the receipt of all distributions on loans by certificateholders under the agreements pursuant to which the certificates are issued. The ratings of the Rating Agencies take into consideration the credit quality of the related mortgage pool, including any credit support providers, structural and legal aspects associated with the certificates, and the extent to which the payment stream on the mortgage pool is adequate to make the payments required by the certificates.

752. The Offering Materials also set forth the specific ratings for the Certificates purchased by Union Central. The Series 2005-2 and 2006-1 Certificates were rated AA by S&P. The Series 2005-1 Certificates was rated BBB by Fitch.

753. In obtaining these ratings for the subject Certificates, UBS concealed the adverse information alleged herein from the rating agencies. Had the rating agencies known the true value of the loans underlying the Certificates, the Certificates would have been rated significantly lower, or not at all.

3. Defendants' Statements Were Knowingly False and Misleading

754. The UBS Defendants knew, or were reckless in not knowing, that the statements identified above were materially false and misleading and/or omitted material facts necessary to

make the statements made not misleading. As set forth herein, the UBS Defendants had actual knowledge that the stated underwriting guidelines were not being adhered to and, rather than provide truthful information and disclosures to Union Central and other investors, used such knowledge to reap massive profits for itself by betting against the very mortgage-backed products they were selling investors.

a. Underwriting Standards Had Been Abandoned

755. While the Offering Materials set forth detailed underwriting guidelines which were supposed to be applied in evaluating borrowers and loans, in fact the stated underwriting guidelines had been abandoned by the loan originators. Loan originators abandoned the fundamental principle that underwriting was supposed to meaningfully evaluate the borrowers' ability to repay the debt, and the lender and/or investors' ability to recover against the pledged collateral in the event of a default.

756. BofA had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to UBS for inclusion in the subject Trusts, as alleged above at §IV.I.1.

757. Greenpoint had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to UBS for inclusion in the subject Trusts, as alleged above at §IV.I.3.

758. SunTrust had abandoned all prudent underwriting practices with respect to the loans that it had originated and sold to UBS for inclusion in the subject Trusts, as alleged above at §IV.I.4.

(1) Skyrocketing Default Rates Are Evidence of Abandoned Underwriting

759. The Certificates purchased by Union Central were supposed to be stable, long-term investments backed by investment-grade credit ratings. However, the extraordinary default rates on the mortgage loans underlying Union Central's Certificates is prima facie evidence that the stated

underwriting standards and loan characteristics represented in the Offering Materials were materially false and misleading.

760. The following chart sets forth the delinquency, bankruptcy or foreclosure amounts, as well as collateral cumulative losses (the losses from defaulted loans that have already been realized by the Trusts), for each of the Certificates purchased by Union Central as of June 2010:

Certificate	Original Deal Size	Delinquent, Bankruptcy Foreclosure, REO Actual Bal.	Collateral Cumulative Losses
2005-1	$273,151,063	$ n/a	$ n/a
2005-2	$339,007,792	$13,751,324	$862,774
2006-2	$419,235,122	$23,134,724	$3,740,235

761. Had the loans been issued in accordance with the stated underwriting guidelines, and had the loans in fact had the characteristics described in the Offering Materials, the rate of delinquency, bankruptcy and foreclosure would be far lower than the current rates. Indeed, Moody's maximum expected collateral losses for the life of the 2005-2 Certificate was only $1.19 million. Moody's maximum expected collateral losses for the life of the 2006-1 Certificate was only $1.47 million.

(2) Appraisals and LTV Ratios Were Inflated

762. The descriptions of appraisal standards, as well as the LTV ratios derived from such appraisals, were materially false and misleading. Undisclosed in the Offering Materials, and in violation of any legitimate appraisal standards, a high percentage of loans underlying the Certificates had been approved through the use of manipulated appraisals that guaranteed that the collateral property would be valued at a price sufficient to support the loan. UBS's practice of using and permitting inflated appraisals in connection with its loan securitizations has been confirmed through

modeling performed by other litigants, which demonstrates that appraisals conducted with UBS securitizations in 2006 were routinely inflated.

763. For instance, the FHFA conducted an AVM analysis of a sample of the property underlying the 16 MASTR offerings at issue in their litigation against MASTR and UBS. Second Amended Complaint, *FHFA v. UBS Americas, Inc.*, No. 11-5201 (S.D.N.Y. July 27, 2011) (Dkt. No. 1), ¶¶289-295. AVM's are routinely used in the industry as a way of valuing properties during prequalification, origination portfolio review and servicing. The FHFA's analysis demonstrates that the valuation of the loans underlying those Certificates were materially and consistently inflated, and therefore that the stated LTV ratios were materially overstated, which in turn greatly increased the risk of default for the loans underlying the certificates.

764. For example, with respect to three of the certificates at issue in the FHFA's case, MABS 2005-WF1, MABS 2006-FRE2, and MABS 2006-NC2, the offering materials stated that the percentage of loans having an LTV ratio of 80% of less was 56.13%, 61.59%, 67.99% respectively. However, the FHFA's analysis showed the actual percentage of loans having an LTV ratio of 80% or less was much lower, at 47.09%, 35.05%, 41.59% respectively. While none of the certificates were supposed to contain loans that had an LTV ratio over 100%, the FHFA's analysis found that a significant number of loans indeed had LTV ratios of over 100% – in other words, the value of loan was more than the value of the property. With respect to the MABS 2005-WF1, MABS 2006-FRE2, and MABS 2006-NC2 Certificates, the FHFA found LTV ratios greater than 100% in 12.26%, 15.07%, and 14.36% of the loans, respectively.

765. Instead of conducting appraisals designed to accurately value the subject property in compliance with USPAP, many appraisals UBS sanctioned and accepted, if they were conducted at

all, were designed to hit valuation targets that would allow loans to be funded and securitized into RMBS so UBS could sell them to investors, including Plaintiffs.

766. Not only did UBS have access to the loan files and monitoring results that indicated to Defendants there were inflated appraisals used to support the loans in the subject UBS Trusts, but they were also privy as industry-insiders to the non-public information alleged in §V.G. regarding the widespread wrongful appraisal practices and the pressures that UBS's loan originators were applying to appraisers in an effort to close the loans and continue to feed UBS with raw material it needed to continue the highly profitable loan securitization businesses.

(3) Debt-to-Income Ratios Were Falsified

767. The statements contained in the UBS Offering Materials regarding the acceptability and evaluation of DTI ratios, as well as many of the specific DTI ratios disclosed, were materially false and misleading. In fact, UBS and the originators knew that borrowers routinely falsified their stated incomes in order to have loans approved.

(4) Owner-Occupancy Rates Were Falsified

768. In addition to the examples above which demonstrate that the Offering Materials misrepresented the owner-occupancy rates of subject properties underlying the Trusts, other litigants' loan-level analysis of thousands of loans securitized by UBS at the same time as the Certificates at issue here, have confirmed that UBS's RMBS Offering Materials routinely misstated the owner-occupancy rates of the loans underlying the Certificates. In addition to their LTV analysis, the FHFA undertook a sophisticated analysis to determine whether a given borrower actually occupied the property as claimed in the UBS Offering Materials. *FHFA v. UBS* Complaint, ¶¶283-288. For almost every MASTR offering at issue there, the FHFA analyzed at least 1,000

loans. The FHFA analyzed tax records, credit records, bills, property records and lien records, to determine whether a borrower was actually living in the property subject to the loan.

769. The results of the FHFA's analysis demonstrates that the percentage of owner-occupied properties disclosed by UBS in their prospectuses was consistently false and that the true rate was much lower. For the MASTR certificates at issue there, the FHFA found that the percentage of non-owner-occupied properties was understated by between 7%-13%.

(5) Defendants Knew that Underwriting Standards Were Being Abandoned

770. Based on its review of the loans in question, UBS had actual knowledge that the loans it securitized in the Trusts sold to Union Central did not comply with the stated underwriting guidelines contained in the Offering Materials, that the quantitative and qualitative data contained in the Offering Materials was materially false and misleading. UBS also accepted poorly underwritten loans in order to grow its securitization business.

b. UBS Had Actual Knowledge of the Defective Loans They Were Securitizing

771. Documents recently released by Clayton confirm UBS's practices resulting in there being rampant underwriting violations in the loan pools backing the UBS Certificates. As the FCIC described, in the internal Clayton "Trending Report" made public by the Government in conjunction with testimony given in September 2010, UBS received regular reports regarding defective loans, and ***13%*** of the loans Clayton reviewed for UBS "failed to meet guidelines." These loans were not subject to any proper "exceptions," as they did not have any "compensating factors." Rather, these loans were plainly defective.

772. Despite such a high level of nonconforming loans, UBS nevertheless continued utilizing, and indeed funding, the same originators who had placed the nonconforming loans in the pools and "waived in" to its pools 33% of those toxic loans that Clayton had identified as being

outside the guidelines. Such waivers were never disclosed to Union Central or any of the investors who purchased UBS Certificates.

773. The Clayton data demonstrates that underwriting guidelines were being routinely violated, and that UBS was informed of such violations.

774. In their zeal to securitize as many loans as possible, UBS securitized a substantial number of loans which they knew did not comply with the stated underwriting guidelines. Indeed, the due diligence that UBS did conduct gave them actual knowledge that many of the loans backing the Certificates failed to comply with the stated underwriting guidelines.

(1) UBS Succumbed to Competitive Pressure to Securitize Bad Loans

775. UBS's business plan and strategic effort to grow its loan securitization business was a key element driving UBS to acquire, securitize and sell mortgage loans regardless of whether those loans had been properly underwritten or whether borrowers had the willingness and ability to repay the debt.

776. By 2005 it was internally recognized within UBS that of all the businesses conducted by UBS's Investment Banking group, the biggest competitive gap was in Fixed Income – the business that acquired and securitized mortgages. In fact, it was a key point of internal discussion that UBS's Fixed Income positioning had declined vis-à-vis leading competitors since 2002.

777. In an effort to close this competitive gap, UBS made a concerted effort to grow its mortgage securitization business. To formulate a strategic and tactical plan to its increase market share of asset-backed securitization business, and in order to keep up with competitors, UBS hired a consulting firm who recommended to UBS's Investment Banking group – the group that operated in the United States through Defendant UBS Securities LLC – that they invest in developing RMBS

operations that focused on subprime and adjustable rate mortgage products. The consultant specifically recommended these areas as significant revenue growth opportunities.

778. At the same time that UBS was seeking to expand its Investment Banking group's loan securitization business, it was in the process of transferring its Mortgage Origination Services Group to the separate and newly created Dillon Read Capital Management ("DRCM") business unit. Because DRCM was not viewed as an outsourcing of the Investment Banking group's fixed income and securitization business, UBS Defendants needed even more mortgage securitizations to make up for the loss of the Mortgage Origination Services Group to DRCM. This transfer of securitization operations to DRCM put additional pressure on the UBS Defendants to acquire and securitize more mortgages to meet the targeted growth plan regardless of whether those loans had been properly underwritten.

779. UBS's strategic plan to grow its business by increasing fixed income market share with an expanded appetite for high-yield and subprime loans was partially reflected in UBS's Form 20-F SEC filing for year end 2005:

> We are seeking to expand our fixed income business further by pursuing opportunities in credit, high yield and asset-backed securities. We will expand our leveraged finance and high yield appetite and extend our client footprint in debt capital markets. Within asset-backed securities, we will match our strength in the agency business with non-agency and sub-prime business as well as developing local currency asset-backed and mortgage-backed securities.

780. UBS's Form 20-F SEC filing for year end 2005 identified its competitors for the available share of the loan securitization business: "As a global investment banking and securities firm, we compete against other major international players such as Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs . . . and Morgan Stanley." As alleged herein, these Defendants were all engaged in a competitive "race to the bottom" by secretly abandoning prudent loan underwriting

requirements for the loans they were acquiring, securitizing and selling to investors, including plaintiffs, during the 2005 to 2007 time period.

(2) UBS's Financial Incentives for Securitizing Defective Loans

781. The UBS Defendants had enormous financial incentives to complete as many RMBS offerings as quickly as possible without regard to the accuracy or completeness of the Registration Statements, and while concealing the adverse information that they were securitizing bad loans that had been waived through the due diligence process. For example, UBS Securities, as the underwriter, was paid a commission based on the amount it received from the sale of the Certificates to the public. Similarly, UBS Real Estate and MASTR received substantial revenues and additional fees from UBS Securities for the sale of the Certificates.

782. The UBS Defendants were successful in their efforts to grow profits by increasing loan securitizations regardless of the huge undisclosed risks presented by the wide-spread abandonment of prudent loan underwriting practices. As a result, in 2005 UBS increased its fixed income underwriting fees by 36% compared to fees earned from those operations in 2004. UBS's Form 20-F SEC filing for year-end 2006 reported that this increase in fixed income underwriting in 2005 was "due to significantly improved market conditions and our enhanced competitive position." The UBS Defendants benefited from this growth as net profits attributable to UBS shareholders grew by 75% during 2005.

783. 2006 was UBS's Investment Banking group's most profitable year ever, and pre-tax profits for that group grew by 15% over 2005 results. UBS attributed to this growth to "progress in our plan to expand our . . . mortgage-backed securities [and other lines of business]." UBS's Form 20-F SEC filing for year-end 2006 reported: "Overall, net fee and commission income now contributes 55% to total operating income in 2006." In addition, the 2006 Form 20-F reported:

"Fixed income activities saw stronger results driven by positive market conditions and improved performance in derivatives, mortgage-backed securities and commodities."

784. Pursuant to the UBS Defendants' conscious initiative to grow market share by expanding the mortgage and asset securitization business, UBS's balance sheet grew by approximately 17% in 2005 and 2006, and UBS's Investment Banking group's share of the total balance sheet assets was always over 80%. By late 2007, however, various regulators commenced investigations relating to UBS's involvement in the securitizations of residential mortgages, including the due diligence practices of UBS securities.

(3) UBS's Internal Investigation into Loan Securitization Practices

785. In order to facilitate its loan securitizations, UBS held and retained for its own account certain super-senior tranches of the RMBS trusts it was selling to investors. UBS took various steps in an effort to hedge the publicly undisclosed risk resulting from holding these securities on its own books, but those attempts were not entirely successful. For example, UBS purchased insurance on many of the RMBS tranches it was holding for its own account, but the insurer experienced financial difficulties and the ultimate lack of protection/coverage caused UBS to write down mortgage-backed securities it held on its books.

786. On December 24, 2007, Swiss regulators announced that the Swiss banking department charged with oversight of Swiss investment banks would be initiating a full investigation into how UBS incurred massive losses in connection with subprime mortgages in the United States. In April 2008, UBS AG presented Swiss banking regulators with a report detailing the reasons for its massive losses related to the United States subprime mortgage market. In that report, which was summarized in a shareholder report issued by UBS AV on April 21, 2008, UBS admitted that its

losses in the United States subprime mortgage market were due to a litany of errors including inadequate risk management and a focus on revenue growth.

787. UBS's report to shareholders identified management's "[f]ailure to demand a holistic risk assessment." The report went on to explain: "It appears that the focus of the IB [*i.e.*, Investment Bank group] was revenue growth and filling the gap to competitors. This contrasts with the level of debate at the same time within relevant Group governance committees such as the GRSC [*i.e.*, the Risk Subcommittee of the Group Executive Committee of UBS]."

788. With the subsequent publication of the FCIC Report and based upon the other factual information that has recently come to light, it is clear that UBS Investment Banking group not only failed to employ a "holistic risk assessment" in its drive to grow its loan securitization business and keep up with the competition, but UBS ignored the high-level internal debates, the internal reports and outside reports (including Clayton reports) all of which revealed to the UBS Defendants that the mortgages they were securitizing did not meet prudent loan underwriting standards. The UBS knew, or were reckless in not knowing, that there was a very high percentage of bad loans securitized and deposited in the Trusts that it sold to Plaintiffs.

4. UBS's Liability as an Underwriter of the UBS Certificate

789. UBS Securities made the false and misleading statements alleged above, which were contained in the Prospectus Supplement endorsed and used by UBS Securities in the sale of certificates to Plaintiffs.

790. As underwriter, UBS Securities edited, drafted and controlled the content of the UBS Trusts' Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with its due diligence conducted in connection with the offering of the Certificates to Plaintiffs, UBS Securities received, considered and understood the adverse

information alleged above regarding the lack of proper underwriting for the loans deposited in the USB Trusts. As underwriter, UBS Securities then used and disseminated these false and misleading Offering Materials to Plaintiffs in connection with the sale of the Certificates and in order to profit at Plaintiffs' expense.

791. UBS Securities, as a subsidiary within UBS, had knowledge that UBS, as alleged herein failed to adhere to underwriting standards when it pooled mortgage loans for its RMBS, including for the UBS Trusts. Further, UBS Securities, knew or was reckless in not knowing, of the defective loans in the UBS Trusts as a result of its due diligence performed as an underwriter for these Trusts. UBS Securities had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans UBS deposited in the UBS Trusts had a practice of routinely and systematically disregarding the stated underwriting standards.

792. UBS Securities also knew that mortgage loans deposited into the UBS Trusts were not properly underwritten because UBS Securities was a knowledgeable insider in the mortgage securitization industry who, unlike Plaintiffs, was privy to the widespread abandonment of prudent loan underwriting practices in connection with the securitization of loans, as alleged herein. In addition to these Trusts, UBS Securities underwrote and sold many other such RMBS to investors and had in that context gained inside knowledge of the poor quality loan underwriting.

5. SunTrust's Liability as an Underwriter of the UBS Certificates

793. Defendant SunTrust Capital Markets, Inc., ("SCM") operates as the investment banking arm of SunTrust Banks Inc. ("STB"), of which it is a wholly owned subsidiary. Collectively, they are referred to as "SunTrust."

794. SCM acted as the underwriter in the sale of Certificates from the MASTR Asset Securitization Trust 2006-1. As underwriter, it drafted and disseminated the MASTR 2006-1 Offering Materials, which contained false and misleading statements about the quality of the underlying mortgages and the underwriting standards applied by UBS and its loan originators for that offering.

795. SCM knew that mortgages pooled into the MASTR RMBS had failed to meet underwriting standards because SCM engaged in the routine practice of underwriting and selling securitizations of toxic mortgages, such as those in the MASTR 2006-1 Trust. SCM also knew, or was reckless in not knowing, of the defective loans in the MASTR 2006-1 Trust as a result of its due diligence performed as an underwriter of that RMBS offering.

796. SCM had access to the detailed loan tapes and actual loan files, and its review of these materials showed it (or it was reckless in not understanding) that originators of the loans UBS deposited in MASTR 2006-1 Trust had a practice of routinely and systematically disregarding the stated underwriting standards.

797. Indeed, SunTrust Mortgage was an SCM affiliate and was a loan originator for the MASTR 2006-1 Trust. SCM knew of SunTrust's corporate-wide practice of effectively abandoning prudent loan underwriting in the pursuit of greater profits. SCM also understood that bad loans had been deposited in the MASTR 2006-1 Trust because SCM was aware that SunTrust Mortgage had originated many of the loans in the Trust and SCM knew, or was recklessly in not knowing, SunTrust Mortgage had a widespread practice of abandoning prudent underwriting standards when originating loans, as alleged at §III.I.4.

798. SCM also routinely performed due diligence on SunTrust Mortgage loans that had been securitized in other RMBS that SCM was underwriting and selling to investors. SCM's

experience with those other RMBS transactions provided it with further knowledge of SunTrust Mortgage's custom and practice of originating loans regardless of whether borrowers had the ability to repay the loans.

799. SCM had further awareness of the bad loans in the MASTR 2006-1 Trust because SCM and its affiliates participated in the widespread process of originating, securitizing and selling toxic loans. From 2006 to 2007, SunTrust expanded its RMBS business at an enormous rate – growing from $141 million RMBS in trading assets in 2006 to $939 million in 2007.

800. Other parties have also experienced the toxic quality of mortgages originated by SunTrust and its affiliates. For example, the FCIC Report explains that Fannie Mae performed a review of delinquent loans originated by a SunTrust affiliate. As a result of its review, from 2007 through 2010, Fannie Mae put back $898 million worth of mortgages for which SunTrust had breached its representations and warranties.

801. In addition, SunTrust agreed to a Consent Order with the Federal Reserve on April 13, 2011, in which SunTrust agreed to strengthen and improve its oversight, compliance, and risk management programs for its mortgage businesses.

802. As a signatory to the Offering Materials, SCM represented that the statements in the MASTR 2006-1 Offering Materials were true. But based on the above facts, it knew, or it was reckless in not knowing, that those representations were materially false and misleading.

VI. DISCLOSURES EMERGE ABOUT THE PROBLEMS UNDERLYING THE LOANS

803. Years and months after Plaintiffs made purchases of the Certificates, the credit rating agencies began to lower ratings on certain of the Certificates. Many of the Certificates were downgraded by the credit rating agencies from "investment grade" to "junk" status.

804. The ratings action represents only a partial picture of the rapid deterioration of the Certificates issued pursuant to the Trusts, as other performance measures of the Certificates showed substantial decay due to the prevalence of bad loans. No further interest or principal payments will be received on some of Union Central's Certificates, and as a result, Union Central has experienced a complete loss on these investments.

805. The table below sets forth the current pricing and current ratings (compared to original ratings) with respect to the Certificates purchased by Plaintiffs:

Certificate	Current Trading Price as a Percentage of Par[10]	Original Rating	Current Rating
• Citigroup Mortgage Loan Trust 2007-10 1B1	11%	AA	CCC
• Citicorp Mortgage Securities Trust, Series 2007-5 B1	6%	AA	CC
• Citicorp Mortgage Securities Trust, Series 2007-8 B1	10%	AA	CC
• IndyMac IMJA Mortgage Loan Trust 2007-A1 B1	0%	AA	D
• GSR Mortgage Loan Trust 2006-7F M1	1%	AA+	C
• GSR Mortgage Loan Trust 2006-9F M1	5%	AA+	C
• MASTR Asset Securitization Trust 2005-1 B3	2%	BBB	C
• MASTR Asset Securitization Trust 2005-2 B1	Sold at 30%	AA	CCC
• MASTR Asset Securitization Trust 2006-1 B1	3%	AA	D
• Morgan Stanley Mortgage Loan	Sold at 4%	AA	D

10 Per *Bloomberg*, April 2011.

Certificate	Current Trading Price as a Percentage of Par[10]	Original Rating	Current Rating
Trust 2005-5AR B1			
• RALI Series 2005-QA9 Trust M1	0% *	AA	D
• RALI Series 2005-QS7 Trust M3	0% *	BBB	D
• RALI Series 2005-QS9 Trust M3	0% *	BBB	D
• RALI Series 2005-QS14 Trust 1M1	18%	AA	D
• RALI Series 2005-QA5 Trust M3	0% *	BBB	C
• RALI Series 2006-QS6 Trust 2M1	4%	AA	D
• RALI Series 2006 QS18 Trust 2M1	0%	AA	D
• RALI Series 2006-QS18 Trust 2M2	0% *	A	D
• RALI Series 2006 QS18 Trust 2M3	0% *	BBB	D
• RALI Series 2006-QS2 Trust 2M1	7%	AA	D
• Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2005-3 B3	0% *	BBB	D

* No further interest or principal payments will be received on these Certificates.

806. However, even as problems in the mortgage loan portfolio became apparent, investors were not aware of Defendants' intentional misconduct until the findings of the FCIC investigation were revealed in part in 2010 and 2011.

807. The loan defaults and related drop in value for Plaintiffs' Certificates were caused by Defendants' wrongdoing. In fact, Defendants' failure to honor, enforce and apply prudent and

proper loan underwriting in their rush to securitize mortgages was a central contributor to the ensuring financial crisis. As the Senate PSI Report concluded: "Investment banks were the driving force behind the structured finance products that provided a steady stream of funding for lenders originating high risk, poor quality loans and that magnified risk throughout the U.S. financial system. The investment banks that engineered, sold, traded, and profited from mortgage related structured finance products were a major cause of the financial crisis."

VII. UNION CENTRAL'S RELIANCE ON DEFENDANTS' FALSE AND MISLEADING STATEMENTS

808. The Certificates for all offerings were issued pursuant to the Offering Materials, which contained the false and misleading statements set forth above.

809. In deciding to purchase the Certificates, Union Central relied on Defendants' false and misleading representations and omissions of material fact regarding the Certificates ratings and underwriting standards that had been applied to the loans backing the Certificates. But for Defendants' fraudulent representations and omissions, Union Central would not have purchased the Certificates.

810. Union Central reasonably relied upon Defendants' representations in the Offering Materials regarding loan quality and believe at the time that Defendants would not engage in the wrongful conduct alleged herein. Union Central did not know at the time it purchased the Certificates, and could not have known, that Defendants were knowingly and recklessly securitizing loans where originators were routinely abandoning the stated underwriting guidelines, leading to a drastic increase in the origination of defective loans. Nor did Union Central know that the property appraisals used by the originators and accepted by Defendants were falsely inflated. Union Central also did not know that Defendants and the originators knowingly accepted false information about material facts such as borrowers' stated income, which caused Defendants' representations to be

false as alleged above. Union Central did not know that Defendants' due diligence had identified significant problems with the originators' loans, and that Defendants' practice was to waive these bad loans into the Trusts. If Union Central had known these and other material facts regarding Defendants' fraudulent misrepresentations and omissions of material fact contained in the Offering Materials, Union Central would not have purchased the Certificates.

811. Defendants' misrepresentations and omissions of material fact caused Union Central to suffer losses on the Certificates because the Certificates were far riskier – and their rate of default far higher – than the Offering Materials represented them to be. The mortgage loans underlying the Certificates experienced defaults and delinquencies at a much higher rate due to the wholesale abandonment of loan-origination guidelines.

812. Union Central purchased each Certificate in reliance on the information contained in the applicable Offering Materials. In connection with the offers and sales of the Certificates to Union Central, Defendants provided directly or indirectly to Union Central's investment personnel or managers the Offering Materials and/or pitchbooks and other documentation containing information and data regarding the Certificates. Similar information was sent to and analyzed by Union Central's investment personnel and managers if the Certificates were sold to them in the secondary market.

813. Union Central reviewed and analyzed the Offering Materials provided directly or indirectly by Defendants with respect to each Certificate offering.

814. Union Central justifiably relied on the Offering Materials provided directly or indirectly by Defendants when purchasing the Certificates.

COUNT I

For Common Law Fraud Against All Defendants

815. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, inclusive, as if fully set forth herein.

816. This is a claim for common law fraud against all Defendants.

817. Defendants made materially inaccurate written representations and omissions in materials distributed to Plaintiffs with respect to the documents and trusts for which Defendants were responsible, as alleged and identified above.

818. The Individual Defendants are liable for the false statements made in connection with the Trusts for which they served as directors or officers.

819. The Underwriter Defendants and the other Defendants made the false and misleading statements contained in the Offering Materials, including regarding about the quality of the collateral underlying the RMBS. Such statements and the reasons why they are false and misleading are set forth with particularity above.

820. Defendants knew or recklessly disregarded the false and misleading nature of their representations and omissions. The bases for Defendants' knowledge or reckless disregard are set forth with particularity above.

821. Defendants made the materially misleading statements and omissions for the purpose of inducing Union Central to buy and retain the Certificates.

822. Union Central justifiably relied on Defendants' materially misleading statements and omissions, which went to the core of Union Central's investment decision on the Certificates: the risk attending such notes and the determination of whether the interest adequately compensated

investors. The Certificates would not have issued and would have been unmarketable but for Defendants' misleading statements and omissions.

823. Defendants' misrepresentations and omissions went to the credit quality of the Certificates and the underlying collateral assets. As a result of Defendants' misconduct alleged above, the value of the Certificates has subsequently collapsed. Only later, after the FCIC findings were disclosed, did Union Central begin to learn it had been defrauded.

824. Defendants continued throughout the relevant time period to conceal information about the credit quality of the Certificates and the collateral assets acquired by Union Central.

825. Defendants undertook to sell billions of dollars in Certificates to investors. Having elected to make representations to investors in order to sell Certificates to them, Defendants owed such investors a duty to disclose all material information, including adverse information.

826. Defendants were in a superior position to investors in the Certificates as a consequence of their selling and trading of assets, such as collateralized assets. Knowing that Plaintiffs purchased millions of dollars of RMBS from Defendants and knowing that Plaintiffs were sold Certificates that were represented to be secure and stable investments, Defendants had a duty to report to Plaintiffs that their due diligence investigation had found material defects in the loans which Defendants had disregarded.

827. Union Central has been injured as its Certificates are worthless or severely impaired.

COUNT II

Claim for Unjust Enrichment
Against All Defendants

828. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, inclusive, as if fully set forth herein.

829. The Defendants received substantial compensation for selling the Certificates to investors. On information and belief, these fees were derived from the volume of Certificates sold to Union Central and other investors. Thus, the more Certificates sold from the Trusts, the more money Defendants received. This economic incentive to sell the Certificates, even in the face of undisclosed, adverse information as to the quality of the loan underwriting, explains but does not justify the Defendants' failure to accurately report information about the collateral.

830. The Defendants directly contributed to the destruction of millions of dollars in investment value as a result of their structuring, rating and doing business with the Trusts. The Defendants stood in conflicted positions relative to the Certificates. The Defendants failed to exercise reasonable care in conducting their specific oversight roles with respect to the RMBS, but were paid substantial profits and fees from the securitizations.

831. New York has a public policy interest in fostering the integrity and transparency of financial markets since it is one of the leading financial centers in the world. The Defendants' ill-gotten gains should be disgorged in favor of Plaintiffs in order to protect and promote this public policy.

COUNT III

Claim for Aiding and Abetting Against All Defendants

832. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, inclusive, as if fully set forth herein.

833. This is a claim against Defendants for aiding and abetting the other Defendants' violations of law alleged herein.

834. This claim is alleged in the alternative to each Count against Defendants to the extent such claim does not proceed.

835. Defendants knew of each of the other Defendants' violations of laws and substantially assisted in such violations.

836. Plaintiffs were damaged thereby.

COUNT IV

For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against RALI, Citi, Goldman, IndyMac, HSBC, Deutsche Bank, UBS Securities and RBS

837. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, inclusive, as if fully set forth herein.

838. This claim is brought under §10(b) of the 1934 Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. §240.10b-5, against RALI, Citi, Goldman, IndyMac, HSBC, Deutsche Bank, UBS Securities and RBS (the "§10(b) Defendants") with respect to their involvement in the following trusts: RALI Series 2006-QS2 Trust; RALI Series 2006-QS6 Trust; RALI Series 2006 QS14 Trust; RALI Series 2006 QS18 Trust; Citigroup Mortgage Loan Trust 2007-10; Citicorp Mortgage Securities Trust, Series 2007-5; Citicorp Mortgage Securities Trust, Series 2007-8; GSR Mortgage Loan Trust 2006-7F; GSR Mortgage Loan Trust 2006-9F; and IndyMac IMJA Mortgage Loan Trust 2007-A1, as alleged herein. The §10(b) Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted material facts necessary to make the statements made not misleading; and (c) engaged in acts, practices and a course of business that operated as a fraud and deceit upon Union Central, in violation of §10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder.

839. The §10(b)Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or the mails, engaged and participated in a continuous course of conduct to conceal non-public, adverse material information about the

securitizations from Union Central, as reflected in the misrepresentations and omissions set forth above.

840. The §10(b) Defendants each had actual knowledge of the misrepresentations and omissions of material facts set forth herein, acted with reckless disregard for the truth by failing to ascertain and to disclose such facts even though such facts were available to them or deliberately refrained from taking steps necessary to discover whether the material facts were false or misleading.

841. As a result of the §10(b) Defendants' dissemination of materially false and misleading information and their failure to disclose material facts, Union Central was misled into believing that the Certificates were more creditworthy investments than they actually were.

842. Union Central purchased the Certificates without knowing that the §10(b) Defendants had misstated or omitted material facts about the securitizations. In purchasing the Certificates, Union Central relied directly or indirectly on false and misleading statements made by the §10(b) Defendants and/or an absence of material adverse information that was known to the §10(b) Defendants or recklessly disregarded by them but not disclosed in the Offering Materials or their communications with Union Central. Union Central was damaged as a result of its reliance on the §10(b) Defendants' false statements and misrepresentations and omissions of material facts.

843. At the time of the §10(b) Defendants' false statements, misrepresentations and omissions, Union Central was ignorant of their falsity and believed them to be true. Union Central would not have purchased or otherwise acquired the Certificates had it known the truth about the matters discussed above.

844. Union Central filed this action within two years after discovery of the facts constituting the violation, including facts establishing scienter and other elements of Union Central's claim, and within five years after the violations.

845. By virtue of the foregoing, the §10(b) Defendants have violated §10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder.

846. As a direct and proximate result of the §10(b) Defendants' wrongful conduct, Union Central has suffered damages in connection with the purchase and subsequent decline in value or default of the Certificates.

COUNT V

For Violation of §20(a) of the 1934 Act Against Citigroup, Goldman Sachs, Ally, CGMI, RFS, UBS Securities, HSBC, Deutsche Bank, RBS, Krueger, Costa, Sparks and Paradis

847. Union Central repeats and realleges the allegations above as if fully set forth herein.

848. This claim is brought under §20(a) of the 1934 Act against Citigroup, Goldman Sachs, Ally, CGMI, RFS, UBS Securities, HSBC, Deutsche Bank, RBS, Krueger, Costa, Sparks and Paradis (the "§20(a) Defendants") with respect to their involvement in the following trusts: RALI Series 2006-QS2 Trust; RALI Series 2006-QS6 Trust; RALI Series 2006 QS14 Trust; RALI Series 2006 QS18 Trust; Citigroup Mortgage Loan Trust 2007-10; Citicorp Mortgage Securities Trust, Series 2007-5; Citicorp Mortgage Securities Trust, Series 2007-8; GSR Mortgage Loan Trust 2006-7F; GSR Mortgage Loan Trust 2006-9F; and IndyMac IMJA Mortgage Loan Trust 2007-A1, as alleged herein.

849. Citigroup, Goldman Sachs, Ally controlled and had the authority to control the content of certain documents, including the Offering Materials. Because of their involvement in the everyday activities of their subsidiaries, including the Depositors and Sponsors, and because of their wide-ranging supervisory authority, these defendants reviewed or had the opportunity to review those documents prior to their issuance and therefore knew, or were reckless in not knowing, that those documents contained the alleged misrepresentations. These Defendants reviewed or could have reviewed these documents prior to their issuance or could have prevented their issuance or

caused them to be corrected so as to accurately and properly disclose all material adverse information.

850. As underwriters of the above trusts, CGMI, Goldman Sachs, RFS, UBS, HSBC, Deutsche Bank and RBS controlled the content of the Offering Materials, including with respect to the material misstatements and omissions alleged above. In connection with the due diligence conducted in connection with the offering of the Certificates to plaintiffs, CGMI, Goldman Sachs, RFS, UBS, HSBC, Deutsche Bank and RBS received, considered and understood the adverse information alleged above regarding the lack of proper underwriting for the loans deposited in the subject trusts. CGMI, Goldman Sachs, RFS, UBS, HSBC, Deutsche Bank and RBS then used and disseminated these false and misleading offering materials to plaintiffs in connection with the sale of the Certificates and in order to profit at plaintiffs' expense. As underwriters, including through their contractual rights and responsibilities with respect to the trusts, CGMI, Goldman Sachs, RFS, UBS, HSBC, Deutsche Bank and RBS had control over the trusts they underwrote, including over the false and misleading statements and omissions described in detail herein.

851. Krueger, Costa, Sparks, Paradis, by virtue of their status and their high-level positions, as well as their participation in and awareness of their respective organization's operations and public statements, were able to and did influence and control their organization's decision making, including controlling the content and dissemination of the documents that Union Central contend contained materially false and misleading information and on which Union Central relied.

852. The §20(a) Defendants directly or indirectly controlled the conduct of those respective Defendants' businesses and their representations to Union Central within the meaning of §20(a) of the 1934 Act. The §20(a) Defendants directly or indirectly controlled the content of the Registration Statements and Prospectus Supplements that they used to sell Union Central the

Certificates within the meaning of §20(a) of the 1934 Act. Therefore, Defendants are jointly and severally liable for the fraud alleged herein.

853. The §20(a) Defendants had the power to control or influence the particular transactions giving rise to the securities violation alleged herein, as set forth more fully above.

854. As set forth above, the §10(b) Defendants each violated §10(b) of the 1934 Act and Rule 10b-5 by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, the §20(a) Defendants are also liable pursuant to §20(a) of the 1934 Act.

855. Union Central filed this action within two years after discovery of the facts constituting the violation, including facts establishing scienter and other elements of Union Central's claim, and within five years after the violations.

856. As a direct and proximate result of defendants' wrongful conduct, including the wrongful conduct of the §20(a) Defendants, Union Central suffered damages in connection with its purchases of the Certificates at issue herein.

COUNT VI

For Violation of §20(b) of the 1934 Act Against Citigroup, Goldman Sachs, Ally, CGMI, RFS, UBS, HSBC, Deutsche Bank, RBS, Krueger, Costa, Sparks and Paradis

857. Union Central repeats and realleges the allegations above as if fully set forth herein.

858. Defendants Citigroup, Goldman Sachs, Ally, CGMI, RFS, UBS, HSBC, Deutsche Bank, RBS, Krueger, Costa, Sparks and Paradis unlawfully engaged in manipulative practice in violation of Section 20(b) of the Exchange Act.

859. Citigroup, Goldman Sachs, Ally, CGMI, RFS, UBS Securities, HSBC, Deutsche Bank, RBS, Krueger, Costa, Sparks and Paradis: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary

to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiffs.

860. Defendants Citigroup, Goldman Sachs, Ally, CGMI, RFS, UBS Securities, HSBC, Deutsche Bank, RBS, Krueger, Costa, Sparks and Paradis had the power and authority to cause the §10(b) to engage in the wrongful conduct complained of herein, which made the statements alleged herein materially false and misleading. By reason of such conduct, these defendants are liable pursuant to Section 20(b) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

A. Awarding compensatory damages in favor of Plaintiffs against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

B. Awarding Plaintiffs their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

C. Awarding statutory damages; and

D. Awarding such additional equitable/injunctive or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: May 4, 2012

ROBBINS GELLER RUDMAN
& DOWD LLP
JOHN J. STOIA, JR.
STEVEN W. PEPICH

STEVEN W. PEPICH

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
CHRISTOPHER M. WOOD
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)

Attorneys for Plaintiffs

Exibit 1
Plaintiffs' Certificates Purchased

Description	Issuing Entity	Issue Date	Purchase Date	Original Face Value
CMSI 2007-5 B1	Citicorp Mortgage Securities Trust, Series 2007-5	6/1/2007	12/19/2007	5,860,000
CMSI 2007-8 B1	Citicorp Mortgage Securities Trust, Series 2007-8	9/1/2007	10/03/2007	5,372,000
CMLTI 2007-10 1B1	Citigroup Mortgage Loan Trust 2007-10	10/1/2007	01/22/2008	2,378,000
GSR 2006-7F M1	GSR Mortgage Loan Trust 2006-7F	7/1/2006	02/27/2007	6,712,000
GSR 2006-9F M1	GSR Mortgage Loan Trust 2006-9F	10/1/2006	02/27/2007	6,726,000
IMJA 2007-A1 B1	Indymac IMJA Mortgage Loan Trust 2007-A1	6/1/2007	09/17/2007	3,807,000
MASTR 2005-1 B3	MASTR Asset Securitization Trust 2005-1	5/1/2005	6/10/2005	961,000
MASTR 2005-2 B1	MASTR Asset Securitization Trust 2005-2	10/1/2005	11/8/2005	4,747,000
MASTR 2006-1 B1	MASTR Asset Securitization Trust 2006-1	3/1/2006	4/6/2006	7,338,000
MSM 2005-5AR B1	Morgan Stanley Mortgage Loan Trust 2005-5AR	8/1/2005	9/22/2005	12,152,000
RALI 2005-QA5 M3	RALI Series 2005-QA5 Trust	4/1/2005	9/27/2005	2,176,500
RALI 2005-QA9 M1	RALI Series 2005-QA9 Trust	8/1/2005	9/9/2005	14,189,000
RALI 2005-QS7 M3	RALI Series 2005-QS7 Trust	6/1/2005	7/14/2005	1,849,900
RALI 2005-QS9 M3	RALI Series 2005-QS9 Trust	6/1/2005	7/19/2005	1,854,900
RALI 2005-QS14 1M1	RALI Series 2005-QS14 Trust	9/1/2005	11/13/2007	2,881,400
RALI 2006-QS2 2M1	RALI Series 2006-QS2 Trust	2/1/2006	11/13/2007	3,090,300
RALI 2006-QS6 2M1	RALI Series 2006-QS6 Trust	6/1/2006	11/13/2007	2,879,900
RALI 2006-QS18 2M1	RALI Series 2006-QS18 Trust	12/1/2006	01/09/2007	1,876,200
RALI 2006-QS18 2M2	RALI Series 2006-QS18 Trust	12/1/2006	1/9/2007	416,900
RALI 2006-QS18 2M3	RALI Series 2006-QS18 Trust	12/1/2006	1/9/2007	312,600
WMALT 2005-3 B3	Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2005-3	4/1/2005	4/29/2005	4,322,000

CERTIFICATE OF SERVICE

I, Kelly Stadelmann, hereby certify that on May 4, 2012, I caused a true and correct copy of the annexed document to be served by U.S. mail to all counsel listed on the attached service list.

Kelly Stadelmann

MBS UNION CENTRAL
Service List - 5/1/2012 (11-0081)

Counsel For Defendant(s)

Jeffrey A. Lipps
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 N. High Street
Columbus, OH 43215
614/365-4100

Victor L. Hou
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
212/225-2000
212/225-3999(Fax)

Richard W. Clary
Michael T. Reynolds
Julie A. North
Cravath, Swaine & Moore LLP
825 Eighth Avenue, Worldwide Plaza
New York, NY 10019
212/474-1000
212/474-3700(Fax)

Brian S. Weinstein
Daniel J. Schwartz
James P. Rouhandeh
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
212/450-4000
212/701-5800(Fax)

Eric B. Epstein
Dorsey & Whitney, LLP
250 Park Avenue
New York, NY 10177
212/415-9200
212/953-7201(Fax)

David M. Harris
Timothy M. Huskey
Greenfelder, Hemker & Gale, P.C.
10 S. Broadway, Suite 200
St. Louis, MO 63102
314/241-9090
314/345-8624(Fax)

Mark G. Vaughan
Law Offices of Joseph D'Elia
464 New York Avenue, Suite 200
Huntington, NY 11743
631/673-3222
631/673-4958(Fax)

Michael O. Ware
S. Christopher Provenzano
Mayer Brown LLP
1675 Broadway
New York, NY 10019
212/506-2500
212/262-1910(Fax)

Christian K. Wrede
Erin J. Cox
James C. Rutten
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
213/683-9100
213/687-3702(Fax)

Susanna M. Buergel
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
212/373-3000
212/757-3990(Fax)

Dan F. Laney III
James W. Cobb
Jeffrey W. Willis
Rogers & Hardin LLP
2700 International Tower
229 Peachtree Street, N.E.
Atlanta, GA 30303-1601
404/522-4700
404/525-2224(Fax)

Jeffrey A. Wurst
Mark S. Mulholland
Robert F. Regan
Ruskin Moscou Faltischek, P.C.
1425 Rexcorp Plaza, East Tower, 15th Floor
Uniondale, NY 11556
516/663-6535
516/663-6735(Fax)

Thomas C. Rice
Alan C. Turner
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
212/455-2000
212/455-2502(Fax)

Christopher J. Dunne
Jason D. Padgett
Michael T. Tomaino, Jr.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
212/558-4000
212/558-3588(Fax)

Counsel For Plaintiff(s)

Samuel H. Rudman
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747
631/367-7100
631/367-1173(Fax)

Christopher M. Wood
Robbins Geller Rudman & Dowd LLP
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
415/288-4545
415/288-4534(Fax)

David C. Walton
John J. Stoia, Jr.
Steven W. Pepich
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423(Fax)

Exhibit 15

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY, et al.

Plaintiffs,

v.

RESIDENTIAL FUNDING COMPANY, LLC (F/K/A RESIDENTIAL FUNDING CORPORATION),

and

GMAC MORTGAGE, LLC

and

RESIDENTIAL ACCREDIT LOANS, INC.

and

RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.

and

RESIDENTIAL FUNDING MORTGAGE SECURITIES I, INC.

and

RESIDENTIAL FUNDING SECURITIES, LLC (F/K/A RESIDENTIAL FUNDING SECURITIES CORPORATION)

and

UBS SECURITIES LLC

and

RBS SECURITIES, INC. (F/K/A GREENWICH CAPITAL MARKETS, INC.)

Case No. A 1105042

Judge Beth A. Myers

AMENDED COMPLAINT

JURY TRIAL DEMANDED

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HAMILTON COUNTY
SEP - 9 2011
COMMON PLEAS COURTS

:
and :
:
J.P. MORGAN SECURITIES LLC :
:
and :
:
DEUTSCHE BANK SECURITIES INC. :
:
and :
:
BRUCE J. PARADIS :
:
and :
:
DAVEE L. OLSON :
:
and :
:
DAVID C. WALKER :
:
and :
:
KENNETH M. DUNCAN :
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and :
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RALPH T. FLEES :
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and :
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JAMES G. JONES :
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and :
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DAVID M. BRICKER :
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and :
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BNP PARIBAS MORTGAGE CORPORATION :
:
and :
:
BNP PARIBAS MORTGAGE SECURITIES LLC :
:

and	:
	:
CITIGROUP GLOBAL MARKETS INC.	:
	:
Defendants.	:

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The Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company, and Fort Washington Investment Advisors, Inc. (collectively, "Western & Southern"), by and through their attorneys, bring this action against Residential Funding Company, LLC (f/k/a Residential Funding Corporation); GMAC Mortgage, LLC; Residential Accredit Loans, Inc.; Residential Asset Mortgage Products, Inc.; Residential Funding Securities, LLC (f/k/a Residential Funding Securities Corporation) (collectively, "RFC" or the "RFC Defendants"); BNP Paribas Mortgage Corporation and BNP Paribas Mortgage Securities LLC (collectively the "TBW Defendants"); RBS Securities, Inc. (f/k/a Greenwich Capital Markets, Inc.), UBS Securities LLC, Deutsche Bank Securities Inc., Citigroup Global Markets, Inc., (the "Underwriter Defendants"); and Bruce J. Paradis; Davee L. Olson; David C. Walker; Kenneth M. Duncan; Ralph T. Flees; James G. Jones; David M. Bricker (collectively, the "Officer Defendants"), and allege, on knowledge as to its own acts and on information and belief as to the acts of others, as follows:

NATURE OF ACTION

1. This action arises out of the sale of certain residential mortgage-backed securities (the "Certificates") to Western & Southern. The Certificates were sold pursuant to public filings and offering materials (as more fully defined below, the "Offering Materials") that contained untrue statements and omissions of material facts, in violation of Sections 1707.41, 1707.43 and 1707.44 of the Ohio Revised Code. Western & Southern further states claims for civil conspiracy, common-law fraud, and negligent misrepresentation.

2. To take advantage of an exploding market for residential mortgage-backed securities, Defendants aggressively expanded their securitization of mortgage loans from 2003-

2007. Defendants wore multiple hats in connection with the offerings, acting in various capacities including sponsor, issuer, and underwriter. In their overlapping capacities, the Defendants were responsible for purchasing large blocks of mortgage loans, repackaging those loans into securities, and selling the newly-created securities to investors like Western & Southern. Defendants or their affiliates often continued to profit after closing such offerings by servicing the loans underlying the securitizations.

3. Defendants earned substantial profits securitizing the mortgage loans, but they did not have to bear the loss if the mortgage loans defaulted as long as they could continue to offload the risk onto investors such as Western & Southern.

4. In marketing the Certificates to Western & Southern, the Defendants represented that the loans backing the securities were underwritten in accordance with prudent underwriting standards that ensured only qualified borrowers were granted loans, borrowers could repay the underlying loans, and that the properties securing such loans were sufficient collateral. The Defendants further represented that the mortgage loans underlying each securitization had been validly assigned to the Trusts such that the Trusts would have the ability to foreclose upon a particular property in the event of a borrower's default.

5. In reality, however, the loans backing the Certificates deviated substantially from what was represented to Western & Southern. To generate an ever-growing volume of loans to sell to investors, the Defendants abandoned their underwriting guidelines, often purchasing loans issued to borrowers regardless of their ability to repay. The loans were often issued on the basis of overstated incomes, inflated appraisals, false verifications of employment, and other unjustified departures from the touted underwriting criteria.

6. Western & Southern commissioned a forensic loan-level review of Defendants' securitizations at issue in this action drawing on a database of 50 million active mortgages providing market-specific data for 98% of all United States ZIP codes and 3,100 counties in all 50 states and the District of Columbia. This coverage represents 99% of the U.S. population and 97% of all properties (145 million properties). The results of the forensic review demonstrate that Defendants materially misrepresented key metrics published in the Offering Materials which were relied upon by Western & Southern to evaluate the Certificates including loan-to-value ("LTV"), combined LTV ("CLTV") ratios, and owner occupancy statistics.

7. It has also recently come to light that despite representations to the contrary in the Offering Materials, Defendants did not properly assign many of the mortgages or properly transfer notes and loan files to the relevant securitization trusts. Indeed, the results of Western & Southern's forensic review show that ***Defendants made absolutely no attempt to assign 81% of the mortgages*** to the securitization trusts, contrary to assurances in the Offering Materials that each mortgage would be properly assigned. As a result, the affected mortgage loans cannot be foreclosed upon in any efficient manner (if at all) if a borrower defaults. As a result, Defendants or their agents have engaged in widespread foreclosure misconduct, filing false documentation with courts nationwide and forging assignments and transfer documentation in an attempt to cover up their misrepresentations and omissions regarding their failure to assign mortgages and properly transfer notes and loan files in accordance with their disclosures in the Offering Materials.

8. Defendants' representations concerning, among other matters, adherence to meaningful underwriting standards, the value of the collateral, and proper assignment practices were material to Western & Southern's decision to purchase the Certificates because the

Defendants were the exclusive source of information regarding the loans and properties backing the securities. Unlike Defendants, Western & Southern did not have access to loan files. Western & Southern therefore depended on the Defendants to perform the necessary due diligence to verify that the information presented to it and other investors was true and accurate.

9. The Defendants' misconduct has prompted several criminal and civil investigations. For example, the United States Department of Justice (the "DOJ") and Securities and Exchange Commission (the "SEC") have commenced parallel criminal and civil investigations of the RFC Defendants' securitization practices. And all fifty state Attorneys General are investigating the Defendants' and others' misconduct in attempting to foreclose upon properties which they have no right to foreclose upon due to their failure to properly assign the mortgages – a failure that was contrary to representations set forth in the Offering Materials.

10. All of the Certificates purchased by Western & Southern were triple-A rated, or the equivalent, at the time of Western & Southern's investment. Now most do not even qualify as investment grade. They are "junk." And in six of the ten securitizations in which Western & Southern purchased Certificates, over 20% of the loans backing the securities have now defaulted, been foreclosed upon, or are delinquent. In four of the ten securitizations, over 30% of the loans backing the securities have now defaulted, been foreclosed upon, or are delinquent. Under the Ohio Securities Act, Western & Southern is entitled to rescind its purchase of these securities and to damages with respect to its Ohio Securities Act and common-law claims.

PARTIES

I. Plaintiffs

11. Plaintiff The Western and Southern Life Insurance Company is an insurance company formed under the laws, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life insurance and annuity products.

12. Plaintiff Western-Southern Life Assurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life insurance and annuity products.

13. Plaintiff Columbus Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life, accident and health insurance and annuity products.

14. Plaintiff Integrity Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of Ohio, with its principal place of business in Cincinnati, Ohio. It sells life, accident and health insurance and annuity products.

15. Plaintiff National Integrity Life Insurance Company is an insurance company formed under the laws of, and domiciled in, the State of New York, with its principal place of business in Goshen, New York. It sells life, accident and health insurance and annuity products.

16. Fort Washington Investment Advisors, Inc. is a registered investment advisor formed under the laws of the State of Ohio, with its principal place of business in Cincinnati, Ohio. Fort Washington Investment Advisors brings this action on behalf of Fort Washington Active Fixed Income LLC, a Delaware limited liability company with its principal place of business in Cincinnati, Ohio.

II. RFC Defendants

17. Defendant Residential Funding Company, LLC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. Prior to approximately October 2006, Residential Funding Company, LLC operated as Residential Funding Corporation, a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Residential Funding Company, LLC and its predecessor, Residential Funding Corporation, are referred to herein as "Residential Funding." Residential Funding was the Sponsor for five of the ten securitizations at issue in this action.

18. GMAC Mortgage, LLC ("GMAC Mortgage"), is a Delaware limited liability company with its principal place of business in Dauphin, Pennsylvania. GMAC Mortgage was the Sponsor for two of the ten securitizations at issue in this action.

19. Defendant Residential Accredit Loans, Inc. ("RALI") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RALI was the Depositor for three of the ten securitizations at issue in this action.

20. Defendant Residential Asset Mortgage Products, Inc. ("RAMP") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RAMP was the Depositor for two of the ten securitizations at issue in this action.

21. Defendant Residential Funding Mortgage Securities I, Inc. ("RFMSI") is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. RFMSI was the Depositor for two of the ten securitizations at issue in this action.

22. Defendant Residential Funding Securities, LLC is a Delaware limited liability company with its principal place of business in St. Paul, Minnesota. Prior to approximately April 2006, Residential Funding Securities, LLC operated as Residential Funding Securities

Corporation, a Delaware corporation with its principal place of business in Minneapolis, Minnesota. Residential Funding Securities, LLC and Residential Funding Securities Corporation are referred to herein as "Residential Securities." Residential Securities was the Underwriter for one of the eight securitizations at issue in this action.[1]

III. Underwriter Defendants

23. Defendant UBS Securities LLC ("UBS") is a Delaware limited liability company with its principal place of business in Stamford, Connecticut. UBS was the Underwriter for two of the ten securitizations at issue in this action, including the TBW offering that is part of this action.

24. Defendant RBS Securities, Inc. (f/k/a Greenwich Capital Markets, Inc.) ("RBS Securities") is a Delaware corporation with its principal place of business in Stamford, Connecticut. RBS Securities was the Underwriter for three of the ten securitizations at issue in this action.

25. Defendant J.P. Morgan Securities LLC is a Delaware limited liability company with its principal place of business in New York, New York. J.P. Morgan Securities LLC is the successor-in-interest to J.P. Morgan Securities Inc., which converted to a limited liability company on or about September 1, 2010. J.P. Morgan Securities Inc. and its successor-in-interest, J.P. Morgan Securities LLC, are referred to herein as "J.P. Morgan Securities." J.P. Morgan Securities acted as the Underwriter for one of the ten securitizations at issue in this action.

[1] On August 1, 2011, after this suit was filed, Residential Securities changed its name to Ally Securities LLC. For the sake of continuity, this Amended Complaint will refer to this entity as "Residential Securities."

26. Defendant Deutsche Bank Securities Inc. is a Delaware corporation with its principal place of business in New York, New York. Deutsche Bank Securities acted as the Underwriter for three of the ten securitizations at issue in this action.

27. Defendant Citigroup Global Markets, Inc. ("Citigroup") is a New York corporation with its principal place of business in New York, New York. Citigroup is an Underwriter for two of the ten securitizations at issue in this action.

IV. RFC Officer Defendants

28. Defendant Bruce J. Paradis joined Residential Funding in 1983, and served in several executive positions prior to becoming its President and Chief Executive Officer in 1994. During the relevant period, Paradis also served as President, Chief Executive Officer, and a director of RALI and RAMP. Paradis signed registration statements for six of the seven RFC securitizations at issue in this action.

29. Defendant Davee L. Olson served as an officer of Residential Funding for over 15 years. He served as a vice president of finance from 1987 until 1990, as a senior vice president of finance from 1990 until 1991, and as the Chief Financial Officer from 1991 to January 2005. Olson also served as a director of RALI, RFMSI, and RAMP during the relevant period. Olson signed registration statements for four of the seven RFC securitizations at issue in this action.

30. Defendant David C. Walker joined General Motors Acceptance Corporation, the parent company of Residential Funding, in 1985. He has served as managing director, Chief Financial Officer, and a member of the board of directors of GMAC Mortgage Group since January 2000, and as director of U.S. funding and securitization at GMAC from September 1998 until December 1999. Walker also served as a director of each of Residential Funding, RALI,

and RFMSI during the relevant period. Walker signed registration statements for two of the seven RFC securitizations at issue in this action.

31. Defendant Kenneth M. Duncan served as Acting Chief Financial Officer of each of Residential Funding, RALI, and RAMP during the relevant period. Duncan signed registration statements for five of the seven RFC securitizations at issue in this action.

32. Defendant Ralph T. Flees served as Controller and Principal Accounting Officer of RALI and RAMP during the relevant period. Flees signed registration statements for all of the RFC securitizations at issue in this action.

33. Defendant James G. Jones was President, CEO, and director of RAMP during the relevant period. Jones signed the registration statement for one securitization at issue in this action.

34. Defendant David M. Bricker was the Chief Financial Officer of RAMP during the relevant period. Bricker signed the registration statement for one securitization at issue in this action.

V. TBW Defendants

35. Defendant BNP Paribas Mortgage Corporation ("BNPPM") is a Delaware corporation with its principal place of business in New York, New York. BNPPM was the Seller for the TBW offering at issue in this action.

36. Defendant BNP Paribas Mortgage Securities LLC ("BNPPMS") is a Delaware corporation with its principal place of business in New York, New York. BNPPMS was the Depositor for the TBW offering at issue in this action.

VII. Relevant Non-Parties

37. The Certificates for each securitization relevant to this action were issued by a trust purportedly established by the Depositor. The ten issuing trusts (collectively, the "Trusts") were: RALI Series 2005-QS16 Trust ("RALI 2005-QS16"); RFMSI Series 2006-S2 Trust ("RFMSI 2006-S2"); RFMSI Series 2006-S12 Trust (RFMSI 2006-S12"); RALI Series 2006-QS3 Trust ("RALI 2006-QS3"); RALI Series 2006-QS6 Trust ("RALI 2006-QS6"); GMACM Home Equity Loan Trust 2007-HE1 ("GMAC 2007-HE1"); GMACM Home Equity Loan Trust 2007-HE2 ("GMAC 2007-HE2"); TBW Mortgage-Backed Trust Series 2006-5 ("TBW 2006-5"); Renaissance Home Equity Loan Trust 2007-1 ("RAMC 2007-1"); and Renaissance Home Equity Loan Trust 2007-2 ("RAMC 2007-2").

38. During the time that Western & Southern purchased the Certificates, non-party Taylor Bean & Whitaker Mortgage Corporation ("TBW") was one of the largest privately held mortgage lending companies in the United States and principally involved in the origination, purchase, sale, and servicing of residential mortgage loans. In August 2009, federal regulators raided TBW after it failed to submit a required annual financial report to the Federal Housing Administration ("FHA") and to disclose certain irregular transactions that raised concerns of fraud. Just days after the raid, the FHA barred TBW from underwriting any FHA-insured mortgages, and Ginnie Mae barred TBW from issuing mortgage-backed securities. TBW declared bankruptcy shortly thereafter.

39. Lee Farkas was the chairman of TBW, the sponsor for the TBW offering that is a part of this action. On April 21, 2011, Farkas was convicted of 14 counts of fraud and conspiracy in the management and operation of TBW in a criminal action brought by the United States government, captioned *United States v. Farkas*, Case No. 1:10-CR-200 (E.D. Va.). He

was subsequently sentenced to 30 years in prison. Farkas is also a defendant in a civil action brought by the SEC in the United State District Court for the Eastern District of Virginia, captioned *SEC v. Farkas*, Case No. 1:10-CV-667, alleging violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 in the management and operation of TBW. Farkas masterminded and led TBW's origination and sale of low-quality mortgage loans to generate massive fees. Those fees were used, *inter alia*, to attempt cover up TBW's extraordinary operating expenses, which were approximately $150 million, almost daily.

40. Prior to its bankruptcy, non-party Delta Funding Corporation ("Delta Funding") was a consumer finance company that originated, securitized, and sold mortgage loans. Non-party Delta Funding was the Sponsor for RAMC 2007-1 and RAMC 2007-2.

41. Prior to its bankruptcy, non-party Renaissance Mortgage Acceptance Corp. ("Renaissance Mortgage") was a consumer finance company that served as the Depositor for securitizations sponsored by Delta Funding. Renaissance Mortgage was the Depositor for RAMC 2007-1 and RAMC 2007-2.

42. At all relevant times, the Defendants committed the acts, caused or directed others to commit the acts, or permitted others to commit the acts alleged in this Amended Complaint. Any allegations about acts of corporate defendants means that those acts were committed through their officers, directors, employees, agents, and/or representatives while those individuals were acting within the actual or implied scope of their authority.

JURISDICTION AND VENUE

43. This Court has jurisdiction over Western & Southern's claims, which are brought under the Ohio Securities Act, common law fraud, civil conspiracy, and negligent misrepresentation.

44. This Court has personal jurisdiction over the Defendants by virtue of their securities sales to Western & Southern in Ohio.

45. Venue is proper pursuant to Ohio Civ. R. 3(B) because, among other reasons, Hamilton County is the principal place of business of most of the plaintiffs.

SUBSTANTIVE ALLEGATIONS

I. THE MARKET FOR RESIDENTIAL MORTGAGE-BACKED SECURITIES

46. In the 1980s and 1990s, mortgage originators followed a traditional model for originating mortgage loans. Under the traditional model, they either held the mortgage loans they provided to borrowers through the term of each loan, or sold the mortgage loans to Fannie Mae or Freddie Mac.

47. Loans held by mortgage originators were typically conservative, first-lien loans to prime borrowers because the originator would profit if the borrower made timely interest and principal payments, but would bear the loss if the borrower defaulted and the property value was insufficient to repay the loan. As a result, the originator had economic incentives to establish the creditworthiness of the borrower and the true value of the underlying property by appraising it fairly before issuing the mortgage loan.

48. Loans sold to Fannie Mae and Freddie Mac had to meet specific guidelines meant to ensure that they were conservative loans made only to prime borrowers. By law, Fannie Mae and Freddie Mac can purchase only those mortgage loans that conform to certain regulatory guidelines. These loans are known in the industry as conforming loans, and are historically the most conservative loans with the lowest rates of delinquency and default. Mortgage loans that fail to meet the regulatory guidelines are known in the industry as non-conforming loans.

49. In the 1980s and 1990s, Fannie Mae and Freddie Mac securitized the loans they purchased from mortgage originators and sold the securities backed by the loans – referred to as residential mortgage-backed securities – to investors. Investors in these early mortgage-backed securities were provided protections not only because the underlying loans conformed to strict regulatory guidelines, but also because Fannie Mae and Freddie Mac guaranteed that investors would receive timely payments of principal and interest. Because Fannie Mae and Freddie Mac are government sponsored entities and were perceived to be implicitly guaranteed by the federal government, investors viewed the guarantees provided by Fannie Mae and Freddie Mac as diminishing credit risk, if not removing it altogether.

50. In the early 2000s, the demand for securities backed by mortgage loans increased. Private financial institutions stepped in to meet the demand by originating an ever-growing number of non-conforming loans, such as loans based on reduced documentation, loans issued to subprime borrowers, and adjustable loans where the initial "teaser" interest rate increases after a period of time. These loans were then securitized for sale to private investors. By 2001, $240 billion in residential mortgage-backed securities were issued through private securitizations. By 2006, that amount had increased by almost five times – to $1.033 trillion.

II. THE SECURITIZATION PROCESS

51. To create residential mortgage-backed securities, such as the Certificates purchased by Western & Southern, a process known as "mortgage securitization" is used. Mortgage loans are acquired from mortgage originators and pooled together, with securities constituting interests in the cash flow from the mortgage pools then sold to investors. The securities are also referred to as mortgage "pass-through" securities because the cash flow from

the pool of mortgages is passed through to the securities holders when payments are made by the underlying mortgage borrowers.

52. Each securitization involves several entities that perform distinct tasks. The first step in creating a residential mortgage-backed security, such as the Certificates, is the acquisition by the Depositor of an inventory of mortgage loans from a Sponsor or Seller, which either originates the loans or acquires the loans from other mortgage originators.

53. To create securities backed by the mortgage loans, the Depositor then forms one or more mortgage pools with the inventory of loans and creates tranches of interests in the mortgage pools with various levels of seniority. Interests in these tranches are then issued by the Depositor (who serves as the Issuer) through a trust in the form of bonds or certificates.

54. Each tranche has a different level of purported risk and reward, and, often, a different credit rating. The most senior tranches often receive the highest investment grade rating (triple-A). Junior tranches, which usually have lower ratings, are more exposed to risk but offer higher potential returns. The most senior tranches of securities will be entitled to payment in full before the junior tranches. Conversely, losses on the underlying loans in the asset pool – whether due to default, delinquency, or otherwise – are allocated first to the most subordinate or junior tranche of securities, then to the tranche above that. This hierarchy in the division of cash flows is referred to as the "flow of funds" or "waterfall."

55. The Depositor works with one or more of the nationally recognized credit-rating agencies to ensure that each tranche of the mortgage-backed securities receives the rating desired by the Depositor (and Underwriter). Once the asset pool is securitized, the certificates are issued to one or more Underwriters (typically Wall Street banks), who resell them to investors such as Western & Southern.

56. Because the cash flow from the loans in the mortgage pool of a securitization is the source of funds to pay the holders of the securities issued by the trust, the credit quality of the securities depends primarily on the credit quality of the loans in the mortgage pool, which often includes thousands of loans. Detailed information about the credit quality of the loans is contained in the loan files developed and maintained by the mortgage originators when making the loans.

57. For residential mortgage loans, such as the loans that backed the Certificates purchased by Western & Southern, each loan file normally contains documents including the borrower's application for the loan, verification of income, assets, and employment, references, credit reports, and an appraisal of the property that will secure the loan and provide the basis for other measures of credit quality, such as loan-to-value ratios and occupancy status. The loan file should also include notes from the person who underwrote the loan describing the loan's purported compliance with underwriting guidelines, and documentation of compensating factors that justified any departure from those standards.

58. Western & Southern and other investors do not have access to the loan files. Instead, the Sponsor, Depositor, and Underwriter are responsible for gathering and verifying information about the credit quality and characteristics of the loans that are supposed to be deposited into the trust, and presenting this information in the registration statements, prospectuses, prospectus supplements, loan tapes and data compilations (collectively, the "Offering Materials") prepared for potential investors. This due diligence process is a critical safeguard for investors and a fundamental legal obligation of the Sponsor, Depositor, and Underwriter.

59. The securitization process incentivized the Defendants to abandon or disregard underwriting standards so that they could originate and purchase huge volumes of low-quality loans to securitize.

60. As the private residential mortgage-backed securities market expanded, the traditional "originate to hold" model morphed into the "originate to distribute" model. Under the "originate to distribute" model, mortgage companies such as the Defendants no longer held the mortgage loans to maturity. Rather, they offloaded the risk of loss to the investors who purchased an interest in the securitized pool of loans.

61. The new distribution model was highly profitable for the Defendants and other mortgage companies. By securitizing and selling mortgage loans to investors through underwriters, mortgage companies received immediate payment for the loans, shifted the loans off their books, and were able to issue more loans. The securitization process enabled the mortgage companies to earn most of their income from transaction and loan-servicing fees.

62. Because the mortgage companies did not have to bear the risk of loss, they had an unchecked incentive to originate more and more loans to feed into the securitization machine. That incentive also caused the Defendants to abandon their disclosed underwriting guidelines to originate and purchase as many loans as possible for securitization.

63. According to *Inside Mortgage Finance*, the RFC Defendants or their affiliates issued (i) $42.336 billion of nonagency mortgage-backed securities in 2004, (ii) $56.93 billion in 2005, making them the fifth largest issuer in 2005; (iii) $66.19 billion in 2006, making them the fourth largest issuer in 2006; and (iv) $32.4 billion in 2007, which still made the RFC Defendants or their affiliates the eighth largest issuer in 2007.

64. TBW similarly took advantage of this exploding market by originating a large volume of mortgage loans in an effort to boost its fee revenue. In 2004, TBW originated approximately $9 billion in mortgage loans. In 2005, the amount had grown to approximately $11 billion. In 2006, the volume nearly doubled – to approximately $19 billion in mortgage loans. In 2007, the volume of mortgage loans that TBW originated grew again – to approximately $20 billion. During this time, TBW was consistently ranked by *National Mortgage News* among the top 10 residential mortgage wholesalers in the United Stated based on volume. By 2008, TBW was the largest non-depository mortgage lender in the United States.

65. Delta Funding and Renaissance Mortgage similarly increased their origination and securitizations during the relevant period. From 2005 through 2007, Delta Funding originated and securitized over $10 billion of loans, which was a substantial increase from prior years.

66. Unbeknownst to Western & Southern, the Defendants originated or purchased loans that were often issued without due regard for the borrowers' ability to repay the loans. The loans were often issued on the basis of overstated incomes, inflated appraisals, false verifications of employment, or exceptions to underwriting criteria that had no proper justification. The origination practices engaged in by the Defendants and the originators from which they purchased were in blatant disregard of Defendants' disclosed underwriting standards and any semblance of reasonable and prudent underwriting.

67. Similarly, the depositor Defendants and seller Defendants disregarded underwriting guidelines and failed to conduct adequate due diligence so that they could purchase and securitize as many loans as possible. The Underwriter defendants facilitated the securitizations and participated in the unlawful sale of the resulting securities to investors such as

Western & Southern without conducting adequate due diligence. Any due diligence conducted by these Defendants was deficient, having been done on an expedited basis, with only an unreasonably small percentage of the loan pool receiving any review.

III. WESTERN & SOUTHERN'S PURCHASES OF CERTIFICATES

68. Between 2005 and 2007, Western & Southern made the following purchases of Certificates from the following Defendants, representing a total investment of approximately $215.4 million:

Asset	Purchaser	Amount	Settle Date	Seller Defendants
RALI 2005-QS16 A4	Columbus Life Insurance Company	4,500,000.00	12/14/05	Residential Funding (Sponsor) RALI (Depositor) Citigroup (Underwriter)
RALI 2005-QS16 A4	Columbus Life Insurance Company	5,000,000.00	12/14/05	Residential Funding (Sponsor) RALI (Depositor) Citigroup (Underwriter)
RALI 2005-QS16 A4	Western & Southern Life Assurance Company	4,500,000.00	12/14/05	Residential Funding (Sponsor) RALI (Depositor) Citigroup (Underwriter)
RALI 2005-QS16 A4	National Integrity Life Insurance Company	2,890,000.00	12/14/05	Residential Funding (Sponsor) RALI (Depositor) Citigroup (Underwriter)
RALI 2005-QS16 A4	Western & Southern Life Insurance Company	13,000,000.00	12/14/05	Residential Funding (Sponsor) RALI (Depositor) Citigroup (Underwriter)
RALI 2005-QS16 A4	Western & Southern Life Insurance Company	8,800,000.00	12/14/05	Residential Funding (Sponsor) RALI (Depositor) Citigroup (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
RALI 2006-QS3 1A12	Columbus Life Insurance Company	459,999.90	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)
RALI 2006-QS3 1A12	Integrity Life Insurance Company	1,000,000.00	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)
RALI 2006-QS3 1A12	Western & Southern Life Assurance Company	5,000,000.00	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)
RALI 2006-QS3 1A12	Western & Southern Life Assurance Company	2,000,000.00	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)
RALI 2006-QS3 1A12	Western & Southern Life Assurance Company	1,000,000.00	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)
RALI 2006-QS3 1A12	National Integrity Life Insurance Company	1,000,000.00	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)
RALI 2006-QS3 1A12	Western & Southern Life Insurance Company	2,000,000.00	3/30/06	Residential Funding (Sponsor) RALI (Depositor) Deutsche Bank Securities (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
RALI 2006-QS6 1A6	Columbus Life Insurance Company	500,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	Columbus Life Insurance Company	1,000,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	Integrity Life Insurance Company	1,000,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	Integrity Life Insurance Company	1,000,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	Western & Southern Life Assurance Company	5,000,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	Western & Southern Life Assurance Company	1,500,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	National Integrity Life Insurance Company	1,000,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	National Integrity Life Insurance Company	1,000,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)
RALI 2006-QS6 1A6	Western & Southern Life Insurance Company	500,000.00	6/30/06	Residential Funding (Sponsor) RALI (Depositor) RBS Securities (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
RFMSI 2006-S2 A2	Fort Washington Investment Advisors, Inc.	441,857.80	7/5/06	Residential Funding (Sponsor) RFMSI (Depositor) UBS (Underwriter)
RFMSI 2006-S2 A2	Fort Washington Investment Advisors, Inc.	294,571.90	7/5/06	Residential Funding (Sponsor) RFMSI (Depositor) UBS (Underwriter)
RFMSI 2006-S2 A2	Western & Southern Life Insurance Company	1,696,734.00	7/5/06	Residential Funding (Sponsor) RFMSI (Depositor) UBS (Underwriter)
RFMSI 2006-S2 A2	Western & Southern Life Insurance Company	785,525.00	7/5/06	Residential Funding (Sponsor) RFMSI (Depositor) UBS (Underwriter)
RFMSI 2006-S2 A2	Fort Washington Investment Advisors, Inc.	1,503,345.00	9/26/07	Residential Funding (Sponsor) RFMSI (Depositor) UBS (Underwriter)
RFMSI 2006-S2 A2	Fort Washington Investment Advisors, Inc.	260,997.40	9/26/07	Residential Funding (Sponsor) RFMSI (Depositor) UBS (Underwriter)
RFMSI 2006-S12 3A9	Western & Southern Life Assurance Company	3,000,000.00	1/9/07	Residential Funding (Sponsor) RFMSI (Depositor) RBS Securities (Underwriter)
RFMSI 2006-S12 3A9	Western & Southern Life Assurance Company	1,172,000.00	1/9/07	Residential Funding (Sponsor) RFMSI (Depositor) RBS Securities (Underwriter)
RFMSI 2006-S12 3A9	Western & Southern Life Insurance Company	6,000,000.00	1/9/07	Residential Funding (Sponsor) RFMSI (Depositor) RBS Securities (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
RFMSI 2006-S12 3A9	Western & Southern Life Insurance Company	2,000,000.00	1/9/07	Residential Funding (Sponsor) RFMSI (Depositor) RBS Securities (Underwriter)
GMACM 2007-HE1 A4	Columbus Life Insurance Company	1,000,000.00	3/29/07	GMAC Mortgage (Sponsor) RAMP (Depositor) J.P. Morgan Securities (Underwriter)
GMACM 2007-HE1 A4	Western & Southern Life Assurance Company	8,300,000.00	3/29/07	GMAC Mortgage (Sponsor) RAMP (Depositor) J.P. Morgan Securities (Underwriter)
GMACM 2007-HE1 A4	Western & Southern Life Assurance Company	7,700,000.00	3/29/07	GMAC Mortgage (Sponsor) RAMP (Depositor) J.P. Morgan Securities (Underwriter)
GMACM 2007-HE1 A4	National Integrity Life Insurance Company	3,000,000.00	3/29/07	GMAC Mortgage (Sponsor) RAMP (Depositor) J.P. Morgan Securities (Underwriter)
GMACM 2007-HE2 A6	Columbus Life Insurance Company	2,000,000.00	6/28/07	GMAC Mortgage (Sponsor) RAMP (Depositor) Residential Securities (Underwriter)
GMACM 2007-HE2 A6	Western & Southern Life Assurance Company	11,000,000.00	6/28/07	GMAC Mortgage (Sponsor) RAMP (Depositor) Residential Securities (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
GMACM 2007-HE2 A6	Western & Southern Life Assurance Company	7,000,000.00	6/28/07	GMAC Mortgage (Sponsor) RAMP (Depositor) Residential Securities (Underwriter)
TBW 2006-5 A5A	Integrity Life Insurance Company	5,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A5A	Western-Southern Life Assurance Company	11,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A5A	National Integrity Life Insurance Company	4,500,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A5A	Sep A	3,500,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A5A	Western and Southern Life Insurance Company	3,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
TBW 2006-5 A6	Columbus Life Insurance Company	2,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A6	Columbus Life Insurance Company	3,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A6	Western-Southern Life Assurance Company	15,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
TBW 2006-5 A6	National Integrity	5,000,000.00	10/26/06	BNP Paribas Mortgage Corp. (Seller) BNP Paribas Mortgage Securities LLC (Depositor) UBS (Underwriter)
RAMC 2007-1 AF6	Columbus Life Insurance Company	3,500,000	3/29/07	Citigroup (Underwriter)
RAMC 2007-1 AF6	Integrity Life Insurance Company	2,250,000	3/29/07	Citigroup (Underwriter)
RAMC 2007-1 AF6	National Integrity Life Insurance Company	3,500,000	3/29/07	Citigroup (Underwriter)
RAMC 2007-1 AF6	Western and Southern Life Insurance Company	6,464,000	3/29/07	Citigroup (Underwriter)

Asset	Purchaser	Amount	Settle Date	Seller Defendants
RAMC 2007-1 AF6	Western and Southern Life Insurance Company	2,250,000	3/29/07	Citigroup (Underwriter)
RAMC 2007-2 AF1	Integrity Life Insurance Company	5,000,000	6/18/07	RBS Securities (Underwriter)
RAMC 2007-2 AF1	Western-Southern Life Assurance Company	750,000	6/18/07	RBS Securities (Underwriter)
RAMC 2007-2 AF1	National Integrity Life Insurance Company	5,000,000	6/18/07	RBS Securities (Underwriter)
RAMC 2007-1 AF1	Fort Washington Investment Advisors, Inc.	4,742,863.5	11/27/07	Deutsche Bank Securities (Underwriter)
RAMC 2007-1 AF1	Integrity Life Insurance Company	5,217,149.85	11/27/07	Deutsche Bank Securities (Underwriter)
RAMC 2007-1 AF1	National Integrity Life Insurance Company	1,976,193.13	11/27/07	Deutsche Bank Securities (Underwriter)
RAMC 2007-1 AF1	Western-Southern Life Assurance Company	790,477.25	11/27/07	Deutsche Bank Securities (Underwriter)
RAMC 2007-1 AF1	National Integrity Life Insurance Company	1,185,715.88	11/27/07	Deutsche Bank Securities (Underwriter)

IV. DEFENDANTS ABANDONED THEIR DISCLOSED UNDERWRITING STANDARDS TO FACILITATE THE SALE OF LOW-QUALITY LOANS TO INVESTORS

A. Defendants Touted Their Underwriting Standards

69. The fundamental basis upon which residential mortgage-backed securities are valued is the ability of the borrowers to repay the principal and interest on the underlying loans and the adequacy of the collateral for those loans. If the borrowers cannot pay and the collateral is insufficient, the securities experience losses. For this reason, the underwriting standards and practices of the mortgage originator that issued the loans backing the certificates – and the representations in the offering materials regarding those standards – are critically important to the value of the securities and to investors' decisions to purchase the securities.

70. Defendants represented in the Offering Materials that the loans underlying each securitization were underwritten in accordance with meaningful underwriting standards designed to properly qualify borrowers and ensure the borrowers' ability to repay the underlying loans and the sufficiency of the underlying properties as collateral. These representations were false. As set forth below in Sections IV(B)-(C) and VII-VIII, the mortgage loans underlying Western & Southern's Certificates did not comply with the underwriting standards the Offering Materials described because those standards were systemically ignored. In originating or acquiring the loans, the Defendants frequently ignored borrowers' actual repayment ability and the value, adequacy, and ability to realize on mortgaged property that was used as collateral. Systematic, bulk exceptions to underwriting standards were granted without proper compensating factors. Defendants failed to inform investors that they were systematically abusing the "exceptions" process in order to further circumvent their purported underwriting standards.

1. The RFC Defendants' Representations

71. The RFC Defendants represented in the Offering Materials that the loans underlying each securitization were underwritten in accordance with meaningful underwriting standards designed to ensure the borrowers' ability to repay the underlying loans and the sufficiency of the underlying properties as collateral.

72. The Offering Materials promised investors that the mortgage originators for the loans had collected a variety of financial information about a borrower to ensure that the borrower could repay the loan. For example, the Offering Materials for RFMSI 2006-S12 provided:

> As part of the application, the borrower is required to provide a current balance sheet describing assets and liabilities and a statement of income and expenses, as well as an authorization to apply for a credit report which summarizes the borrower's credit history with merchants and lenders and any record of bankruptcy. In addition, an employment verification is obtained which reports the borrower's current salary and may contain the length of employment and an indication as to whether it is expected that the borrower will continue that employment in the future.

RFMSI 2006-S12 Prospectus Supplement dated December 21, 2006 at 11-12.[2] The Offering Materials for each of the RFC Defendants' securitizations at issue in the present action contained the same or substantially similar representations as set forth in detail in Exhibit A.

73. The Offering Materials promised investors that only borrowers who could repay loans had received them. For example, Offering Materials for RFMSI 2006-S12 provided:

> Once all applicable employment, credit and property information is received, a determination is made as to whether the prospective borrower has sufficient monthly income available to meet the borrower's monthly obligations on the

[2] The RFC Defendants' affiliate Homecomings Financial Network, Inc. ("Homecomings"), originated or purchased approximately 8.2%, 14.9% and 26.4% of the group I loans, group II loans and group III loans, respectively in RFMSI 2006-S12. GMAC Mortgage originated approximately 0.5%, 10.3% and 14.7% of the group I loans, group II loans and group III loans, respectively. National City Mortgage originated 23.3% of the loans in loan group I. SunTrust Mortgage, Inc. originated 20.1% and 14.7% of the loans underlying loan group I and loan group II respectively. Provident Funding Associates, LP originated 14.7% of the loans in loan group II. No other party originated more than 10% of the underlying loans.

> proposed mortgage loan and other expenses related to the home, including property taxes and hazard insurance, and other financial obligations and monthly living expenses.

RFMSI 2006-S12 Prospectus Supplement at 12. The Offering Materials for each of the RFC Defendants' securitizations at issue in the present action contained the same or substantially similar representations as set forth in detail in Exhibit A.

74. The Offering Materials assured investors that loans underwritten pursuant to "reduced loan documentation" were subject to enhanced LTV and credit score requirements. For example, the Offering Materials for RFMSI 2006-S12 provided: "[I]n order to be eligible for a reduced loan documentation program, the LTV ratio must meet applicable guidelines, the borrower must have a good credit history and the borrower's eligibility for this type of program may be determined by use of a credit scoring model." RFMSI 2006-S12 Prospectus Supplement at 13. The Offering Materials for each of the RFC Defendants' securitizations at issue in the present action contained the same or substantially similar representations as set forth in detail in Exhibit A.

75. The Offering Materials promised investors that Residential Funding itself had reviewed the underwriting information to confirm compliance with underwriting standards. For example, Offering Materials for RFMSI 2006-S12 provided:

> Residential Funding Company, LLC, on behalf of the depositor, typically will review a sample of the mortgage loans purchased by Residential Funding Company, LLC for conformity with the applicable underwriting standards and to assess the likelihood of repayment of the mortgage loans.

RFMSI 2006-S12 Prospectus Supplement at 11. The Offering Materials for each of the RFC Defendants' securitizations at issue in the present action contained the same or substantially similar representations as set forth in detail in Exhibit A.

76. Finally, the Offering Materials promised investors that all loans were issued in substantial compliance with underwriting standards, and that any deviation from specific criteria was justified by sufficient positive compensating factors. For example, Offering Materials for RFMSI 2006-S12 provided:

> [A] mortgage loan will be considered to be originated in accordance with the underwriting standards described above if, based on an overall qualitative evaluation, the loan is in substantial compliance with the underwriting standards. For example, a mortgage loan may be considered to comply with the underwriting standards described above, even if one or more specific criteria included in the underwriting standards were not satisfied, if other factors positively compensated for the criteria that were not satisfied.

RFMSI 2006-S12 Prospectus Supplement at S-48. The Offering Materials for each of the RFC Defendants' securitizations at issue in the present action contained the same or substantially similar representations as set forth in detail in Exhibit A.

2. The TBW Defendants' Representations

77. TBW originated or acquired all of the mortgage loans underlying the TBW 2006-5 securitization. TBW 2006-5 Prospectus Supplement dated October 25, 2006 at 9. The Offering Materials represented to investors that the securitized loans were underwritten in accordance with meaningful underwriting standards designed to ensure that borrowers were able to repay the underlying loans and the properties purportedly securing those loans constituted adequate collateral.

78. For example, the Offering Materials promised investors that TBW had collected a variety of financial information about a borrower to ensure that the borrower could repay the loan:

> For the "Standard" documentation loan program, a prospective borrower is required to complete a detailed application providing pertinent credit information. The application contains a description of a borrower's assets and liabilities and a statement of income and expenses, as well as an authorization to apply for a credit

> report which summarizes the borrower's credit history with merchants and lenders and any record of bankruptcy. In addition, employment verification is obtained which reports the borrower's current salary and may contain the length of employment and an indication as to whether it is expected that the borrower will continue such employment in the future. If a prospective borrower is self-employed or if income is received from dividends and interest, rental properties or other income which can be verified from tax returns, the borrower may also be required to submit copies of signed tax returns. In addition, the borrower may be required to authorize verification of deposits at financial institutions where the borrower has accounts.

Id. at 28.

79. Even for loans issued to borrowers with reduced documentation, the Offering Materials promised investors that such loans still required verification that the borrower could repay the loan, and were limited in size:

> Non-Conforming Loans may also be originated under TBW's various types of reduced loan documentation policy, where income and assets may or may not be stated depending on certain TBW guidelines. For example, "Stated Income" allows self-employed borrowers to state his or her income, therefore not requiring the borrower to verify income. For these loans, a credit check, an appraisal, and verification of sufficient assets is required. These loans generally will not exceed a 75% loan-to-value ratio on primary residences and a 70% loan-to-value ratio on second homes.

Id.

80. Finally, the Offering Materials promised investors that the loans were issued in substantial compliance with underwriting standards, and that any deviation from specific criteria was justified by sufficient positive compensating factors:

> TBW's underwriting standards include a set of specific criteria pursuant to which the underwriting evaluation is made. However, the application of TBW's underwriting standards does not imply that each specific criterion was satisfied individually. Rather, a mortgage loan will be considered to be originated in accordance with a given set of underwriting standards if, based on an overall qualitative evaluation, the loan is in substantial compliance with those underwriting standards. For example, a mortgage loan may be considered to comply with a set of underwriting standards, even if one or more specific criteria included in those underwriting standards were not satisfied, if other factors

> compensated for the criteria that were not satisfied or if the mortgage loan is considered to be in substantial compliance with the underwriting standards.

Id.

3. The Renaissance Representations

a. RAMC 2007-1

81. All of the mortgage loans underlying RAMC 2007-1 were originated by Delta Funding. *See* RAMC 2007-1 Prospectus Supplement dated March 14, 2007 at 105. The Offering Materials represented to investors that the securitized loans were underwritten in accordance with meaningful underwriting standards designed to ensure that borrowers were able to repay the underlying loans and the properties purportedly securing those loans constituted adequate collateral.

82. The Offering Materials represented that the mortgage originator collected a variety of financial information about a borrower to ensure that the borrower could repay the loan:

> For loans to borrowers who are salaried employees, we require current employment information in addition to employment history. We verify this information based on one or more of the following items: written confirmation from employers, recent pay-stub, recent W-2 tax form, recent tax return, bank statements and telephone confirmation from the employer. For our limited income verification program, we require either six months of bank statements or a job letter to be submitted which contains substantially the same information one would find on a standard verification of employment form, including: job position; length of time on job; current salary; and the job letter should appear on the employer's letterhead and include the telephone number and signature of the individual completing the letter on behalf of the employer.

Id. at 110.

83. The Offering Materials assured investors that very few loans were underwritten based on stated income or reduced documentation and that when such loans were issued they

were subject to meaningful safeguards including enhanced credit rating and LTV requirements. For example, the Offering Materials provided:

> For our no income verification program, we require proof of self-employment in the same business for two years. We only offer our stated income program, which represents a very small percentage of our loans, for better credit quality borrowers where telephone verification is performed by an underwriter to verify that the borrower is employed. We usually require lower combined LTV ratios with respect to loans made under programs other than the full documentation program.

Id.

84. The Offering Materials also promised investors that Delta Funding's underwriters had reviewed the underwriting information to confirm compliance with underwriting standards:

> Our underwriters are trained to review all components of the loan to determine its compliance with our underwriting guidelines. . . . We assess a borrower's credit-worthiness primarily based on the borrower's mortgage history and credit score, and we generally adjust our pricing and LTV ratios based on many other risk parameters. . . . Qualification for a loan is based primarily upon our risk-based pricing model and guidelines, which we have developed over our 25-year history and our extensive database of prior loan performance.

Id.

85. Finally, the Offering Materials promised investors that all loans were issued in substantial compliance with underwriting standards, and that any deviation from specific criteria was justified by sufficient positive compensating factors:

> On a case-by-case basis, we may determine that the prospective borrower warrants an exception from the guidelines if sufficient compensating factors exist. Examples of compensating factors we consider include the following: low debt ratio; long-term stability of employment and/or residence; excellent payment history on past mortgages; or a significant reduction in monthly expenses.

Id.

b. RAMC 2007-2

86. All of the mortgage loans underlying RAMC 2007-2 were originated by Delta Funding. *See* RAMC 2007-2 Prospectus Supplement dated May 14, 2007 at 86. The Offering

Materials represented to investors that the securitized loans were underwritten in accordance with meaningful underwriting standards designed to ensure that borrowers were able to repay the underlying loans and the properties purportedly securing those loans constituted adequate collateral.

87. The Offering Materials represented that the mortgage originator collected a variety of financial information about a borrower to ensure that the borrower could repay the loan:

> For loans to borrowers who are salaried employees, we require current employment information in addition to employment history. We verify this information based on one or more of the following items: written confirmation from employers, recent pay-stub, recent W-2 tax form, recent tax return, bank statements and telephone confirmation from the employer. For our limited income verification program, we require either six months of bank statements or a job letter to be submitted which contains substantially the same information one would find on a standard verification of employment form, including: job position; length of time on job; current salary; and the job letter should appear on the employer's letterhead and include the telephone number and signature of the individual completing the letter on behalf of the employer.

Id. at 91.

88. The Offering Materials assured investors that very few loans were underwritten based on stated income or reduced documentation and that when such loans were issued they were subject to meaningful safeguards including enhanced credit rating and LTV requirements. For example, the Offering Materials provided:

> For our no income verification program, we require proof of self-employment in the same business for two years. We only offer our stated income program, which represents a very small percentage of our loans, for better credit quality borrowers where telephone verification is performed by an underwriter to verify that the borrower is employed. We usually require lower combined LTV ratios with respect to loans made under programs other than the full documentation program.

Id.

89. The Prospectus Supplement also promised investors that the Renaissance Underwriters themselves had reviewed the underwriting information to confirm compliance with underwriting standards: "Our underwriters are trained to review all components of the loan to determine its compliance with our underwriting guidelines." *Id*.

90. Finally, the Prospectus Supplement promised investors that all loans were issued in substantial compliance with underwriting standards, and that any deviation from specific criteria was justified by sufficient positive compensating factors:

> On a case-by-case basis, we may determine that the prospective borrower warrants an exception from the guidelines if sufficient compensating factors exist. Examples of compensating factors we consider include the following: low debt ratio; long-term stability of employment and/or residence; excellent payment history on past mortgages; or a significant reduction in monthly expenses.

Id.

B. Widespread Defaults and Downgrades Suggest That Defendants Abandoned Their Underwriting Standards

91. Even though the Certificates purchased by Western & Southern were supposed to be long-term, stable investments, just years after their issuance, a substantially high percentage of the mortgage loans backing the Certificates have defaulted, been foreclosed upon, or are delinquent, resulting in massive losses to the certificate holders, including Western & Southern. The following table contains the most recent performance data available for the loan pools:

Offering	Number of Months Since Issuance	Current Number of Loans in Pool	Total % of Current Delinquencies
RALI 2005-QS16	12	1,683	2.80
	24	1,456	7.21
	36	1,316	13.99
	48	1,151	23.68
	60	1,013	20.90

Offering	Number of Months Since Issuance	Current Number of Loans in Pool	Total % of Current Delinquencies
RALI 2006-QS3	12	3,771	7.66
	24	3,234	15.03
	36	2,790	25.02
	48	2,339	29.68
	60	2,046	26.31
RALI 2006-QS6	12	2,978	7.66
	24	2,597	19.25
	36	2,202	29.42
	48	1,846	30.37
	60	NA	NA
RFMSI 2006-S2	12	514	1.02
	24	466	3.35
	36	431	6.27
	48	365	16.01
	60	307	17.22
RFMSI 2006-S12	12	697	1.38
	24	660	5.82
	36	537	11.74
	48	453	14.09
	60	NA	NA

Offering	Number of Months Since Issuance	Current Number of Loans in Pool	Total % of Current Delinquencies
GMACM 2007-HE1	12	18,474	2.50
	24	15,219	7.64
	36	12,309	7.14
	48	10,294	5.55
	60	NA	NA
GMACM 2007-HE2	12	20,432	3.64
	24	16,958	7.78
	36	13,888	6.77
	48	NA	NA
	60	NA	NA
TBW 2006-5	12	2,516	6.87
	24	2,244	19.54
	36	2,095	44.78
	48	1,623	39.55
	60	NA	NA
RAMC 2007-1 AF1	12	4,926	24.02
	24	4,273	34.76
	36	3,792	39.31
	48	3,478	34.84
	60	NA	NA

Offering	Number of Months Since Issuance	Current Number of Loans in Pool	Total % of Current Delinquencies
RAMC 2007-2 AF1	12	4,179	25.65
	24	3,659	37.40
	36	3,300	39.22
	48	3,056	33.20
	60	NA	NA

92. All of Western & Southern's investments initially received the highest possible Standard & Poor's rating—AAA—which has historically represented an expected loss rate of less than .05%. This is the same rating that until recently was typically given to bonds backed by the full faith and credit of the United States government, such as treasury bills. According to S&P's whitepaper, "Understanding Standard & Poor's Rating Definitions," an AAA rating represents an "extremely strong capacity to meet its financial commitments."

93. Now virtually all of the Certificates have been downgraded to junk-bond ratings, as can be seen in the following table:

Certificate Offering and Class	Original Moody's Rating	Current Moody's Rating	Original Fitch Rating	Current Fitch Rating	Original S&P Rating	Current S&P Rating
RALI 2005-QS16 A4	Aaa	Caa3	AAA	C	AAA	CCC
RALI 2006-QS3 1A12	Aaa	Caa3	AAA	D	AAA	D
RALI 2006-QS6 1A6	Aaa	Caa3	AAA	D	AAA	D
RFMSI 2006-S2 A2	--	--	AAA	CCC	AAA	CCC
RFMSI 2006-S12 3A9	Aaa	Caa1	AAA	CCC	AAA	B+/*-
GMACM 2007-HE1 A4	Aaa	B3/*-	--	--	AAA	B
GMACM 2007-HE2 A6	Aaa	Caa3	--	--	AAA	D
TBW 2006-5 A5A	Aaa	C	--	--	AAA	D
TBW 2006-5 A6	Aaa	Caa2	--	--	AAA	D
RAMC 2007-1 AF1	Aaa	B3	--	--	AAA	CCC
RAMC 2007-1 AF6	Aaa	Ca	--	--	AAA	CCC
RAMC 2007-2 AF1	Aaa	Caa1	--	--	AAA	CCC

94. The poor performance of the loan pools, the inability to efficiently work out loans or realize on the mortgage collateral and the rapidly dropping credit ratings of the Certificates have caused a massive decline in the market values of the Certificates. According to recent data, the Certificates have lost 39% of their market value.

95. The economic downturn cannot explain the abnormally high percentage of defaults, foreclosures, and delinquencies observed in the loan pools. Nor can it explain the inability to work out or modify the defaulted loans or efficiently foreclose on the mortgage collateral. Loan pools that were properly underwritten and contained loans with the represented characteristics would have experienced substantially fewer payment problems and substantially

lower percentages of defaults, foreclosures, and delinquencies. If loan documentation had been adequately prepared, maintained and delivered (such as assignments of notes and mortgages), the value of the underlying loans and collateral would have been better preserved.

C. Other Evidence That Defendants Systemically Disregarded the Underwriting Guidelines Touted in the Offering Materials

1. The RFC Defendants' Systemic Abandonment of Underwriting Standards

96. GMAC Mortgage came into existence in 1985 when GMAC Inc., then the finance subsidiary of General Motors, acquired a mortgage loan business. In 1990, GMAC Mortgage acquired RFC. GMAC further increased its mortgage business in 2000 by forming GMAC Bank (now Ally Bank). GMAC has been one of the largest MBS issuers in the country since the 1980s, and GMAC grew to be the fourth largest U.S. mortgage loan originator by 2006, issuing tens of billions of dollars of mortgages annually. The RFC Defendants or their affiliates originated a majority of the mortgage loans underlying the RFC securitizations subject to this action.

97. The RFC Defendants' abandonment of their underwriting guidelines and improper loan documentation has been the subject of multiple investigations and lawsuits. For example, the RFC Defendants' misconduct in connection with their mortgage-backed securitizations was featured in the January 2011 report of the Congressional Financial Crisis Inquiry Commission (the "FCIC Report"). The FCIC Report disclosed that a review of RFC loans by Fannie Mae and Freddie Mac uncovered over a billion dollar of loans originated by RFC that failed to comply with applicable underwriting guidelines during the relevant period. These loans were so materially deficient that the RFC Defendants had to repurchase them. According to the FCIC:

> In 2009 and 2010, Freddie put back significant loan volumes to the following lenders: Countrywide, $1.9 billion; Wells Fargo, $1.2 billion; Chase Home Financial, $1.1 billion; Bank of America, $476 million; ***and Ally Financial, $453 million***.
>
> Using a method similar to Freddie's to test for loan eligibility, Fannie reviewed between 2% and 5% of the mortgages originated since 2005—sampling at the higher rates for delinquent loans. From 2007 through 2010, Fannie put back loans to the following large lenders: Bank of America, $6.9 billion; Wells Fargo, $2.3 billion; JP Morgan Chase, $2.2 billion; Citigroup, $1.5 billion; SunTrust Bank, $898 million; ***and Ally Financial, $838 million***.

98. MBIA Insurance Corporation ("MBIA") had access to some of the complete loan files for certain of the RFC Defendants' securitizations including GMACM 2007-HE1, which is at issue in the present action. Its analyses were made public only in April 2010 in connection with the filing of the complaint in *MBIA Insurance Co. v. GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corp.)*, No. 600837-2010 (N.Y.S. Sup. Ct.). MBIA's findings demonstrate that the essential characteristics of the mortgage loans underlying the Certificates sold to Western & Southern were misrepresented, and that the problems in the RFC Defendants' underwriting practices were systemic.

99. MBIA is a New York-based monoline insurer that wrote insurance on GMACM 2007-HE1, insuring that payments of principal and interest would be made to investors in that offering. MBIA conducted an investigation into certain loan files after it was asked to make payments on its GMACM 2007-HE1 insurance policies. (Western & Southern, as an investor, does not have access to such files.) For the offerings MBIA analyzed, the parties, type of collateral, structure, timing, and disclosures made were all substantially similar, if not identical, to those present here. MBIA's analysis is also probative of problems underlying Western & Southern's Certificates because the Defendants' problems were systemic.

100. MBIA reviewed approximately 4,104 defaulted loans included in the RFC Defendants' securitizations, including GMACM 2007-HE1. MBIA found that 89% of these loans were not in compliance with the RFC Defendants' stated underwriting guidelines. MBIA's review also found that "[a] significant number of mortgage loans were made on the basis of 'stated incomes' that were grossly unreasonable or were approved despite DTI or CLTV ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines or in the Purchase Agreements or Prospectus Supplements. . . ."

101. Perhaps most notably, MBIA reported in June 2010 for the first time that the RFC Defendants utilized a "proprietary automated electronic loan underwriting program known as Assetwise." While use of such an automated program may not in itself be problematic, Assetwise was not programmed to require compliance with the RFC Defendants' stated underwriting guidelines. As a result, the RFC Defendants were including loans approved by Assetwise despite the fact that they did not comply with the applicable underwriting guidelines.

102. In a decision issued December 14, 2010, Justice Fried of the Supreme Court of the State of New York found that the results of MBIA's review were sufficient to establish for pleading purposes that the RFC Defendants fraudulently securitized loans, including loans underlying GMACM 2007-HE1.

103. Further, on June 29, 2011, the SEC and the DOJ launched investigations of, among other things, "potential fraud related to the origination and/or underwriting of mortgage loans" by the RFC Defendants. As an originator of residential mortgage loans for the GMAC entities, the scope of the SEC and the DOJ's investigation will likely include a review of compliance with the RFC Defendants' own loan origination underwriting guidelines.

2. TBW's Systemic Abandonment of Underwriting Standards

104. TBW was founded in 1982 and grew to be one of the largest privately held mortgage lending companies in the United States. TBW was principally involved in the origination, purchase, sale, and servicing of residential mortgage loans. TBW generally sold these loans in the secondary mortgage market to third-party investors, including Freddie Mac and commercial financial institutions, either individually, pooled, or as part of mortgage-backed securities. TBW originated and purchased billions of dollars in new residential loans on an annual basis. To fund its mortgage loan originations and acquisitions, TBW relied on various purchase facilities, credit lines, and financing vehicles, primarily with Colonial Bank and, starting in or about January 2005, Ocala Funding, LLC.

105. On August 4, 2009, the Special Inspector General for the Troubled Asset Relief Program and the FBI raided TBW's headquarters in Ocala, Florida. This raid led to the discovery of evidence that TBW defrauded both Freddie Mac and Ginnie Mae. The day after the raid, the Federal Housing Authority suspended TBW from making loans backed by the FHA. TBW is the largest lender ever to be suspended by the FHA.

106. On or about August 24, 2009, TBW filed for bankruptcy in the United States Bankruptcy Court for the Middle District of Florida in Jacksonville.

107. After the raid, it was revealed that TBW's misconduct was not limited to FHA backed loans and that TBW's meteoric growth was fueled by a total disregard for any semblance of underwriting standards or internal controls. For example, the *Ocala Star-Banner* reported as follows on August 11, 2009:

> Former Taylor Bean employees who spoke to the Star-Banner last week said they knew there were problems with many of the loans they made. They said the company they once worked for lacked the internal controls to ensure the information they had about borrowers was accurate.

> They said the company's computer programs keeping track of customer information was riddled with problems and too easily accessible by brokers outside the company, with no checks in place to make sure loan information was accurate.
>
> Some former employees said customer information was often inconsistent and inaccurate, leaving some in the company to wonder why many of Taylor Bean's homeowners ever were approved for a mortgage.

108. Many of the individuals who were responsible for the shoddy and fraudulent underwriting practices at TBW are currently incarcerated. TBW's former chairman, Lee Farkas, was convicted of 14 counts of fraud and conspiracy in the management and operation of TBW in a criminal action brought by the United States government, captioned *United States v. Farkas*, Case No. 1:10-CR-200 (E.D. Va.), and sentenced to 30 years in prison. Farkas masterminded and led TBW's origination and sale of low-quality mortgage loans to generate fees in an attempt to cover TBW's extraordinary operating expenses, which were approximately $150 million almost daily. Former TBW treasurer Desiree Brown was sentenced to six years in prison and former TBW president Raymond Bowman received 30 months incarceration. Catherine Kissick, a Colonial Bank executive who served as the go-between during the TBW fraud scheme, was sentenced to eight years in federal prison.

109. TBW's misconduct is also the subject a civil action brought by the SEC, captioned *SEC v. Farkas*, Case No. 1:10-CV-667 (E.D. Va.), alleging violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 in the management and operation of TBW.

110. TBW could not have offloaded its toxic loans on investors such as Western & Southern without the involvement of Defendants BNPPM, BNPPMS, and UBS. BNPPM served as the Seller for TBW 2006-5, BNPPMS served as the depositor for TBW 2006-5. UBS served

as the Underwriter. These Defendants disregarded TBW's shoddy loan practices or failed to conduct adequate due diligence.

3. Delta Funding's Systemic Abandonment of Underwriting Standards

111. Prior to their bankruptcy, Delta Funding and Renaissance Mortgage were affiliated consumer finance companies that originated, securitized and sold mortgage loans. From 1991 through 2007 they issued 53 asset-backed securitizations, collateralized by approximately $20.7 billion in mortgage loans. Delta Funding and Renaissance Mortgage increased their origination of mortgage loans by 17% between 2006 and 2007, originating $3.4 billion of mortgage loans in the first nine months of 2007 before they abruptly ceased all origination activities.

112. Delta Funding was a notorious predatory lender. In an article published on August 19, 2011, the *New York Times* reported that the implications of Delta Funding's shoddy and fraudulent lending practices are reverberating through people's lives and the financial system. The *New York Times* reported the story of a woman named Mary Lee Ward who was the victim of Delta Funding's misconduct, in relevant part, as follows:

> Fifteen years ago, Ms. Ward says, she needed money for a lawyer to help keep her great-granddaughter from being put up for adoption. Like many others in her neighborhood, she turned to a subprime lender.
>
> She signed a contract with Delta Funding, a company she found advertised on a flier tucked in her mailbox. She borrowed $82,000 against her house, but claims she only ever received a payment of $1,000. Ms. Ward still displays a faded portrait of her great-granddaughter as a baby, even though she was unable to prevent the adoption and has long since lost contact with her.
>
> In 1999 and 2000, several state and federal agencies sued Delta Funding, accusing the company of predatory lending practices directed at elderly members of minority groups throughout Queens and Brooklyn. Those suits were settled with Delta denying wrongdoing. Lawyers from Common Law say the lender sent a letter to Ms. Ward in 2001 informing her that they were canceling her loan, but

> the loan never was canceled. Instead, the mortgage passed from financial institution to financial institution over the last 10 years.
>
> Unable to pay the growing debt, Ms. Ward was issued a judgment of foreclosure in 2008 and the property was put up for auction that July. The winning bidder, the real estate investment company 768 Dean Inc., has been trying to evict Ms. Ward ever since.

113. Delta Funding and Renaissance could not have unloaded their toxic loans to investors such as Western & Southern without the involvement of Defendants RBS Securities, Citigroup, and Deutsch Bank Securities, the Underwriters for RAMC 2007-1 and RAMC 2007-2. These Defendants knowingly disregarded Delta Funding's and Renaissance's shoddy loan practices or failed to conduct adequate due diligence.

V. MISREPRESENTATIONS CONCERNING TRANSFER OF TITLE TO THE ISSUING TRUSTS

114. The Defendants falsely stated in the Offering Materials that each underlying mortgage would be assigned to the relevant Trust and that notes and loan files would properly be transferred such that the Trust would have the right to foreclose upon property subject to each mortgage loan.

115. A fundamental step in the mortgage securitization process is the transfer to the issuing trust for each mortgage-backed securities offering of good title to the mortgage loans comprising the pool for that offering. This is necessary in order for the holders to be legally entitled to enforce the mortgage loans in case of default.

116. Two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process – a promissory note and a security instrument (either a mortgage or a deed of trust).

117. The rules for these transfers are governed by the law of the state in which the property is located, by the terms of the pooling and servicing agreement ("PSA") for each securitization, and by the law governing the issuing trust (with respect to matters of trust law).

118. Generally, state laws and the PSAs require the promissory note and security instrument to be transferred by indorsement, in the same way that a check can be transferred by indorsement, or by sale. In addition, state laws generally require that the trustee have physical possession of the original, manually signed note in order for the loan to be enforceable by the trustee against the borrower in case of default.

119. In order to preserve the bankruptcy-remote status of the issuing trusts in mortgage-backed securities transactions, the notes and security instruments are generally not transferred directly from the mortgage loan originator to the trust. Rather, the notes and security instruments are generally initially transferred from the originator to the depositor, either directly or via one or more special-purpose entities. After this initial transfer to the depositor, the depositor transfers the notes and security interests to the issuing trust for the particular securitization. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

120. In addition, the PSA generally requires the transfers of the mortgage loans to the trust to be completed within a strict time limit after formation of the trust in order to ensure that the trust is properly formed and that the trust qualifies as a tax-free real estate mortgage investment conduit.

121. The applicable state trust law generally requires strict compliance with the trust documents, including the PSA, so that failure to comply strictly with the timeliness, indorsement, physical delivery and other requirements of the PSA with respect to the transfers of the notes and

security instruments results in void transfers and the trust lacking good title to the mortgage loans.

A. Defendants' Representations

122. The Offering Materials represented that each mortgage represented a valid lien such that the issuing trust could foreclose upon the mortgage in the event of a borrower's default. For example, the RFMSI 2006-S12 Offering Materials promised that "the mortgage loans are secured by first liens on fee simple interests." RFMSI 2006-S12 Prospectus Supplement at S-40. The same or similar representations appeared in the Offering Materials relating to each of Defendants' other securitizations that are at issue in this action. *See* Exhibit A.

123. Defendants represented in the Offering Materials associated with each securitization that the underlying mortgage notes would be properly assigned to the Trusts and that the loan files would similarly be delivered to the Trusts. For example, the RFMSI 2006-S12 Offering materials assured investors that title would be transferred properly, providing:

> The depositor will, as to each mortgage loan other than mortgage loans underlying any mortgage securities, deliver to the trustee or the custodian, the mortgage note and any modifications or amendment thereto endorsed without recourse either in blank or to the order of the trustee or its nominee. In addition, the depositor will, as to each mortgage loan other than mortgage loans underlying any mortgage securities, deliver to the sponsor, the servicer, the master servicer, the trustee or the custodian, as selected by the depositor, a set of the remaining legal documents relating to each mortgage loan that are in possession of the depositor, which may include the following:
>
> - the mortgage, except for any mortgage not returned from the public recording office, with evidence of recording indicated thereon or a copy of the mortgage with evidence of recording indicated thereon or, in the case of a Cooperative Loan, on the related financing statement;
>
> - an assignment in recordable form of the mortgage, or evidence that the mortgage is held for the trustee through the MERS® System or a copy of such assignment with evidence of recording indicated thereon or, with respect to a Cooperative Loan, an assignment of the related proprietary lease or occupancy agreement; and

- if applicable, any riders or modifications to the mortgage note and mortgage or a copy of any riders or modifications to the mortgage note and mortgage, together with any other documents at such times as described in the related pooling and servicing agreement.

RFMSI 2006-S12 Prospectus Supplement at 25. The same or similar representations appeared in the Offering Materials relating to each of Defendants' other securitizations that are at issue in this action. *See* Exhibit B.

124. The Offering Materials further assured investors that when Defendants transferred mortgage loans using the Mortgage Electronic Registration System ("MERS"), such assignments were sufficient to ensure that the mortgage loans could be foreclosed upon in the event of a borrower's default. For example, the RFMSI 2006-S12 Offering Materials provided:

> [I]n accordance with the rules of membership of Merscorp, Inc. and/or Mortgage Electronic Registration Systems, Inc. or, MERS, assignments of the mortgages for the mortgage loans in the related trust will be registered electronically through Mortgage Electronic Registration Systems, Inc., or MERS® System. With respect to mortgage loans registered through the MERS® System, MERS shall serve as mortgagee of record solely as a nominee in an administrative capacity on behalf of the trustee and shall not have any interest in any of those mortgage loans.

RFMSI 2006-S12 Prospectus Supplement at 25. The same or similar representations appeared in the Offering Materials relating to each of Defendants' other securitizations that are at issue in this action. *See* Exhibit B.

125. These disclosures led investors to conclude that the Defendants had taken all steps necessary to ensure the Trusts could negotiate loan modifications with proper authority and, when necessary, foreclose upon any defaulted mortgage loan. Since the securities at issue in this case were supposedly secured, the representations concerning the Trusts' collateral are obviously material representations. In many instances, however, the collateral did not properly secure the underlying loans and could not be efficiently realized because the Defendants either lost, failed

to timely create or failed to timely deliver the paperwork necessary to prove title to the mortgages and the notes or properly constitute the Trusts as is required under state law.

B. Contrary to Defendants' Representations, They Did Not Properly Assign Large Numbers of Mortgages and Failed to Properly Transfer Notes and Mortgage Loan Files to the Trusts

126. In their zeal to offload toxic loans to investors such as Western & Southern, Defendants did not come close to complying with the strict rules governing assignment of mortgages and transfer of promissory notes and loan files. Indeed, Defendants lost much of the paperwork relating to the loans underlying their securitizations or made no attempt to assign mortgages and deliver the original mortgage notes to the issuing trusts as required under state law. Further, following creation of the Trusts they engaged in an attempt to cover up their failure to validly assign the mortgage notes by filing false documentation in courts nationwide and forging assignment documents in an effort to cover up their tracks. The cover-up made possible and facilitated the execution of additional securitizations which damaged investors such as Western & Southern.

1. A Forensic Review Commissioned By Western & Southern Establishes that Defendants Made Virtually No Effort to Assign Mortgages to the Relevant Trusts

127. Western & Southern commissioned an exhaustive review of public assignment records to determine if the chain of assignments is complete with respect to the mortgage loans underlying the securitizations subject to this action. The results of Western & Southern's review are shocking. Defendants made virtually no effort to assign mortgages to the issuing Trusts.

a. RALI 2005-QS16

128. Defendants represented that they assigned valid title to the Trusts for the 1,971 mortgages in connection with RALI 2005-QS16. Western & Southern was able to track

assignments for 1,442 of these mortgages through a review of public records. Of the 1,442 mortgages reviewed, ***Defendants made absolutely no attempt to assign 84% (or 1,204) of the mortgages to the Trust***. Of these 1,204 mortgages that were never assigned to the Trust, 233 (or 16% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 971 mortgages (or 67% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption). Only 187 mortgages were assigned to MERS and 18 of those assignments are invalid assignments because they are missing an intervening assignment. Western & Southern would need to access Defendants' and MERS' files to determine whether those assignments are valid or whether they are after-the-fact forgeries executed in the course of Defendants' cover up of their monumental documentation failure described below in Section V(B)(2).

129. While the Offering Materials for RALI 2005-QS16 represent that <u>all</u> mortgages were validly assigned to the Trust, Defendants only attempted to assign 51 of the 1,442 mortgages reviewed. 33 of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

b. RALI 2006-QS3

130. Defendants represented that they assigned valid title to the Trusts for the 4,506 mortgages in connection with RALI 2006-QS3. Western & Southern was able to track assignments for 2,802 of these mortgages through a review of public records. Of the 2,802 mortgages reviewed, ***Defendants made absolutely no attempt to assign 85% (or 2,394) of the***

mortgages to the Trust. Of these 2,394 mortgages that were never assigned to the Trust, 419 (or 15% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 1,973 mortgages (or 70% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption). Only 264 mortgages were assigned to MERS and 16 of those assignments are invalid assignments because they are missing an intervening assignment. Western & Southern would need to access Defendants' and MERS' files to determine whether those assignments are valid or whether they are after-the-fact forgeries executed in the course of Defendants' cover up of their monumental documentation failure described below in Section V(B)(2).

131. While the Offering Materials for RALI 2006-QS3 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 144 of the 2,802 mortgages reviewed. 92 of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

c. RALI 2006-QS6

132. Defendants represented that they assigned valid title to the Trusts for the 4,115 mortgages in connection with RALI 2006-QS6. Western & Southern was able to track assignments for 2,852 of these mortgages through a review of public records. Of the 2,852 mortgages reviewed, ***Defendants made absolutely no attempt to assign 84% (or 2,390) of the mortgages to the Trust***. Of these 2,390 mortgages that were never assigned to the Trust, 397 (or 14% of the mortgages reviewed) were assigned to the originator or some other third-party. With

regard to 1,993 mortgages (or 70% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption). Only 301 mortgages were assigned to MERS and 15 of those assignments are invalid assignments because they are missing an intervening assignment. Western & Southern would need to access Defendants' and MERS' files to determine whether those assignments are valid or whether they are after-the-fact forgeries executed in the course of Defendants' cover up of their monumental documentation failure described below in Section V(B)(2).

133. While the Offering Materials for RALI 2006-QS6 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 161 of the 2,852 mortgages reviewed. 89 of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

d. RFMSI 2006-S2

134. Defendants represented that they assigned valid title to the Trusts for the 553 mortgages in connection with RFMSI 2006-S2. Western & Southern was able to track assignments for 374 of these mortgages through a review of public records. Of the 374 mortgages reviewed, ***Defendants made absolutely no attempt to assign 91% (or 340) of the mortgages to the Trust***. Of these 340 mortgages that were never assigned to the Trust, 30 (or 8% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 310 mortgages (or 83% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which, again, renders

any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption). Only 11 mortgages were assigned to MERS. Western & Southern would need to access Defendants' and MERS's files to determine whether those assignments are valid or whether they are after-the-fact forgeries executed in the course of Defendants' cover up of their monumental documentation failure described below in Section V(B)(2).

135. While the Offering Materials for RFMSI 2006-S2 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 23 of the 374 mortgages reviewed. Thirteen of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

e. RFMSI 2006-S12

136. Defendants represented that they assigned valid title to the Trusts for the 2,375 mortgages in connection with RFMSI 2006-S12. Western & Southern was able to track assignments for 1,845 of these mortgages through a review of public records. Of the 1,845 mortgages reviewed, ***Defendants made absolutely no attempt to assign 91% (or 1,673) of the mortgages to the Trust***. Of these 1,673 mortgages that were never assigned to the Trust, 110 (or 9% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 1,500 mortgages (or 83% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which, again, renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage assigned to MERS (which is a highly dubious assumption). Only 120 mortgages were assigned to MERS and 17 of those assignments are

invalid assignments because they are missing an intervening assignment. Western & Southern would need to access Defendants' and MERS' files to determine whether those assignments are valid or whether they are after-the-fact forgeries executed in the course of Defendants' cover up of their monumental documentation failure described below in Section V(B)(2).

137. While the Offering Materials for RFMSI 2006-S12 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 52 of the 1,845 mortgages reviewed. Twenty nine of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

138. Western & Southern was unable to obtain data to conduct a similar forensic review of GMACM 2007-HE1 and GMACM 2007-HE2. However, Western & Southern's forensic review encompassed 9315 mortgage loans underlying the RFC Defendants' securitizations. This sample is sufficient to establish that the RFC Defendants' failure to assign mortgages to the securitization trusts was systemic and infected all of the RFC Defendants' securitizations including GMACM 2007-HE1 and GMACM 2007-HE2.

f. TBW 2006-5

139. Defendants represented that they assigned valid title to the Trusts for the 3,001 mortgages in connection with TBW 2006-5. Western & Southern was able to track assignments for 2,163 of these mortgages through a review of public records. Of the 2,163 mortgages reviewed, ***Defendants made absolutely no attempt to assign 88% (or 1,897) of the mortgages to the Trust***. Of these 1,897 mortgages that were never assigned to the Trust, 240 (or 11% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 1,657 mortgages (or 77% of the mortgages reviewed), MERS is listed as the beneficial owner,

but the mortgage has not been assigned to MERS (or the Trust), which renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption). Only 13 were assigned to MERS and one of those assignments is invalid because it is missing an intervening assignment. Western & Southern would need to access Defendants' and MERS' files to determine whether those assignments are valid or whether they are after-the-fact forgeries executed in the course of Defendants' cover up of their monumental documentation failure described below in Section V(B)(2).

140. While the Offering Materials for TBW 2006-5 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 253 of the 2,163 mortgages reviewed. 178 of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

g. RAMC 2007-1

141. Defendants represented that they assigned valid title to the Trusts for the 5,632 mortgages in connection with RAMC 2007-1. Western & Southern was able to track assignments for 4,116 of these mortgages through a review of public records. Of the 4,116 mortgages reviewed, ***Defendants made absolutely no attempt to assign 77% (or 3,185) of the mortgages to the Trust***. Of these 3,185 mortgages that were never assigned to the Trust, 257 (or 6% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 2,928 mortgages (or 71% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state

recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption). Only one mortgage was assigned to MERS and it is an invalid assignment because it is missing an intervening assignment.

142. While the Offering Materials for RAMC 2007-1 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 930 of the 4,116 mortgages reviewed. 883 of these assignments are invalid because they are missing intervening assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

h. RAMC 2007-2

143. Defendants represented that they assigned valid title to the trusts for the 4,765 mortgages in connection with RAMC 2007-2. Western & Southern was able to track assignments for 3,586 of these mortgages through a review of public records. Of the 3,586 mortgages reviewed, ***Defendants made absolutely no attempt to assign 76% (or 2,728) of the mortgages to the Trust***. Of these 2,728 mortgages that were never assigned to the Trust, 253 (or 7% of the mortgages reviewed) were assigned to the originator or some other third-party. With regard to 2,475 mortgages (or 69% of the mortgages reviewed), MERS is listed as the beneficial owner, but the mortgage has not been assigned to MERS (or the Trust), which renders any MERS registration a complete nullity even assuming that MERS can be used to circumvent state recording laws when a mortgage is assigned to MERS (which is a highly dubious assumption).

144. While the Offering Materials for RAMC 2007-2 represent that all mortgages were validly assigned to the Trust, Defendants only attempted to assign 858 of the 3,586 mortgages reviewed. 800 of these assignments are invalid because they are missing intervening

assignments. Upon information and belief, a review of Defendants' files will reveal additional deficiencies with Defendants' purported assignments.

2. Defendants Have Participated in a Massive Cover Up Of Their Systemic Failure to Assign Mortgages and Properly Transfer Notes and Loan Files to the Trusts

a. RFC and GMAC Mortgage Have Filed False Foreclosure Documents in Courts Across the Country

145. RFC and/or GMAC Mortgage are the primary servicers for RALI 2005-QS16, RFMSI 2006-S2, RFMSI 2006-S12, RALI 2006-QS3, and RALI 2006-QS6. GMAC Mortgage is the servicer for GMACM 2007-HE1 and GMACM 2007-HE2. As the servicers for these securitizations, RFC and GMAC Mortgage were responsible for, among other things, collecting payments from borrowers, negotiating with borrowers over loan modifications, initiating and pursuing foreclosure proceedings, obtaining assignment documentation, and selling properties subject to foreclosure. RFC and GMAC Mortgage or their affiliates earn substantial servicing fees in connection with the servicing of loans underlying these securitizations.

146. The Board of Governors of the Federal Reserve System ("Board of Governors") issued a Consent Order dated April 13, 2011 finding that RFC and GMAC Mortgage failed to document mortgage loans properly and have attempted to cover up this failure. The Board of Governors found that RFC and GMAC Mortgage:

> (a) Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of the Mortgage Servicing Companies or employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such knowledge or review;

> (b) Filed or caused to be filed in courts in various states and in connection with bankruptcy proceedings in federal courts or in the local land record offices, numerous affidavits and other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary; [and]
>
> (c) Litigated foreclosure and bankruptcy proceedings and initiated non-judicial foreclosures without always confirming that documentation of ownership was in order at the appropriate time, including confirming that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party . . . .

147. RFC and GMAC Mortgage stipulated to the Consent Order and, thus, admitted the Board of Governor's findings. The Consent Orders require the RFC Defendants to undertake a sweeping review of their foreclosure practices. Upon information and belief, this review will uncover substantial additional evidence demonstrating that the Defendants' representations concerning proper assignment of mortgages and delivery of mortgage files were false.

148. RFC and GMAC Mortgage have engaged in widespread foreclosure misconduct in an attempt to cover up the fact that the RFC Defendants failed to properly assign mortgages and transfer notes and mortgage loan files to the issuing trusts. This pervasive misconduct indicates a systemic failure that infected many mortgage-backed securitizations including the securitizations at issue in the present action. RFC and GMAC Mortgage utilize so-called "robo-signers" who execute tens of thousands of foreclosure affidavits a month, all necessarily false because they are allegedly based on their own personal knowledge, and many of them without proper documentation, including evidence of possession of the underlying mortgage note. The "robo-signers" sometimes attempt to execute assignments retroactive to the closing date of the relevant securitization in an attempt to circumvent state laws governing assignment. Such purportedly retroactive assignments are invalid.

149. One of GMAC Mortgage's "robo-signers" is Jeffrey Stephan, the leader of GMAC Mortgage's document execution unit. On December 10, 2009, Stephan testified in a

deposition taken in a foreclosure proceeding commenced by GMAC Mortgage in Circuit Court in Palm Beach County, Florida, that he "robo-signed" 10,000 foreclosure documents a month without reviewing them or verifying their accuracy. Stephan further testified under oath that the 13 individuals who reported to him similarly "do not go into the system and verify the information as accurate" before documents are executed in connection with foreclosures commenced by GMAC Mortgage. Stephan testified that this is standard practice for all loans serviced by the RFC Defendants or their affiliates.

150. Stephan also admitted that while he is not employed by MERS, he routinely represents in court filings and assignment documentation that he is a vice president of MERS.

151. Recently, an internal GMAC Mortgage document containing a record of Stephan's discussions with outside counsel was publicly released. The document provides additional evidence that the RFC Defendants have committed acts of forgery or otherwise filed false documentation in foreclosure proceedings nationwide in order to cover up their monumental failure to deliver valid title to the trusts. The document establishes that on April 4, 2010, Stephan explained to outside counsel that GMAC Mortgage sought to foreclose upon a mortgage on a property in New York City that was originated by Ameriquest and sold to a securitization trust. The mortgage was never assigned to the trust and Ameriquest went bankrupt in 2007. Stephan explained that GMAC wanted Ameriquest to agree to a retroactive assignment, but it was impossible to get Ameriquest to agree because it was defunct. As Stephan put it: "The problem is we do not have signing authority—are there any other options?" (Note that even if GMAC Mortgage could have obtained consent, this type of retroactive assignment is invalid because the Pooling and Servicing Agreements require that all assignments occur by the closing date of the securitization.)

152. Stephan and GMAC Mortgage apparently concuded that their only option was to create and file forged documentation. On July 7, 2010, GMAC Mortgage forged an assignment from Ameriquest to the relevant trust which stated that it was “effective as of” August 2005. This was a total fabrication that GMAC Mortgage filed in New York State court. Stephan was purportedly the Ameriquest officer who authorized the assignment. ProPublica, a public watchdog group, performed a review of hundreds of foreclosure cases in New York involving Ameriquest originated loans and found that the RFC Defendants had prepared many other similar forgeries. ProPublica reported as follows on July 27, 2011:

> A review of court records in New York identified hundreds of similar assignment documents filed in the name of Ameriquest after 2008 by GMAC and other mortgage servicers. . . .
>
> GMAC, whose parent company renamed itself last year as Ally Financial, was at the center of what became known as the robo-signing scandal. The uproar began last fall after revelations that mortgage servicing employees had produced flawed documents to speed foreclosures. GMAC and other banks have acknowledged filing false affidavits in which bank officials claimed "personal knowledge" of the facts underlying thousands of mortgages. But GMAC and other servicers say they've since tightened their procedures. They insist that their records were largely accurate and the affidavits amounted to errors of form, not substance.
>
> The issues surrounding the Ameriquest loan and others like it appear to be more serious.
>
> "This assignment of mortgage has all of the markings of GMAC finding that it lacked a needed mortgage assignment in order to foreclose and just making it up," said Thomas Cox, a Maine foreclosure defense attorney.
>
> In New York, it's a felony to file a public record with "intent to deceive."
>
> "It's fraud," said Linda Tirelli, a consumer bankruptcy attorney. "I want to know who's going to do a perp walk for recording this."
>
> No criminal charges have been filed in the robo-signing cases.
>
> Asked by ProPublica about the document, GMAC acknowledged Stephan did not have authority to sign on behalf of Ameriquest. The bank said it is still planning to push ahead with foreclosure on the homeowner, who remains in the property.

153. In October 2010, the Ohio Attorney General commenced a lawsuit against GMAC alleging the loan servicer and its agents filed fraudulent foreclosure affidavits to mislead courts in hundreds of Ohio cases. *See State of Ohio v. GMAC Mortgage, LLC et al.*, 3:10-cv-02537-JZ (N.D. Ohio 2010). After an extensive inquiry, the Ohio Attorney General concluded that:

> GMAC Mortgage has caused Assignments of Mortgage to be prepared and executed by agents of GMAC Mortgage that improperly purport to assign the note from MERS to the trustee and falsely claim that the GMAC Mortgage employee executing the Assignment has authority to assign the note on behalf of MERS.

154. The Ohio Attorney General further found that GMAC Mortgage conspired to specifically mislead Ohio courts noting:

> Stephan knew or should have known that these hundreds of affidavits would be filed in Ohio courts and relied upon by Ohio Common Pleas Judges in deciding whether the plaintiff in the particular case had a right to foreclose on Ohio residents.
>
> When Stephan executed an affidavit, he testified he did not ascertain who the current promissory note-holder was . . . even though his affidavits always stated or implied that plaintiff was the holder of the note. ***The agents of GMAC Mortgage prepared these affidavits to mislead the courts in Ohio on such matters as who kept the applicable records, who the holder of the note was, the amount due to whoever the holder of the note was, and whether proper notice alleging default had been sent to the borrower.***

155. The Ohio Attorney General made it abundantly clear that Stephan's actions were not isolated incidents and instead reflected a pervasive pattern of practice within RFC and GMAC Mortgage. As the Ohio Attorney General put it: "Ally and GMAC Mortgage had authority over and the right to control the actions of Stephan and benefited financially from the actions of Stephan. The actions of Stephan were part of the business plans of Ally and GMAC Mortgage."

156. The RFC Defendants' misconduct has been recognized by multiple courts. For example, GMAC Mortgage was sanctioned by the Maine state court in *Federal National*

Mortgage Association v. Nicolle Bradbury, BRI-RE-09-65 (Me. Dist. Ct., Bridgton Sep. 24, 2010) for its "robo-signing" cover up. In awarding the sanctions, the Honorable Keith A. Powers wrote:

> The facts underlying Defendant's motion are for the most part undisputed. Plaintiff does not dispute that its affiant, Jeffery Stephan, in his role as limited signing officer for GMAC, Plaintiff's servicing agent, signed the affidavit which Plaintiff submitted in support of its Motion for Summary Judgment without even reading it and without signing in the presence of a notary. These facts came into the record because the Defendant went to the time and expense of traveling to Pennsylvania to take Stephan's deposition. In that deposition, which took place on June 7, 2010, Stephan testified that he signs some 400 documents per day, and that the process he follows in signing summary judgment affidavits is consistent with GMAC's policies and procedures.
>
> The Court is particularly troubled by the fact that Stephan's deposition in this case is not the first time that GMAC's high-volume and careless approach to affidavit signing has been exposed. Stephan himself was deposed six months earlier, on December 10, 2009, in Florida. His Florida testimony is consistent with the testimony given in this case: except for some limited checking of figures, he signs summary judgment affidavits without first reading them and without appearing before a notary. Even more troubling, in addition to that Florida action, in May, 2006 another Florida court not only admonished GMAC, it sanctioned the Plaintiff lender for GMAC's affidavit signing practices. As part of its order, the Florida court required GMAC to file a Notice of Compliance, indicating its commitment to modify its affidavit signing procedures to conform to proper practices. The experience of this case reveals that, despite the Florida Court's order, GMAC's flagrant disregard apparently persists. It is well past the time for such practices to end.

157. Similarly, in *U.S. Bank N.A. v. Kimball*, No. 2010-169 (Vt. Jul. 22, 2011), U.S. Bank as trustee for one of the RFC Defendants' securitization trusts filed a foreclosure proceeding attaching a mortgage note that was not endorsed to the relevant issuing trust but that had attached to it an allonge (*i.e.*, a supplemental page) purportedly transferring the note from MERS to the trust. U.S. Bank also attached an "Assignment of Mortgage" executed by none other than Jeffrey Stephan, purportedly in his capacity as a vice president of MERS (despite the fact that he is not and has never been a vice president of MERS, and has never been authorized to

execute assignments on behalf of MERS). The homeowner challenged the foreclosure arguing that MERS did not have authority to assign the mortgage because it never owned the note and U.S. Bank had not demonstrated that the note was ever assigned to the trust. In an attempt to deceive the trial court, the RFC Defendants had their star "robo-signer," Jeffrey Stephan, execute an affidavit that purportedly swore to the alleged assignments. Stephan's affidavit did not make any representation as to when the purported transfer to the trust occurred. His affidavit also attached what appeared to be the same allonge that was previously filed by U.S. Bank. This allonge attempted to insert the missing intervening endorsement. The trial court rejected this attempt to "robo-sign" the defendant out of her house and the Vermont Supreme Court agreed noting as follows:

> It is neither irrational nor wasteful to expect the foreclosing party be actually in possession of its claimed interest in the note and have the proper supporting documentation in hand when filing suit. Nor is it irrationally demanding to expect the foreclosing party to provide adequate, satisfying proof.

158. As a direct result of the aforementioned blatant misconduct, in September 2010 the RFC Defendants had to suspend foreclosures in 23 states and undertake a review of internal procedures, publicly acknowledging that they systemically commenced foreclosure proceedings based on forged or otherwise improper documentation. And in January 2011, GMAC Mortgage agreed to dismiss 10,000 foreclosure proceedings filed in the State of Maryland because they relied upon forged or false documentation.

159. On September 27, 2010, the Connecticut Attorney General similarly ordered the RFC Defendants to halt foreclosures. At the time, Attorney General Richard Blumenthal stated as follows:

> I am demanding a freeze in all GMAC/Ally foreclosure actions to forestall horrendous, illegal harm against homeowners. The GMAC/Ally foreclosure steamroller should be stopped so the company can be held accountable. My

> office has already confirmed that some defective documents were filed in Connecticut.
>
> The bank's apparent failure to follow basic legal procedure — a potential fraud on the court — is appalling and unacceptable. Our investigation will enable strong legal action against GMAC/Ally, if warranted by the facts and the law. I will fight to assure that banks comply with clear legal requirements that protect homeowners from unfair foreclosures of their homes.
>
> My office will investigate whether other banks engaged in such practices because these failings involve much more than mere technicalities, as GMAC/Ally has claimed. As a consumer advocate and attorney, I am dismayed and shocked that the bank blatantly skirted legal requirements and procedural safeguards to increase the volume and pace of foreclosures.

160. In addition, on December 20, 2010, at the direction of New Jersey Chief Justice Stuart Rabner, General Equity Judge Mary C. Jacobson of the Superior Court of New Jersey issued an order to show cause to the RFC Defendants, Wells Fargo, Bank of America, JPMorgan Chase Bank, Onewest Bank, and Citibank. The order to show cause required GMAC and the others to "show cause at a hearing scheduled for January 19, 2011, why the court should not suspend the processing of all foreclosure matters involving [the banks] and appoint a Special Master to review their past and proposed foreclosure practices." *In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities*, Docket No. F-059553-10 (Super. N.J. Dec. 20, 2011). A Special Master was subsequently appointed and the RFC Defendants and the other banks reportedly suspended foreclosures in New Jersey. On August 17 and August 19, 2011, after considering submissions by the parties, the Special Master recommended that all of the banks except the RFC Defendants be allowed to resume foreclosures and that the proposed restrictions in the order to show cause should not be enacted as against them. Judge Jacobson accepted the Special Master's reports. Apparently, and not surprisingly, the RFC Defendants' misconduct is so egregious the Special Master could not lift the suspension. Indeed, aside from referencing cursory and half-hearted remedial efforts the RFC Defendants claim to have

undertaken, their response to the order to show cause essentially relied on the argument that a state court does not have authority to suspend foreclosures despite the fact that the RFC Defendants committed fraud in New Jersey foreclosure proceedings by filing forged documents.

b. The Servicers of the TBW and Renaissance Securitizations have Attempted to Cover Up the Failure to Properly Transfer Notes and Assign Mortgages to the Trusts

161. Wells Fargo is the servicer and master servicer for TBW 2006-5. Wells Fargo is also the master servicer for RAMC 2007-1 and RAMC 2007-2. Ocwen Loan Servicing LLC is the servicer for RAMC 2007-1 and RAMC 2007-2. Both Wells Fargo and Ocwen earn lucrative fees in these roles.

162. The Office of the Comptroller of the Currency (the "OCC") issued a Consent Order dated April 13, 2011 finding that Wells Fargo tried to cover up the fact that the issuing Trusts did not have legal title sufficient to allow them to foreclose upon the underlying mortgage loans by engaging in fraudulent or improper foreclosure practices. The OCC found that Wells Fargo:

> (a) filed or caused to be filed in state and federal courts affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;
>
> (b) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary; [and]
>
> (c) litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time . . . .

163. Wells Fargo stipulated to the Consent Order and, thus, admitted the OCC's findings. The Consent Order requires Wells Fargo to undertake a sweeping review of its foreclosure practices. Upon information and belief, this review will uncover substantial additional evidence demonstrating that the Defendants' representations concerning proper assignment of mortgages and delivery of mortgage files were false.

164. Wells Fargo employs an army of so-called "robo-signers" who execute tens of thousands of foreclosure affidavits a month, all necessarily false because they are allegedly based on the "robo-signers'" personal knowledge, and many of them without proper documentation, including evidence of possession of the underlying mortgage note. The "robo-signers" sometimes attempt to execute assignments retroactive to the closing date of the relevant securitization in an attempt to circumvent state laws governing assignment. Such purportedly retroactive assignments are invalid.

165. One of Wells Fargo's "robo-signers" is a woman named Xee Moua who admitted that she executes hundreds of foreclosure documents every day without reading them. *"Signer" Issue Raised for Wells Fargo*, WSJ (Oct. 15, 2010). Ms. Moua admitted she reviewed up to 500 on a daily basis.

166. After Ms. Moua disclosed Wells Fargo's widespread practice of filing false mortgage documents, Wells Fargo admitted that it had filed false foreclosure documentation in ***55,000*** foreclosure proceedings.

167. The Ohio Attorney General commenced an investigation in the wake of Ms. Moua's admission and asked Wells Fargo to voluntarily vacate all foreclosures based on improper paperwork.

168. Wells Fargo's misconduct was the subject of an investigative report that recently aired on the television program *60 Minutes*. *60 Minutes* reported that Wells Fargo and other servicers retained a firm named DOCx to falsify mortgage loan documentation in an effort to cover up the fact that there was a systemic failure to deliver mortgage loan documents and assign mortgage notes to issuing trusts in connection with securitization transactions, including Defendants' securitizations. "Robo-signers" employed by DOCx were required to "robo-sign" 340 documents an hour and 4,000 per day for Wells Fargo and other bank clients.

169. Ocwen, the servicer for RAMC 2007-1 and RAMC 2007-2, is similarly involved in widespread foreclosure misconduct in an effort to hide the fact that Defendants and others failed to properly assign mortgages and deliver mortgage files to issuing trusts. In fact, courts have expressly found that loans underlying RAMC 2007-1 and RAMC 2007-2 were not properly indorsed to the trusts and Ocwen has filed false or fraudulent documents in foreclosure proceedings in an attempt to foreclose upon loans underlying RAMC 2007-1 and RAMC 2007-2.

170. For example, in *HSBC Bank USA, N.A., as Indenture Trustee for the Registered Noteholders of Renaissance Home Equity Loan Trust 2007-1 v. Thompson*, App. Case No. 23761, Trial Ct. Case No. 07-CV9439, 2010 Ohio 4158, Ohio App. LEXIS 3525 (Ohio Ct. App., Montgomery County Sept. 3, 2010) ("*Thompson*") HSBC attempted to foreclose on a property as Trustee for RAMC 2007-1. The note HSBC offered to the court had not been endorsed to RAMC. Instead HSBC offered two allonges arguing that it was endorsed by one of Delta Funding's affiliates to Delta Funding. HSBC also offered an assignment of mortgage prepared by Ocwen that purported to provide an assignment of the mortgage from MERS to the trust. The assignment was purportedly signed by Scott Anderson, who represented that he was both a vice president of Ocwen and a vice president of MERS. The trial court held that the trust did not have

standing to foreclose because it could not prove that it was the owner of the note and because the purported assignment was a retroactive assignment and, thus, ineffective. The Court of Appeals of Ohio, Second Appellate District, Montgomery County, affirmed.

171. The *Thompson* court held that because the note was indorsed to the originator and not to the trust, the trust lacked standing to foreclose. The court noted that even if the allonges that HSBC offered demonstrated that the note was indorsed to the trust, the use of allonges in this manner is not permitted under Ohio law because there was no evidence that the allonges had been properly affixed to the note.

172. With regard to the assignment, the court found that it was properly excluded from evidence but noted that even if it was not excluded from evidence it was an obvious forgery and, thus, an ineffective assignment. The Court noted:

> Furthermore, even if we were to consider this "evidence," the mortgage assignment from MERS to HSBC indicates that the assignment was pre-pared by Ocwen for MERS, and that Ocwen is located at the same Palm Beach, Florida address. . . . In addition, Scott Anderson, who signed the assignment, as Vice-President of MERS, appears to be the same individual who claimed to be both Vice-President of MERS and Vice-President of Ocwen.

Thompson, Ohio App. LEXIS 3525 at *32.

173. Similarly, in *HSBC Bank USA, N.A. as Indenture Trustee for the Registered Noteholders of Renaissance Home Equity Loan Trust 2007-2 v. Taher*, Case No. 9320/2009, 2011 N.Y. Misc. LEXIS 3171 (N.Y. Supr. Kings County July 1, 2011) ("*Taher*") the court took Ocwen to task for its "robo-signing" and refused to foreclose upon a loan underlying RAMC 2007-2. In *Taher*, the Court held that HSBC was not entitled to foreclose upon the underlying property on behalf of RAMC 2007-2 because the purported assignment from MERS to the trust was invalid for multiple reasons. First, Delta Funding as originator, and not the Trust or MERS, was the party to whom the note was indorsed to – MERS cannot assign a mortgage if it never

held the note regardless of whether or not a mortgage has been assigned to MERS. Second, Delta Funding never authorized MERS to assign the mortgage and even if Delta Funding had provided such authorization MERS could not have assigned the mortgage because the mortgage had never been assigned to MERS.

174. The *Taher* court detailed Ocwen's misconduct at length and ordered the parties to show cause why the court should not sanction HSBC and its counsel for frivolous conduct for filing an affirmation that relied upon Ocwen to verify the accuracy of the documents submitted in the foreclosure proceeding. In discussing an affirmation submitted by Frank Cassara, the court noted:

> Mr. Cassara's affirmation, affirmed "under the penalties of perjury," that to the best of Mr. Cassara's "knowledge, information, and belief, the Summons and Complaint, and other papers filed or submitted to the Court in this matter contain no false statements of fact or law," is patently false. Moreover, the Court is troubled that: the alleged representative of plaintiff HSBC, Christina Carter, who according to Mr. Cassara, "confirmed the factual accuracy and allegations set forth in the Complaint and any supporting affirmations filed with the Court, as well as the accuracy of the notarizations contained in the supporting documents filed therewith," is not an employee of HSBC, but a robosigner employed by OCWEN LOAN SERVICING, LLC [OCWEN], whose signature on legal documents has at least three variations; the MERS to plaintiff HSBC assignment of the subject mortgage and note was executed by Scott W. Anderson, a known robosigner and OCWEN employee, whose signature is reported to have appeared in at least four different variations on mortgage assignments; and, the instant affidavit of merit was executed by Margery Rotundo, another robosigner, OCWEN employee and self-alleged employee of various other banking entities.

Taher, 2011 N.Y. Misc. LEXIS 3171 at *6.

175. The *Taher* court indicated that this was not the first time HSBC and Ocwen have attempted to deceive the court:

> HSBC has a history of foreclosure actions before me with affidavits of merit executed by Margery Rotundo [of Ocwen] and MERS to HSBC assignments executed by Scott Anderson [of Ocwen] that "contain serious irregularities that make them inherently untrustworthy."

Id.

176. With regard to Scott Anderson the court stated:

> While I have never personally met Mr. Anderson, his signatures have appeared in many foreclosure documents in this Court. His claims of wearing different corporate hats and the variations in the scrawls of initials used for his signature on mortgage documents has earned Mr. Anderson notoriety as a robosigner.

Id. at *12.

177. With regard to another Ocwen "robo-signer," Margery Rotundo, the court noted:

> In the instant action, Margery Rotundo executed the April 27, 2009 affidavit of merit and amount due. Ms. Rotundo has, in prior foreclosure cases before me, a history of alleging to be the Senior Vice President of various entities, including plaintiff HSBC, Nomura Credit & Capital, Inc. and an unnamed servicing agent for HSBC. In the instant action she claims to be the Senior Vice President of Residential Loss Mitigation of OCWEN, HSBC's servicing agent.

Id. at *20.

178. With regard to yet another Ocwen "robo-signer," Christina Carter, the court noted:

> Mr. Cassara, plaintiff's counsel affirmed that "On January 4, 2011 and January 5, 2011, I communicated with the following representative . . . of Plaintiff . . . Christina Carter . . . Manager of Account Management." This is disingenuous. Ms. Carter is not employed by plaintiff, but by OCWEN. She executed documents as an officer of MERS and as an employee of OCWEN. Ms. Carter's signature on documents is suspect because of the variations of her signature used.

Id. at *22-23.

179. Other reportedly notorious "robo-signers" purportedly based in Ocwen's offices in Palm Beach Florida include Oscar Taveras, Doris Chapman, Leticia Arias, Dana Moore, Jonathan Burgess, and Laura Buxton.

180. Ocwen's "robo-signing" practices have become so notorious that New York's Superintendent of Financial Services, Benjamin Lawsky, refused to allow Ocwen to acquire Litton Loan Servicing from Goldman Sachs & Co. unless Ocwen entered into a detailed

agreement requiring it to address its abominable business practices and virtually non-existent internal controls.

181. The agreement with the Superintendent, which was announced on September 1, 2011, requires Ocwen to:

> ensure that affidavits and sworn statements submitted in foreclosure proceedings are executed by individuals with actual personal knowledge of the matters set forth therein based upon the individuals' personal review of borrowers' loan files and other information relating to borrowers' loans. . .;
>
> ensure that any information set forth in an affidavit or sworn statement detailing a borrower's default and the right to foreclose is accurate, complete and reliable. . .; [and]
>
> ensure that notarized documents are signed by the affiant in the actual presence of a notary.

182. Ocwen was also forced by the New York Superintendent to agree to withdraw forged documents previously filed in foreclosure proceedings.

C. Defendants' Statements Regarding MERS Were Also Misleading

183. The Defendants' representations that their use of MERS was sufficient to ensure that each Trust would be able to foreclose upon the underlying collateral were also false. As multiple courts have held, because the actual mortgage note is typically not transferred to MERS, the use of the MERS System is a nullity. Accordingly, in February 2011, MERS instructed its lender members to stop foreclosing in the name of MERS in light of the overwhelming weight of legal authority holding that beneficial ownership of an underlying mortgage cannot be transferred to MERS.

184. Moreover, MERS' guidelines expressly contradict Defendants' contention in the Offering Materials that MERS would be the "beneficial owner" of each mortgage. MERS

Recommended Foreclosure Procedures 8 provides: "MERS does not create or transfer beneficial interests in mortgage loans or create electronic assignments of the mortgage."

VI. DEFENDANTS MANIPULATED THE RATINGS PROCESS

185. Each tranche of the Western & Southern Certificates received a credit rating indicating the rating agencies' view of its risk profile. As set forth in Section IV(B), the initial ratings given to the Certificates were typically AAA, or the highest available investment rating. The ratings were material to reasonable investors, including Western & Southern, because the ratings provided additional assurances that investors would receive the expected interest and principal payments. The Certificates would have been unmarketable to investors like Western & Southern and would not have been issued but for the provision of these ratings.

186. The Offering Materials represented that the rating agencies conducted an analysis designed to assess the likelihood of delinquencies and defaults in the underlying mortgage pools and issued ratings accordingly. For example, the Offering Materials for RALI 2005-QS16 represent the Certificates would be rated by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., and Fitch Ratings and that:

> The ratings assigned by Fitch to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of all distributions to which they are entitled under the transaction structure. . . . The ratings assigned by Standard & Poor's to mortgage pass-through certificates address the likelihood of the receipt by certificateholders of payments required under the pooling and servicing agreement. . . . The ratings assigned by Moody's to the Senior Certificates address the likelihood of the receipt by the Senior Certificateholders of all distributions to which they are entitled under the pooling and servicing agreement.

RALI 2005-QS16 Prospectus Supplement at S-86. Each of the Prospectus Supplements relating to the Defendants' other offerings that are part of this action provide identical or substantially similar disclosures. *See* Exhibit C. Each Prospectus Supplement also provides the ratings for each class of certificate issued based on ratings analyses done by multiple ratings agencies.

187. These representations were false. The ratings given to the Certificates by the major credit rating agencies were based on the loan profiles supplied to the agencies by the Defendants. But as discussed above and below, most (if not all) of the key components of that data were false because the Defendants failed to adhere to their disclosed underwriting standards, failed to assign title to the underlying mortgages properly and manipulated the appraisal of the properties underlying the mortgage pools. As such, Defendants essentially pre-determined the ratings by feeding inaccurate information into the ratings system. This rendered misleading Defendants' representations concerning the ratings and their significance because Defendants failed to disclose that the ratings would be based entirely on unreliable information provided by Defendants themselves.

VII. DEFENDANTS IMPROPERLY MANIPULATED THE APPRAISAL PROCESS AND MISREPRESENTED LTV RATIOS

A. Defendants Did Not Rely Upon Independent, Industry-Standard Appraisals

188. The Offering Materials for Defendants' offerings all represent that Defendants required and relied upon independent, industry-standard appraisals to determine the adequacy of the underlying collateral. *See* Exhibit D. These representations were false because: (i) the appraisers were not independent from the respective mortgage lenders, which pressured appraisers to value the mortgaged property at a pre-determined, preconceived, inflated, and false appraisal value; (ii) sales managers employed by the respective originators had and utilized the authority to override and inflate an appraiser's final professional valuation of the mortgaged property; and, as such, (iii) the appraisals failed to conform to industry standards.

189. That the Defendants' statements regarding appraisals were misleading is confirmed by Congressional testimony and other statements made by those in the industry about

the widespread corruption in the appraisal processes, including those used by the companies at issue here, during all times relevant to this Complaint.

190. For instance, Richard Bitner, a former executive of a subprime lender for fifteen years, testified in April 2010 that "the appraisal process [was] highly susceptible to manipulation," and that the rise in property values was in part due to "the subprime industry's acceptance of overvalued appraisals." Similarly, Patricia Lindsay, a former wholesale lender, testified in April 2010 that in her experience appraisers throughout the industry were "often times pressured into coming in 'at value,'" *i.e.*, at least the amount needed for the loan to be approved. The appraisers "fearing" for their "future business and their livelihoods" would choose properties "that would help support the needed value rather than finding the best comparables to come up with the most accurate value."

191. Jim Amorin, President of the Appraisal Institute, testified in April 2009 regarding the industry-wide problem that "in many cases, appraisers are ordered or severely pressured to doctor their reports to convey a particular, higher value for a property, or else never see work from those parties again . . . . [T]oo often state licensed and certified appraisers are forced into making a 'Hobson's Choice.'"

192. The FCIC Report recounts the similar testimony of Dennis J. Black, an appraiser with twenty-four years of experience who held continuing education services across the country. "He heard complaints from appraisers that they had been pressured to ignore missing kitchens, damaged walls, and inoperable mechanical systems. Black told the FCIC, 'The story I have heard most often is the client saying he could not use the appraisal because the value was [not] what they needed.' The client would hire somebody else."

B. Defendants Misrepresented the LTV and CLTV Ratios of the Underlying Mortgage Pools

193. Each prospectus also contains representations concerning the LTV and CLTV ratios of the mortgage loans underlying each securitization. The LTV is the ratio of a mortgage loan's original principal balance to the appraised value of the mortgaged property. The CLTV is the ratio of the amount of all liens against the property subject to the mortgage loans to the appraised value of the property.

194. These ratios were obviously material to Western & Southern and other investors because higher ratios are correlated with a higher risk of default. A borrower with a small equity position in a property has less to lose if he or she defaults on the loan. There is also a greater likelihood that a foreclosure will result in a loss for the lender if the borrower fully leveraged the property. LTV and CLTV are common metrics for analysts and investors to evaluate the price and risk of mortgage-backed securities.

195. As part of its investigation of the claims asserted herein, Western & Southern has analyzed the LTV and CLTV ratios of mortgage loans that secure each of the Certificates that it purchased.[3] Western & Southern tested the LTV and CLTV ratios as represented in the Offering Materials against the ratios that would have been calculated had the properties been valued at the time of loan origination in accordance with accepted and reliable appraisal practices (as was represented in the Offering Materials). To perform this analysis, Western & Southern has employed an industry-standard automated valuation model ("AVM") that reliably calculates the values of the subject properties as of the date of mortgage loan origination.

[3] Western & Southern was unable to obtain data sufficient to conduct a similar forensic review of GMACM 2007-HE1 and GMACM 2007-HE2. However, Western & Southern's forensic review encompassed all five of the remaining RFC Defendants' securitizations. This sample is sufficient to show that the RFC Defendants' similarly misstated the LTV, CLTV and owner occupancy statistics relating to GMACM 2007-HE1 and GMACM 2007-HE2.

196. The results of this analysis are stark misstatements in the LTV and CLTV ratio information as represented in the Offering Materials. Because the LTV and CLTV calculations are simply a ratio of loan amount to value, and because the loan amounts are unquestioned, the reason for the discrepancies is inescapable: the LTV and CLTV ratios represented in the Offering Materials were the result of inflated and unreliable appraisals. Had the appraisal practices comported with those represented in the Offering Materials, the resulting LTV and CLTV ratios would have been materially different from those represented in the Offering Materials.

197. The following summarizes five types of material LTV and/or CLTV ratio understatements contained in the Offering Materials: (i) the percentage of loans with over 100% LTV; (ii) the percentage of loans with over 90% LTV; (iii) the percentage of loans with over 80% LTV; (iv) the weighted average LTV ratio for the mortgage pool; and (v) the weighted average CLTV ratio for the mortgage pool. Each is a distinct and significant representation in the Offering Materials.

198. The 100% LTV representation is obviously significant because loans with over 100% LTV afford the lender no equity cushion and leave the lender with inadequate collateral from the outset of the loan. The Offering Materials consistently assured Western & Southern that there were no such loans in the mortgage pools. Unfortunately, as the following table indicates, the recalculated LTV ratios (which, based on the AVM, indicate what the reported LTV would have been had proper appraisal methods been employed) indicate that there were a material number of mortgage loans with LTV ratios in excess of 100%:

Offering	% of Loans with Greater than 100% LTV per the Prospectus	Recalculated % of Loans with Greater than 100% LTV	Prospectus Understatement
RALI 2005-QS16	0.00%	6.96%	6.96%
RALI 2006-QS3	0.00%	7%	7%
RALI 2006-QS6	0.00%	7.7%	7.7%
RFMSI 2006-S2	0.00%	6.68%	6.68%
RFMSI 2006-S12	0.00%	7.46%	7.46%
TBW 2006-5	0.00%	8.21%	8.21%
RAMC 2007-1	0.00%	18.05%	18.05%
RAMC 2007-2	0.00%	20.01%	20.01%

199. The following table lists the securities purchased by Western & Southern in which the LTV calculated using the AVM exceeds 90%, and lists the representation in the associated Offering Materials with respect to the percentage of the mortgages in the subject pool with LTVs greater than 90%. An LTV in excess of 90% represents an extremely risky mortgage for the investor, as the borrower has little equity in the property and there is a significant risk that upon foreclosure the collateral will be inadequate to pay the debt. Accordingly, for each of the securities listed in the following table, the statement regarding the mortgages in the subject pool with LTVs in excess of 90% was materially misleading:

Offering	% of Loans with Greater than 90% LTV per the Prospectus	Recalculated % of Loans with Greater than 90% LTV	Prospectus Understatement
RALI 2005-QS16	5.2%	18.08%	12.88%
RALI 2006-QS3	3.81%	16.15%	12.34%
RALI 2006-QS6	1.89%	17.29%	15.4%
RFMSI 2006-S2	0.79%	13.13%	12.34%
RFMSI 2006-S12	0.33%	14.09%	13.76%
TBW 2006-5	3.36%	18.53%	15.17%
RAMC 2007-1	15.98%	32.39%	16.41%
RAMC 2007-2	17.61%	36.67%	19.06%

200. The following table lists the securities purchased by Western & Southern in which the LTV calculated using the AVM exceeds 80%, and lists the representation in the associated Offering Materials with respect to the percentage of the mortgages in the subject pool with LTVs greater than 80%. The 80% LTV metric is very significant to an investor such as Western & Southern, because in traditional mortgage underwriting an LTV in excess of 80% was generally considered as affording the lender little value cushion to protect against borrower default and loss upon foreclosure. Accordingly, for each of the securities listed in the following table, the statement regarding the percentage of mortgages in the subject pool with LTVs in excess of 80% was materially misleading:

Offering	% of Loans with Greater than 80% LTV per the Prospectus	Recalculated % of Loans with Greater than 80% LTV	Prospectus Understatement
RALI 2005-QS16	15.08%	37.04%	21.96%
RALI 2006-QS3	10.41%	35.3%	24.89%
RALI 2006-QS6	5.3%	34.58%	29.28%
RFMSI 2006-S2	4.91%	29.33%	24.42%
RFMSI 2006-S12	1.47%	27.86%	26.39%
TBW 2006-5	6.57%	34.38%	27.81%
RAMC 2007-1	36.95%	50.25%	13.3%
RAMC 2007-2	39.12%	54.18%	15.06%

201. The following table lists mortgage pools securing the Certificates purchased by Western & Southern in which the representation contained in the related Offering Materials with respect to the weighted average LTV of the mortgage pool securing those Certificates was materially understated. The weighted average LTV representation is significant because it provides the investor with an important gauge as to the overall riskiness of the mortgage pool:

Offering	Weighted Average LTV as Stated in Prospectus	Recalculated Weighted Average LTV	Prospectus Understatement
RALI 2005-QS16	75.03%	82.77%	7.74%
RALI 2006-QS3	75.68%	84.41%	8.73%
RALI 2006-QS6	73.81%	83.99%	10.18%
RFMSI 2006-S2	70.93%	83.46%	12.53%
RFMSI 2006-S12	69.19%	82.98%	13.79%
TBW 2006-5	76.36%	87.34%	10.98%
RAMC 2007-1	74.54%	86.49%	11.95%
RAMC 2007-2	76.33%	89.81%	13.48%

202. The following table lists mortgage pools securing the Certificates purchased by Western & Southern in which the representation contained in the related Offering Materials with respect to the weighted average CLTV of the mortgage pool securing those Certificates was materially understated. The weighted average CLTV representation is significant because it provides the investor with an important gauge as to the overall riskiness of the mortgage pool:

Offering	Weighted Average CLTV as Stated in Prospectus	Recalculated Weighted Average CLTV	Prospectus Understatement
RALI 2005-QS16	78.35%	90.23%	11.88%
RALI 2006-QS3	81.5%	96.81%	15.31%
RALI 2006-QS6	81.64%	95.58%	13.94%
RFMSI 2006-S2	74.25%	89.38%	15.13%
RFMSI 2006-S12	72.44%	88.76%	16.32%
TBW 2006-5	85.08%	101.01%	15.93%
RAMC 2007-1	76.19%	89.11%	12.92%
RAMC 2007-2	77.22%	91.84%	14.62%

VIII. DEFENDANTS' REPRESENTATIONS REGARDING OWNER OCCUPANCY WERE FALSE

203. Residential real estate can be divided into the following occupancy status categories: primary residences, second homes, and investment properties. Mortgages on primary residences are less risky because they are less likely to default than mortgages on non-owner occupied residences. Thus, the percentage of loans in the asset pool of a securitization which are secured by mortgages on other than primary residences is a key indicator of the risk of certificates sold in the securitization. Occupancy status rates also influence prepayment patterns (which in turn affects the timing and payments on mortgage-backed securities).

204. For these reasons, the occupancy status of the collateral backing the mortgages in loan pools was material to Western & Southern's decision to invest in the Certificates. The Offering Materials for each of the securitizations subject to this action contained specific assertions as to the occupancy status rates of the mortgages in the subject pools.

205. The following table lists mortgage pools securing the Certificates purchased by Western & Southern, sets forth the assertion contained in the related Offering Materials with respect to the percentage of the mortgages that were on properties that were not the borrower's primary residence, and sets forth the non-primary residence occupancy status rates generated by a review of information contained in various public and private databases. The databases reviewed contain information regarding, *inter alia*, the address to which borrower's tax bills were sent, the addresses used by borrower's other creditors to send billings, whether borrowers claimed the property as a homestead under applicable law, and whether borrowers owned other properties of record and how the amount of the subject loan compared to the amounts of mortgage loans on other properties owned. As set forth in the following table, the occupancy status rates set forth in the Offering Materials for the securitizations listed below were materially misstated, and materially misled Western & Southern regarding the true risk of the Certificates it purchased:

Offering	**% of Mortgage of Non-Primary Residence per Prospectus**	**% of Mortgages on Non-Primary Residence per Database Review**	**Prospectus Understatement**
RALI 2005-QS16	29%	34.4%	5.4%
RALI 2006-QS3	32.8%	37.73%	4.93%
RALI 2006-QS6	30.4%	35.53%	5.13%
RFMSI 2006-S2	4.2%	9.04%	4.84%
RFMSI 2006-S12	4.6%	10.23%	5.63%
TBW 2006-5	32.8%	38.29%	5.49%
RAMC 2007-1	6.5%	13.3%	6.8%
RAMC 2007-2	6.5%	13.52%	7.02%

IX. WESTERN & SOUTHERN'S DETRIMENTAL RELIANCE AND DAMAGES

206. In making the investments, Western & Southern relied upon the Defendants' representations and assurances regarding the quality of the mortgage collateral underlying the Certificates, including the quality of their underwriting processes, the assignment of the underlying mortgages and transfer of notes and loan files, the ratings ascribed to the Certificates, the appraisal of the underlying properties, and statistics concerning owner occupancy. Western & Southern received, reviewed, and relied upon the Offering Materials, which described in detail the mortgage loans underlying each offering.

207. In purchasing the Certificates, Western & Southern justifiably relied on the Defendants' false representations and omissions of material fact detailed above, including the misstatements and omissions in the Offering Materials. These representations materially altered the total mix of information upon which Western & Southern made its purchasing decisions.

208. But for the misrepresentations and omissions in the Offering Materials, Western & Southern would not have purchased or acquired the Certificates as it ultimately did, because those representations and omissions were material to its decision to acquire the Certificates, as described above.

209. The false and misleading statements of material facts and omissions of material facts in the Offering Materials directly caused Western & Southern's damages because the Certificates were in fact far riskier than the Defendants described them to be. The loans underlying the Certificates experienced default and delinquency at extraordinarily high rates due to the abandonment of the disclosed underwriting guidelines. When the inevitable defaults followed, many of the underlying loans could not be foreclosed upon because the Defendants failed to assign the mortgages properly. Western & Southern's losses on the Certificates have

been much greater than they would have been if the loans were as Defendants described them to be.

210. There are several potential ways of valuing a mortgage-backed security. One of the potential ways that lower value can be measured – and part of the evidence that Western & Southern has been damaged – can be found in secondary-market pricing. Though the market may have temporarily "seized up" during the financial crisis, it has since partially recovered and there was and is a functioning secondary market for mortgage-backed securities such as the Certificates here. Numerous brokers are active in, and have trading desks specifically dedicated to, the secondary market for mortgage-backed securities, including without limitation Bank of America, Barclays, Goldman Sachs, Citigroup, Deutsche Bank, Morgan Stanley, Royal Bank of Scotland, J.P. Morgan, and Nomura.

211. According to data provided to the FCIC, between May 2007 and November 2008, Goldman Sachs alone bought and sold $17 billion worth of MBS cash securities, and $32 billion worth of credit default swaps linked to mortgage-backed securities, representing a total of 7,000 trades. These figures demonstrate the liquidity in the secondary market for mortgage-backed securities.

212. Western & Southern has incurred substantial losses in market value on the Certificates. Further, the income and principal payments that Western & Southern received have been less than Western & Southern expected under the "waterfall" provisions of the securitizations. Even in the context of the real estate crisis, the Certificates would have held most, if not all, of their value had the securities underlying the loans been as represented by the Defendants in the Offering Materials. This decreased value is evidenced collectively by, but need not be measured solely by, among other things: (a) the high rates of default and

delinquency of the Mortgage Loans; (b) the Certificates' plummeting credit ratings; and (c) lower-than-expected past and current income streams from the Certificates.

213. The drastic and rapid loss in value of Western & Southern's Certificates was primarily and proximately caused by the issuance of loans to borrowers who could not afford them, in contravention of the prudent underwriting guidelines described in the Offering Materials, and due to the failure to assign mortgage loans to each Trust in a manner sufficient to allow the Trust to foreclose upon the underlying property in the event of a default. Delinquencies and defaults were much higher than they would have been if the mortgage loans had been properly underwritten and remain higher than they should be due to the inability of each Trust to foreclose upon many defaulted properties.

X. LIABILITY OF THE OFFICER DEFENDANTS, SPONSORS, DEPOSITORS, AND UNDERWRITERS AS SELLERS, SALE PARTICIPANTS AND/OR CO-CONSPIRATORS

214. The Defendants that qualify as sellers of securities or that participated in the sale of securities under the Ohio Securities Act are the Sponsors (Residential Funding and GMAC Mortgage), the Depositors (RALI, RAMP, RFMSI, and BNPPMS), the Seller of TBW 2006-5 (BNPPM) and the Underwriter Defendants (Residential Securities, UBS Securities, RBS Securities, J.P. Morgan Securities and Deutsche Bank Securities), and the Officer Defendants (Defendants Paradis, Olson, Walker, Duncan, Flees, Jones, Bricker and Young). Each of these is liable for misrepresentations in the Offering Materials under ORC §§ 1707.41, 1707.43, 1707.44.

215. As the Sponsors and/or Sellers for the securitizations at issue, Residential Funding, GMAC Mortgage, and BNPPM originated or acquired the mortgage loans that were pooled together in the securitizations, and then sold, transferred, or otherwise conveyed title to those loans to the Depositors pursuant to Pooling and Servicing Agreements. Residential

Funding, GMAC Mortgage, and BNPPM had responsibility for preparing the Offering Materials that were used to solicit purchases of the Certificates and were identified on the Prospectuses and Prospectus Supplements. Residential Funding, GMAC Mortgage, and BNPPM profited from the sales of the Certificates.

216. As the Depositors for the securitizations at issue, RALI, RAMP, RFMSI, and BNPPMS purchased the mortgage loans from the Sponsors pursuant to the Pooling and Servicing Agreements. The Depositors then purportedly sold, transferred, or otherwise conveyed the mortgage loans to the Trusts, which held the loans as collateral for the Certificates. The Depositors shared responsibility for preparing the Offering Materials that were used to solicit purchases of the Certificates, and were identified on the Prospectuses and Prospectus Supplements. In addition, the Depositors were responsible for registering the offerings with the SEC. The Depositors profited from the sales of the Certificates.

217. The Trusts issued the Certificates that were sold to investors, including Western & Southern. The Trusts had no autonomy or assets of their own, but were mere agents of the Depositors created for the sole purposes of holding the pools of mortgage loans assembled by the Sponsors and Depositors and issuing the Certificates for sale to the investors.

218. As officers of the Depositors, the RFC Officer Defendants and the BNPPMS Officer Defendants participated in each sale by signing registration statements associated with the Certificates. Defendant Paradis signed registration statements for six of the seven RFC securitizations at issue in this action. Defendant Olson signed registration statements for four of the seven RFC securitizations at issue in this action. Defendant Walker signed registration statements for two of the seven RFC securitizations at issue in this action. Defendant Duncan signed registration statements for five of the seven RFC securitizations at issue in this action.

Defendant Flees signed registration statements for all of the RFC securitizations at issue in this action. Defendant Jones signed the registration statement for one securitization at issue in this action. Defendant Bricker signed the registration statement for one securitization at issue in this action.

219. The Sponsors, Depositors, and Trusts used the Underwriters Residential Securities, UBS Securities, RBS Securities, J.P. Morgan Securities, and Deutsche Bank Securities to market and sell the Certificates. The Underwriters were responsible for underwriting and managing the sale of Certificates, including screening the mortgage loans for compliance with the appropriate underwriting guidelines. The Underwriters reviewed and participated in the preparation and dissemination of the Offering Materials and profited from the sales of the Certificates.

220. The Sponsors, Depositors, Underwriters, and Trusts successfully solicited Western & Southern's purchase of the Certificates at issue and title in the Certificates was transferred to Western & Southern.

221. Defendants also conspired with each other and unnamed co-conspirators, including third party mortgage loan servicers Wells Fargo and Ocwen, to commit violations of the Ohio Securities Act in order to profit from the sale of the Certificates and/or profit from the servicing of the loans underlying the Certificates.

XI. DEFENDANTS FAILED TO CONDUCT ADEQUATE DUE DILIGENCE

222. Obviously, if Defendants had conducted reasonable due diligence they would have discovered that the Offering Materials included the material misrepresentations described above in Sections IV-VIII. Defendants could have and should have reviewed at least a significant sample of the mortgage loans underlying each offering. If they had, they would have

discovered that a substantial number of loans did not comply with the underwriting standards touted in the Offering Materials. Defendants could have, and should have, conducted independent analyses that would have alerted them to the fact that the Offering Materials misrepresented LTV and CLTV ratios, owner occupancy statistics, and that the ratings provided to the Certificates were overstated. Finally, even a cursory review of the handling of mortgage files and purported assignments would have revealed that no attempt was being made to assign mortgages to the Trusts or properly transfer notes and loan files.

223. That certain Underwriter Defendants are not affiliates of the Sponsors of the respective offerings makes no difference. Each of the Underwriter Defendants were aware that proper due diligence would have revealed the misrepresentations, but they nevertheless failed to conduct adequate due diligence or consciously disregarded the misstatements in the Offering Materials.

224. For example, the FCIC Report revealed that UBS allowed into securitizations a substantial number of mortgage loans that, as reported to it by third-party due diligence firms, did not conform to the applicable underwriting. Reports prepared for UBS Securities by the third party due diligence firm Clayton Holdings revealed that, in the period from the first quarter of 2006 to the second quarter of 2007, 20% of the mortgage loans UBS submitted to Clayton to review in residential mortgage-backed securities groups were rejected by Clayton as falling outside the applicable underwriting guidelines. Of the mortgage loans that Clayton found defective, 33% of the loans were subsequently waived in by UBS without proper consideration and analysis of compensating factors.

225. The FCIC similarly reported that RBS Securities systemically disregarded reports from Clayton that loans included in securitizations failed to comply with applicable underwriting

guidelines. Clayton's reports revealed that in the period from the first quarter of 2006 to the second quarter of 2007, 18% of the mortgage loans RBS Securities or its affiliates submitted to Clayton to review in residential mortgage-backed securities groups were rejected by Clayton as falling outside the applicable underwriting guidelines. Of the mortgage loans that Clayton found defective, 53% of the loans were subsequently waived in by RBS Securities without proper consideration and analysis of compensating factors and included in securitizations. RBS Securities' underwriting and due diligence practices with respect to mortgage-backed securities are being investigated by the SEC. In March 2008, the SEC launched an informal investigation into RBS Securities' underwriting of mortgage-backed securities. That investigation was upgraded, and became formal in March 2011.

226. Deutsche Bank Securities also utilized Clayton. Clayton's reports reveal that from January 2006 to June 2007, 35% of the mortgages Deutsche Bank Securities submitted to Clayton for review were rejected as outside underwriting guidelines. Of the mortgages that Clayton found defective, some 50% were subsequently "waived in" by Deutsche Bank Securities. Of the nine banks that FCIC investigated, Deutsche Bank was second both in the number of loans rejected by Clayton and in the number of loans it subsequently waived in.

227. J.P. Morgan securities also utilized Clayton. Clayton's reports reveal that from January 2006 to June 2007, 26% of the mortgages J.P. Morgan Securities submitted to Clayton for review were rejected as outside underwriting guidelines. Of the mortgages that Clayton found defective, some 51% were subsequently "waived in" by J.P. Morgan Securities Securities.

228. Citigroup's knowledge concerning origination practices went far beyond a general awareness that originators systematically were disregarding their own underwriting guidelines. In April 2010, Richard M. Bowen III, an executive of a Citigroup affiliate testified before the

FCIC that during the 2006-2007 time frame 60% to 80% of the RMBS Citigroup sold were defective and in contravention to the representations and warranties made to investors. According to the FCIC, Citigroup retaliated against this whistleblower by decreasing the number of his direct reports from 220 people to two, slashing his bonus, and giving him poor performance reviews. Citigroup also utilized Clayton. Clayton's reports reveal that from January 2006 to June 2007, 29% of the mortgages Citigroup submitted to Clayton for review were rejected as outside underwriting guidelines. Of the mortgages that Clayton found defective, some 31% were subsequently "waived in" by Citigroup.

XII. SCIENTER ALLEGATIONS APPLICABLE TO COMMON-LAW FRAUD CLAIMS

229. The allegations below are made in support of common-law fraud claims, not in support of Plaintiffs' Ohio Securities Act claims and negligent misrepresentation claims.

230. The same evidence discussed above not only shows that the representations were untrue, but that the Defendants *knew* they were falsely representing the underlying process and the risk profiles behind the Mortgage Loans. For instance:

- As set forth in Sections VII and VIII, the large discrepancies in basic information such as owner occupancy, LTV, and CLTV statistics, detailed above, evidence a systemic underwriting failure that Defendants could not possibly have been ignorant of, given that it controlled the entire securitization process.

- As set forth in detail in Section IV(C)(1), Fannie Mae and Freddie Mac discovered that the RFC Defendants sold them more than $1 billion of loans that failed to comply with applicable underwriting guidelines during the relevant period and the RFC Defendants were forced to repurchase them.

- As detailed in Section V(B), Western & Southern's forensic review confirms that Defendants made no attempt to properly assign 81% of the mortgage notes underlying the Certificates. Defendants could not have been ignorant of this fact because they controlled the securitization process.

- As detailed in Section V, Defendants or their affiliates or agents have engaged in an attempt to cover up their failure to validly assign the mortgage notes by filing false documentation in courts nationwide and forging assignment documents in an effort to cover up their tracks. Former head of the FDIC Shelia Bair recently described Defendants' misconduct as "pervasive" during an interview aired on the television program *60 Minutes*.

- As detailed in Section XI, the Underwriter Defendants' agent, Clayton, notified the Underwriter Defendants that large numbers of mortgage loans included in securitizations they underwrote did not comply with the applicable underwriting guidelines. But the Underwriter Defendants did nothing to rectify the situation. Instead, they included the non-compliant loans in securitizations sold to investors such as Western & Southern without requiring evidence of sufficient compensating factors.

FIRST CAUSE OF ACTION
(Violation of ORC § 1707.41)

231. Western & Southern realleges each allegation above as if fully set forth herein.

232. This claim is brought under Section 1707.41 of the Ohio Securities Act, ORC § 1707.41 against all Defendants. Defendants (a) offered securities for sale by a written or printed circular, prospectus, or advertisement; (b) Western & Southern purchased these securities relying on such written or printed circular, prospectus, or advertisement; and (c) such written or printed circular, prospectus, or advertisement contained untrue statements of material fact and/or omitted material facts necessary to make the statements made not misleading.

233. Defendants had knowledge of the untrue statements of material fact and omissions of material facts set forth herein by virtue of the fact that, at a minimum, Defendants failed to exercise reasonable diligence in ascertaining their falsity.

234. As a result of Defendants' dissemination of materially false and misleading information and their failure to disclose material facts, Western & Southern was misled into believing that the Certificates were more creditworthy investments than they actually were.

235. By virtue of the foregoing, Defendants violated ORC § 1707.41. As a direct and proximate result of the Defendants' wrongful conduct, Western & Southern has suffered damages in connection with the purchase and subsequent decline in value of the Certificates.

SECOND CAUSE OF ACTION
(Violation of ORC § 1707.44(B)(4))

236. Western & Southern realleges each allegation above as if fully set forth herein.

237. This claim is brought under the Ohio Securities Act, ORC § 1707.44(B), against all Defendants. Defendants made false representations concerning material and relevant facts, in the Offering Materials for the purpose of selling securities within the State of Ohio.

238. Defendants had knowledge of the misrepresentations and omissions of material facts set forth herein by virtue of the fact that, at a minimum, Defendants failed to exercise reasonable diligence in ascertaining their falsity.

239. As a result of Defendants' dissemination of materially false and misleading information and their failure to disclose material facts, Western & Southern was misled into believing that the Certificates were more creditworthy investments than they actually were.

240. By virtue of the foregoing, Defendants violated ORC § 1707.44(B)(4). As a direct and proximate result of Defendants' wrongful conduct, Western & Southern has suffered damages in connection with the purchase and subsequent decline in value of the Certificates.

THIRD CAUSE OF ACTION
(Violation of ORC § 1707.44(J))

241. Western & Southern realleges each allegation above as if fully set forth herein.

242. This claim is brought under the Ohio Securities Act, ORC § 1707.44(J), against all Defendants. Defendants knowingly made or caused to be made materially misleading false statements in the Offering Materials concerning the value of the Certificates.

243. Defendants had knowledge of the misrepresentations and omissions of material facts set forth herein by virtue of the fact that, at a minimum, Defendants failed to exercise reasonable diligence in ascertaining their falsity.

244. As a result of Defendants' dissemination of materially false and misleading information and their failure to disclose material facts, Western & Southern was misled into believing that the Certificates were more creditworthy investments than they actually were.

245. By virtue of the foregoing, Defendants have violated ORC § 1707.44(J). As a direct and proximate result of Defendants' wrongful conduct, Western & Southern has suffered damages in connection with the purchase and subsequent decline in value of the Certificates.

FOURTH CAUSE OF ACTION
(Violation of ORC § 1707.44(G))

246. Western & Southern realleges each allegation above as if fully set forth herein.

247. This claim is brought under the Ohio Securities Act, ORC § 1707.44(G), against all Defendants. Defendants knowingly engaged in acts prohibited under the Ohio Securities Act in connection with the sale of the Certificates to Western & Southern.

248. By virtue of the foregoing, Defendants violated ORC § 1707.44(G). As a direct and proximate result of Defendants' wrongful conduct, Western & Southern has suffered damages in connection with the purchase and subsequent decline in value of the Certificates.

FIFTH CAUSE OF ACTION
(Rescission pursuant to ORC § 1707.43)

249. Western & Southern realleges each allegation above as if fully set forth herein including but not limited the First, Second, Third and Fourth Causes of Action herein.

250. This claim is brought under the Ohio Securities Act, ORC § 1707.43, against all Defendants. As set forth in the First, Second, Third and Fourth Causes of Action herein,

Defendants made sales in violation of the Ohio Securities Act or participated in or aided the sellers in making such sale.

251. Western & Southern is entitled to void and rescind the sale of Certificates under ORC § 1707.43 and recover the full amount of consideration paid for the Certificates and all taxable court costs.

SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

252. Western & Southern realleges each allegation above as if fully set forth herein.

253. This is a claim for negligent misrepresentation against RALI, RAMP, RFMSI, and BNPPMS (the "Negligent Misrepresentation Defendants").

254. Western & Southern made 60 separate investments in ten Offerings of mortgage-backed securities that the Defendants securitized and sold. The Negligent Misrepresentation Defendants also originated or acquired, and underwrote, all the loans in the Offerings.

255. Because the Negligent Misrepresentation Defendants arranged the securitizations, they had unique and special knowledge about the loans in the Offerings. In particular, the Negligent Misrepresentation Defendants had unique and special knowledge and expertise regarding the quality of the underwriting of the loans underlying each securitization.

256. Because Western & Southern could not evaluate the loan files for the mortgage loans underlying its Certificates, and because Western & Southern could not examine the underwriting quality or servicing practices for the mortgage loans in the securitizations on a loan-by-loan basis, it was heavily reliant on the Negligent Misrepresentation Defendants' unique and special knowledge regarding the underlying mortgage loans when determining whether to make each investment of Certificates. Western & Southern was entirely reliant on the Negligent

Misrepresentation Defendants to provide accurate information regarding the loans in engaging in that analysis.

257. The Negligent Misrepresentation Defendants were aware that Western & Southern was seeking to compile a portfolio of conservative investments and that Western & Southern relied on the Negligent Misrepresentation Defendants' unique and special expertise and experience and depended upon the Negligent Misrepresentation Defendants for accurate and truthful information.

258. Based on their expertise, superior knowledge, and relationship with Western & Southern, the Negligent Misrepresentation Defendants owed a duty to Western & Southern to provide complete, accurate, and timely information regarding the mortgage loans and the offerings. The Negligent Misrepresentation Defendants breached their duty to provide such information to Western & Southern.

259. The Negligent Misrepresentation Defendants likewise made misrepresentations which they knew, or were negligent in not knowing at the time to be false, in order to induce Western & Southern's investment in the offerings. At the time they made these misrepresentations, the Negligent Misrepresentation Defendants knew, or at a minimum were negligent in not knowing, that these statements were false, misleading, and incorrect. Such information was known to the Negligent Misrepresentation Defendants but not known or readily known to Western & Southern, and the Negligent Misrepresentation Defendants knew that Western & Southern was acting in reliance on mistaken information.

260. Western & Southern reasonably relied on the information the Negligent Misrepresentation Defendants did provide and was damaged as a result of these misrepresentations. Had Western & Southern known the true facts regarding Defendants'

underwriting practices and the quality of the loans making up the securitizations, it would not have purchased the Certificates.

261. The Negligent Misrepresentation Defendants' material misrepresentations and omissions set forth above were made without any reasonable ground for believing that the representations were true.

262. By reason of the foregoing, the Negligent Misrepresentation Defendants are liable to Western & Southern for negligent misrepresentation.

263. As a result of the foregoing, Western & Southern has suffered damages according to proof.

SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

264. Western & Southern realleges each allegation above as if fully set forth herein.

265. As set forth in the First, Second, Third, Fourth, and Fifth Causes of Action, Defendants violated the Ohio Securities Act and as set forth in the Eighth Cause of Action Defendants committed fraud.

266. Residential Funding, GMAC Mortgage, RALI, RAMP, RFMSI, the RFC Officer Defendants, J.P. Morgan Securities, RBS Securities, UBS Securities, and Deutsche Bank Securities all agreed to take the steps necessary to cause RALI 2005-QS16, RFMSI 2006-S2, RFMSI 2006-S12, RALI 2006-QS3, RALI 2006-QS6, GMAC 2007-HE1, and/or GMAC 2007-HE2 to issue Certificates pursuant to materially misleading Offering Materials fraud in order to profit from the sale of the Certificates and/or profit from the servicing of the loans underlying the Certificates.

267. TBW, BNPPMS, BNPPM, the BNP Officer Defendants, and Wells Fargo all agreed to take the steps necessary to cause TBW 2006-5 to issue the Certificates pursuant to

materially misleading Offering Materials in order to profit from the sale of the Certificates and/or profit from the servicing of the loans underlying the Certificates.

268. Delta Funding, Renaissance Mortgage, RBS Securities, Citigroup, Wells Fargo, and Ocwen all agreed to take the steps necessary to cause RAMC 2007-1 and/or RAMC 2007-2 to issue the Certificates pursuant to materially misleading Offering Materials in order to profit from the sale of the Certificates and/or profit from the servicing of the loans underlying the Certificates.

269. As set out above, each Defendant committed overt acts in furtherance of the conspiracy.

270. As a result of the foregoing, Western & Southern has suffered damages according to proof.

EIGHTH CAUSE OF ACTION
(Common-Law Fraud)

271. Western & Southern realleges each allegation above as if fully set forth herein.

272. This claim is brought against all Defendants.

273. The material representations set forth above were fraudulent, and the Defendants' representations fraudulently omitted material statements of fact.

274. Each of the Defendants knew their representations and omissions were false and/or misleading at the time they were made. Each of the Defendants made the misleading statements with intent to defraud Western & Southern.

275. Western & Southern justifiably relied on the Defendants' false representations and misleading omissions.

276. Had Western & Southern known the true facts regarding the Defendants' underwriting practices and quality of the loans making up the securitizations, it would not have purchased the Certificates.

277. As a result of the Defendants' false and misleading statements and omissions, as alleged herein, Western & Southern has suffered damages according to proof. The Defendants are liable to Western & Southern for common-law fraud.

PRAYER FOR RELIEF

WHEREFORE Western & Southern prays for relief as follows:

An award of damages against Defendants in favor of Western & Southern against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, but including at a minimum:

a. Rescission and recovery of the consideration paid for the Certificates, with interest thereon;

b. Western & Southern's monetary losses, including loss of market value and loss of principal and interest payments;

c. Attorneys' fees and costs;

d. Prejudgment interest at the maximum legal rate;

e. Punitive damages; and

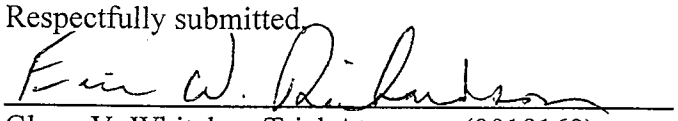
f. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury on all issues triable by jury.

Dated: Cincinnati, Ohio
September 9, 2011

Respectfully submitted,



Glenn V. Whitaker, Trial Attorney (0018169)
gvwhitaker@vorys.com
Eric W. Richardson (0066530)
ewrichardson@vorys.com
Adam C. Sherman (0076850)
acsherman@vorys.com
Erik B. Bond (0087188)
ebbond@vorys.com
Vorys, Sater, Seymour and Pease LLP
Suite 2000, Atrium Two
221 East Fourth Street
Cincinnati, Ohio 45202
Telephone: (513) 723-4000
Facsimile: (513) 852-7885

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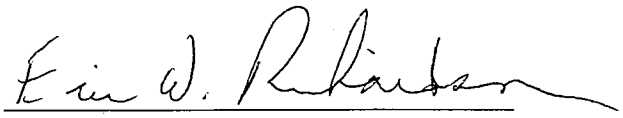
WOLLMUTH MAHER & DEUTSCH LLP
David H. Wollmuth (*pro hac vice to be submitted*)
Vincent T. Chang (*pro hac vice to be submitted*)
Steven S. Fitzgerald (*pro hac vice to be submitted*)
500 Fifth Avenue
New York, New York 10110
(212) 382-3300

Attorneys for Plaintiffs The Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company and Fort Washington Investment Advisors, Inc.

PRAECIPE TO THE CLERK

Please serve the defendant listed below by certified U.S. Mail, return receipt requested, a Summons and this Amended Complaint at the following address:

CitiGroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013



Eric W. Richardson

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by Email and US ordinary mail, postage prepaid, this 9th day of September on the following counsel of record:

Jeffrey A. Lipps, Esq.
Jennifer A. Battle, Esq.
Michael N. Beekhuizen, Esq.
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215

Attorneys for Defendants Residential Funding Company, LLC, GMAC Mortgage, LLC, Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Funding Securities, LLC, Bruce J. Paradis, Davee L. Olson, David C. Walker, Kenneth M. Duncan, Ralph T. Flees, James G. Jones, David M. Bricker, Deutsche Bank Securities, Inc. and RBS Securities Inc.

Robert A. Pitcairn, Jr., Esq.
Laura A. Hinegardner, Esq.
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202

Attorneys for UBS Securities LLC

Gregory A. Harrison, Esq.
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Attorneys for JPMorgan Securities LLC

Pierre Bergeron, Esq.
Squire, Sanders & Dempsey LLP
221 East Fourth Street, Suite 2900
Cincinnati, Ohio 45202

Attorneys for BNP Paribas Mortgage Co., BNP Paribas Mortgage Securities, Christian Mundigo and Gregory Lattanzio

Adam C. Sherman

Exhibit 16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; ALLY BANK F/K/A GMAC BANK; GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION

Defendants.

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No. 11-cv-9729 (PAC)

AMENDED COMPLAINT

RECEIVED
MAR 30 2012
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"), Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"), Ally Bank, formerly known as GMAC Bank ("Ally Bank"), and GMAC Mortgage, LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with a financial guaranty insurance policy (the "2006-HE1 Policy" or the "Policy") issued by FGIC in relation to a GMACM-sponsored transaction (the "2006-HE1 Transaction" or the "Transaction"), in which GMACM Home Equity Loan Trust 2006-HE1 (the "2006-HE1 Trust" or the "Trust") issued and sold to investors over $1.2 billion aggregate principal amount of insured residential mortgage-backed securities (the

"2006-HE1 Notes"). As the sponsor of the 2006-HE1 Transaction, GMACM procured the Policy from FGIC in order to enhance the ratings and marketability of the 2006-HE1 Notes. GMACM fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices and the credit quality and characteristics of the tens of thousands of mortgage loans (individually the "Mortgage Loans," and collectively the "Loan Pool") that provided the collateral for the 2006-HE1 Notes. In short, the Mortgage Loans were different—and demonstrably worse—than GMACM had represented them to be. FGIC's issuance of the Policy enabled the 2006-HE1 Notes to receive a triple-A rating from the rating agencies, which in turn made the 2006-HE1 Transaction viable, and enabled GMACM and its affiliates to earn millions of dollars in transaction fees.

2. Since the closing of the 2006-HE1 Transaction, GMACM has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the 2006-HE1 Transaction, GMACM has violated the essential terms of its agreement with FGIC. GMACM has also breached the essential terms of the other operative documents incorporated therein.

3. The wrongdoing committed by GMACM, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through its wholly-owned subsidiary, ResCap. Ally Financial is the ultimate parent of ResCap, which owns GMACM. Ally Financial, as the ultimate parent of ResCap and GMACM, has the practical ability, which it has repeatedly exercised, to direct and control the activities of these (and other) subsidiaries. In many instances—including in this Transaction—Ally Financial's direction and control was effected by using ResCap as an intermediary instrument to achieve its goals. For example, many of the

material contractual breaches committed by GMACM, concerning, primarily, FGIC's right to access information in GMACM's possession and GMACM's failure to repurchase or cure certain of the Mortgage Loans backing the 2006-HE1 Notes that FGIC sought to have repurchased, were carried out by ResCap, at the direction and control of Ally Financial.

4. GMACM was also substantially assisted in fraudulently inducing FGIC to issue the Policy by another Ally Financial subsidiary, Ally Bank, then doing business as GMAC Bank. Ally Bank and GMACM were the two principal originators of loans that became the collateral for the 2006-HE1 Transaction, and as such had intimate knowledge of the quality of the Loan Pool. In total, Ally Bank sold over $500 million in loans that it had originated or acquired to GMACM to be securitized in the 2006-HE1 Transaction. Further, Ally Bank agreed to serve as custodian of the 2006-HE1 Transaction—one of the critical parties charged with certain oversight and maintenance duties with respect to the 2006-HE1 Trust—and received certain key operative documents with respect to the Transaction. With knowledge of GMACM's material misrepresentations and omissions regarding the Mortgage Loans that collateralized the Transaction, Ally Bank separately made representations and warranties regarding those loans for the purpose of aiding GMACM's inducement of FGIC to issue the Policy. By assisting GMACM in inducing FGIC to issue the Policy, Ally Bank was able to collect substantial fees as Custodian and perpetuate its lucrative loan origination business.

5. Ally Bank has materially breached its own separate contractual agreement regarding its duties as Custodian of the 2006-HE1 Transaction, in particular by failing to ensure that essential documents were included in the loan file and failing to notify FGIC of breaches of representations and warranties by GMACM of which Ally Bank was aware.

6. The 2006-HE1 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among GMACM and several other parties whereby tens of thousands of home equity loans and home equity revolving lines of credit were pooled together and transferred to the 2006-HE1 Trust, which then issued to investors securities (*i.e.*, the 2006-HE1 Notes) collateralized by those loans.

7. In March 2006, FGIC and several other parties entered into the 2006-HE1 Transaction. The 2006-HE1 Transaction was sponsored by GMACM. To facilitate the Transaction, GMACM pooled together over twenty-one thousand Mortgage Loans to provide collateral for the 2006-HE1 Notes. All of the Mortgage Loans were either originated or acquired by GMACM or Ally Bank.

8. After pooling the Mortgage Loans originated or acquired by GMACM and Ally Bank, GMACM transferred the Mortgage Loans directly or indirectly to another Ally Financial subsidiary, Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then deposited the Mortgage Loans it received from GMACM into the 2006-HE1 Trust. The 2006-HE1 Trust, in turn, issued the 2006-HE1 Notes to investors. The 2006-HE1 Trust was a legal entity created by GMACM solely for the purposes of the 2006-HE1 Transaction to hold the Mortgage Loans and to issue the 2006-HE1 Notes to investors in a registered public offering.

9. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the Trust are used to pay, among other things, principal and interest due on the 2006-HE1 Notes, and the fees and expenses of GMACM and other participants in the Transaction.

10. GMACM also acts as servicer of the 2006-HE1 Transaction (the "Servicer"). As Servicer, GMACM supervises the collection of borrower payments and performs other servicing

duties related to the Mortgage Loans. As discussed in more detail below, all of GMACM's servicing operations have since been integrated into ResCap. Yet another Ally Financial subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was a co-manager of the 2006-HE1 Transaction. In addition, JPMorgan Chase Bank, N.A ("JPMorgan") agreed to act as indenture trustee of the Trust (the "Indenture Trustee").

11. GMACM, directed and controlled by Ally Financial, is, therefore, the hub of the 2006-HE1 Transaction: it is the sponsor of the securitization, the originator and seller of many of the Mortgage Loans, and the servicer of all the loans that collateralize the 2006-HE1 Notes. The primary victim of the 2006-HE1 Transaction—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by GMACM—is FGIC, which has already paid out tens of millions of dollars in losses under the Policy, with further material losses still to come.

12. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed notes ("RMBS Notes"). At the time of the 2006-HE1 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Notes typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of principal losses allocated to the RMBS Notes. FGIC's insurance policies thus enhanced the credit quality, and marketability, of the insured securities.

13. To enhance the ratings and marketability of the 2006-HE1 Notes, and to increase the profit that GMACM would derive from the 2006-HE1 Transaction, GMACM sought to have FGIC issue the Policy to JPMorgan, as Indenture Trustee for the 2006-HE1 Notes for the benefit of the holders of the 2006-HE1 Notes.

14. To induce FGIC to issue the Policy, GMACM made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated and their characteristics. Those representations and warranties were false when stated. FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2006-HE1 Transaction. Additionally, those representations and warranties were false on the many occasions when they were restated by GMACM (for example, when GMACM added new loans to the Loan Pool). As a result, FGIC was fraudulently induced to enter the Transaction, and the credit risk assumed by FGIC in connection with the Transaction was far greater than it would have been had GMACM's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

15. GMACM received substantial assistance from Ally Bank in fraudulently inducing FGIC to issue the Policy. Ally Bank was aware of the material misrepresentations GMACM had made to FGIC, and further represented to FGIC that it would undertake duties to monitor and certify the accuracy and completeness of certain material aspects of the Mortgage Loan files, as well as inform FGIC of certain failures by GMACM to comply with its obligations under the 2006-HE1 Transaction documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would not comply—with its representations and warranties to FGIC. As such, Ally Bank actively aided and abetted GMACM's fraudulent inducement of FGIC to issue the Policy.

16. Moreover, both GMACM and Ally Bank received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policy. Ally Financial took actions and made statements to boost investor confidence in, and otherwise finance and support, its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations GMACM and Ally Bank had made to FGIC. As a result of its dominance over ResCap, Ally Bank, and GMACM, Ally Financial knew that the representations and warranties GMACM and Ally Bank made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted GMACM's and Ally Bank's fraudulent inducement of FGIC to issue the Policy.

17. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policy in reliance on the (presumed) accuracy and truthfulness of GMACM's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and the resulting amount of claims presented to FGIC have been overwhelming. Had FGIC been told the truth about the nature of GMACM's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policy, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of GMACM's misconduct.

18. Further, as explained more fully below, following the closing of the 2006-HE1 Transaction, GMACM failed to properly give effect to a "Managed Amortization Event," as defined by the plain language of the transaction documents. GMACM subsequently improperly added approximately $580 million in additional mortgage loans (the "Subsequent Mortgage

Loans") to the 2006-HE1 Trust through subsequent transfers that it was not authorized to make. As a result, FGIC is being asked to pay significant losses incurred on a substantial number of loans that were added to the 2006-HE1 Trust after closing, in circumstances where the express terms of the operative documents for the 2006-HE1 Transaction (the "Operative Documents") precluded those loans from being added to the 2006-HE1 Trust.

19. In order to evaluate the extent of GMACM's breaches, FGIC has requested copies of the mortgage loan files and servicing notes for the Mortgage Loans. GMACM is obligated, under its agreements with FGIC, to provide those documents to FGIC. GMACM has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence material breaches by GMACM. This refusal to provide information in itself constitutes a material breach of GMACM's insurance agreement with FGIC.

20. Certain of the material contractual breaches committed by GMACM and Ally Bank—including, but not limited to, its refusal to honor FGIC's right to access information in GMACM's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

21. Through this Amended Complaint, FGIC seeks relief against GMACM, Ally Bank, ResCap, and Ally Financial for GMACM's fraudulent inducement of FGIC, and for GMACM's material breaches of its insurance agreement with, and contractual obligations owed to, FGIC in connection with the 2006-HE1 Transaction.

22. Further, FGIC seeks relief against Ally Financial and Ally Bank for aiding and abetting GMACM's fraudulent inducement, as well as for Ally Bank's material breaches of its contractual obligations to FGIC.

23. FGIC also seeks a declaration from the Court that Ally Financial, ResCap and GMACM were and continue to be alter egos of one another.

THE PARTIES

24. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

25. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial is the parent company of ResCap, GMACM, and all GMACM-affiliated entities relevant to this action.

26. Defendant GMACM is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. In the period relevant to this action, GMACM originated, acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

27. Since 2005, GMACM has been an indirect wholly-owned subsidiary of ResCap; prior to that time, GMACM was an indirect, wholly-owned subsidiary of Ally Financial.

28. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of GMACM and its business includes originating, acquiring, selling, and servicing mortgage loans.

29. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

30. Ally Bank (f/k/a GMAC Bank), an indirect, wholly-owned subsidiary of Ally Financial, was at all times relevant to this Amended Complaint a loan originator. To facilitate the 2006-HE1 Transaction, Ally Bank sold to GMACM over $500 million in mortgage loans that it had originated or acquired to be securitized in the Transaction. These loans comprised more

than 55% of the initial Mortgage Loans. GMAC Bank was renamed Ally Bank in May 2009. Ally Bank is an online bank chartered under Utah law.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs. This Court has personal jurisdiction over the defendants as the defendants have consented to this jurisdiction by virtue of having removed the New York state court action to this Court. Additionally, in an agreement at issue in this case, at least one of the defendants irrevocably submitted to the jurisdiction of this Court.

32. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred within this judicial district, and, in an agreement at issue in this case, at least one of the defendants agreed not to challenge venue in this Court. Further, the defendants have consented to this venue by virtue of having removed the New York state court action to this Court.

RELEVANT NON-PARTIES

33. RAMP, a special purpose vehicle, is an indirect, wholly-owned subsidiary of Ally Financial and a Delaware corporation with its principal place of business in Minnesota. To facilitate the 2006-HE1 Transaction, RAMP purchased mortgage loans from GMACM and another affiliate, Walnut Grove Mortgage Loan Trust 2003-A ("Walnut Grove"), and deposited those loans into the 2006-HE1 Trust. The trust then issued the 2006-HE1 Notes to the underwriters, including Ally Securities (then doing business as GMAC RFC Securities), to be sold to investors.

34. Ally Securities, an entity incorporated in Delaware, is an affiliate of GMACM and RAMP and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2006-HE1 Notes and, on information and belief, participated in the preparation of certain of the key offering documents for the 2006-HE1 Transaction.

35. Walnut Grove is a Delaware statutory trust established by an affiliate of GMACM. Beginning in 2003, GMACM sold to Walnut Grove second-lien mortgage loans that it had originated or acquired. To facilitate the 2006-HE1 Transaction, Walnut Grove sold certain of the Mortgage Loans to RAMP.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

36. In the period relevant to this action, GMACM originated, acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Notes.

37. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including in large part GMACM, Ally Bank, and ResCap, led Ally Financial to seek a bailout by the federal government in 2008.

(1) GMACM, GMAC-RFC, and RFC

38. GMACM is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

39. Residential Funding Corporation, LLC ("RFC") is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate GMACM, RFC engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

40. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

41. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

42. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with GMACM. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential

> investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

43. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

44. Ally Financial's business model depended on securitizations, which were conducted by its business units, including GMACM. Pooling mortgage loans and selling them into securitizations enabled GMACM to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

45. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, GMACM generally acted as servicer of its own securitizations. GMACM thereby earned servicing fees that normally amounted to 0.50% per annum of the aggregate principal balance of the mortgage loans, as well as collected fees in the range of 20%-36% of any subsequent recoveries from charged-off loans.

46. GMACM also enriched Ally Financial and its other subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2006-HE1 Transaction:

- Ally Bank gained fees for originating nearly 60% of the loans initially comprising the 2006-HE1 Trust, and proceeds from selling those loans to GMACM; Ally Bank also gained fees as custodian of the 2006-HE1 Trust for holding certain documents;

- Walnut Grove received the proceeds from selling certain of the Mortgage Loans to RAMP (after purchasing over 40% of the loans from GMACM);

- RAMP received payments for serving as the depositor of the Mortgage Loans to the 2006-HE1 Trust; and

- Ally Securities received fees for underwriting the 2006-HE1 Notes.

(3) Ally Financial, GMACM, and RFC Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

47. GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

48. Additionally, on September 2, 2011, the Federal Housing Finance Authority ("FHFA"), as conservator for Freddie Mac, filed suit in the Supreme Court of the State of New York, New York County against Ally Financial and several of its subsidiaries for claims arising in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in

certificates issued through twenty-one transactions similar to the transaction at issue here. Among other claims, FHFA brought suit for common law fraud against various Ally Financial subsidiaries and aiding and abetting fraud against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates.

49. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs. In October 2011, Ally Financial and its co-defendants removed the FHFA action to the U.S. District Court for the Southern District of New York.

50. In addition, GMACM is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that in connection with three transactions similar to the one at issue here, GMACM affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of more than $4 billion, as a means of unfairly shifting to investors and MBIA risks that GMACM should have borne itself. On December 15, 2010, the New York Supreme Court issued a ruling denying GMACM's motion to dismiss, which allowed both the breach of representations and warranties and fraud claims, among others, to proceed to trial.

51. GMACM's sister company, RFC, is also currently facing a lawsuit brought by MBIA in New York Supreme Court for, among other things, fraud and breach of representations and warranties in connection with RMBS transactions. In December 2009, the New York Supreme Court rejected RFC's motion to dismiss certain of the claims brought against it, allowing both the breach of contract and fraud claims, among others, to proceed.

52. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two pending suits in various jurisdictions pending against Ally Financial's mortgage-related business units and subsidiaries, arising from numerous mortgage-backed securities offerings. The plaintiffs in those suits have alleged, among other things, that Ally Financial's various mortgage subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011). Further, in its 2011 annual report, Ally Financial stated that it expects additional similar claims to be brought against Ally Financial and/or its subsidiaries in the future. *See* Ally Fin. Inc., Annual Report (Form 10-K), at 20 (Feb. 28, 2011).

53. Since the filing of its November 2011 quarterly report, moreover, Ally Financial and its subsidiaries have been sued by additional plaintiffs, including HSH Nordbank AG, which have alleged, inter alia, material misrepresentations and omissions about the loans backing RMBS securities issued by Ally Financial's affiliates.

54. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. During 2011, Ally

Financial and its subsidiaries have received repurchase claims from monoline insurers for $265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. Ally Financial clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own U.S. Securities and Exchange Commission ("SEC") filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Annual Report (Form 10-K), at 98 (Feb. 28, 2012).

55. Indeed, according to Ally Financial's annual report, Ally Financial, GMACM's parent, also believes that "[t]he total exposure . . . to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions implemented in 2008 and forward." Ally Fin. Inc., Annual Report (Form 10-K), at 224 (Feb. 28, 2012). The 2006-HE1 Transaction is, as its name implies, of the 2006 vintage, but also includes Mortgage Loans originated in 2007.

56. Additionally, Ally Financial also disclosed that the SEC served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *See* Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

(4) The Mortgage Loan Servicing Misconduct of Ally Financial and GMACM Has Come Under Scrutiny and Resulted in Severe Sanctions

57. On February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, and several other mortgage loan servicers would be required to pay $766.5

million in monetary sanctions for "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2012). On February 12, 2012, the Federal Reserve Board imposed well over $200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an assessment order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See In re Ally Fin. Inc.*, FRB Docket Nos. 12-006-CMP-HC & 12-006-CMP-DEO (Feb. 10, 2012) (the "Assessment Order"). According to the Federal Reserve Board, the sanction "takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the institutions' misconduct, and the comparative sizes of the institutions' foreclosure activities." *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2012).

58. Further, also on February 9, 2012, the U.S. Attorney General announced that Ally Financial will take part in a $25 billion settlement to resolve claims brought by the government in response to the "reckless and abusive mortgage practices" of Ally Financial and four similarly situated bank holding companies. *See* Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple state attorneys general, *see id.*; National Mortgage Settlement, Servicing Standard Highlights, *available at* http://www.nationalmortgagesettlement.com (last visited Mar. 10, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper

origination, securitization, and servicing practices, *see* National Mortgage Settlement, About the Settlement, http://www.nationalmortgagesettlement.com/about (last visited Mar. 10, 2012).

59. According to the U.S. Attorney General, the $25 billion settlement and $766.5 million sanction are just "the latest step forward" in holding Ally Financial and others accountable for "egregious mortgage loan servicing abuses." *See* Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012).

60. Similarly, the New York Attorney General recently announced a $136 million settlement with the nation's five largest mortgage servicers—including GMAC/Ally Financial. *See* Press Release, Office of the New York Attorney General, Schneiderman Secures Major Settlement that Allows Sweeping Mortgage Investigations to Proceed (Feb. 9, 2012). As the New York Attorney General noted, the settlement principally addressed "foreclosure abuses" by GMAC/Ally Financial and other banks, and "[i]n addition to penalties for past abuses, the settlement includes direct relief to victims of wrongful foreclosure conduct" and "imposes strong national standards for mortgage servicing" that had previously been lacking. *Id.* Additionally, the New York Attorney General will lead the new Residential Mortgage-Backed Securities Working Group, a component of the interagency Financial Fraud Enforcement Task Force led by the DOJ, which "brings together the Department of Justice (DOJ), several state law enforcement officials, and other federal agencies to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities." *Id.*

61. In addition to these recent settlements and Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the "FDIC") previously ordered Ally Financial, GMACM, and several other Ally Financial subsidiaries to adopt new procedures and

practices in relation to mortgage loan servicing. *See In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO, FDIC-11-123b (April 13, 2011) (the "Consent Order").

62. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries, including GMACM, have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

63. Furthermore, under the Consent Order, Ally Financial must direct GMACM and its other mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

64. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure processes of GMACM to request an independent review of their files. *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces that Borrowers from Four Mortgage Servicers Can Request an Independent Review and Potentially Receive Compensation (Nov. 1, 2011). This independent review will determine whether errors and misrepresentations

in GMACM's foreclosure processes indeed caused financial harm to the borrower. *See id.* If the foreclosure process is found to have caused financial injury to the borrower, GMACM will then be required to provide full compensation. *See id.*

65. As a result of servicing misconduct, Ally Financial and other bank holding companies will now be required to adhere to new, heightened servicing standards. *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2011). The Federal Reserve Board has ordered Ally Financial to remedy its servicing practices by, *inter alia*, "strengthen[ing] the coordination of communications with borrowers by providing borrowers the name of the person at the service who is their primary point of contact, establish[ing] limits on foreclosures where loan modifications have been approved, establish[ing] robust third party vendor controls, strengthen[ing] compliance programs, and provid[ing] appropriate remediation to borrowers who suffered financial injury as a result of errors by the servicers." *See id.*

66. Moreover, the servicing and foreclosure improprieties of Ally Financial and its subsidiaries is a matter of public record. According to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep. *Fed. Nat'l Mortgage Ass'n v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Dist. Nine, Div. N. Cumberland) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

67. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.* at 51:15-23. Stephan further testified that when he signed an affidavit affirming that the foreclosure was proper, all he knew was the borrower's name and whether he had signing authority for the GMAC entity foreclosing on the property. *Id.* at 62:23-25, 63:2-6. Stephan testified that the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required by GMACM. *Id.* at 64:8-14.

68. Additionally, in October 2010, the Ohio Attorney General filed suit against GMACM and Ally Financial, alleging, *inter alia*, that employees of GMACM had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See Ohio v. GMAC Mortgage, LLC*, CI0201006984, Ct. C.P. Lucas Cnty. Although some of the claims brought by the Ohio Attorney General's suit have been resolved by the $25 billion multi-party settlement, many additional claims not encompassed by the settlement, including those relating to the improper assignment of mortgage notes, have survived. As of February 2012, the action remains pending in Ohio.

69. Similarly, in December 2011, the Massachusetts Attorney General filed suit against GMACM for, among other things, engaging in unfair and deceptive foreclosure practices. *See Massachusetts v. Bank of Am., N.A.*, 11-4363, Suffolk Cnty. Super. Ct. Days after filing suit,

the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial and GMACM for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Boston Globe, *Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices*, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

Id.

70. While the $25 billion settlement ultimately resolved certain claims brought by the Massachusetts Attorney General in this action, several claims relating to improper foreclosure practices and abuse of certain state recordation systems have survived and will continue to be prosecuted. *See* Press Release, Office of the Attorney General of Massachusetts, *Massachusetts Homeowners to Receive $318 Million in Relief as Part of State-Federal Agreement Over Unlawful Foreclosures and Loan Servicing*, Feb. 9, 2012.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and GMACM

71. Since as early as November 2011, Ally Financial has been considering filing for bankruptcy protection for ResCap, its wholly-owned subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports. GMACM is a wholly-owned, indirect subsidiary of ResCap.

72. Around that time, the financial industry was "betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering." Bloomberg News, *Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance*," Nov. 14, 2011.

73. As the article notes, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy. *See id.*

74. Indeed, Ally Financial warned in its 2011 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 19 (Feb. 28, 2012).

75. That risk ultimately came to pass as Ally Financial recently disclosed that the penalties assessed by the federal government and numerous state attorneys general regarding the foreclosure practices of Ally Financial and its subsidiaries "resulted in our Mortgage operations recording a $230 million charge in the fourth quarter of 2011." *Id.* at 31. As Ally Financial detailed in its previous public filing, the "[t]he majority of [the charge] was recorded at Residential Capital, LLC ('ResCap') . . . [which] resulted in a covenant breach in certain of ResCap's credit facilities." Ally Fin. Inc., Current Report (Form 8-K) (Jan. 31, 2012). Indeed, as Ally Financial more recently explained, "ResCap is required to maintain consolidated net worth . . . of $250 million at the end of each month under the terms of certain of its credit facilities. . . [and] as a result of the fourth quarter charge, ResCap's consolidated net worth was $92 million at December 31, 2011." Ally Fin. Inc., Annual Report (Form 10-K), at 31-32 (Feb. 28, 2012). ResCap's substantial shortfall, however, was "immediately remediated by Ally

through a capital contribution of $197 million, which was provided through forgiveness of intercompany debt during January 2012." *Id.*

76. Moreover, in February 2012, it was reported that Ally Financial had contacted buyout firms such as Fortress Investment Group LLC and Cerberus Capital Management LP regarding a potential sale of ResCap through a pre-packaged bankruptcy to be effectuated by the end of March as ResCap faces financing and liquidity deadlines. *See* Bloomberg News, *Ally's ResCap Said to Seek Buyers for Prearranged Bankruptcy*, Feb. 8, 2012.

77. According to the report, "[p]otential bidders are being told that a pre-packaged bankruptcy filing would allow the buyer to leave behind liabilities such as [RMBS] securitizations that have been the subject of litigation." *Id.* To that end, Ally Financial's CEO, Michael Carpenter, has stated that he will not pursue the aforementioned initial public offering for Ally Financial "until [these] legacy mortgage issues are resolved." *Id.* Nevertheless, a bondholder group representing holders of approximately $800 million in ResCap debt has expressed its desire to "fight [Ally Financial] tooth and nail" to oppose the bankruptcy, based in part on the belief that "Ally [Financial] can't legally separate itself from ResCap because it has stripped assets from the unit." Bloomberg News, *Paulson, Tepper Said Among Investors Urging Ally to Back ResCap*, Jan. 10, 2012.

78. Indeed, as Ally Financial has pointedly noted in its most recent annual report: "In light of ResCap's liquidity and capital needs combined with volatile conditions in the marketplace, there is substantial doubt about ResCap's ability to continue as a going concern." Ally Fin. Inc., Annual Report (Form 10-K), at 18 (Feb. 28, 2012).

B. Ally GMACM's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

79. To improve the marketability and ratings of the RMBS Notes issued as part of its securitizations, GMACM from time to time sought credit enhancement for the RMBS Notes from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Notes that, if there is a shortfall in cash available to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

80. For a trust that issues RMBS Notes, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Notes. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the Loan Pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS investors. Such shortfalls result in claims on FGIC's policies.

(2) Securitization Sponsor's Disclosures and Representations and Warranties

81. The risk FGIC assumes when it agrees to issue a policy for RMBS Notes depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originators and the characteristics of the loans. If, for instance, GMACM and other loan originators employ substandard underwriting practices, the underlying

mortgage loans would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

82. Accordingly, FGIC generally required securitization sponsors, like GMACM, to provide substantial representations and warranties about the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance to the value of the mortgaged property at origination—plus, in the case of a junior lien mortgage loan, the principal balance of the senior mortgage loan on the related mortgaged property—("CLTV ratio"), and the borrower's credit score ("FICO score"). Even where GMACM did not originate a particular loan, it nonetheless is typically required to make representations about that loan, thereby assuming the risk that those representations might not be accurate. GMACM's representations and warranties, including representations about the standards and procedures used to underwrite the loans, were intended to allow FGIC to assess the credit risk inherent in the mortgage loan pool before deciding to commit to the transaction.

83. GMACM's representations and warranties in its RMBS transactions regarding the characteristics of the loans included in the mortgage loan portfolios, and the underwriting standards used to evaluate those mortgage loans, are particularly vital because each loan pool comprised thousands of mortgage loans, each of which was in itself a complex legal transaction. Each loan file typically contains (or at least is supposed to contain) a mortgage application, a credit report, income and employment verifications, an appraisal, the lender's internal documentation and a wide variety of other documentation necessary to support proper loan underwriting decisions. Moreover, in seeking financial guaranty insurance from FGIC for the

2006-HE1 Transaction, GMACM demanded that FGIC commit to the pricing and other material terms within a very limited time frame. Both GMACM and FGIC understood and intended that FGIC would rely on the information supplied by GMACM as sponsor, as well as GMACM's representations and warranties concerning that information, in assessing the credit risk of the mortgage loan pool.

84. Further, on information and belief, for each of its securitizations, GMACM as sponsor supplied the same data it provided to FGIC to one or several rating agencies in order for those agencies to create expected loan level default and loss estimates. The loan level default and loss estimates were then used by the rating agencies to create cash flow projections and potential loss estimates for the entire transaction. Finally, the rating agencies delivered to the sponsor and to FGIC a private credit assessment for the transaction (sometimes referred to as a "shadow rating") without considering the effect of FGIC's policy. The shadow rating provided an overall evaluation of the likelihood of default on the securities FGIC would be insuring in the securitization. As sponsor, GMACM arranged for the shadow rating to be provided to FGIC knowing that it was an essential condition to FGIC's willingness to issue a financial guaranty insurance policy.

C. The GMACM 2006-HE1 Transaction

85. On March 30, 2006, GMACM pooled together and deposited many thousands of fixed and adjustable rate Home Equity (Revolving) Lines of Credit ("HELOCs") and Home Equity Loans ("HELs") into the GMACM Home Equity Loan Trust 2006-HE1. The 2006-HE1 Trust served as the Issuer of $1,274,156,000 in aggregate principal amount of 2006-HE1 Notes. Home equity loans are essentially second-lien mortgage loans, which are generally funded entirely at the closing of the loan. Home equity lines of credit are typically revolving credit lines

collateralized by second-lien mortgage loans, which can be drawn on at any time during an extended period, and repaid at any time, subject to a maximum repayment period.

86. The initial conveyance to the 2006-HE1 Trust by RAMP (acting as Depositor) contained over 12,500 HELOCs with an aggregate outstanding principal balance of approximately $593 million, and over 8,800 HELs with an aggregate principal balance of approximately $368 million. In all, the 2006-HE1 Trust contained at closing roughly 21,300 initial Mortgage Loans with an aggregate principal balance of approximately $961 million. Investors in the GMACM-sponsored 2006-HE1 Transaction were issued a single class of securities—the 2006-HE1 Notes (formally termed the GMACM Home Equity Loan-Backed Term Notes, Series 2006-HE1)—which were collateralized by the Mortgage Loans transferred to and held by the 2006-HE1 Trust. In addition, approximately $320 million was deposited into a pre-funding account at the closing, which was used to acquire additional Mortgage Loans in the 90 days following the closing.

87. To enhance the ratings and marketability of the 2006-HE1 Notes, GMACM sought a financial guaranty insurance policy from FGIC for the purpose of insuring the transaction for the benefit of the certificate holders. On March 30, 2006, GMACM and FGIC executed an Insurance and Indemnity Agreement (the "I&I Agreement"), under which FGIC agreed to and did issue Policy number 06030037 to insure the 2006-HE1 Notes. The I&I Agreement was signed by FGIC (the "Insurer" of the 2006-HE1 Transaction); GMACM (the "Sponsor", "Seller" and "Servicer" for the 2006-HE1 Transaction); RAMP (the "Depositor" for the 2006-HE1 Transaction); Walnut Grove (a "Seller" for the 2006-HE1 Transaction); and JPMorgan (the "Indenture Trustee" for the 2006-HE1 Transaction). The Bank of New York Trust Company, N.A., later became the successor in interest to JPMorgan as Indenture Trustee.

88. Also on March 30, 2006, Ally Bank (using its then-current name, GMAC Bank) entered into a Custodial Agreement whereby it agreed to serve as Custodian of the underlying mortgage loan notes on behalf of the 2006-HE1 Trust. FGIC is an express third party beneficiary of that agreement. *See* Custodial Agreement § 5.6.

89. The I&I Agreement provides that FGIC (the Insurer) is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." I&I Agreement § 2.02(k). "Operative Documents" are defined to include, among other documents: (i) the 2006 HE-1 Notes; (ii) the Mortgage Loan Purchase Agreement dated as of March 30, 2006 among GMACM, RAMP, Walnut Grove and JPMorgan (the "MLPA"); (iii) the Servicing Agreement dated as of March 30, 2006 among GMACM, the 2006-HE1 Trust and JPMorgan; (iv) the Indenture dated as of March 30, 2006 between the 2006-HE1 Trust and JPMorgan; and (v) the Custodial Agreement dated as of March 30, 2006 among GMACM, JPMorgan, and Ally Bank. I&I Agreement § 1.01. FGIC is referred to as the "Enhancer" under certain of the Operative Documents.

90. Pursuant to the I&I Agreement FGIC insured $1,274,156,000 aggregate principal amount of the 2006-HE1 Notes. The Policy improved the marketability of the 2006-HE1 Notes by mitigating risk for potential investors and making the 2006-HE1 Notes eligible to receive a credit rating of triple-A by the rating agencies at closing.

91. GMACM and the Depositor offered the 2006-HE1 Notes for sale pursuant to a prospectus, dated February 16, 2006 (the "Prospectus"), and a prospectus supplement, dated March 29, 2006 (the "Prospectus Supplement"), which touted the Policy and the "triple-A" initial rating of the 2006-HE1 Notes, which was made possible by the Policy. The Prospectus and Prospectus Supplement, together with certain preliminary offering documents, each as

further supplemented by any subsequent amendment or supplement thereto, and any other offering document that makes reference to the Policy, are referred to collectively as the "Offering Documents."

92. On March 30, 2006, an Ally Financial subsidiary, Ally Securities, sold the 2006-HE1 Notes to investors, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

93. The 2006-HE1 Transaction was structured in such a way as to permit GMACM to add Subsequent Mortgage Loans to the pool during a specifically defined Revolving Period, which enabled GMACM to continue to shift the credit risk of such loans to investors and to FGIC for a defined period after the closing, and to realize immediate gains on the loans it sold to the trust. GMACM represented and warranted to FGIC that the Subsequent Mortgage Loans would conform to the same contractual representations and warranties GMACM made about the loans and the underwriting of the loans that were in the pool at closing. *See* MLPA § 3.1(b). Those representations and warranties were critical to FGIC's acceptance of this feature of the 2006-HE1 Transaction.

94. As discussed more fully below, Subsequent Mortgage Loans were also expressly not permitted to be added to the pool following the occurrence of a Managed Amortization Event, which, as defined, was deemed to occur whenever the Funding Account carried an average daily balance of greater than $10 million in any three-consecutive-month period.

D. GMACM Fraudulently Induces FGIC to Insure the 2006-HE1 Notes with Substantial Assistance from Ally Financial and Ally Bank

(1) GMACM's Fraudulent Inducement of FGIC

95. FGIC's participation in the 2006-HE1 Transaction was an essential component of the 2006-HE1 Transaction and enhanced GMACM's ability to market the securitization

effectively. The Policy allowed GMACM to sell the 2006-HE1 Notes with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

96. In order to induce FGIC to write financial guaranty insurance for the 2006-HE1 Transaction, GMACM provided to FGIC, directly or indirectly, a variety of information.

97. *First* and foremost, GMACM provided to FGIC initial and final Prospectus Supplements summarizing, among other material information, the credit quality and characteristics of the Mortgage Loans, and GMACM's loan underwriting guidelines and loan origination criteria.

98. *Second*, GMACM provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the 2006-HE1 Transaction, together with representations regarding material statistics about the Loan Pool as a whole.

99. *Third*, GMACM provided to FGIC credit ratings for the 2006-HE1 Notes determined without considering the effect of the Policy. These ratings, which GMACM procured from the credit rating agencies, are known as "shadow ratings."

100. *Fourth*, as discussed in detail below, GMACM provided to FGIC representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreement regarding the Mortgage Loans specifically and the Loan Pool generally.

101. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the 2006-HE1 Notes, FGIC relied in part upon representations and warranties regarding GMACM's loan underwriting standards made by GMACM in the Prospectus and Prospectus Supplement. The Prospectus, as supplemented by the Prospectus Supplement, was filed with the SEC and became effective on March 29, 2006. A Preliminary Prospectus

Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about March 28, 2006, in an email sent by Daniel Deaton, on behalf of GMACM. The Final Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about March 29, 2006, in an email sent by Jeffrey Wittenberg on GMACM's behalf.

102. In the Offering Documents, GMACM represented that, based on the data provided in the borrower's application and certain other applicable verifications, "a determination will have been generally made by the original lender that the borrower's monthly income would be sufficient to enable the borrower to meet its monthly obligations on the loan and other expenses related to the property." Prospectus at 29. Further, in the Prospectus Supplement, GMACM also represented to FGIC that:

> The mortgage loans were selected for inclusion in the mortgage pool from among mortgage loans originated or purchased in connection with [GMACM's] Underwriting Standards . . . based on [GMACM's] assessment of investor preferences and rating agency criteria.

Prospectus Supplement at S-33.

103. The Prospectus Supplement expressly states that GMACM's "underwriting standards with respect to the [Mortgage Loans, including the Home Equity Lines of Credit and Home Equity Loans] will generally conform to those published in the GMAC Mortgage Corporation underwriting guidelines, including the provisions of the GMAC Mortgage Corporation underwriting guidelines applicable to the GMAC Mortgage Home Equity Program." Prospectus Supplement at S-38, S-42.

104. GMACM publishes its loan underwriting standards in a document referred to in the Prospectus Supplement as "the GMAC Mortgage Corporation underwriting guidelines" (and referred to herein as the "Underwriting Guidelines"). Prospectus Supplement at S-38, S-39, S-42. In general, the Underwriting Guidelines specify documentation requirements, and substantive

criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories and/or evidence of closing funds, among other things. The substantive criteria for eligibility address material characteristics of the proposed loan, such as DTI ratios, CLTV ratios and occupancy status.

105. The Prospectus Supplement set forth, among other information, the following important characteristics of the Loan Pool: the ranges of and weighted average FICO scores, the ranges of and weighted average CLTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (*i.e.*, whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). *See* Prospectus Supplement at A-I-1 - A-I-14.

106. In particular, GMACM represented in the Prospectus Supplement that the loans had generally been originated with a maximum DTI ratio of 45% and a maximum CLTV ratio of 100%. *See* Prospectus Supplement at S-40, S-43. GMACM also represented that for each Mortgage Loan it had made a determination based upon all applicable employment, credit and property information regarding whether the prospective borrower had sufficient monthly income available to meet the borrower's monthly obligations. *See* Prospectus Supplement at S-41, S-45.

107. GMACM also represented in the Offering Documents that, with respect to occupancy status, 97.85% of the Mortgage Loans would be secured by the borrower's primary residence. Prospectus Supplement at A-1-4.

108. ***Loan Tapes.*** The loan tapes provided by GMACM set forth, for each loan in the Loan Pool, key characteristics such as the borrower's FICO score and DTI ratio and the CLTV ratio for the loan. GMACM also disclosed in the Prospectus Supplement—with respect to the Loan Pool as a whole—aggregate characteristics also relevant to the assessment of the credit risk of the pool, including weighted averages of FICO scores, DTI ratios and CLTV ratios.

109. ***Shadow Rating Letters***. GMACM, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. Based on the information supplied by GMACM, Moody's assessed the credit quality of the Loan Pool and assigned a shadow rating of Baa2 to the 2006-HE1 Notes, while S&P assigned the 2006-HE1 Notes a shadow rating of BBB. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to insure the 2006-HE1 Transaction.

(2) GMACM's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Bank

110. Ally Bank provided substantial assistance to its affiliate GMACM in fraudulently procuring the Policy from FGIC. As it originated or acquired nearly 60% of the Mortgage Loans, Ally Bank was well aware of the true characteristics of the majority of the Loan Pool. Moreover, as a result of its affiliate status with GMACM, and its role as Custodian for the 2006-HE1 Transaction—for which it received substantial fees—Ally Bank was aware of the representations and warranties GMACM made to FGIC regarding the nature of GMACM's business practices and the characteristics of the Mortgage Loans (including the many thousands of Mortgages Loans that were originated by Ally Bank).

111. With full knowledge that GMACM had not complied—and would not comply—with the representations and warranties it made to FGIC, and direct knowledge of the many

thousands of loans it had originated and sold to GMACM, which formed a substantial part of the collateral for the 2006-HE1 Transaction, Ally Bank represented to FGIC that, as Custodian, it would inform FGIC if it discovered any non-compliant Mortgage Loans or non-compliance with GMACM's obligations under the Operative Documents. By offering FGIC this false comfort, despite knowing that GMACM was fraudulently inducing FGIC to provide financial guaranty insurance for the 2006-HE1 Transaction, Ally Bank provided material assistance to GMACM's fraud.

(3) GMACM's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

112. Ally Financial provided substantial assistance to its subsidiaries GMACM and Ally Bank in fraudulently inducing FGIC to participate in the 2006-HE1 Transaction and, ultimately, issue the Policy. Ally Financial knew that the Mortgage Loans underlying the 2006-HE1 Transaction were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap, Ally Bank, and its other subsidiaries, Ally Financial knew that the representations and warranties GMACM made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

113. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to engender investor confidence in, and otherwise finance and support, its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of

Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

114. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

115. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries."

116. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

117. Ally Financial's corporate restructuring also allowed GMACM to explicitly represent and warrant to FGIC in the I&I Agreement that GMACM "is solvent, and will not be rendered insolvent by the Transaction. . . . [GMACM] shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." I&I Agreement § 2.01(m). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary GMACM.

118. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the 2006-HE1 Transaction—and other securitization transactions—were far

worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

119. Moreover, as a result of its domination and control over ResCap, GMACM, and Ally Bank, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of GMACM's representations and warranties to FGIC—and that they were untrue when stated—as well as the substantial assistance Ally Bank was rendering GMACM in aid of its fraudulent inducement of FGIC. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including GMACM, shared numerous directors and senior management as well. Similarly, William F. Muir, Ally Financial's President, has served in that capacity since at least 2004 (first at GMAC and then at Ally Financial) while also serving as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

120. David C. Walker is another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including GMACM and RAMP. Walker

joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In September 2005, shortly before the closing of the 2006-HE1 Transaction, Walker was a director at ResCap, GMACM, RFC, and RAMP, among other ResCap subsidiaries. In the 2006-HE1 Transaction, acting as a director of RAMP, Walker was a signatory to RAMP's May 1, 2005 "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which was included among the closing documents of the 2006-HE1 Transaction.

121. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, Ally Bank, and GMACM, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by GMACM was shared among and between GMACM and its parent ResCap, ResCap and its parent Ally Financial, and Ally Bank and its parent and affiliates. Indeed, at least one Ally Financial employee who was involved in the 2006-HE1 Transaction appeared on the Transaction's working group list and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

122. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to GMACM in fraudulently inducing FGIC to participate in the Transaction and issue the Policy. Further, the issuance of the Policy, which

made the 2006-HE1 Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. GMACM's Representations, Warranties and Affirmative Covenants

123. In connection with the 2006-HE1 Transaction, GMACM, at the direction of Ally Financial, either directly or indirectly through ResCap, gave numerous representations, warranties and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way GMACM conducted its loan origination, selection, and evaluation process, the characteristics of the Mortgage Loans, and the accuracy and completeness of the information supplied to FGIC. These and other characteristics of the Mortgage Loans included in the Loan Pool at closing were detailed in a schedule attached to the Servicing Agreement, and, as to Subsequent Mortgage Loans, in similar schedules at the time of their transfer to the 2006-HE1 Trust (such schedules collectively, the "Mortgage Loan Schedule"). GMACM also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to GMACM's books and records and to GMACM's Chief Financial Officer and its independent accountants.

124. GMACM's representations and warranties, and particularly GMACM's representation that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the 2006-HE1 Transaction and to issue the Policy. Further, the I&I Agreement's incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that GMACM made in connection with the 2006-HE1 Transaction.

125. FGIC, for its part, reasonably relied on the information available to it regarding the underlying Mortgage Loans and the representations and warranties provided by GMACM.

Since FGIC had neither the right under the Operative Documents, nor the practical ability, to review the tens of thousands of underlying Mortgage Loan files in the days available to it prior to the closing of the 2006-HE1 Transaction, GMACM knew that FGIC had no choice but to rely on GMACM's representations regarding the underlying loans in determining whether to issue the Policy. Further, FGIC had no reason to believe that these representations were not true and accurate.

126. Indeed, GMACM included more than 21,000 individual Mortgage Loans in the 2006-HE1 Transaction at closing. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation and other forms of documentation necessary to support each underwriting decision. Unlike GMACM, FGIC was under no contractual duty whatsoever to review the more than 21,000 Mortgage Loans. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by GMACM regarding its loan origination, selection, and evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on GMACM to conduct its underwriting processes according to the promised standards and FGIC had no basis to conclude that GMACM's representations and warranties were false. Thus, FGIC reasonably believed that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

127. Based on the information received by FGIC and the representations and warranties given by GMACM, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Indenture Trustee for the benefit of the holders of the 2006-HE1 Notes. In return for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the

aggregate principal balance of the 2006-HE1 Notes. Specifically, FGIC received 0.12% per annum of the aggregate balance of the 2006-HE1 Notes for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties and affirmative covenants provided by GMACM.

128. As discussed below, GMACM's information, representations and warranties were materially false when disclosed and/or provided by GMACM. GMACM knew that this information, and its representations and warranties, were materially false when made. GMACM also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policy. Indeed, GMACM intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and issue the Policy. The issuance by FGIC of the Policy—induced by GMACM's fraudulent misrepresentations and substantial assistance by Ally Financial—made the 2006-HE1 Notes eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Representations, Warranties and Affirmative Covenants Relating to the Operative and Offering Documents

129. Under Section 2.01 of the I&I Agreement, GMACM made the following representations and warranties, among others (emphasis added in each case):

> ♦ *Accuracy of Information.* **Neither the Operative Documents to which it is a party nor other information relating to the Mortgage Loans**, the operations of GMACM. . . or the financial condition of GMACM . . . furnished to [FGIC] . . . by GMACM . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made** . . . GMACM . . . has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change with respect to GMACM . . . Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to GMACM . . . that would render any of the Documents untrue or misleading in any material respect.

♦ *Compliance with Securities Laws.* The offering and sale of the Securities complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading** . . . .

♦ *Operative Documents.* **Each of the representations and warranties of GMACM . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** [and] GMACM . . . hereby makes each such representation and warranty to, and for the benefit of, [FGIC] as if the same were set forth in full herein.

♦ *Solvency; Fraudulent Conveyance.* GMACM . . . is solvent and will not be rendered insolvent by the Transaction and . . . **GMACM . . . shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**, and . . . GMACM . . . does not intend to incur, or believe that it has incurred, debts beyond its ability to pay as they mature. . . . GMACM . . . is not transferring the Mortgage Loans . . . with any intent to hinder, delay or defraud . . . creditors.

130. *First*, in the I&I Agreement, GMACM represented and warranted to FGIC that "[n]either the Operative Documents to which it is a party nor other information relating to the Mortgage Loans. . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreement § 2.01(j). Through these Operative and Offering Documents, GMACM communicated several material facts about the characteristics of the mortgage loans sold to the 2006-HE1 Trust.

131. *Second*, in the I&I Agreement, GMACM represented and warranted that "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading." § 2.01(k). As discussed above, in the Prospectus Supplement, GMACM represented that all of the mortgage loans sold to the 2006-HE1 Trust had

been underwritten generally in accordance with GMACM's underwriting standards, including the GMAC Mortgage Home Equity Program. Prospectus Supplement at S-38, S-42.

132. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the "Operative Documents," as that term was defined in the I&I Agreement: "[e]ach of the representations and warranties . . . contained in the applicable Operative Documents . . . is true and correct in all material respects[.]" *See* I&I Agreement §§ 1.01, 2.01(l). The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that GMACM made to other entities, such as investors or the Indenture Trustee, in connection with the 2006-HE1 Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreement § 2.02(k).

133. *Fourth*, GMACM also provided information to FGIC concerning Mortgage Loans in the 2006-HE1 Transaction. *See* I&I Agreement § 2.02(c)(iii). This information included loan tapes that set forth statistics about the Loan Pool. The loan tapes purported to describe key characteristics relevant to the assessment of risk, including DTI ratios, CLTV ratios, occupancy status and FICO scores. *See* MLPA § 2.1(d). On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the Mortgage Loan Schedule referred to in the MLPA.

134. In turn, in the MLPA, GMACM represented that all the information in that Mortgage Loan Schedule "is true and correct in all material respects as of the date or dates respecting which such information is furnished." MLPA § 3.1(b)(i).

135. As a result of incorporating into the I&I Agreement the representations and warranties in the related Operative Documents, GMACM incorporated representations and

warranties regarding the underwriting of the Mortgage Loans included in the 2006-HE1 Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that the Mortgage Loans had been underwritten in compliance with GMACM's underwriting guidelines. *See* MLPA § 3.1(xxxvii).

136. In particular, in the MLPA, GMACM represents and warrants, as to each Mortgage Loan:

- The information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respects as of the date or dates respecting which such information is initially furnished;

- As of the Cut-Off Date or related Subsequent Cut-Off Date, no Mortgage Loan was 30 days or more delinquent in payment of principal or interest;

- With respect to the GMACM Initial Mortgage Loans or, as applicable, any Subsequent Mortgage Loans sold by GMACM, the related Mortgage File contains or will contain, in accordance with the definition of "Mortgage File" in Appendix A to the Indenture, each of the documents and instruments specified to be included therein;

- As of the Cut-Off Date or Subsequent Cut-Off Date, the Combined Loan-to-Value Ratio [("CLTV")] for each Mortgage Loan was not in excess of 100.00%;

- GMACM used no selection procedures that identified the Mortgage Loans as being less desirable or valuable than other comparable mortgage loans originated or acquired by GMACM under the GMACM Home Equity Program.

137. Moreover, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—GMACM specifically covenants that it will "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement § 2.02(a).

(2) Representations, Warranties and Affirmative Covenants Regarding Access to Information and Servicing

138. The I&I Agreement also incorporates the representations and warranties that GMACM made in the Servicing Agreement in its capacity as Servicer. *See* I&I Agreement § 2.01(l). Under the I&I Agreement, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [Servicing Agreement]." I&I Agreement § 2.02(l). In the Servicing Agreement, GMACM covenanted, represented, and warranted that it would service the Mortgage Loans in the 2006-HE1 Transaction in a manner consistent with its own servicing guidelines. *See* Servicing Agreement § 3.01(a).

139. The I&I Agreement requires *inter alia* that GMACM furnish or cause to be furnished to FGIC "promptly upon receipt thereof, copies of all schedules, financial statements or other similar reports delivered to or by GMACM . . . [as well as] promptly on request such other data as [FGIC] may reasonably request." I&I Agreement § 2.02(c)(v),(A),(B).

140. The I&I Agreement further affords FGIC the express right "to conduct an ongoing review of GMACM's practices as Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices." I&I Agreement § 2.02(p). FGIC also has the express right to "inspect the books and records of GMACM . . . [and to] discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and with GMACM's consent, which consent shall not be unreasonably withheld or delayed, to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants." I&I Agreement § 2.02(e)(i)-(iii).

F. GMACM's Breaches of Its Representations, Warranties and Affirmative Covenants

141. As discussed above, FGIC relied on material representations and warranties made by GMACM regarding the manner in which the Mortgage Loans were originated, selected, and

evaluated, the characteristics of those loans, and the accuracy and completeness of information GMACM supplied to FGIC. Based on those representations and warranties, FGIC agreed to issue the Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed below, the risk that FGIC assumed when it issued the Policy was many times greater than the risk disclosed by GMACM's representations and warranties. GMACM breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

142. The 2006-HE1 Transaction has performed poorly, and delinquencies and defaults for Mortgage Loans in the 2006-HE1 Transaction have been substantial. As of October 2011, a total of 4,763 mortgage loans, representing nearly 15% of the balance of the entire Loan Pool, had been liquidated or were delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policy, which covers, *inter alia*, shortfalls in amounts paid to noteholders arising from liquidated Mortgage Loans, GMACM assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with GMACM's own representations and warranties.

143. The poor performance of the Mortgage Loans has reduced the cash flow to the 2006-HE1 Trust, which has caused, and will continue to cause, substantial claims to be presented to FGIC under the Policy to cover these shortfalls. As of March 2012, approximately $98 million in claims had been presented to FGIC in connection with the 2006-HE1 Transaction. FGIC expects tens of millions of dollars more in claims to be presented to it under the 2006-HE1 Transaction in the future.

144. As an increasingly high percentage of the 2006-HE1 Mortgage Loans enter delinquency and default, FGIC has uncovered a wealth of material breaches of GMACM's

representations and warranties regarding the characteristics of the loans and the standards to which they were underwritten.

(1) Breaches Identified Through Initial Review

145. When FGIC became concerned about the high delinquencies and default rates in the 2006-HE1 Transaction, FGIC requested that GMACM provide it with certain Mortgage Loan files underlying the 2006-HE1 Transaction.

146. FGIC selected for review 121 non-performing (*i.e.*, non-current or charged-off) loans that had resulted in a loss to the 2006-HE1 Trust. To perform this review, FGIC hired an independent outside consultant with particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

147. That review revealed that GMACM had breached one or more material representations and warranties on 103 of the 121 loans, or approximately 85% of the loans reviewed.

148. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 8253418290: due to an undisclosed second mortgage, the loan closed with a CLTV of 148.77%. In order for this mortgage loan to have been eligible for inclusion in the 2006-HE1 pool, the relevant guidelines for the particular type of loan underwritten permit a maximum CLTV ratio of 100%.

- Loan Number 8255068044: due to an income misrepresentation, the loan closed with a DTI of 106.49%. In order for this mortgage loan to have been eligible for inclusion in the 2006-HE1 pool, the relevant guidelines for the particular type of loan underwritten permit a maximum DTI ratio of 50%.

- Loan Number 8259971235: the borrower had a payment history evidencing multiple delinquencies on a prior loan within the prior year and the loan closed with a DTI of 58.83%. In order for this mortgage loan to have been eligible for inclusion in the 2006-HE1 pool, the relevant guidelines for the particular type of loan underwritten require that the borrower have made no late payments on any prior loans within the

twelve month period preceding the date of the mortgage loan. Further, the relevant guidelines permit a maximum DTI ratio of 50%.

- Loan Number 8601459619: the borrower never made a single payment on the loan and it was therefore delinquent at the time it was transferred to the 2006-HE1 Trust. GMACM represented and warranted to FGIC that no mortgage loan was 30 days or more delinquent in payment of principle or interest at the time of payment.

- Loan Number 8655697712: the loan closed with a DTI of 69.30% and a CLTV of 88.84%. In order for this mortgage loan to have been eligible for inclusion in the 2006-HE1 pool, the relevant guidelines for the particular type of loan underwritten permit a maximum DTI of 45% and a maximum CLTV of 85%.

149. These examples of underwriting violations—but a small smattering of the extensive defects among the Mortgage Loans—evidence significant breaches of the MLPA, under which GMACM represented and warranted that (i) the information set forth in the Mortgage Loan Schedule is true and correct in all material respects; (ii) no Mortgage Loan was 30 days or more delinquent as of March 1, 2006; (iii) each Mortgage File contains all required documents and instruments; (iv) the CLTV of each Mortgage Loan did not exceed 100%; and (v) GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program). *See* MLPA § 3.1. It is reasonable to conclude—based on what is now known by FGIC and as a result of what is being wrongly withheld from FGIC—that a substantial majority of the 27,400 initial and pre-funded Mortgage Loans (amounting to over $1.2 billion) held by the 2006-HE1 Trust, and the approximately 13,300 Subsequent Mortgage Loans (amounting to over $600 million), evidence similar breaches of GMACM's representations and warranties.

150. Following the discovery of these high defect rates and pursuant to the I&I Agreement and the MLPA, FGIC demanded that GMACM repurchase the non-compliant Mortgage Loans discovered during its repurchase review. GMACM has expressly refused to

repurchase a substantial number of non-conforming Mortgage Loans. This failure constitutes a material breach of the I&I Agreement and Operative Documents incorporated therein.

151. Moreover, on information and belief, GMACM is and has been aware that many of the Mortgage Loans, whether acquired at the closing or thereafter, were nonconforming and, thus, in breach of its own representations and warranties. Despite this knowledge, GMACM has failed to repurchase the nonconforming loans with conforming loans, as is required under the Operative Documents.

(2) Breaches Identified Through Additional Review

152. In 2010, as the 2006-HE1 Transaction continued to perform poorly, FGIC again retained a professional mortgage loan review team to identify, review, and evaluate a statistically significant sample of mortgage loans in the 2006-HE1 Transaction.

153. FGIC's independent loan consultant reviewed the 257 loan files FGIC did receive from GMACM. That review revealed that GMACM had breached one or more material representations with respect to 245, or an astounding 95%, of these loans.

154. Based on the information gathered from this random sample review, FGIC estimates a Transaction-wide defect rate as high as 88%.

(3) GMACM's Pervasive and Material Breaches of Its Representations and Warranties and Affirmative Covenants

155. As indicated above, FGIC ultimately obtained access to 378 Mortgage Loan files (the 121 files FGIC initially reviewed, as well as the 257 files it belatedly received from GMACM) which FGIC's independent consultant reviewed to evaluate and re-underwrite the Mortgage Loans. These reviews revealed that GMACM breached one or more material representations with respect to 348—approximately 92%—of the Mortgage Loans reviewed.

156. Moreover, despite its express obligations under the MLPA and the I&I Agreement, GMACM continues to refuse to repurchase or cure over 300 of the 348 non-compliant and defective loans that FGIC has asked GMACM to repurchase.

157. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicate the clear breach of GMACM's contractual representations, warranties and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, GMACM has breached representation and warranties stating, for the 2006-HE1 Transaction, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (*i.e.* the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of GMACM in the Operative Documents (including each representation and warranty in the MLPA) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- no Mortgage Loan was 30 days or more delinquent as of March 1, 2006 (or the date the loan was transferred to the 2006-HE1 Trust);
- each Mortgage File contains all required documents and instruments;
- the CLTV of each Mortgage Loan did not exceed 100%; and
- GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program).

158. Moreover, the true scope of the material underwriting failures is unknown given GMACM's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of GMACM's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

(4) GMACM's Denial of Loan File Requests

159. As the 2006-HE1 Transaction continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blashko, a GMACM/ResCap employee GMACM via e-mail demanding that GMACM provide additional Mortgage Loan files to FGIC, including origination files, servicing notes, and custodian files, for a random sample of 431 2006-HE1 loans. Having received no response from GMACM to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011, regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, the request required authorization from officers at Ally Financial, and GMACM/ResCap's response was directed by officers at Ally Financial.

160. On February 14, 2011, and again on April 26, 2011, FGIC sent further follow-up letters requesting loan files.

161. In finally responding to FGIC's request for information, GMACM refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans"). Instead, it only provided FGIC with a small sampling (257 of 431) of the requested loan files, consisting largely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

162. Pursuant to the Servicing Agreement and the I&I Agreement, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(p) of the I&I Agreement provides that "FGIC shall have the right, so long as any of the 2006-HE1 Notes remains outstanding, to conduct an ongoing review of GMACM's practices as Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I

Agreement as to the nature of the Mortgage Loans files that are subject to review. Further, Section 2.02(c)(v) of the I&I Agreement states that "[p]romptly upon request," GMACM must provide to FGIC "such other data as [FGIC] may reasonably request relating to the Mortgage Loans . . . ."

163. On April 26, 2011, having still received none of the remaining performing 2006-HE1 Mortgage Loan files it requested, FGIC sent a further letter requesting the remaining loan files. To date, GMACM has not responded.

164. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreement, GMACM has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(5) GMACM's Denial of Servicing Notes

165. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the I&I Agreement, that GMACM furnish or cause to furnish the servicing notes for the Mortgage Loans.

166. GMACM, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(6) GMACM's Denial of FGIC's Access to Books and Records, Servicing Officer, and GMACM's Independent Accountants

167. On November 21, 2011, in accordance with its express rights under Sections 2.02(e)(i),(ii), (iii) of the I&I Agreement, FGIC requested to (i) inspect the books and records of GMACM; (ii) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

168. To date, GMACM has failed to respond to this request, in violation of the I&I Agreement.

G. Ally Bank's Breaches of the Custodial Agreement

169. Under the Custodial Agreement, to which FGIC is an express third party beneficiary, *see* Custodial Agreement § 5.6, and through which Ally Bank received substantial fees, Ally Bank undertook several obligations to FGIC concerning the manner in which Ally Bank would ensure that the Mortgage Loans contained complete and accurate information and that GMACM was in compliance with its representations and warranties regarding the origination, selection, and characteristics of those loans.

170. Ally Bank agreed that it would "hold the Mortgage Notes and any Loan Agreement relating to any Subsequent Mortgage Loan," and that it would review the Mortgage Notes and deliver to FGIC a certification of "the completeness of the receipt of the Mortgage Notes." Custodial Agreement §§ 2.1, 2.2.

171. Ally Bank further agreed to notify FGIC of breaches of the MLPA by GMACM, by providing that: "Upon discovery by the Custodian of a breach of any representation or warranty made by [GMACM] in the Purchase Agreement . . .with respect to a Mortgage Loan . . . the Custodian shall give prompt written notice to [FGIC]." Custodial Agreement § 2.3.

172. An initial review of a small percentage of defective Mortgage Loans has revealed that in many instances the Mortgage Note was not included in the loan file. The lack of a Mortgage Note within a particular file constitutes a breach of the representations and warranties given by GMACM in the MLPA. Ally Bank should have been aware of the fact that Mortgage Notes were missing from certain Mortgage Loan files, and that this was a breach of the MLPA representations and warranties. Consequently, it should have notified FGIC pursuant to its own obligations under the Custodial Agreement. *See* Custodial Agreement §§ 2.1-2.3. Ally Bank

has, however, failed to provide FGIC with any notices regarding defects in any Mortgage Loan file, and has further provided inaccurate and/or incomplete certifications regarding the Mortgage Loans, thereby breaching the Custodial Agreement to which FGIC is an express third party beneficiary.

173. Moreover, Ally Bank had an obligation to notify FGIC of any breach by GMACM of the MLPA representations and warranties that it discovered, not just those pertaining to the Mortgage Note. Since Ally Bank originated nearly 60% of the Mortgage Loans in the 2006-HE1 Transaction—which have suffered astounding defect rates—it must have been keenly aware of the breadth and scope of the underwriting failures with respect to those loans. Ally Bank, thus, must have known that GMACM was in breach of the representations and warranties in the MLPA, and its failure to so notify FGIC was a further breach of the Custodial Agreement.

H. GMACM's Fraud

174. The material breaches of GMACM's representations and warranties, including the extensive underwriting failures by GMACM, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants GMACM made to FGIC to induce its participation in the Transaction. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that GMACM breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the Policy, it (GMACM) would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because GMACM refuses to provide all of the

requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

175. All of the Mortgage Loans underlying the 2006-HE1 Transaction were originated or acquired by GMACM. As such, GMACM had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with the applicable GMACM underwriting guidelines and if the loans breached other representations and warranties made by GMACM.

176. To induce FGIC to enter into the 2006-HE1 Transaction, GMACM provided FGIC with a loan tape, which contained false and misleading information regarding, among other things, the CLTV ratios, DTI ratios, occupancy status and FICO scores of the borrowers.

177. In addition, GMACM made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2006-HE1 Trust. GMACM was well aware that FGIC would not agree to insure the 2006-HE1 Notes unless GMACM obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, GMACM provided Moody's and S&P with the same false information regarding the credit quality of the underlying Mortgage Loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2006-HE1 Notes that met FGIC's minimum requirements—Baa2 and BBB, respectively. In this way, GMACM made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that GMACM would pass on to FGIC, and second, by causing shadow ratings of the 2006-HE1 Notes to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

178. GMACM was well aware that FGIC would rely on the shadow ratings—prepared with information supplied by GMACM—as the I&I Agreement specifically contemplated as a condition to issuance of the Policy that FGIC "shall have received confirmation that the Notes insured by the Policy are rated" by S&P and Moody's at a specified minimum level "without regard to the Policy." I&I Agreement § 3.01(k).

179. As noted, the issuance of the Policy enabled the 2006-HE1 Notes to receive triple-A ratings from the rating agencies. Moreover, the receipt of a triple-A rating for the 2006-HE1 Notes, which depended on the issuance of the Policy, which in turn depended on the shadow ratings formulated using (inaccurate) information supplied by GMACM, was a critical component of the Transaction. As GMACM expressly noted in the Prospectus Supplements: "It is a condition to the issuance of the notes that they be rated 'Aaa' by Moody's . . . and 'AAA' by Standard & Poor's[.]" Prospectus Supplement at S-108.

180. Had the information provided to the ratings agencies by GMACM been accurate and truthful, Moody's and S&P would almost certainly have assigned a very different (and lower) shadow rating to the 2006-HE1 Transaction, and FGIC in turn would not have issued the Policy on the agreed terms, or would have refused to issue the Policy altogether.

181. GMACM also made material misrepresentations to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the guidelines under and standards to which the Mortgage Loans were underwritten.

182. For example, in the Prospectus Supplement (and in the I&I Agreement by incorporation) GMACM assured FGIC that the Mortgage Loans "were originated generally in accordance with the underwriting standards of GMAC Mortgage Corporation." Prospectus

Supplement at S-33, S-36. GMACM provided FGIC with GMACM's Underwriting Guidelines themselves, which contained extensive underwriting standards and requirements.

183. In fact, as confirmed by the overwhelming defect rates in the Loan Pool described above, all of which are due to Mortgage Loans that are inconsistent with GMACM's own underwriting guidelines, GMACM was well aware at the closing of the 2006-HE1 Transaction that those representations were false. In other words, at the time of the closing of the 2006-HE1 Transaction, GMACM either (1) knew or should have known that its representations were materially false because GMACM had not, among other things, determined if the Mortgage Loans were originated "generally in accordance" with its own underwriting guidelines, or (2) had reviewed whether the Mortgage Loans were originated "generally in accordance" with its underwriting guidelines, had determined that they were not, but nonetheless materially misrepresented to FGIC that the Mortgage Loans were originated "generally in accordance" with those guidelines.

184. Moreover, GMACM represented to FGIC that, in the case of each loan within the Loan Pool, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information. In fact, GMACM was not verifying the ability of borrowers to repay their loans in compliance with its own underwriting guidelines accurately or at all. As a result, GMACM misrepresented facts that were uniquely within its knowledge.

185. Moreover, the MLPA (and the I&I Agreement by incorporation) contained other false and misleading representations about the Mortgage Loans. In particular, GMACM misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule is true and correct in all material respects; (ii) no Mortgage Loan was 30 days or more

delinquent as of March 1, 2006; (iii) each Mortgage File contains all required documents and instruments; (iv) the CLTV of each Mortgage Loan did not exceed 100%; and (v) GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program). The true information regarding these loans—as known by GMACM—simply could not substantiate GMACM's assurances. In short, no amount of GMACM promising that the loans met certain standards, despite knowing otherwise, actually made those promises true.

186. GMACM knew that its representations were materially false and that these false representations were essential to FGIC's decision to issue the Policy. GMACM intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and to issue the Policy.

187. GMACM knew when making the representations and warranties regarding the Mortgage Loans to FGIC prior to FGIC agreeing to issue the Policy that GMACM never intended to honor those representations and warranties, as is evidenced, *inter alia*, by the extraordinary breadth and depth of the problems FGIC has uncovered with respect to the underwriting and characteristics of those loans, and the poor performance of the 2006-HE1 Trust. In short, in order to induce FGIC to issue the Policy, GMACM represented to FGIC that, if FGIC issued the Policy, GMACM would comply with its contractual representations and warranties, despite knowing that it had not complied—and would not comply—with those very same obligations.

188. GMACM's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC, including the receipt of a subpoena served in connection with GMACM's

suspected fraudulent origination and underwriting practices, as well as to a multitude of suits and the potential for more litigation to come.

189. Consistent with this pattern of behavior, GMACM defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

I. Ally Bank Aids and Abets GMACM's Fraud

190. Ally Bank provided substantial assistance to GMACM in fraudulently inducing FGIC to issue the Policy. In its role as Custodian—for which it received substantial fees—Ally Bank undertook to provide "prompt written notice" to FGIC of any breaches of the representations and warranties in the MLPA that it discovered. The MLPA, *see supra* at ¶ 94, contained several representations and warranties regarding the characteristics of the underlying Mortgage Loans as well as loans subsequently transferred to the 2006-HE1 Trust.

191. As an originator of nearly 60% of the Mortgage Loans, Ally Bank was well aware of the true nature of the Loan Pool. Moreover, as a result of being a key part of the 2006-HE1 Transaction and its affiliate status with GMACM, Ally Bank must have been aware of the representations and warranties GMACM routinely made to financial guaranty insurers—and did make here to FGIC—regarding the nature of GMACM's business practices and the quality of the mortgage loans that collateralized its many RMBS transactions, including the 2006-HE1 Transaction.

192. Against this backdrop, Ally Bank represented to FGIC that, if the 2006-HE1 Transaction was consummated, it (Ally Bank) would hold and monitor certain key information and documentation regarding the Mortgage Loans, and would provide notice to FGIC of any breaches by GMACM of which it was aware with respect to GMACM's representations and warranties to FGIC. As must have been known to Ally Bank, those representations and warranties made by GMACM directly concerned the Mortgage Loans, including the 60% of

them that Ally Bank itself had originated. Ally Bank made these representations to FGIC with full knowledge that GMACM had not complied—and would not comply—with its relevant representations and warranties, and, accordingly, that they were false. By representing to FGIC that it would (a) hold and certify the accuracy of certain key information and documentation regarding the Mortgage Loans, the majority of which it had originated itself, and (b) inform FGIC of any failure by GMACM to comply with its obligations, Ally Bank materially aided GMACM's fraudulent inducement of FGIC to issue the Policy. The issuance of the Policy, which made the 2006-HE1 Transaction possible, inured to the significant financial benefit of Ally Bank, given that it collected substantial fees as Custodian and also perpetuated the market for its loan origination and sales business.

J. Ally Financial Aids and Abets GMACM's Fraud

193. Ally Financial provided substantial assistance to GMACM in fraudulently inducing FGIC to issue the Policy. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties GMACM made regarding the nature of GMACM's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

K. The Managed Amortization Event

194. As discussed below, under the plain language of the 2006-HE1 Transaction documents, GMACM failed to properly give effect to the existence of a "Managed Amortization Event." Accordingly, GMACM improperly added 12,712 new loans, having an aggregate principal amount of approximately $580 million, to the 2006-HE1 Trust through subsequent transfers.

(1) The Operative Documents Control the Occurrence of a Managed Amortization Event

195. Under the Operative Documents, GMACM, as Servicer of the 2006-HE1 Trust, is required to establish a Custodial Account in which it must deposit any payments made by borrowers on the Mortgage Loans (*i.e.*, the principal and interest payments made by mortgagors). *See* Servicing Agreement § 3.02(b).

196. Additionally, under the Operative Documents, the Indenture Trustee is required to establish a segregated trust account known as the Funding Account. *See* Servicing Agreement § 3.16(a). As Servicer of the 2006-HE1 Trust, GMACM is required, "on each Payment Date during the Revolving Period, . . . to withdraw from the Custodial Account and deposit into the Funding Account the aggregate amount of Principal Collections remaining after the purchase of all Additional Balances or Subsequent Mortgage Loans on or prior to such Payment Date." Servicing Agreement § 3.16(a).

197. A revolving period, in the context of a securitization, is generally the time during which cash available to the trust may properly be reinvested in new collateral for the pool rather than being used to repay the securities. Under the Operative Documents for the 2006-HE1 Transaction, the Revolving Period was defined as: "the period beginning on the Closing Date and ending on the earliest of (i) the Payment Date occurring in September 2007, (ii) the occurrence of a Managed Amortization Event or (iii) the occurrence of a Rapid Amortization Event." Indenture, Appendix A. As further described below, a "Managed Amortization Event" was defined as a period beginning on the first date when the balance of the particular account from which cash available to the trust may properly be reinvested in new loans for the pool, for any reason, exceeds a specified amount. *See id.*

198. In the 2006-HE1 Transaction, during the Revolving Period, GMACM could use the funds in the Funding Account, subject to certain conditions, to purchase:

> Subsequent Mortgage Loans that are HELOCs, if any, in an amount equal to (1) the aggregate Principal Balance of all such Subsequent Mortgage Loans purchased from such Seller during the related Collection Period or (2) if the Servicer has applied amounts on deposit in the Custodial Account representing Principal Collections for such Collection Period toward the purchase of Subsequent Mortgage Loans that are HELOCs, the excess if any, of the aggregate Principal Balance of all such Subsequent Mortgage Loans purchased from such Seller over such Principal Collections.

Servicing Agreement § 3.16(c)(i)(B).

199. In consideration for the payment of funds from the Funding Account, the Operative Documents require that the seller from whom the new loans are purchased transfer the new loans into the 2006-HE1 Trust. *See* MLPA § 2.2(a). The MLPA also requires GMACM to deliver to FGIC, within five days after the transfer, a copy of the Mortgage Loan Schedule reflecting the Subsequent Mortgage Loans in electronic format. *See* MLPA § 2.2(c). Further, if a Subsequent Mortgage Loan is outside certain criteria, GMACM is required to seek and obtain FGIC's agreement to the transfer of the mortgage loan to the 2006-HE1 Trust as a Subsequent Mortgage Loan, subject to certain conditions, including that GMACM must increase the over-collateralization amount for 2006-HE1 Trust in order to reduce FGIC's potential exposure. *See* MLPA § 2.2(d).

200. Significantly, GMACM may transfer Subsequent Mortgage Loans only if "the Revolving Period shall not have terminated." MLPA § 2.2(b)(v). The Revolving Period ends, *inter alia*, upon "the occurrence of a Managed Amortization Event." Indenture, Appendix A.

201. A Managed Amortization Event, as defined in the current version of the Indenture, is "deemed to occur if . . . for any three month consecutive period, the average of the daily

balances on deposit in the Funding Account for such three consecutive months is greater than $10,000,000." Indenture, Appendix A.

(2) The Initial Managed Amortization Event Definition

202. The currently operative version of the Managed Amortization Event definition was included in the Indenture in or around May 2006—approximately six weeks after the initial closing date of the 2006-HE1 Transaction.

203. At the closing of the 2006-HE1 Transaction on March 30, 2006, the Prospectus Supplement issued by GMACM in conjunction with the offering of the 2006-HE1 Notes and dated March 29, 2006, defined a Managed Amortization Event as "the event deemed to occur on any date on which the amount on deposit in the Funding Account equals or exceeds $10,000,000." Prospectus Supplement at S-64. As relevant here, then, the Operative Documents strictly limited the transfer of Subsequent Mortgage Loans to the 2006-HE1 Trust by creating an iron-clad requirement: that the Revolving Period shall not have terminated due to a Managed Amortization Event having been triggered by the Funding Account having a balance of greater than $10,000,000.

204. In April 2006, the Funding Account held an ending balance of nearly $15,000,000. As such, under the then-operative definition, a Managed Amortization Event would have been triggered almost as soon as the 2006-HE1 Transaction closed. FGIC was not aware, and GMACM did not provide notice, of the fact that the Managed Amortization Event had been triggered. Accordingly, GMACM has breached the I&I Agreement sections 2.02(a).

(3) GMACM Changes the Managed Amortization Event Definition After a Managed Amortization Event Has Already Occurred

205. Sometime in or around late April to early May 2006, GMACM approached FGIC in an effort to change the definition of Managed Amortization Event under the Operative

Documents. Ultimately, FGIC agreed to GMACM's proposed change, as reflected in Appendix A to the Indenture, such that the Managed Amortization Event was deemed triggered "if, beginning in June 2006, for any three month consecutive period, the average of the daily balances on deposit in the Funding Account for such three consecutive months is greater than $10,000,000." Although GMACM never executed a formal amendment to the Operative Documents, and did not obtain the consent of either the relevant credit rating agencies or the Indenture Trustee, the altered Indenture, together with its Appendix A containing the governing definitions, was filed with the SEC on or about May 17, 2006, and is dated "as of March 30, 2006 [i.e., the closing date]."

206. Assuming that the revised definition was operative on or about May 17, 2006, the Operative Documents still strictly limit the transfer of Subsequent Mortgage Loans to the 2006-HE1 Trust, although the altered—but still inflexible—requirement is that the Revolving Period shall not have terminated due to a Managed Amortization Event having been triggered by the existence of a three-consecutive-month period in which the Funding Account held an average daily balance of greater than $10,000,000.

(4) A Managed Amortization Event Occurs Under GMACM's Modified Definition

207. In the three-consecutive-month period from May 2006 to July 2006, the Funding Account held an average daily balance of greater than $10,000,000, such that a Managed Amortization Event was deemed to have occurred as of July 2006.

208. Accordingly, by operation of clear and express provisions in the Operative Documents, the Revolving Period automatically (and without the need for any action by any party) ended at the time that such Managed Amortization Event occurred. Once the Revolving Period ended, GMACM was prohibited from transferring any new loans to the 2006-HE1 Trust.

209. Notwithstanding this fact, GMACM failed to calculate and give effect to the fact that a Managed Amortization Event had occurred in July 2006, ending the Revolving Period, and continued to improperly transfer Subsequent Mortgage Loans into the 2006-HE1 Trust. *See* MLPA § 2.2(b)(v); Indenture, Appendix A.

210. Notwithstanding the termination of the Revolving Period, GMACM improperly sold and added to the 2006-HE1 Trust, through fifteen (15) Subsequent Transfers, an aggregate principal amount of $578,445,325.61 in improper Subsequent Mortgage Loans.

211. The below table sets forth the amount of principal balance in each of the fifteen (15) improper Subsequent Transfers that GMACM effected:

Month	Subsequent Transfer Amount ($)
Jul-06	32,099,929.96
Aug-06	37,199,985.80
Sep-06	38,299,997.82
Oct-06	42,999,999.71
Nov-06	37,499,997.95
Dec-06	27,101,022.31
Jan-07	53,937,029.04
Mar-07	67,749,920.19
Apr-07	44,924,807.40
May-07	36,359,900.58
Jun-07	34,560,875.41
Jul-07	36,821,863.84
Aug-07	33,499,999.50
Sep-07	29,099,337.99
Oct-07	26,290,658.11
Total	**578,445,325.61**

212. Further, the Subsequent Mortgage Loans transferred into the 2006-HE1 Trust have performed much worse than the initial and pre-funded Mortgage Loans. As of October 1, 2011, approximately 20% of the balance of the over $578 million in improperly transferred Subsequent Mortgage Loans has been charged-off, defaulted, or was severely delinquent, as

compared to approximately 12.7% of the balance of the earlier Mortgage Loans as of the same time period.

213. With respect to each Subsequent Transfer for which FGIC received the required Subsequent Transfer Agreement, GMACM restated therein all applicable representations and warranties regarding the mortgage loans and that it was complying with the requirements of the Operative Documents, including that its actions were not in contravention of any of those agreements. GMACM further certified that it had satisfied each condition precedent to effecting a Subsequent Transfer even though this was untrue as the occurrence of a Managed Amortization Event in July 2006 had ended the Revolving Period and precluded any Subsequent Transfers.

214. In short, Subsequent Mortgage Loans were improperly transferred to the 2006-HE1 Trust despite the fact that a Managed Amortization Event had already triggered the termination of the Revolving Period. GMACM had no authority to execute such transfers. As such, under the express terms of the Operative Documents, the subsequently transferred loans were not properly transferred to the 2006-HE1 Trust in accordance with the terms of the 2006-HE1 Transaction, constituting yet another breach of the I&I Agreement. Moreover, the Subsequent Transfer Agreements, which were executed by GMACM and purported to permissibly transfer Subsequent Mortgage Loans to the 2006-HE1 Trust, were improper on their face due to the occurrence of the Managed Amortization Event prohibiting any subsequent transfers of Mortgage Loans. Consequently, GMACM committed multiple breaches of representations and warranties made in the MLPA stating that all Subsequent Transfer Agreements are valid and that their execution does not constitute a material breach of any agreements to which GMACM is a party. *See* MLPA § 3.1(a)(iv),(vii). Pursuant to the terms of the I&I Agreement, because GMACM has breached multiple representations and warranties

contained in section 3.1 of the MLPA, GMACM is obligated to repurchase all Subsequent Mortgage Loans improperly transferred to the 2006-HE1 Trust. *See* I&I Agreement § 2.01(l).

L. GMACM's Breach of Obligations as Servicer

215. GMACM, as Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for the 2006-HE1 Transaction, including, but not limited to, its obligations to follow proper servicing procedures.

216. GMACM took responsibility for the servicing of the Mortgage Loans and had certain related contractual obligations under the I&I Agreement and the Servicing Agreement with respect to the 2006-HE1 Transaction. Under the I&I Agreement, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [Servicing Agreement]." I&I Agreement § 2.02(l). Under the Servicing Agreement, GMACM is liable to FGIC for the servicing and administering of the Mortgage Loans, and in doing so is required to "follow such collection procedures as shall be normal and usual in its general mortgage servicing activities and consistent with the procedures the Servicer employs in servicing all other Mortgage Loans in the servicing portfolio with characteristics similar to those of the Mortgage Loans." Servicing Agreement §§ 3.02(a), 6.01.

217. During 2007, the servicing operations of GMACM were integrated into ResCap. Since the time of the integration, on information and belief, GMACM breached these obligations by, among other things, being deficient in its borrower contact, collections, and loss mitigation standards, and by failing to honor FGIC's contractual rights to information. In particular, an onsite review of the Ally Financial servicing arm's headquarters, including those of GMACM, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed *inter alia*: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing

call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when GMACM does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry GMACM, as servicer, also had an obligation to notify FGIC of any material breaches of representations and warranties, and to cause GMACM, as seller, to repurchase the affected Mortgage Loans.

218. On information and belief, GMACM has failed to remedy any of its deficient servicing practices.

219. In addition, GMACM disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a servicing protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

220. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. GMACM disclosed to FGIC that all of the mortgage loans in FGIC-insured, GMACM-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the 2006-HE1 Transaction, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second-lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive

servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, GMACM clearly knew that such Mortgage Loans, by their very nature, required particularized servicing before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by GMACM to ensure that the Mortgage Loans were serviced and administered in accordance with "procedures as shall be normal and usual in its general mortgage servicing activities" constitutes a breach of the Servicing Agreement and the I&I Agreement. *See* Servicing Agreement §§ 3.02(a), 3.04; I&I Agreement § 2.02(l).

221. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, GMACM has failed to provide such information in breach of Section 2.02(c)(v) of the I&I Agreement.

M. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

222. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns GMACM and RFC. Ally Financial—as the ultimate parent of ResCap, GMACM, Ally Bank, and RFC—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC.

223. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC. Ally Financial exercised its direction and control in connection with the 2006-HE1 Transaction. At times, Ally

Financial performed such direction and control by using ResCap as an instrument to effect its goals.

224. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries." *See In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO, FDIC-11-123b (April 13, 2011) (emphasis added).

225. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of GMACM Directly and Indirectly Through its Control of ResCap

226. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

227. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

228. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

229. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

230. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

231. On December 1, 2006, Ally Financial had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

232. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

233. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the proposed 2005 operating agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement") (emphasis added).

234. Moreover, on April 26, 2007, "ResCap Investor Relations" announced the release of Ally Financial's 2007 first quarter financial results to investors in an email bearing the ResCap logo. That announcement stated that Ally Financial's financial results were found on both Ally Financial's and ResCap's websites.

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[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the SEC on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

235. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RAMP, among other Ally Financial subsidiaries.

236. Similarly, as noted above, William F. Muir, Ally Financial's President, has also served as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

237. Ally Financial's domination and control of its subsidiaries, and in particular its use of ResCap to effectuate that control, is further evidenced by John Ruckdaschel, who, according to publicly available information, has served as in-house counsel at Ally Financial since October 2006. According to an e-mail sent from ResCap to FGIC, Ruckdaschel has served as "internal legal counsel for all [] securitizations" since at least May 2008. Although purportedly an Ally Financial employee, Ruckdaschel also sent and received e-mail using a ResCap e-mail address. Further, an employee of ResCap specifically instructed FGIC that all "official letters" regarding several Ally Financial subsidiaries—including GMACM, RAMP and others—should be sent not to the relevant (and supposedly independent) subsidiary, but rather to Ruckdaschel, Ally Financial's internal counsel. Additionally, Ruckdaschel received correspondence relating to the Operative Documents at issue in this Transaction.

238. As further evidence of Ally Financial's domination over ResCap, the 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

239. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand

behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

240. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

241. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citibank, which

provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

242. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

243. Additionally, Annual Reports prepared by Ally Financial further note its pursuit of strategic alternatives with ResCap, and highlight the extent to which Ally Financial manipulated its control over its subsidiaries to enhance its own financial health. According to Ally Financial: "On December 31, 2009, we announced that due to our ongoing strategic review of how to best deploy GMAC's current and future liquidity, we decided to pursue strategic alternatives with respect to ResCap and committed to a plan . . . related to management's intent to sell certain ResCap related assets and businesses. . . . In order to maximize value, we will consider a variety of options including one or more sales, spin-offs, or other potential transactions . . . [that we believe] should minimize the impact of any significant future losses related to ResCap's legacy mortgage business . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3-4 (Feb. 26, 2010).

244. There is also substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

245. Further, Ally Financial has established a "Mortgage Repurchase Reserve" to account for the potentially significant liabilities stemming from repurchase demands made on its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was $825 million as of the fourth quarter of 2011. *See* Ally Financial's 4Q 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of $44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

246. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable to mortgage loan repurchases as belonging to Ally Financial, when he stated: "Our mortgage repurchase reserve is [as it then stood] $829 million . . . . Our loss experience improved during the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011) (emphases added). On the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8 (emphasis added).

247. Additionally, as discussed above, Ally Financial recorded a $230 million charge in the fourth quarter of 2011, $212 million of which was recorded at its controlled subsidiary, ResCap. As a result of the penalties assessed against ResCap by government regulators, and the fact that ResCap failed to maintain sufficient tangible net worth to comply with the requirements of the terms of certain credit facilities, Ally Financial propped up its subsidiary ResCap with a

$197 million capital contribution in the form of intercompany debt forgiveness. *See* Ally Fin. Inc., Form 10-K, at 31-32 (Feb. 28, 2012).

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

248. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited March 27, 2012).

249. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured, including this Transaction. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

250. The origination and securitization of mortgage loans by ResCap and its subsidiaries have long been integral parts of Ally Financial's core business. In its 2006 Annual Report, Ally Financial (then reporting as GMAC LLC) stated that "[w]e are a leading real estate finance company focused primarily on the residential real estate market. Our business activities

include the origination, purchase, servicing, sale and securitization of residential mortgage loans." GMAC LLC, Annual Report (Form 10-K), at 3 (Mar. 13, 2007) (emphasis added). Ally Financial further stated that "we utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy." *Id.* at 5 (emphasis added).

251. Ally Financial continued to publicly report on its own business and that of its subsidiaries in later filings on an integrated basis: "We engage in the origination, purchase, servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products. Mortgage operations include the Residential Capital, LLC (ResCap) legal entity, [and] the mortgage operations of Ally Bank . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3 (Feb. 26, 2010). More recently, continuing to discuss its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United States and we provide collateralized lines of credit to other mortgage originators." Ally Fin. Inc., Annual Report (Form 10-K), at 4 (Feb. 28, 2012).

252. Moreover, as discussed above, Ally Financial—at least in the view of certain of ResCap's bondholders—is believed to have stripped assets from its subsidiary.

253. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed GMACM and RFC as part of its own business. For example, in its investor presentation from 2007, ResCap declares that GMACM and RFC "are owned and *operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally

Financial was not directly controlling GMACM and RFC, it was using ResCap as an instrument to do so.

254. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

255. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one GMACM has with respect to the 2006-HE1 Transaction as Servicer.

256. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in

ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

257. In another example, Larry Hipp, a member of ResCap's Risk Analyst/Investor Repurchase Department, communicated with FGIC regarding rescission requests using an Ally Financial email address, but in those very same emails, lists his ResCap contact information, including a ResCap email address. In addition, Ally Financial/ResCap used to send FGIC secure communications bearing a "GMAC ResCap" header, but those secure communications now have an Ally Financial header.

258. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

> Q: Could you please state your name for the record.
> A: My name is Jeffrey Stephan.
> Q: Okay. And who do you work for?
> A: GMAC, LLC [Ally Financial].
> Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
> A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
> Q: Okay.
> A: It's GMCA [sic] Mortgage Corporation.
> Q: Okay.
> A: I'm not sure how you would word that.
> Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
> A. Yes.
> Q. -- that formerly existed?
> A. Yes.
> Q. So these entities no longer currently exist?

A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

N. FGIC's Contractual Remedies Under The I&I Agreement

259. The I&I Agreement provides FGIC with broad remedies for GMACM's breaches of its representations and warranties. The breadth of these remedies provided further material inducement for FGIC to issue the Policy. Specifically, Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Indenture or the other Operative Documents, or existing at law or in equity.

260. Moreover, the I&I Agreement provides that, upon an "Event of Default" – which is defined to include when "[a]ny representation or warranty" by GMACM in the I&I Agreement or the Operative Documents is materially untrue or incomplete – FGIC can "take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts, if any, then due under [the I&I Agreement] or any other Operative Document or to enforce performance and observance of any obligation, agreement or covenant of [GMACM]." I&I Agreement §§ 5.01(a), 5.02(a).

261. In addition, GMACM agreed in Section 3.04(a) of the I&I Agreement:

> to pay, and to protect, indemnify and save harmless [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach

> by GMACM of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the Transaction contemplated by the Operative Documents . . . .

I&I Agreement § 3.04(a).

262. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, GMACM agreed to repurchase or substitute Mortgage Loans that did not conform to GMACM's representations and warranties, and to indemnify FGIC for claims and losses arising from GMACM's breach of any representation or warranty. *See* I&I Agreement §§ 3.03(b), 3.04(a).

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Declaratory Relief Regarding GMACM's Indemnification Obligations)

263. FGIC re-alleges and incorporates by reference paragraphs 1 through 262 of this Amended Complaint.

264. The I&I Agreement is a valid and binding agreement between the parties.

265. FGIC has performed its obligations under the I&I Agreement.

266. GMACM's representations and warranties were material to FGIC's decision to insure the 2006-HE1 Notes and to issue the 2006-HE1 Policy.

267. GMACM's pervasive and material breaches of its representations and warranties, from the very inception of the Transaction and in the years since, constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

268. Pursuant to Section 3.04(a) of the I&I Agreement, GMACM must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the

transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by GMACM of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

269. As explained above, GMACM has breached numerous representations, warranties, and covenants in the 2006-HE1 Offering and Operative Documents. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

270. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

271. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM must jointly and severally indemnify and reimburse FGIC for all sums arising out of the 2006-HE1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2006-HE1 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2006-HE1 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

272. In addition, FGIC seeks a declaration that GMACM must indemnify FGIC for all sums arising out of the 2006-HE1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2006-

HE1 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2006-HE1 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Fraudulent Inducement — I&I Agreement)

273. FGIC re-alleges and incorporates by reference paragraphs 1 through 272 of this Amended Complaint.

274. GMACM induced FGIC to enter into the I&I Agreement and to issue the Policy by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

275. As explained above, GMACM knowingly made materially false statements to FGIC, and/or omitted material facts from its statement to FGIC, with the intent to induce reliance by FGIC.

276. GMACM intended for FGIC to rely on GMACM's material false statements and/or omissions. FGIC had no reason to believe that GMACM's representations were false, and reasonably and justifiably relied on GMACM's material false statements and/or omissions regarding information uniquely in the possession of GMACM when it decided to enter into the I&I Agreement and to issue the Policy for the 2006-HE1 Notes.

277. As a result of GMACM's material false statements and material omissions from its statements, FGIC entered into the I&I Agreement, issued the Policy, and thereby agreed to

insure Notes backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that GMACM represented would collateralize the 2006-HE1 Transaction.

278. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

279. As a result of GMACM's material false statements and material omissions from its statements, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

280. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

281. Alternatively, GMACM is liable for such damages.

THIRD CAUSE OF ACTION

**(As Against Ally Financial and Ally Bank:
Aiding and Abetting Fraudulent Inducement — I&I Agreement)**

282. FGIC re-alleges and incorporates by reference paragraphs 1 through 281 of this Amended Complaint.

283. As explained above, Ally Financial provided substantial assistance to its subsidiary GMACM in fraudulently inducing FGIC to issue the Policy.

284. GMACM could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

285. Ally Financial knew that GMACM fraudulently induced FGIC to issue the Policy for the 2006-HE1 Transaction.

286. Ally Financial's statements materially aided GMACM's fraudulent inducement.

287. As a result of Ally Financial's aiding and abetting GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

288. Moreover, as explained above, Ally Bank provided substantial assistance to its affiliate GMACM in fraudulently inducing FGIC to issue the Policy.

289. Ally Bank originated nearly 60% of the Mortgage Loans (amounting to over $500 million in loans), which form a substantial part of the collateral for the 2006-HE1 Transaction. Ally Bank was therefore aware of the characteristics of the Loan Pool. Ally Bank was also an affiliate of GMACM and served as Custodian of the 2006-HE1 Transaction, for which it received substantial fees. As such, Ally Bank was aware of the material misrepresentations GMACM had made to FGIC to fraudulently induce FGIC to issue the Policy. Ally Bank further represented to FGIC that it would undertake duties to monitor and certify the accuracy and completeness of the Mortgage Loan files, as well as inform FGIC of failures by GMACM to comply with its obligations under the Operative Documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would not comply—with its representations and warranties.

290. Ally Bank's representations to FGIC materially aided GMACM's fraudulent inducement of FGIC to issue the Policy.

291. As a result of Ally Bank's aiding and abetting of GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

292. Ally Bank and Ally Financial are separately liable for their respective damages as set forth in this cause of action.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract—Representations, Warranties, and Affirmative Covenants)

293. FGIC re-alleges and incorporates by reference paragraphs 1 through 292 of this Amended Complaint.

294. The I&I Agreement is a valid and binding agreement between the parties.

295. FGIC has performed its obligations under the I&I Agreement.

296. As explained above, GMACM has materially breached its representations and warranties under Section 2.01 of the I&I Agreement.

297. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

298. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

299. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

300. Alternatively, GMACM is liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Bank: Breach of Custodial Agreement)

301. FGIC re-alleges and incorporates by reference paragraphs 1 through 300 of this Amended Complaint.

302. The Custodial Agreement is a valid and binding agreement between the parties thereto.

303. FGIC is an express third party beneficiary of the Custodial Agreement.

304. As explained above, Ally Bank has materially breached its obligations under Sections 2.1, 2.2, and 2.3 of the Custodial Agreement.

305. Ally Financial, acting directly and/or indirectly through ResCap, directed Ally Bank's actions as set forth in this cause of action.

306. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Repurchase Obligation)

307. FGIC re-alleges and incorporates by reference paragraphs 1 through 306 of this Amended Complaint.

308. The I&I Agreement is a valid and binding agreement between the parties.

309. FGIC has performed its obligations under the I&I Agreement.

310. Pursuant to the terms of the I&I Agreement, and the provisions of the MLPA incorporated therein, FGIC has demanded that GMACM repurchase non-complying Mortgage Loans. GMACM has refused to repurchase numerous such Mortgage Loans.

311. GMACM has breached the I&I Agreement, and the provisions of the MLPA incorporated therein, by failing to repurchase those Mortgage Loans that violated GMACM's representations and warranties that FGIC has noticed to GMACM.

312. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

313. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

314. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

315. Alternatively, GMACM is liable for such damages.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Material Breach of the Operative Documents — Indemnification for Improper Subsequent Transfers or, Alternatively, Declaration of Repurchase Obligation)

316. FGIC re-alleges and incorporates by reference paragraphs 1 through 315 of this Amended Complaint.

317. The I&I Agreement is a valid and binding agreement between the parties.

318. FGIC has performed its obligations under the I&I Agreement.

319. GMACM has breached the I&I Agreement, and the provisions of the MLPA and the Operative Documents incorporated therein, by executing improper Subsequent Transfers to the 2006-HE1 Trust despite the occurrence of a Managed Amortization Event having triggered the termination of the Revolving Period.

320. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

321. FGIC has been damaged in an amount to be proven at trial as a result of the improper transfer of Mortgage Loans to the 2006-HE1 Trust.

322. FGIC is entitled to indemnification for any claim it has paid or which it may be required to pay arising from a Subsequent Mortgage Loan that was improperly transferred to the 2006-HE1 Trust after the occurrence of a Managed Amortization Event triggered the termination of the Revolving Period.

323. FGIC therefore seeks a declaration that GMACM must reimburse and indemnify FGIC for all sums arising out of the 2006-HE1 Transaction for which FGIC has or will become liable and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, as a result of the improper transfer of Subsequent Mortgage Loans to the 2006-HE1 Trust.

324. In the alternative, FGIC has been damaged in an amount to be proven at trial because it has paid or remains liable for certain claims arising from Subsequent Mortgage Loans that GMACM was obligated to repurchase as a result of their improper transfer to the 2006-HE1

Trust after the occurrence of a Managed Amortization Event (i) triggered the termination of the Revolving Period and (ii) invalidated all later Subsequent Transfer Agreements.

325. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

326. Alternatively, GMACM is liable for such damages.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract – Declaratory Relief Regarding Access to Information)

327. FGIC re-alleges and incorporates by reference paragraphs 1 through 326 of this Amended Complaint.

328. The I&I Agreement is a valid and binding agreement between the parties.

329. FGIC has performed its obligations under the I&I Agreement.

330. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, GMACM agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the 2006-HE1 Transaction. FGIC further has the right to conduct reviews of GMACM's practices as Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(p) of the I&I Agreement.

331. As discussed above, pursuant to the I&I Agreement, FGIC made numerous reasonable written requests that GMACM furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by GMACM, and others, concerning the Mortgage Loans.

332. GMACM has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

333. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

334. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, GMACM agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of GMACM; (ii) discuss the affairs, finances and accounts of GMACM with GMACM's Chief Financial Officer; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

335. On November 21, 2011, FGIC made a reasonable written request that GMACM permit FGIC or its authorized agent to conduct an inspection of the books and records of GMACM, as well as permit FGIC to (i) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and (ii) with GMACM's consent, which consent shall not be unreasonably withheld or delayed, discuss the affairs, finances, and accounts of GMACM with GMACM's independent accountants.

336. GMACM has failed to make available such persons or to produce such information.

337. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

338. Pursuant to Section 2.02(c)(v) of the I&I Agreement, GMACM agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [Servicing Agreement]."

339. FGIC made a reasonable request for servicing notes on December 9, 2010.

340. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

341. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

342. Accordingly, FGIC seeks a declaration that GMACM has failed to comply with Sections 2.02(c)(v), 2.02(e)(i)-(iii), and 2.02(p) of the I&I Agreement, and an order requiring GMACM to promptly remedy those breaches and therefore comply with FGIC's requests and notices to GMACM pursuant to the relevant provisions, as detailed above.

NINTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Servicer Obligations)

343. FGIC re-alleges and incorporates by reference paragraphs 1 through 342 of this Complaint.

344. The I&I Agreement is a valid and binding agreement between the parties.

345. FGIC has performed its obligations under the I&I Agreement.

346. Moreover, as explained above, GMACM has breached its affirmative covenant under the I&I Agreement to service all Mortgage Loans in all material respects in compliance with the Servicing Agreement.

347. GMACM's breaches of the I&I Agreement has caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

348. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

349. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

350. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

351. Alternatively, GMACM is liable for such damages.

TENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Declaratory Relief)

352. FGIC re-alleges and incorporates by reference paragraphs 1 through 351 of this Complaint.

353. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this complaint.

354. For the reasons set forth in paragraphs 222 through 258, among others, Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other.

355. FGIC has been damaged as a result of the actions Ally Financial, ResCap and GMACM.

356. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other, and therefore are jointly and severally liable for each other's liabilities.

ELEVENTH CAUSE OF ACTION

(As Against GMACM: Attorneys' Fees and Costs)

357. FGIC re-alleges and incorporates by reference paragraphs 1 through 356 of this Amended Complaint.

358. The I&I Agreement is a valid and binding agreement between the parties.

359. FGIC has performed its obligations under the I&I Agreement.

360. Pursuant to Section 3.03(c) of the I&I Agreement, GMACM agreed to reimburse FGIC for any and all costs or expenses "including reasonable attorneys' . . . fees and expenses" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, GMACM agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2006-HE1 Transaction.

361. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of GMACM's failure to provide Mortgage Loan files, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant GMAC Mortgage Company, LLC, with respect to (1), (2), (4), (5), (6), and (8) through (17) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4), (5), (6), (8) through (14), (16) and (17), below, and in its favor and against Ally Bank, with respect to (3), (7), (16), and (17) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (6), (8) through (14), (16) and (17) below and the following relief:

(1) A declaration that, pursuant to GMACM's obligations under the I&I Agreement, GMACM must solely and/or Ally Financial, ResCap, and GMACM must jointly and severally reimburse and indemnify FGIC for all

sums arising out of the 2006-HE1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement: (i) for all sums it has paid to date under the Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and (iv) an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal, rescissory, equitable and punitive damages, to be proven at trial, for GMACM's fraudulent inducement of FGIC to enter into the 2006-HE1 Transaction and to issue the Policy;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's and Ally Bank's aiding and abetting of GMACM's fraudulent inducement of FGIC to enter into the 2006-HE1 Transaction and to issue the Policy;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for GMACM's material breaches of the 2006-HE1 Transaction;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for GMACM's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that GMACM must repurchase all Mortgage Loans that are in breach of GMACM's representations and warranties in the 2006-HE1 Transaction, and an order giving effect to that declaration;

(7) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for Ally Bank's material breaches of its obligations under the Custodial Agreement;

(8) Further or alternatively, a declaration that GMACM reimburse and indemnify FGIC for all sums arising out of the 2006-HE1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts due or claims that may be presented for payment by FGIC under the Policy as and when such sums

fall due or such claims are presented, as a result of Subsequent Mortgage Loans that were improperly transferred to the 2006-HE1 Trust, and an order giving effect to that declaration;

(9) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for GMACM's improper transfer of Subsequent Mortgage Loans to the 2006-HE1 Trust;

(10) Further or alternatively, a declaration that GMACM must repurchase the Mortgage Loans that were improperly transferred to the 2006-HE1 Trust, and order giving effect to that declaration;

(11) Further or alternatively, a declaration that GMACM must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2006-HE1 Transaction, and an order giving effect to that declaration;

(12) Further or alternatively, a declaration that GMACM must allow FGIC to inspect the books and records of GMACM, to discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants, and an order giving effect to that declaration;

(13) Further or alternatively, a declaration that GMACM must cause to be provided servicing notes for the 2006-HE1 Transaction when requested by FGIC;

(14) Further or alternatively, a declaration that Ally Financial, ResCap, and GMACM are alter egos of each other;

(15) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(16) An award of prejudgment interest at the statutory rate; and

(17) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: March 30, 2012

JONES DAY

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Patrick J. Smith
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AFFIRMATION OF SERVICE

I, Michael O. Thayer, being duly sworn, deposes and says:

1. Deponent is not a party to the action, is over 18 years of age, and is employed by the law firm Jones Day, located at 222 East 41st Street, New York, New York 10017.

2. On the 30th day of March, 2012, I served, by overnight mail, a true and correct copy of the Amended Complaint upon the following:

Barry S. Levin
Orrick, Herrington & Sutcliffe LLP (San Francisco)
The Orrick Building
405 Howard Street
San Francisco, CA 94105

Daniel J. Dunne
Orrick, Herrington & Sutcliffe LLP (Seattle)
701 Fifth Avenue, Suite 5600
Seattle, WA 98104

Elyse D. Echtman
Orrick, Herrington & Sutcliffe LLP (NYC)
51 West 52nd Street
New York, NY 10019

Jeffrey A. Lipps
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215

Jennifer A.L. Battle
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215

Michael Nathaniel Beekhuizen
Carpenter Lipps & Leland LLP
280 North High Street
Suite 1300
Columbus, OH 43215

Richard A. Martin
Orrick, Herrington & Sutcliffe LLP (NYC)
51 West 52nd Street
New York, NY 10019

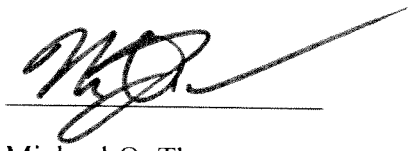
Michael Orth Ware
Mayer Brown LLP
1675 Broadway
New York, NY 10019

Richard A. Spehr
Mayer Brown LLP
1675 Broadway
New York, NY 10019

Jennifer Marie Rosa
Mayer Brown LLP(DC)
1999 "K" Street, N.W.
Washington, DC 20006

Reginald Raybern Goeke
Mayer Brown LLP(DC)
1999 "K" Street, N.W.
Washington, DC 20006

by delivering the same, enclosed in a properly addressed wrapper, into the custody of the overnight delivery service Federal Express, prior to the latest time designated by them for overnight delivery.



Michael O. Thayer

Exhibit 17

12 CIV 0338

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

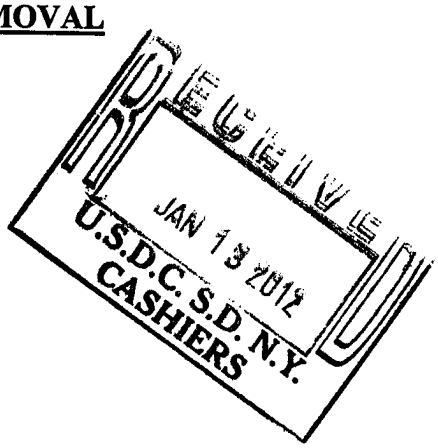
-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,

Defendants.

No. 11-cv-_____(___)

NOTICE OF REMOVAL



TO:
CLERK
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

CLERK
Supreme Court of the State of New York
County of New York
Courthouse
60 Centre Street
New York, New York 10007

Howard F. Sidman
Jones Day
222 East 41st Street
New York, New York 10017

Pursuant to 28 U.S.C. § 1441, Defendants Residential Capital, LLC ("Residential Capital") and Residential Funding Company, LLC ("Residential Funding") (collectively "Defendants") respectfully give notice of the removal this action, entitled *Financial Guaranty Insurance Company v. Ally Financial, Inc. F/K/A GMAC, LLC; Residential Capital, LLC F/K/A Residential Capital Corporation; Residential Funding Company, LLC F/K/A Residential Funding Corporation*, Index No. 653623/2011 (Supreme Court of the State of New York, County of New York), from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York based upon the following grounds:

1. Upon information and belief, this action was commenced on or about December 27, 2011, in the Supreme Court of the State of New York, County of New York. A copy of the Summons and Complaint was served on Defendant Residential Capital's appointed agent, Corporation Service Company, on December 29, 2011. A copy of the Summons and Complaint was served on Defendant Residential Funding's appointed agent, Corporation Service Company, on December 29, 2011.

2. This Notice of Removal is being filed within thirty (30) days of the date Defendants' appointed agents received service of the Summons and Complaint. This Notice of Removal includes a short and plain statement of grounds for removal together with a copy of all process, pleadings, and orders served upon Defendants in this action attached hereto as Exhibit A.

3. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) and this action may be removed to this Court by Defendants pursuant to 28 U.S.C. §

1441(a), in that it is a suit constituting a dispute between citizens of different states and the matter in controversy exceeds the sum of the value of $75,000, exclusive of interest and costs.

a. This suit constitutes a dispute between citizens of different states. As alleged in the Complaint, Plaintiff Financial Guaranty Insurance Company ("Plaintiff") is, and has been at all relevant times, a citizen of New York. Complaint ¶18. As of the date Plaintiff filed suit and currently, Defendant Residential Funding is a Delaware limited liability company. Complaint ¶20. The citizenship of a limited liability company is determined by the citizenship of its members. *Handelsman v. Bedford Vill. Assocs. Ltd. P'ship*, 213 F.3d 48, 51-52 (2nd Cir. 2000). Where the members are themselves limited liability companies, a court looks to the citizenship of their members, and continues this process until it reaches the ultimate incorporated or individual members. *See e.g., Quantlab Financial, LLC v. Tower Research Capital LLC*, 715 F.Supp.2d 542, 546-47 (S.D.N.Y. 2010); *Lindley Contours, LLC v. AABB Fitness Holdings, Inc.*, 414 Fed. Appx 62, 64 (9th Cir. 2011); *Onepoint Solutions, LLC, v. Borchert*, 486 F.3d 432, 347 n.4 (7th Cir. 2007). Residential Funding's sole member at all relevant times has been GMAC-RFC Holding Company, LLC, a Delaware limited liability company. GMAC-RFC Holding Company, LLC's sole member at all relevant times has been Residential Capital, LLC, a Delaware limited liability company. Residential Capital's sole member at all relevant times has been GMAC Mortgage Group LLC, a Delaware limited liability company. GMAC Mortgage Group LLC's sole member at all relevant times has been Ally Financial, Inc. Ally Financial, Inc. is incorporated under the laws of Delaware with its principal place of business in Michigan. Complaint ¶19. Accordingly, Residential Funding is, and has been at all relevant times, a citizen of Delaware and Michigan, the principal place of business and state of incorporation for the ultimate incorporated member. Similarly, Defendant

Residential Capital is, and has been at all relevant times, a citizen of Delaware and Michigan, as its ultimate incorporated member is also Ally Financial, Inc. Finally, defendant Ally Financial, Inc. is, and has been at all relevant times, a citizen of Delaware and Michigan. Thus, the citizenship of all parties are diverse as defined by 28 U.S.C. § 1332(a). Moreover, no defendant is a citizen of New York, the state in which the action is pending and the domicile of the Plaintiff, and none of the parties or companies identified above, other than Plaintiff, has its principal place of business in the State of New York.

b. This action involves a matter in controversy exceeding the sum or value of $75,000, exclusive of costs, in that the compensatory damages sought by the Plaintiff include, among other items, indemnification for and damages in the amount of claims made against Plaintiff's insurance policy for "more than $28 million in claims" presented to Plaintiff, and "tens of millions of dollars more in claims to be presented" under Plaintiff's policy in the future. Complaint ¶¶ 122; Prayer for Relief.

4. Venue lies in the United States District Court for the Southern District of New York because the state-court action was filed in this district. 28 U.S.C. § 1441(a).

5. As required by 28 U.S.C. § 1446(d), Defendants are serving a copy of this Notice of Removal on Plaintiff and will file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York.

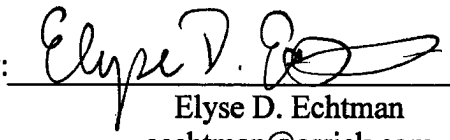
6. All Defendants have consented to removal of the instant action. Defendant Ally Financial, Inc. will be filing a separate notice of consent.

WHEREFORE, Defendants submit this Notice of Removal of this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York and pray this action stand so removed.

Dated: New York, New York
January 13, 2012

Respectfully submitted,

Orrick, Herrington & Sutcliffe LLP

By: 

Elyse D. Echtman
eechtman@orrick.com

51 West 52nd Street
New York, New York 10019-6142
+1 212-506-5000
+1 212-506-5151

Attorneys for Defendants Residential Capital, LLC, and Residential Funding Company, LLC

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY, **Plaintiff,** **-against-** **ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,** **Defendants.**	**Index No. _____** **SUMMONS** **Date Index No. Purchased:** December 27, 2011

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiff herein and to serve a copy of your answer on the Plaintiff at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

VENUE: Plaintiff designates New York County as the place of trial. The basis of this designation is Plaintiff's residence in New York County at 125 Park Avenue, New York, New York 10017. A further basis of this designation is Defendant RESIDENTIAL FUNDING COMPANY, LLC's residence in New York County and agreed submission to this venue.

Dated: December 27, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Alex P. McBride
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY, **Plaintiff,** **-against-** **ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,** **Defendants.**	)	**Index No. _____** **COMPLAINT**

Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"), Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"), and Residential Funding Company, LLC, formerly known as Residential Funding Corporation ("RFC"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with a financial guaranty insurance policy (the "Policy") issued by FGIC in relation to an RFC-sponsored transaction (the "2005-EFC7 Transaction" or the "Transaction") in which RAMP Series 2005-EFC7 Trust (the "2005-EFC7 Trust") issued and sold to investors $698,175,000 aggregate principal amount of insured

residential mortgage-backed securities (the "2005-EFC7 Certificates"). As the sponsor of the 2005-EFC7 Transaction, RFC procured the Policy from FGIC in order to enhance the ratings and marketability of the 2005-EFC7 Certificates. RFC fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices, the credit quality and characteristics of the thousands of mortgage loans (individually the "Mortgage Loans," and collectively the "Loan Pool") that provided the collateral for the 2005-EFC7 Certificates, and the underwriting criteria through which the Mortgage Loans were acquired and evaluated. In short, the Mortgage Loans were different—and demonstrably worse—than RFC had represented them to be. Indeed, RFC's misrepresentations with respect to the 2005-EFC7 Transaction have been so egregious that a federal government agency has alleged fraud and state and federal securities law violations against RFC relating to the 2005-EFC7 Transaction. FGIC's issuance of the Policy enabled the 2005-EFC7 Certificates to receive an initial triple-A rating from the rating agencies, which in turn made the 2005-EFC7 Transaction viable, and enabled RFC and its affiliates to earn millions of dollars in transaction fees.

2. Since the closing of the 2005-EFC7 Transaction, RFC has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the 2005-EFC7 Transaction, RFC has violated the essential terms of its agreement with FGIC. RFC has also breached the essential terms of the other operative documents incorporated therein.

3. The wrongdoing committed by RFC, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through ResCap. Ally Financial is the ultimate parent of ResCap, which owns RFC. Ally Financial, as the ultimate parent of ResCap and RFC,

has the practical ability, which it has repeatedly exercised, to direct and control the activities of its subsidiaries, including ResCap and RFC. At times, Ally Financial's direction and control was effected by using ResCap as an instrument to achieve its goals.

4. The 2005-EFC7 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among RFC and several other parties. To facilitate the Transaction, RFC pooled together the Mortgage Loans that it had purchased from the originator, EquiFirst Corporation ("EquiFirst"), a nationwide mortgage lender at that time. The Mortgage Loans consisted of 4,282 first-lien and junior-lien mortgage loans acquired by RFC from EquiFirst prior to the closing of the 2005-EFC7 Transaction.

5. Following its acquisition of the Mortgage Loans, RFC transferred the Mortgage Loans to another Ally Financial subsidiary, Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then deposited the Mortgage Loans it received from RFC into the 2005-EFC7 Trust. The trust, in turn, issued certificates representing the beneficial interest in the 2005-EFC7 Trust. The 2005-EFC7 Trust was a legal entity created by RFC solely for the purposes of the 2005-EFC7 Transaction to hold the Mortgage Loans and to issue the 2005-EFC7 Certificates to investors in a registered public offering.

6. RFC also acts as master servicer of the 2005-EFC7 Transaction (the "Master Servicer"), and another Ally Financial affiliate, HomeComings Financial LLC ("HomeComings"), is the subservicer. As Master Servicer, RFC supervises the activities of the subservicer, including the collection of borrower payments, and performs other servicing duties related to the Mortgage Loans. As discussed in more detail below, all of HomeComings' and RFC's servicing operations have since been integrated into ResCap. Yet another Ally Financial subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was the joint

lead manager of the underwriters for the 2005-EFC7 Transaction. In addition, U.S. Bank National Association ("U.S. Bank") agreed to act as trustee of the Trust (the "Trustee").

7. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the Trust are used to pay, among other things, principal and interest due on the 2005-EFC7 Certificates, and the fees and expenses of RFC and other participants in the Transaction.

8. RFC, directed and controlled by Ally Financial, is, therefore, the hub of the 2005-EFC7 Transaction: it is the sponsor of the securitization, an acquirer and seller of the Mortgage Loans, and the master servicer of the Transaction. The primary victim of the 2005-EFC7 Transaction—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by RFC—is FGIC, which has already been presented with over $28 million in claims under the Policy, with further material losses still to come.

9. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed certificates ("RMBS Certificates"). At the time of the 2005-EFC7 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Certificates typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of realized losses on the Mortgage Loans collateralizing the insured securities. FGIC's insurance policies thus enhanced the credit quality, and marketability, of the insured securities.

10. To enhance the ratings and marketability of the 2005-EFC7 Certificates, and to increase the profit that RFC would derive from the 2005-EFC7 Transaction, RFC sought to have FGIC issue the Policy to U.S. Bank as Trustee for the benefit of the holders of the 2005-EFC7 Certificates.

11. As an essential element of the 2005-EFC7 Transaction, RFC made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated and their characteristics to induce FGIC to enter into the Transaction. RFC represented, among other things, that the Mortgage Loans were acquired and evaluated under RFC's own underwriting guidelines. Prospectus Supplement at S-32. Those representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2005-EFC7 Transaction. As a result, FGIC was fraudulently induced to enter the Transaction, and the credit risk assumed by FGIC in connection with the Transaction was far greater than it would have been had RFC's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

12. RFC received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policy. Ally Financial took actions and made statements to finance, support, and boost investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations RFC had made to FGIC. As a result of its dominance over ResCap and RFC, Ally Financial knew that the representations and warranties RFC made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted RFC's fraudulent inducement of FGIC to issue the Policy.

13. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policy in reliance on the (presumed) accuracy and truthfulness of RFC's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and therefore the amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of RFC's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policy, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of RFC's misconduct.

14. In order to evaluate the extent of RFC's breaches, FGIC has requested copies of the mortgage loan files and servicing notes for the Mortgage Loans. RFC is obligated, under its agreements with FGIC, to provide those documents to FGIC. RFC has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence material breaches by RFC. This refusal to provide information in itself constitutes a material breach of RFC's insurance agreement with FGIC.

15. Certain of the material contractual breaches committed by RFC—including, but not limited to, FGIC's right to access information in RFC's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

16. Through this Complaint, FGIC seeks relief against RFC, ResCap, and Ally Financial for RFC's fraudulent inducement, and for its material breaches of its insurance agreement with FGIC and other contractual obligations owed to FGIC in connection with the 2005-EFC7 Transaction.

17. FGIC seeks a declaration from the Court that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other. Further and alternatively, FGIC seeks relief against Ally Financial for aiding and abetting RFC's fraudulent inducement.

THE PARTIES

18. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

19. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial specializes in automotive financings, residential mortgage financings and services, and insurance services. Ally Financial is the parent company of ResCap, RFC, and all RFC-affiliated entities relevant to this action.

20. Defendant RFC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. In the period relevant to this action, RFC acquired and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

21. Since 2005, RFC has been an indirect wholly-owned subsidiary of ResCap; prior to that time, RFC was an indirect, wholly-owned subsidiary of Ally Financial.

22. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of RFC and is a leading real estate finance company, the business of which includes acquiring, selling and servicing mortgage loans.

23. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this suit pursuant to CPLR §§ 301 and 311-a. RFC is a registered, foreign, limited liability company within the State of New York. RFC has appointed an agent for service of process in this State and transacts business within this State. Also, in an agreement at issue in this case, RFC irrevocably submitted to the jurisdiction of this Court. Ally Financial and ResCap likewise regularly transact business in this State, and the acts giving rise to the claims in this case occurred in this State.

25. Venue is proper in New York County pursuant to CPLR § 503. FGIC, as plaintiff, has designated New York County as the place of trial. RFC, a party to this action, has designated New York County as its county of residence in the State of New York, and has agreed not to challenge venue in this Court. Furthermore, substantial activity giving rise to the claims in this case occurred within New York County.

RELEVANT NON-PARTIES

26. GMAC Mortgage LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMACM is an indirect wholly-owned subsidiary of ResCap, which in turn is a wholly-owned subsidiary of Ally Financial.

27. RAMP, a special purpose vehicle, is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. To facilitate the 2005-EFC7 Transaction, RAMP purchased the Mortgage Loans from RFC and deposited them into the 2005-EFC7 Trust, which then issued the 2005-EFC7 Certificates to underwriters to be sold to investors.

28. Ally Securities, an entity incorporated in Delaware, is an affiliate of RFC and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding

Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2005-EFC7 Certificates and, on information and belief, participated in the preparation of the Prospectus and Prospectus Supplement.

29. RFC acquired all of the Mortgage Loans for the 2005-EFC7 Transaction from EquiFirst, a mortgage originator headquartered in Charlotte, North Carolina. EquiFirst is no longer in business.

30. HomeComings, *f/k/a* HomeComings Financial Network, Inc., has continually served as primary servicer of the Mortgage Loans. HomeComings is a wholly-owned subsidiary of RFC.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

31. In the period relevant to this action, RFC acquired, sold and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Certificates.

32. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including ResCap and RFC, led Ally Financial to seek a bailout by the federal government in 2008.

(1) RFC, GMACM, and GMAC-RFC

33. RFC is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

34. GMACM is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate RFC, GMACM engaged in the business of originating, acquiring, servicing and securitizing mortgage loans during the period relevant to this action.

35. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

36. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

37. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with RFC. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

38. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id*. at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id*.

(2) Ally Financial's Securitization Business

39. Ally Financial's business model depended on securitizations, which were conducted by its business units, including RFC. Pooling mortgage loans and selling them into securitizations enabled RFC to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

40. RFC, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third parties. RFC would typically acquire such mortgage loans and then deposit them into a securitization trust (usually through an affiliate). RFC would then procure underwriters, trustees, and (in the case of insured securities) financial guaranty insurers, and cause the securitization trust to sell securities collateralized by the relevant mortgage loans. In many instances, RFC profited from the difference between the cost it incurred to acquire mortgage loans and the price at which it sold them for deposit into the securitizations.

41. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining

whether a mortgage loan is in default based on the transaction documents, RFC typically also sought (as it did here) to be appointed as the Master Servicer for the 2005-EFC7 Transaction. Moreover, RFC appointed its subsidiary, HomeComings, to act as subservicer. For acting as Master Servicer to the 2005-EFC7 Transaction, RFC gained substantial additional compensation.

42. RFC also enriched Ally Financial and its subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2005-EFC7 Transaction: (i) HomeComings gained fees servicing the Mortgage Loans; (ii) RAMP, which established the 2005-EFC7 Trust and acted as depositor of the Mortgage Loans, charged fees to cover its operating expenses; and (iii) Ally Securities received fees for underwriting the 2005-EFC7 Certificates.

(3) Ally Financial, RFC, and GMACM Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

43. The Federal Housing Finance Authority ("FHFA") has alleged fraud and state and federal securities law violations against RFC relating to this same 2005-EFC7 Transaction. On September 2, 2011, the FHFA, as conservator for Freddie Mac, filed suit in this Court against RFC for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in RMBS issued through twenty-one RFC-sponsored transactions, including the 2005-EFC7 Transaction.

44. The FHFA also alleges violations of state and federal securities laws by RFC and its parent, Ally Financial, and their affiliates, stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and

other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against RFC's affiliates and Ally Financial for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs.

45. In addition, RFC is currently facing a lawsuit brought by MBIA Insurance Corporation in this Court for, among other things, fraud and breach of representations and warranties in connection with insured RMBS transactions. On December 22, 2009, this Court issued a ruling on RFC's motion to dismiss which allowed both the breach of contract and the fraud claims, among others, to proceed.

46. DZ Bank AG also filed a summons with notice in New York Supreme Court on December 13, 2011, against Ally Financial, ResCap, RFC, RAMP, and other Ally Financial subsidiaries for common-law fraud, fraudulent inducement, negligent misrepresentation, and aiding and abetting fraud, in connection with the 2005-EFC7 Transaction. The summons with notice alleges material misrepresentations and omissions regarding the standards used to underwrite, and key statistical characteristics of, the Mortgage Loans in the 2005-EFC7 Transaction. The claims arise from DZ Bank AG's purchase of $289.8 million in securities issued by Ally Financial subsidiaries, including a portion of the 2005-EFC7 Certificates.

47. IKB Deutsche Industriebank AG also filed a summons with notice in New York Supreme Court on December 16, 2011, against Ally Financial, ResCap, RFC, and other Ally Financial subsidiaries for, *inter alia*, Securities Act violations, common law fraud, fraudulent

inducement, and aiding and abetting fraud. The claims arise from the purchase of $4 million in securities underwritten and issued by Ally Financial subsidiaries in a similar RMBS transaction.

48. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two pending suits against Ally Financial's mortgage-related subsidiaries. The plaintiffs in those suits have alleged, among other things, that Ally's various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

49. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. In the first nine months of 2011 alone, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $254 million worth of mortgages related to securitizations it consummated between 2004 and 2007. It clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own SEC filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 88 (Nov. 4, 2011).

50. According to its most recent quarterly report, Ally Financial believes its "exposure to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008 . . . ." Ally Fin. Inc., Quarterly Report (Form

10-Q), at 146 (Nov. 4, 2011). The 2005-EFC7 Transaction is, as the name implies, of the 2005 vintage.

51. Additionally, Ally Financial also disclosed that the U.S. Securities and Exchange Commission served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

52. Furthermore, RFC's sister company GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." *Id.* (emphasis added).

(4) The Mortgage Loan Servicing Practices of Ally Financial and Its Subsidiaries Have Come Under Scrutiny for Deficiencies

53. The Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and the Federal Deposit Insurance Corporation (the "FDIC") have ordered Ally Financial and several of its subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

54. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to

properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

55. Furthermore, under the Consent Order, Ally Financial must direct its mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id.* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

56. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure process of at least one Ally Financial subsidiary to request an independent review of their files and, if warranted, receive compensation for the financial harm they suffered as a result of any errors, misrepresentations, or other deficiencies. *See* Press Release, Federal Reserve Board (November 1, 2011).

57. Moreover, according to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep., *Federal National Mortgage Association v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Div Nine, No. Cumb.) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming

> personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

58. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.*

59. The Ohio Attorney General, in October 2010, filed suit against Ally Financial and its subsidiaries, alleging, *inter alia*, that employees of Ally Financial subsidiaries had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). And in December 2011, the Massachusetts Attorney General filed a similar suit against an Ally Financial subsidiary (GMACM) for, among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston).

60. Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial for allegedly carrying out illegal foreclosures and submitting false documents related to

property seizures. *See* Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices, Boston Globe, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and RFC

61. Ally Financial is considering filing for bankruptcy protection for ResCap, its wholly-owned, indirect subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports, as of November 9, 2011. RFC is a wholly-owned, indirect subsidiary of ResCap.

62. Bloomberg News reported that "[d]erivatives traders are betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering," in an article entitled, "Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance," dated November 14, 2011. According to the article, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy.

63. Indeed, Ally Financial warned in its 2010 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 21 (Feb. 25, 2011).

B. RFC's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

64. To improve the marketability and ratings of the RMBS Certificates, issued as part of its securitizations, RFC from time to time sought credit enhancement for the RMBS Certificates from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Certificates that, if there is a shortfall in cash available to it to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

65. For a trust that issues RMBS Certificates, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Certificates. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the Loan Pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS Certificate investors. Such shortfalls result in claims on FGIC's policy.

(2) Securitization Sponsor's Representations and Warranties

66. The risk FGIC assumes when it agrees to issue a policy for RMBS Certificates depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originator and the characteristics of the loans. If, for instance, a loan originator employs substandard underwriting practices, the underlying mortgage loans would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or

default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

67. Accordingly, FGIC generally required securitization sponsors like RFC to provide substantial representations and warranties about the underlying mortgage loans, including representations about the standards and procedures used to underwrite the loans and the characteristics of the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance to the value of the mortgaged property at origination—plus, in the case of a junior lien Mortgage Loan, the principal balance of the senior Mortgage Loan on the related mortgaged property—("LTV ratio"), the borrower's credit score ("FICO score"), and the credit grade of the loan according to RFC's grading system ("Credit Grade"). Even where, as here, RFC did not originate the loans at issue, it nonetheless is typically required to make representations about those loans, thereby assuming the risk that those representations might not be accurate. RFC's representations and warranties were intended to allow FGIC to assess the credit risk inherent in the mortgage Loan Pool before deciding to commit to the transaction.

C. The RAMP 2005-EFC7 Transaction

68. In late 2005, RFC began to put together the 2005-EFC7 Transaction. RFC purchased thousands of residential mortgage loans originated by EquiFirst, pooled those loans, and deposited them in the 2005-EFC7 Trust (via RAMP). The trust then issued $698,175,000 aggregate principal amount of Class A Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC7. The 2005-EFC7 Certificates consisted of five classes of senior certificates, all of which were insured by FGIC. The 2005-EFC7 Trust contained two groups of Mortgage Loans ("2005-EFC7 Group I" and "2005-EFC7 Group II"). 2005-EFC7 Group I contained 2,895 fixed- and adjustable-rate first-lien and junior-lien mortgage loans having an outstanding aggregate

principal balance of more than $517 million. 2005-EFC7 Group II contained 1,387 fixed- and adjustable-rate first-lien and junior-lien mortgage loans having an outstanding aggregate principal balance of more than $207 million. The Mortgage Loans purportedly were all either acquired and evaluated by RFC under its 'AlterNet' program (the "AlterNet Program"), or under its 'Negotiated Conduit Asset' program (the "NCA Program").

69. To enhance the ratings and marketability of the 2005-EFC7 Certificates, RFC sought a financial guaranty insurance policy from FGIC for the purpose of insuring the transaction for the benefit of the certificate holders. On December 28, 2005, FGIC and RFC executed an Insurance and Indemnity Agreement (the "I&I Agreement"), under which FGIC agreed to issue the Policy to insure the 2005-EFC7 Certificates, and FGIC accordingly issued its policy number 05030159. The I&I Agreement was signed by FGIC (the "Insurer" for the Transaction); RFC (the "Master Servicer" for the Transaction); RAMP (the "Depositor" for the Transaction); and U.S. Bank (the Trustee for the Transaction).

70. The I&I Agreement provides that FGIC is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." The "Operative Documents" are defined to include, among other documents: (i) the 2005-EFC7 Certificates; (ii) the Pooling and Servicing Agreement, dated December 1, 2005, among RFC, RAMP, and U.S. Bank (the "PSA"); and (iii) the Assignment and Assumption Agreement, dated as of December 28, 2005, between RFC and RAMP (the "A&A Agreement"). The PSA also provides that FGIC (the Certificate Insurer) "is an express third-party beneficiary of [the PSA]."

71. The Policy improved the marketability of the 2005-EFC7 Certificates by mitigating risk for potential investors and making the 2005-EFC7 Certificates eligible to receive an initial credit rating of triple-A by the rating agencies at closing.

72. RFC and the Depositor offered the 2005-EFC7 Certificates for sale pursuant to a prospectus, dated July 26, 2005 (the "Prospectus"), and a prospectus supplement, dated December 21, 2005 (the "Prospectus Supplement"), touting the Policy and the triple-A initial rating of the 2005-EFC7 Certificates made possible by the Policy. The Prospectus and the Prospectus Supplement, together with certain preliminary Offering Documents, each as further supplemented by any subsequent amendment or supplement thereto, and any other Offering Documents that makes reference to the Policy, are referred to collectively as the "Offering Documents."

73. On December 28, 2005, an Ally Financial subsidiary, Ally Securities, sold the 2005-EFC7 Certificates to investors, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

D. RFC Fraudulently Induces FGIC to Insure the 2005-EFC7 Certificates with Substantial Assistance from Ally Financial

(1) RFC's Fraudulent Inducement of FGIC

74. FGIC's participation in the 2005-EFC7 Transaction was an essential component of the 2005-EFC7 Transaction and enhanced RFC's ability to market the securitization effectively. The Policy allowed RFC to sell the 2005-EFC7 Certificates with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

75. In order to induce FGIC to write financial guaranty insurance for the 2005-EFC7 Transaction, RFC provided to FGIC, directly or indirectly, a variety of information.

76. First and foremost, RFC provided to FGIC initial and final Prospectus Supplements summarizing, among other material information, the credit quality and characteristics of the Mortgage Loans, and RFC's loan underwriting guidelines. RFC represented in the Prospectus Supplement that approximately 87% of the Mortgage Loans were

acquired and evaluated by RFC under its AlterNet Program and approximately 13% of the Mortgage Loans were acquired and evaluated by RFC under its NCA Program. Prospectus Supplement at S-32. RFC also provided FGIC with the underwriting guidelines of those programs.

77. Second, RFC provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the 2005-EFC7 Transaction, together with representations regarding material statistics about the Loan Pool as a whole.

78. Third, RFC provided to FGIC credit ratings for the 2005-EFC7 Certificates determined without considering the effect of the Policy. These ratings, which RFC procured from the credit rating agencies, are known as "shadow ratings."

79. Fourth, RFC provided information regarding EquiFirst's practices and procedures for originating and servicing mortgage loans, and the prior performance of such loans.

80. Fifth, as discussed in detail in Section E, RFC provided representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreement regarding the mortgage loans specifically and the Loan Pool generally.

81. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the 2005-EFC7 Certificates, FGIC relied in part upon representations and warranties regarding RFC's loan underwriting standards made by RFC in the Prospectus and Prospectus Supplement. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about December 16, 2005, in an email sent by Jeremiah Wagner of Mayer Brown (f/k/a Mayer, Brown, Rowe & Maw LLP) on behalf of RFC and RAMP. The Prospectus, as supplemented by the Prospectus Supplement, was filed with the SEC and became

effective on December 22, 2005. The Final Prospectus Supplement was transmitted to, among others, Jeffrey Kert of FGIC, on or about December 27, 2005, in an email sent by Jeremiah Wagner of Mayer Brown on RFC's and RAMP's behalf.

82. The Prospectus Supplement set forth, among other information, the following important characteristics of the Loan Pool: the ranges of and weighted average FICO scores and Credit Grades, the ranges of and weighted average LTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (*i.e.*, whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). Prospectus Supplement at II-1 – II-8, III-1 – III-8.

83. RFC represented in the Prospectus Supplement that "[a]pproximately 88.6%, 81.6% and 86.6% of the Group I Loans, Group II Loans and all mortgage loans, respectively, were acquired and evaluated by Residential Funding under its AlterNet Program and approximately 11.4%, 18.4% and 13.4% of the Group I Loans, Group II Loans and all mortgage loans, respectively, were acquired and evaluated by Residential Funding under its 'Negotiated Conduit Asset Program' or NCA program." Prospectus Supplement at S-32.

84. RFC publishes its loan underwriting standards in a document the Prospectus refers to as "Residential Funding's Client Guide" as modified from time to time (the "Client Guide"). In general, the Client Guide specifies documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification,

employment verification, bank statements, payment histories, and/or evidence of closing funds, among other things.

85. RFC disclosed additional data relevant to the AlterNet Program and NCA Program. In particular, RFC provided FGIC with the AlterNet and NCA Guidelines. RFC also disclosed in the Prospectus Supplement the delinquency and foreclosure experience it had recorded for the AlterNet and NCA Programs for nine months ending in September 2005 and for the preceding three years. Prospectus Supplement at S-81, S-83.

86. The Prospectus Supplement also includes substantive criteria for eligibility addressing material characteristics of a proposed loan, such as DTI ratios, LTV ratios, occupancy status, and Credit Grades.

87. In particular, RFC represented in the Offering Documents that the loans in 2005-EFC7 Group I had been originated with a maximum monthly DTI ratio of 60% and a maximum LTV ratio of 100%. *See* Prospectus Supplement at II-3, II-8. RFC further represented that the loans in 2005-EFC7 Group II had been originated with a maximum monthly DTI ratio of 55% and a maximum LTV ratio of 100%. *See* Prospectus Supplement at III-3, III-8.

88. RFC also represented in the Offering Documents that, with respect to occupancy status, 94.48% of the loans in 2005-EFC7 Group I and 100% of the loans in 2005-EFC7 Group II would be secured by the borrower's primary residence. Prospectus Supplement at II-5; III-5.

89. ***Loan Tapes.*** RFC sent via email final schedules of the Mortgage Loans to FGIC on December 14, 2005. Those schedules (or "loan tapes") provided by RFC set forth, for each loan in the pool, key characteristics such as the borrower's FICO score, Credit Grades, DTI ratio, and the LTV ratios for the loan. RFC also disclosed in the Prospectus Supplement, with respect

to the pool as a whole, aggregate characteristics relevant to the assessment of the credit risk of the pool, including FICO scores, Credit Grades, DTI ratios, and LTV ratios.

90. ***Shadow Rating Letters***. RFC, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. Based on the information supplied by RFC, Moody's assessed the credit quality of the Loan Pool and assigned a shadow rating of Baa1 to the 2005-EFC7 Certificates, while S&P assigned the 2005-EFC7 Certificates a shadow rating of BBB+. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to insure the 2005-EFC7 Certificates.

91. ***EquiFirst.*** FGIC relied on RFC to conduct an appropriate inquiry into the business methods and practices and procedures of EquiFirst. FGIC also relied on RFC to provide FGIC with information about EquiFirst and the performance of loans that were originated and/or serviced by EquiFirst. For example, on August 3 and December 14, 2005, RFC provided FGIC with a variety of information concerning EquiFirst's performance in originating mortgage loans. RFC's affiliates had acquired and held portfolios of loans originated by EquiFirst in securitizations that were issued between 2002 and 2004. RFC provided FGIC with performance data regarding these EquiFirst-originated loans, purporting to show that such loans performed with delinquency and loss rates that were acceptable to FGIC. FGIC reasonably relied on such information and data in deciding to enter into the I&I Agreement and issue the Policy.

(2) RFC's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

92. Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to participate in the 2005-EFC7 Transaction and, ultimately, issue

the Policy. Ally Financial knew that the Mortgage Loans underlying the 2005-EFC7 Transaction were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap and its other subsidiaries, Ally Financial knew that the representations and warranties RFC made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

93. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to finance, support, and engender investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

94. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

95. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Exhibit 99.1.

96. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to

improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

97. Ally Financial's corporate restructuring also allowed RFC to explicitly represent and warrant to FGIC in the I&I Agreement that RFC "is solvent, and will not be rendered insolvent by the Transaction. . . . [RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." I&I Agreement § 2.01(a)(xiii). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary RFC.

98. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the 2005-EFC7 Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

99. Moreover, as a result of its domination and control over ResCap and RFC, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of RFC's representations and warranties to FGIC—and that they were untrue when stated. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of

its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including RFC, shared numerous directors and senior management as well.

100. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, and RFC, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by RFC was shared among and between RFC and its parent ResCap, as well as ResCap and its parent Ally Financial. Indeed, at least one Ally Financial employee who was involved in the 2005-EFC7 Transaction appeared on the Transaction's working group list and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

101. Another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including RFC and RAMP, is David C. Walker. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In September 2005, shortly before the closing of the 2005-EFC7 Transaction, Walker was a director at ResCap, GMACM, RFC, and RAMP, among other ResCap subsidiaries. In the 2005-EFC7 Transaction, acting as a director of RAMP, Walker was a signatory to RAMP's May 1, 2005 "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors." Similarly, acting as a director of RFC he executed the

"Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors." Both of these documents were included in the closing documents of the 2005-EFC7 Transaction.

102. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to RFC in fraudulently inducing FGIC to participate in the Transaction and issue the Policy. Further, the issuance of the Policy, which made the 2005-EFC7 Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. RFC's Representations, Warranties and Affirmative Covenants

103. In connection with the 2005-EFC7 Transaction, RFC, at the direction of Ally Financial, either directly or indirectly through ResCap, made numerous representations, warranties, and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way the loans were selected and evaluated, the characteristics of the Mortgage Loans, and the accuracy of the information supplied to FGIC. RFC also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to RFC's books and records and to RFC's Servicing Officer and its independent accountants.

104. RFC's representation, among others, that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the 2005-EFC7 Transaction and to issue the Policy. Further, the I&I Agreement's incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely

upon each and every one of the representations and warranties that RFC made in connection with the 2005-EFC7 Transaction.

105. FGIC, for its part, reasonably relied on the information available to it regarding the underlying Mortgage Loans and the representations and warranties provided by RFC. Since FGIC had neither the right nor duty under the Operative Documents, nor the practical ability to review the thousands of underlying Mortgage Loan files in the days available to it prior to the closing of the 2005-EFC7 Transaction, RFC knew that FGIC had no choice but to rely on RFC's representations regarding the underlying loans in determining whether to issue the Policy. Further, FGIC had no reason to believe that these representations were not true and accurate.

106. RFC included 4,282 individual Mortgage Loans in the 2005-EFC7 Trust. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation, and other forms of documentation necessary to support underwriting decisions. Unlike RFC, FGIC was under no contractual duty whatsoever to review the Mortgage Loans. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by RFC regarding its evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on the fact that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

107. Based on the information received by FGIC and the representations and warranties given by RFC, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Trustee for the benefit of the holders of the 2005-EFC7 Certificates. In return for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate

principal balance of the 2005-EFC7 Certificates, commensurate with the risk FGIC thought it was taking. Specifically, FGIC received 0.20% per annum of the aggregate balance of the 2005-EFC7 Certificates for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by RFC.

108. RFC's information, representations, and warranties were materially false when disclosed and/or provided by RFC. RFC knew that this information, and its representations and warranties, were materially false when made. RFC also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policy. Indeed, RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and issue the Policy. The issuance by FGIC of the Policy—induced by RFC's fraudulent misrepresentations and substantial assistance of Ally Financial—made the 2005-EFC7 Certificates eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Representations, Warranties and Affirmative Covenants Relating to the Operative and Offering Documents

109. Under Section 2.01 of the I&I Agreement, RFC made the following representations and warranties, among others (emphasis added in each case):

- *Accuracy of Information*. **None of the Operative Documents nor any other material information relating to the Mortgage Loans**, the operations of RFC. . . or the financial condition of RFC . . . furnished to [FGIC] . . . by RFC . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made**. [RFC] has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change. Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to RFC . . . that would render any of the Documents untrue or misleading in any material respect.

- *Compliance with Securities Laws*. The offering and sale of the Class A Certificates complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading** . . . .

- *Operative Documents*. **Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** . . . .

- *Solvency; Fraudulent Conveyance*. [RFC] is solvent, and will not be rendered insolvent by the Transaction. . . . **[RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**. [RFC] does not intend to incur, and does not believe that it has incurred, debts beyond its ability to pay as they mature. . . . [RFC] is not entering into the Operative Documents, or transferring any of its assets in connection with the Transaction, with any intent to hinder, delay or defraud any of its creditors.

110. *First*, in the I&I Agreement, RFC represented and warranted that "[n]one of the Operative Documents nor any other material information relating to the Mortgage Loans, the operations of RFC . . . or the financial condition of RFC . . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreement § 2.01(a)(x). Through these Operative and Offering Documents, as detailed above, RFC communicated several material facts about the characteristics of the mortgage loans sold to the 2005-EFC7 Trust.

111. *Second*, in the I&I Agreement, RFC also represented and warranted that the "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. . . ." I&I Agreement § 2.01(a)(xi). As discussed above, in the Prospectus Supplement, RFC represented that the Mortgage Loans sold to the 2005-EFC7 Trust had been evaluated in conformity with RFC's underwriting standards.

112. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the respective related Operative Documents: "Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects . . . ." I&I Agreement § 2.01(a)(xii). The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that RFC made to other entities, such as investors or the Trustee, in connection with the 2005-EFC7 Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreement § 2.02(k).

113. *Fourth*, RFC also provided information to FGIC concerning Mortgage Loans in the 2005-EFC7 Transaction. *See* I&I Agreement § 2.02(c)(iii). This information included loan tapes that set forth statistics about the Loan Pool. The loan tapes purported to describe key characteristics relevant to the assessment of risk, including DTI and LTV ratios, occupancy status, Credit Grades, and FICO scores. *See* PSA § 1.01. On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the Mortgage Loan Schedule referred to in Section 4(a) of the A&A Agreement.

114. In turn, in the A&A Agreement, RFC represented that all the information in that Mortgage Loan Schedule "is true and correct in all material respects as of the date or dates respecting which such information is furnished." A&A Agreement § 4(a).

115. As a result of incorporating into the I&I Agreement the representations and warranties in the related Operative Documents, RFC incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in the 2005-EFC7 Transaction. These representations and warranties set forth the standards governing each Mortgage Loan,

including, significantly, the representation that the Mortgage Loans had been evaluated in compliance with RFC's own underwriting guidelines.

116. In particular, in the A&A Agreement, RFC represented and warranted as to the Mortgage Loans:

- **Information in Mortgage Loan Schedule**: "The information set forth in the Mortgage Loan Schedule for such Mortgage Loans is true and correct in all material respects as of the date or dates respecting which such information is furnished." A&A Agreement § 4(a).

- **No Material Breach Or Default**: "[T]here is no default, breach, violation or event of acceleration existing under the terms of any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration under the terms of any Mortgage Note or Mortgage . . . and no such default, breach, violation or event of acceleration has been waived by RFC or by any other entity involved in servicing a Mortgage Loan." A&A Agreement § 4(e).

- **Delinquent Loans**: "As of the Cut-off Date, 0.1% of the Group I Loans, 0.1% of the Group II Loans, and 0.1% of the Mortgage Loans, respectively, are 30 to 59 days Delinquent in payment of principal and interest and none of the Mortgage Loans are 60 or more days Delinquent in payment of principal and interest." A&A Agreement § 4(h).

117. Moreover, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—RFC specifically covenants that it will "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement § 2.02(a), (k)

118. RFC also agreed that it had to receive FGIC's consent before modifying or amending any of the Operative Documents. The I&I Agreement provides, "[RFC] will not modify, waive, or amend, or consent to any modification, waiver or amendment of, any of the terms, provisions or conditions of the Operative Documents to which it is a party . . . without the

prior written consent of [FGIC], which consent shall not be unreasonably withheld, conditioned or delayed." § 2.03(b).

(2) Representations, Warranties and Affirmative Covenants Regarding Access to Information and Servicing

119. In addition to the representations and warranties referenced above, the I&I Agreement provides that RFC has the contractual obligation, as Master Servicer, to service the Mortgage Loans in compliance with the PSA and to provide FGIC with access to the underlying Mortgage Loans and servicing notes, and as Seller, to procure custodial interim certifications stating that all mortgage files were complete and properly transferred into the appropriate trust ("Interim Certification"). Specifically, the I&I Agreement provides:

- *Other Information*. (A) Promptly upon request, such other data as [FGIC] may reasonably request relating to the Mortgage Loans, the servicing of the Mortgage Loans . . . , the Transaction or the ability of any of RFC or the Depositor to perform its obligations under the Operative Documents, and (B) all information required to be furnished to the Trustee or the Holders, as the case may be. I&I Agreement § 2.02(c)(v).

- *Access to Records; Discussions with Officers and Accountants*. On an annual basis, or at any time when a Shortfall Event shall have occurred and be continuing, up*on the reasonable request of [FGIC], it will permit [FGIC] or its authorized agents, or cause [FGIC]* or its authorized agents to be permitted . . . to inspect the books and records of RFC . . . . to discuss the affairs, finances and accounts of RFC . . . as they relate to the Mortgage Loans, the Transaction or the ability to perform [its] obligations under the Operative Documents with a Servicing Officer . . . [and] if [FGIC] reasonably believes that a Material Adverse Change may have occurred and with RFC's consent, which consent shall not be unreasonably withheld or delayed, to discuss the affairs, finances and accounts of RFC . . . with the independent accountants of such Person; provided, however, that officers of RFC shall have the right to be present during such discussions. In addition, if requested by [FGIC], on an annual basis, or otherwise when reasonably requested by [FGIC], RFC will . . . cause the Custodian to deliver to [FGIC] an updated certification, in the form of the "Interim Certification" required under the Custody Agreement, with an exceptions list attached thereto, to enable [FGIC] to track the progress of recording of Mortgages and Assignments with respect to the Mortgage Loans. I&I Agreement § 2.02(e) (emphasis added).

- *Servicing of Mortgage Loans*. All Mortgage Loans will be serviced in all material respects in compliance with the [PSA]. I&I Agreement § 2.02(l).

- *Due Diligence*. If in [FGIC's] reasonable judgment circumstances so warrant, based on the performance of the Transaction, [FGIC] shall have the right, so long as the Class A Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices, at [FGIC]'s expense and in a reasonable manner convenient to both RFC and [FGIC]. This due diligence right is in addition to the access provided and the other rights provided for in Section 2.02(e) of this Insurance Agreement. I&I Agreement § 2.02(m).

F. RFC's Breaches of Its Representations, Warranties and Affirmative Covenants

120. As discussed above, FGIC relied on material representations and warranties made by RFC regarding the manner in which the Mortgage Loans were selected and evaluated, the characteristics of those loans, and the accuracy and completeness of information RFC supplied to FGIC. Based on those representations and warranties, FGIC agreed to issue the Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed above, the risk that FGIC assumed when it issued the Policy was many times greater than the risk disclosed by RFC's representations and warranties. RFC breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

121. The 2005-EFC7 Transaction has performed poorly, and delinquencies and defaults for Mortgage Loans in the 2005-EFC7 Transaction have been substantial. As of November 2011, a total of 1,711 mortgage loans, representing 40.0% of the loans underlying the 2005-EFC7 Transaction, had posted a loss or were severely delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policy, RFC assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with RFC's representations and warranties.

122. The poor performance of the Mortgage Loans has reduced the cash flow to the 2005-EFC7 Trust, which has caused and will continue to cause claims to be presented to FGIC under the 2005-EFC7 Policy to cover these shortfalls. Indeed, as of December 2011, more than $28 million in claims had been presented to FGIC in connection with the 2005-EFC7 Transaction. FGIC expects tens of millions of dollars more in claims to be presented to it under the 2005-EFC7 Transaction in the future.

(1) RFC's Denial of Loan File Requests

123. As the 2005-EFC7 Transaction continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blashko, an RFC/ResCap employee, via e-mail demanding that RFC provide 467 of the Mortgage Loan files. Having received no response from RFC to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011 regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, the request required authorization from officers at Ally Financial, and RFC/ResCap's response was directed by officers at Ally Financial.

124. On February 14, 2011, and again on April 28, 2011, FGIC sent further follow-up letters requesting loan files.

125. In finally responding to FGIC's request for information, RFC refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans"). Instead, it only provided FGIC with a portion of the requested loan files, consisting solely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

126. Pursuant to the PSA and the I&I Agreement, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(m) of the I&I

Agreement provides that FGIC "shall have the right, so long as the [2005-EFC7] Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I Agreement as to the nature of the Mortgage Loan files that are subject to review. Further, Section 2.02(c)(v) of the I&I Agreement states that "[p]romptly upon request," RFC must provide to FGIC "such other data as [FGIC] may reasonably request relating to the Mortgage Loans . . . ."

127. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreement, RFC has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(2) RFC's Denial of Interim Certification Requests

128. On June 21, 2011, FGIC demanded, pursuant to Section 2.02(e) of the I&I Agreement, that RFC promptly cause the Custodian under the 2005-EFC7 Transaction to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement for the Transaction, with an exceptions list attached thereto. An Interim Certification would enable FGIC to track the progress of the recording of mortgages and assignments with respect to the related Mortgage Loans.

129. Again on December 8, 2011, FGIC wrote RFC demanding the Interim Certification, noting that it had been over five months since FGIC's initial letter and that RFC had failed to respond.

130. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to these requests.

(3) RFC's Denial of Servicing Notes

131. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the I&I Agreement, that RFC furnish or cause to furnish the servicing notes for the Mortgage Loans.

132. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(4) RFC's Denial of FGIC's Access To Books and Records, Servicing Officer, and RFC's Independent Accountants

133. On December 1, 2011, in accordance with its express rights under Sections 2.02(e)(i)-(iii) of the I&I Agreement, FGIC requested to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances, and accounts of RFC with the Servicing Officer of RFC; and (iii) discuss the affairs, finances, and accounts of RFC with RFC's independent accountants.

134. To date, RFC has failed to respond to this request, in violation of the I&I Agreement.

(5) RFC's Refusal to Disclose Terms of Settlement Agreement with EquiFirst

135. On January 29, 2010, RFC entered into a settlement agreement with EquiFirst whereby EquiFirst paid $1.5 million in connection with certain mortgage loans that were originated by EquiFirst and that were purchased and securitized by RFC ("EquiFirst Settlement"). On information and belief, the mortgage loans subject to the settlement included Mortgage Loans in the 2005-EFC7 Transaction. Within days of the EquiFirst Settlement, FGIC requested that RFC provide information regarding this settlement.

136. Pursuant to Sections 2.02(c)(v) of the I&I Agreement, RFC agreed "[p]romptly upon request" to provide FGIC with data concerning the Mortgage Loans or the Transaction. Moreover, pursuant to Section 2.02(e)(ii) of the I&I Agreement, RFC agreed, upon FGIC's reasonable request and on an annual basis, among other times, to discuss the affairs of RFC as they relate to the Mortgage Loans or the Transaction.

137. To date, and in breach of Sections 2.02(c) and 2.02(e) of the I&I Agreement, RFC has refused to provide FGIC with any information concerning the EquiFirst Settlement other

than the amount of the settlement and the number of loans affected by the settlement. In particular, RFC has refused to provide material and necessary information regarding the EquiFirst Settlement, including (i) the specific loans in the 2005-EFC7 transaction which the EquiFirst Settlement covered and (ii) the terms of the EquiFirst Settlement as it related to the entire population of loans submitted by FGIC to RFC.

138. FGIC has made reasonable requests for information from RFC concerning the EquiFirst Settlement. To date, RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to disclose to FGIC material information concerning the settlement, including the information listed above.

139. In addition, pursuant to Section 2.02(f)(iv) of the I&I Agreement, RFC agreed to "promptly inform [FGIC] in writing of the occurrence" of any "Material Adverse Change," which is defined in the I&I Agreement as a material adverse change in the ability of any individual or entity—including RFC—to perform its obligations under any of the Operative Documents, including servicing obligations. If, as part of the EquiFirst Settlement, RFC agreed to limit its subsequent efforts to enforce EquiFirst's obligations with respect to the Mortgage Loans, then the settlement may constitute a Material Adverse Change, because, among other reasons, it materially and adversely affects RFC's ability to service, repurchase or cure defective Mortgage Loans. Alternatively, if RFC has voluntarily limited its efforts to enforce EquiFirst's obligations, then it has *ipso facto* breached its obligations to FGIC.

140. FGIC has requested information regarding the EquiFirst Settlement in order to determine whether the settlement is a Material Adverse Change. In contravention of FGIC's contractual rights, RFC has failed to provide such information to FGIC. Moreover, if the EquiFirst Settlement constitutes a Material Adverse Change, RFC had an obligation to promptly

inform FGIC of the circumstances surrounding the settlement in writing, which RFC has not done. Accordingly, FGIC reserves its rights to assert additional causes of action against RFC relating to the EquiFirst Settlement.

(6) Breaches Uncovered In Loan File Reviews

141. During the ordinary course of its business, FGIC evaluated a substantial number of Mortgage Loans from the 2005-EFC7 Transaction to determine whether they contained material breaches of the I&I Agreement and the Operative Documents necessitating repurchase under the related Operative Documents. To perform this review, FGIC hired an independent outside consultant, having particular skill, experience and expertise in the review, evaluation, and re-underwriting of mortgage loans.

142. The independent consultant's review revealed that approximately 55% of the Mortgage Loans reviewed by the outside consultant contained breaches of the representations and warranties in the I&I Agreement.

143. A small sample of these material breaches and underwriting violations are listed below:

- Loan number 10091344. The loan closed with a LTV ratio of 160.19%, far above the 95% maximum permitted under the underwriting guidelines.
- Loan Number 10090884: The loan closed with a LTV ratio of 80%, in violation of the 70% maximum allowed under the underwriting guidelines for this borrower's level of credit risk.
- Loan Number 10088604: The loan closed with a LTV ratio of 90%, above the 70% maximum permitted under the underwriting guidelines for this borrower's credit score. In addition, the credit report indicated that the borrower's cumulative adverse credit account over the past 24 months was $5,097, well above the $500 maximum permitted under the underwriting guidelines.
- Loan Number 10084578. The loan closed with the borrower's open and unpaid collections totaling $9,111, almost double the $5,000 maximum permitted under the

underwriting guidelines. The loan also closed with a LTV ratio fully 5% above the maximum permitted.

- Loan Number 10089404. The loan closed with a combined LTV ratio of 114.53%, in contrast with the 0% combined LTV ratio reported in the Mortgage Loan Schedule, and in violation of the 100% maximum allowed under the underwriting guidelines. The loan also closed with a DTI ratio of 82.55%, well above the 50% maximum permitted under the underwriting guidelines.

- Loan number 10086600. The loan closed with a DTI ratio of 123.17%, confirmed by the borrower's recent tax returns in the loan file, and in violation of the 50% maximum allowed under the underwriting guidelines. Moreover, the Mortgage Loan Schedule had reported that the DTI ratio was only 23%.

These examples of underwriting violations—but a small smattering of the extensive defects among the Mortgage Loans—evidence significant breaches of the A&A Agreement and the I&I Agreement.

144. Following the discovery of these high defect rates and pursuant to the I&I Agreement and the A&A Agreement, FGIC demanded that RFC repurchase the non-compliant Mortgage Loans discovered during its repurchase review. RFC has expressly refused to repurchase a substantial number of non-conforming Mortgage Loans. This failure constitutes a material breach of the I&I Agreement and Operative Documents incorporated therein.

145. Moreover, on information and belief, RFC is and has long been aware that many of the Mortgage Loans were non-conforming and breached its own representations and warranties. Despite this knowledge, RFC has failed to take steps to repurchase the non-conforming loans or replace them with conforming loans.

(7) Breaches Uncovered Using Loan Pool Data

146. In addition to the loan-level review discussed above, FGIC commissioned an independent consultant—a leading provider of financial, property and consumer information, such as property valuation services using automated property valuation tools—to test the

accuracy of RFC's representations and warranties relating to the Mortgage Loans regarding occupancy status and LTV ratios. The consultant extracted information and data relating to over 3,000 Mortgage Loans.

a. Breaches of Owner-Occupancy Representation and Warranty

147. RFC represented in the Offering Documents that 94.48% of the loans in 2005-EFC7 Group I and 100% of the loans in 2005-EFC7 Group II, or 96.05% of all Mortgage Loans, would be secured by the borrower's primary residence. Prospectus Supplement at II-5, III-5, and IV-5.

148. Based on the information provided, FGIC determined that for the Mortgage Loans only 83.3% were owner-occupied properties as a primary residence.

149. The Prospectus Supplement therefore materially overstated the percentage of Mortgage Loans in their respective pools that were owner-occupied as a primary residence. As such, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

150. FGIC has determined that the rate of Mortgage Loan non-performance (*i.e.*, loans that, as of November 2011, were delinquent for more than 90 days, in foreclosure, liquidated, or have posted a loss) in the 2005-EFC7 Transaction for loans that were determined after review to be non owner-occupied was 43.2%.

b. Breaches of LTV Ratio Representation and Warranty

151. The Prospectus Supplement also provided information relating to the LTV ratios of the underlying Mortgage Loans.

152. LTV information provided in the Prospectus Supplement provided that the loans had generally been originated with a maximum LTV ratio of 100% for first-lien loans and a maximum LTV ratio of 100% for junior-lien loans. Prospectus Supplement at II-3, III-3. LTV

information provided in the Prospectus Supplement included (1) the average weighted LTV ratio for the Mortgage Loans, and (2) the number and aggregate value of the Mortgage Loans with LTV ratios in a given percentage band (*e.g.*, the number of Mortgage Loans with LTV ratios of between 80% and 85%, between 85% and 90%, and so on). *See* Prospectus Supplement at II-3, III-3. The Prospectus Supplement reported that *none* of Mortgage Loans had a LTV ratio over 100 percent. *See* Prospectus Supplement at II-3, III-3.

153. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, FGIC determined that 13.4% of the Mortgage Loans—as opposed to *none* of the loans, as reported in the Prospectus Supplement, had an original LTV ratio above 100%, and 24.2%—as opposed to fewer than 9%, as reported in the Prospectus Supplement—had an original LTV ratio above 95%. In addition, RFC represented in the Prospectus Supplement that the weighted average LTV ratio of the Mortgage Loans at origination was 82.29% for 2005-EFC7 Group I and 83.95% for 2005-EFC7 Group II, but FGIC determined that the actual weighted average LTV ratio of the Mortgage Loans at origination was approximately 87% for Group I, approximately 88% for Group II, and approximately 88% for the entire 2005-EFC7 deal. Thus, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

154. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (*i.e.*, loans that, as of November 2011, were delinquent for more than 90 days, in foreclosure, liquidated, or have posted a loss) in the 2005-EFC7 Transaction for loans where the automated valuation model indicated a LTV greater than 100% was over 50.9%.

155. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicates the clear breach of RFC's contractual representations, warranties and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, RFC has breached representations and warranties stating, for the 2005-EFC7 Transaction, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (*i.e*. the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of RFC in the Operative Documents (including each representation and warranty in the A&A Agreement) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- each Mortgage File contains all required documents and instruments, and;
- Approximately 87% of the Mortgage Loans were acquired and evaluated by RFC under its AlterNet Program and approximately 13% of the Mortgage Loans were acquired and evaluated by RFC under its Negotiated Conduit Asset Program.

156. It is reasonable to conclude—based on what is known by FGIC and as a result of what is being wrongly withheld from FGIC—that many of the 4,282 Mortgage Loans held by the 2005-EFC7 Trust at closing evidenced similar breaches of RFC's representations and warranties.

157. Indeed, based on the information gathered from FGIC's loan file review and the information extracted by FGIC's consultant relating to LTV ratios and owner-occupancy rates discussed above, FGIC believes that the Transaction-wide defect rate for the Mortgage Loans is likely to be at least 42%.

158. Moreover, the true scope of the material underwriting failures is unknown given RFC's refusal to provide FGIC with pertinent—and contractually required—information. This

refusal in itself constitutes a breach of RFC's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

G. RFC's Fraud

159. The material breaches of RFC's representations and warranties, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants RFC made to FGIC to induce its participation in the Transaction. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that RFC breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the Policy, RFC would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because RFC refuses to provide all of the requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

160. All of the Mortgage Loans underlying the 2005-EFC7 Transaction were acquired by RFC. As such, RFC had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with the applicable RFC underwriting guidelines and if the loans breached other representations and warranties made by RFC.

161. To induce FGIC to enter into the 2005-EFC7 Transaction, RFC provided FGIC with a loan tape, which contained false and misleading information regarding, among other things, the LTV and DTI ratios, occupancy status, Credit Grades, and FICO scores of the borrowers.

162. In addition, RFC made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2005-EFC7 Trust. RFC was well aware that FGIC would not agree to insure the 2005-EFC7 Certificates unless RFC obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, RFC provided Moody's and S&P with the same false information regarding the credit quality of the underlying mortgage loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2005-EFC7 Certificates that met FGIC's minimum requirements—Baa1 and BBB+, respectively. In this way, RFC made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that RFC would pass on to FGIC, and second, by causing shadow ratings of the 2005-EFC7 Certificates to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

163. RFC also made material misrepresentations to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the standards to which the Mortgage Loans were underwritten.

164. For example, RFC knowingly misrepresented that the Mortgage Loans were acquired and evaluated under RFC's own underwriting guidelines. In the Prospectus Supplement (and in the I&I Agreement by incorporation), RFC assured FGIC that "[a]pproximately 88.6%, 81.6% and 86.6% of the Group I Loans, Group II Loans and all mortgage loans, respectively, were acquired and evaluated by Residential Funding under its AlterNet Program and approximately 11.4%, 18.4% and 13.4% of the Group I Loans, Group II Loans and all mortgage loans, respectively, were acquired and evaluated by Residential Funding

under its 'Negotiated Conduit Asset Program' or NCA program." Prospectus Supplement at S-32. Moreover, the loan tape indicated that the loans were acquired and evaluated under those same guidelines. RFC also provided FGIC with the AlterNet and NCA guidelines themselves, which contained extensive underwriting standards and requirements.

165. In fact, RFC was well aware at the closing of the EFC7 Transaction that those representations were false. It was not until years after the Transaction closed that RFC admitted that the Mortgage Loans were not underwritten to RFC's underwriting guidelines. In 2009, FGIC sent RFC numerous repurchase requests after reviewing certain Mortgage Loans in the EFC7 Transaction. In those requests, FGIC cited material breaches of the I&I Agreement and the Operative Documents, including non-conformity to RFC underwriting guidelines, which rendered certain Mortgage Loans ineligible or non-conforming and required RFC to repurchase those loans. RFC responded to many of FGIC's repurchase requests by claiming that the Mortgage Loans *were* conforming because they were under EquiFirst's guidelines and not RFC's AlterNet guidelines.

166. For example, on September 1, 2009, FGIC sent RFC repurchase requests for loan numbers 10092024 and 10089338 because those loans were non-conforming under the applicable AlterNet Guidelines. In response to FGIC's repurchase request for loan number 10092024, RFC asserted that the loan *was* conforming because "EFC [EquiFirst] guidelines" allowed such a loan. RFC attached excerpts from EquiFirst's underwriting guidelines in support. In response to FGIC's repurchase request for loan number 10089338, RFC asserted that the loan *did* qualify because the "Equifirst Core Program" allowed such a loan. RFC again attached excerpts from EquiFirst's underwriting guidelines in support.

167. RFC's response also indicates that these loans were also not compliant with its representation, as reflected in the credit grades listed on the Mortgage Loan Schedule, that these loans were underwritten to AlterNet guidelines.

168. These admissions demonstrate that RFC did not acquire and evaluate the Mortgage Loans under RFC's underwriting guidelines, *i.e.*, under the AlterNet Program and NCA Program. Instead, as RFC implicitly conceded in the rescission letters, these loans were evaluated and acquired under EquiFirst's less demanding underwriting guidelines. Accordingly, RFC knew that its representations were materially false at the time of the closing or should have known that its representations were materially false because RFC had not, among other things, evaluated and acquired the Mortgage Loans under any RFC guidelines.

169. Moreover, the A&A Agreement and Prospectus Supplement (as incorporated by reference in the I&I Agreement) contained other false and misleading representations about the Mortgage Loans. In particular, RFC misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule was true and correct in all material respects; (ii) the Mortgage Loans met certain credit grades; (iii) there was no default breach, violation or event of acceleration existing under any Mortgage Note or Mortgage; and (iv) the weighted average LTV Ratio for the Mortgage Loans was 82.29% for 2005-EFC7 Group I and 83.95% for 2005-EFC7 Group II.

170. Therefore, at the time of the closing of the 2005-EFC7 Transaction, RFC either (1) knew or should have known that its representations were materially false because RFC had not, among other things, evaluated and acquired the Mortgage Loans under the AlterNet Program where it represented it did so, or (2) had evaluated the Mortgage Loans under the AlterNet Program, had determined that they did not meet the standards of those programs, but nonetheless

materially misrepresented to FGIC that the Mortgage Loans were evaluated and acquired in conformity with that program.

171. These representations were essential to FGIC's decision to issue the Policy. These representations and warranties were false when stated. RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and to issue the Policy. The true information regarding these loans, as detailed above, simply could not substantiate RFC's assurances. In short, no amount of RFC promising that the loans met certain standards actually made those promises true.

172. RFC's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC as well as to a multitude of suits and the potential for more litigation to come.

173. Consistent with this pattern of behavior, RFC defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

H. Ally Financial Aids and Abets RFC's Fraud

174. Ally Financial provided substantial assistance to RFC in fraudulently inducing FGIC to issue the Policy. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties RFC made regarding the nature of RFC's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

I. The Federal Government Alleges Fraud Against RFC Relating to the 2005-EFC7 Transaction

175. As discussed above, the FHFA recently filed suit in the Supreme Court of New York against RFC for fraud, aiding and abetting fraud, and violating state and federal securities

laws in connection with its role in the public filing of offering documents which allegedly contained false and misleading statements.

176. In support of its claims, the FHFA performed a review of loan-level data for randomly-selected 2005-EFC7 Group II Mortgage Loans to assess whether the information provided in the Prospectus Supplement for the 2005-EFC7 Transaction was true and accurate. FHFA Complaint at ¶ 94. For each of the sampled loans, FHFA used an industry standard automated valuation model ("AVM")—on information and belief, similar to the approach used by FGIC—to calculate the value of the underlying property at the time the mortgage loan was originated. (Id. ¶ 99).

177. Similar to FGIC's findings with respect to 2005-EFC7, the FHFA's review of the sample data confirmed, on a statistically-significant basis, that the information provided in the 2005-EFC7 Prospectus Supplement concerning owner-occupancy and LTV ratios was materially false.

178. The FHFA's analysis determined that RFC overstated the true percentage of non-owner-occupied properties within the 2005-EFC7 underlying Group II Mortgage Loan Pool, overstated the true percentage of 2005-EFC7 underlying Group II Mortgage Loans with a LTV ratio at or below 80 percent, and falsely represented that none of the loans had a LTV ratio above 100%. FHFA Complaint ¶ 98 & Table 6; ¶ 102 & Table 7.

179. Moreover, the FHFA cites as untrue or misleading numerous misrepresentations concerning RFC's underwriting standards in the EFC7 Transaction, including RFC's representation that "[f]or those mortgage loans that Residential Funding purchased from sellers in [the AlterNet Program], each mortgage loan determined by Residential Funding to be acceptable for purchase would have been originated in accordance with or would have been

determined to be generally consistent with the provisions of [the Client Guide]." FHFA Complaint, Appendix A at 44 (quoting Prospectus Supplement at S-32).

J. RFC's Breach of Obligations as Master Servicer

(1) Failure to Remedy Subservicing Deficiencies and to Provide Information

180. RFC, as Master Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for the 2005-EFC7 Transaction, including, but not limited to, its obligations to follow proper servicing procedures, and to sufficiently monitor and manage the performance of the subservicer with respect to its duties under each Transaction.

181. RFC took responsibility for the servicing of the Mortgage Loans through its wholly-owned subsidiary HomeComings and RFC had certain related contractual obligations under the I&I Agreement and the PSA with respect to the 2005-EFC7 Transaction. Under the I&I Agreement, RFC covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [PSA]." I&I Agreement § 2.02(l). Under the PSA, RFC is "obligated and liable to . . . [FGIC] for the servicing and administering of the [Mortgage Loans]," and in doing so is required to "follow [] such procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities[.]" PSA §§ 3.01(a), 3.04. As such, on each occasion that HomeComings failed to service and administer the Mortgage Loans in conformity with generally accepted servicing practices (including RFC's own servicing guidelines), RFC was liable "to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans." PSA § 3.04.

182. During 2007, the servicing operations of GMAC Mortgage, GMAC-RFC, and HomeComings were integrated into ResCap. Since the time of the integration, on information and belief, HomeComings has been deficient in its borrower contact, collections and loss mitigation standards. An onsite review of the Ally Financial servicing arm's headquarters, including those of HomeComings and RFC, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed *inter alia*: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when HomeComings does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry.

183. On information and belief, RFC has failed to remedy any of the deficient servicing practices in which HomeComings is engaged as subservicer.

184. In addition, RFC disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

185. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. RFC disclosed to FGIC that all of the mortgage loans in FGIC-insured, RFC-serviced transactions (over 90,000

mortgage loans), including all of the Mortgage Loans in the 2005-EFC7 Transaction, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second- lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, RFC clearly knew that such Mortgage Loans, by their very nature, required particularized servicing such as that provided by HomeComings before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by RFC to ensure that the Mortgage Loans were serviced and administered in accordance with "good faith" business practices constitutes a breach of the PSA and the I&I Agreement. *See* PSA § 3.01(a), 3.04; I&I Agreement § 2.02(l).

186. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, RFC has still failed to provide such information.

(2) RFC allowed Excessive Loan Modifications And Amended the PSA Without FGIC's Consent

187. RFC, as Master Servicer, agreed that it would "not modify, waive or amend, or consent to any modification, waiver or amendment of" the PSA without the prior written consent of FGIC. I&I Agreement § 2.03(b).

188. On August 10, 2009, RFC requested FGIC's consent in order to execute an amendment (the "Purported Amendment") to allow RFC to modify 100% of the Mortgage Loans

rather than what would otherwise be allowed under the PSA. FGIC requested that RFC provide FGIC with sufficient information, including RFC's policies and procedures used for underwriting and processing prospective mortgagors for the Home Affordable Modification Program ("HAMP"), to respond to RFC's request for FGIC's consent. RFC never provided that information. Despite the fact that FGIC never consented to the additional loan modifications, it appears that RFC nonetheless proceeded as if its Purported Amendment had been adopted in contravention of FGIC's contractual rights. *See* I&I Agreement § 2.03(b).

189. Thus, to amend the PSA, RFC had to receive FGIC's consent. FGIC never gave its consent. Therefore, RFC breached section 2.03(b) of the I&I Agreement.

190. On information and belief, RFC has collected significantly higher servicing fees as a result of adopting the Amendment and modifying particular Mortgage Loans.

191. FGIC has requested additional information in order to determine whether RFC is in breach of its servicing obligations. In contravention of FGIC's contractual rights, RFC has failed to provide such information, including servicing notes, to FGIC. On information and belief, RFC, as Master Servicer, also knew of material breaches of representations and warranties and did not notify FGIC thereof, or cause the repurchase of the Mortgage Loans affected thereby. Accordingly, FGIC reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

K. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

192. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns RFC and GMACM. Ally Financial—as the ultimate parent of ResCap, RFC and GMACM—has the

practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, RFC and GMACM.

193. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, RFC and GMACM. Ally Financial exercised its direction and control in connection with the 2005-EFC7 Transaction. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

194. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries." *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

195. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of RFC Directly and Indirectly Through its Control of ResCap

196. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

197. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations,

"welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

198. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

199. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the proposed 2005 operating agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two

[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the Securities and Exchange Commission (the "SEC") on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

independent directors, *to be selected by GMAC*." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement") (emphasis added).

200. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RAMP, among other Ally Financial subsidiaries.

201. The 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

202. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

203. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part

of our plan and a key part of our value creation." *Id*. (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

204. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citi, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id*.

205. Moreover, there is substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

206. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home >

About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

207. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

208. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed RFC and GMACM as part of its own business. For example, in its investor presentation from 2007, ResCap declares that RFC and GMACM "are owned *and operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial wasn't directly controlling RFC and GMACM, it was using ResCap as an instrument to do so.

209. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information

related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

210. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one RFC has with respect to the 2005-EFC7 Transaction as Master Servicer.

211. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

212. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

> Q: Could you please state your name for the record.
> A: My name is Jeffrey Stephan.
> Q: Okay. And who do you work for?
> A: GMAC, LLC [Ally Financial].
> Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
> A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
> Q: Okay.
> A: It's GMCA [sic] Mortgage Corporation.
> Q: Okay.
> A: I'm not sure how you would word that.
> Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
> A. Yes.
> Q. -- that formerly existed?
> A. Yes.
> Q. So these entities no longer currently exist?
> A. Right.
> Q. Okay. And how long then have you been employed by GMAC, LLC?
> A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

L. FGIC's Contractual Remedies Under The I&I Agreement

213. The I&I Agreement provides FGIC with broad remedies for RFC's breaches of its representations and warranties. Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Pooling and Servicing Agreement or the other Operative Documents, or existing at law or in equity.

214. RFC also agreed in Sections 3.03(b) and 3.03(c) of the I&I Agreement:

> Anything in Sections 2.01(l) and 3.03(a) hereof or in any Operative Document to the contrary notwithstanding, the Insurer shall be entitled to full reimbursement from RFC for (i) any payment made under the Policy arising as a result of RFC's failure to substitute for or deposit an amount in respect of any defective Mortgage Loan as required pursuant to Section 4 and Section 5 of the Assignment Agreement, together with interest on any and all such amounts remaining unreimbursed . . . from the date such amounts became due until paid in full . . .

I&I Agreement § 3.03(b); and

> RFC agrees to pay to [FGIC] any and all reasonable charges, fees, costs and expenses that [FGIC] may reasonably pay or incur, including reasonable attorneys' and accountants' fees and expenses, in connection with (i) the enforcement, defense or preservation of any rights in respect of any of the Operative Documents, including defending, monitoring or participating in any litigation or proceeding . . . relating to any of the Operative Documents . . . .

I&I Agreement § 3.03(c).

215. In addition, RFC agreed in Section 3.04(a) of the I&I Agreement:

> to pay, and to protect, indemnify and save harmless, [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach by RFC or the Depositor of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the transactions contemplated by the Operative Documents by reason of . . . . the breach by RFC or the Depositor of any representation, warranty . . . or covenant under any of the Operative Documents or the occurrence, in respect of RFC or the Depositor, under any of the Operative Documents of any "event of default" . . . .

I&I Agreement § 3.04(a) & (a)(iv).

216. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, RFC agreed to repurchase or substitute Mortgage Loans that did not conform to RFC's representations and warranties, and to indemnify FGIC for claims and losses arising from RFC's breach of any representation or warranty.

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Material Breach of the I&I Agreement—Declaratory Relief Regarding RFC's Indemnification Obligation)

217. FGIC re-alleges and incorporates by reference paragraphs 1 through 216 of this Complaint.

218. The I&I Agreement is a valid and binding agreement between the parties.

219. FGIC has performed its obligations under the I&I Agreement.

220. RFC's representations and warranties were material to FGIC's decision to insure the 2005-EFC7 Certificates and to issue the 2005-EFC7 Policy.

221. RFC's pervasive and material breaches of its representations and warranties constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

222. Pursuant to Section 3.04(a) of the I&I Agreement, RFC must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by RFC of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

223. As explained above, RFC has breached numerous representations and warranties in the 2005-EFC7 Offering and Operative Documents, for example, those contained in Section

2.01 of the I&I Agreement. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

224. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

225. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must jointly and severally indemnify FGIC for all sums arising out of the 2005-EFC7 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the 2005-EFC7 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2005-EFC7 Policy as and when such sums fall due or claims are presented.

226. In addition, FGIC seeks a declaration that RFC must indemnify FGIC for all sums arising out of the 2005-EFC7 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the 2005-EFC7 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2005-EFC7 Policy as and when such sums fall due or claims are presented.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Fraudulent Inducement—I&I Agreement)

227. FGIC re-alleges and incorporates by reference paragraphs 1 through 226 of this Complaint

228. RFC induced FGIC to enter into the I&I Agreement and to issue the Policy by making false representations and warranties about its business practices and the Mortgage Loans,

and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

229. As explained above, RFC knowingly made materially false statements to, and/or omitted material facts from, FGIC with the intent to induce detrimental reliance by FGIC.

230. RFC intended for FGIC to rely on RFC's material false statements and/or omissions. FGIC had no reason to believe that RFC's representations were false, and reasonably and justifiably relied on RFC's material false statements and/or omissions regarding information uniquely in the possession of RFC when it decided to enter into the I&I Agreement and to issue the Policy for the 2005-EFC7 Certificates.

231. As a result of RFC's material false statements and omissions, FGIC entered into the I&I Agreement, issued the Policy, and thereby agreed to insure certificates backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that RFC represented would collateralize the 2005-EFC7 Transaction.

232. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

233. As a result of RFC's material false statements and omissions, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

234. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

235. In addition, RFC is separately liable for such damages.

THIRD CAUSE OF ACTION

(Alternatively Against Ally Financial: Aiding and Abetting Fraudulent Inducement—I&I Agreement)

236. FGIC re-alleges and incorporates by reference paragraphs 1 through 235 of this Complaint.

237. As explained above, Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to issue the Policy.

238. RFC could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

239. Both Ally Financial knew that RFC fraudulently induced FGIC issue the Policy for the 2005-EFC7 Transaction.

240. Ally Financial's statements materially aided RFC's fraudulent inducement.

241. As a result of Ally Financial's aiding and abetting RFC's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Representations, Warranties and Affirmative Covenants)

242. FGIC re-alleges and incorporates by reference paragraphs 1 through 241 of this Complaint.

243. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

244. FGIC has performed its obligations under the I&I Agreement.

245. As explained above, RFC has materially breached its representations and warranties under Section 2.01 of the I&I Agreement.

246. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

247. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

248. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

249. In addition, RFC is separately liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Repurchase Obligation)

250. FGIC re-alleges and incorporates by reference paragraphs 1 through 249 in this Complaint.

251. The I&I Agreement is a valid and binding agreement between the parties.

252. FGIC has performed its obligations under the I&I Agreement.

253. Pursuant to the terms of the I&I Agreement, and the provisions of the Operative Documents incorporated therein, FGIC has demanded that RFC repurchase non-complying Mortgage Loans. RFC has refused to repurchase numerous such Mortgage Loans.

254. RFC has breached the I&I Agreement, and the provisions of the Operative Documents incorporated therein, by failing to repurchase those Mortgage Loans that violated RFC's representations and warranties that FGIC has noticed to RFC.

255. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

256. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

257. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

258. In addition, RFC is separately liable for such damages.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Declaratory Relief Regarding Access to Information)

259. FGIC re-alleges and incorporates by reference paragraphs 1 through 258 of this Complaint.

260. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

261. FGIC has performed its obligations under the I&I Agreement.

262. Pursuant to Section 2.02(c) of the I&I Agreement, RFC agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the 2005-EFC7 Transaction. FGIC further has the right to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(m) of the I&I Agreement.

263. As discussed above, pursuant to the I&I Agreement, FGIC made numerous reasonable written requests that RFC furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by RFC, and others, concerning the Mortgage Loans.

264. RFC has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

265. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

266. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, RFC agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer; and (iii) discuss the affairs, finances and accounts of RFC with RFC's independent accountants.

267. FGIC made a reasonable request to inspect the books and records, discuss the affairs, finances and accounts with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants on December 1, 2011.

268. RFC has failed to make available such persons or to produce such information.

269. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

270. Pursuant to Section 2.02(e) of the I&I Agreement, RFC agreed, on an annual basis or when reasonably requested by FGIC, to cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the 2005-EFC7 Custodial Agreement to enable FGIC to track the progress of the recording of Mortgages and Assignments with respect to the Mortgage Loans.

271. FGIC made a reasonable request for the Interim Certification on June 21, 2011.

272. RFC has failed to cause the Interim Certification to be delivered to FGIC as requested. On December 8, 2011, FGIC again notified RFC of its failure to perform under the I&I Agreement, but RFC continued to fail to cause the Interim Certification to be delivered to FGIC.

273. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Interim Certification to be delivered to FGIC after receiving reasonable requests from FGIC.

274. Pursuant to Section 2.02(c)(iv) of the I&I Agreement, RFC agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [PSA]."

275. FGIC made a reasonable request for servicing notes on December 9, 2010.

276. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

277. Pursuant to Sections 2.02(c)(v) of the I&I Agreement, RFC agreed "[p]romptly upon request" to provide FGIC with data concerning the Mortgage Loans or the Transaction. Moreover, pursuant to Section 2.02(e)(ii) of the I&I Agreement, RFC agreed, upon FGIC's reasonable request and on an annual basis, among other times, to discuss the affairs of RFC as they relate to the Mortgage Loans or the Transaction.

278. FGIC has made reasonable requests for information from RFC concerning the EquiFirst Settlement.

279. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to disclose to FGIC information concerning the EquiFirst Settlement other than the amount of the settlement and the number of loans affected by the settlement.

280. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

281. Accordingly, FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must comply with Sections 2.02(c), 2.02(m) and 2.02(e) of the I&I Agreement.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Master Servicer Obligations)

282. FGIC re-alleges and incorporates by reference paragraphs 1 through 281 of this Complaint.

283. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

284. FGIC has performed its obligations under the I&I Agreement.

285. As explained above, RFC has materially breached its representations and warranties under section 2.03(b) of the I&I Agreement by purporting to amend the Operative Documents without FGIC's prior and necessary consent.

286. Moreover, as explained above, RFC has breached its affirmative covenant under the I&I Agreement to service all Mortgage Loans in all material respects in compliance with the PSA.

287. RFC's breaches of the I&I Agreement has caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

288. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

289. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

290. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

291. In addition, RFC is separately liable for such damages.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief)

292. FGIC re-alleges and incorporates by reference paragraphs 1 through 291 of this Complaint.

293. This is a claim for declaratory judgment pursuant to CPLR 3001 for the purpose of determining a justiciable controversy between FGIC and Ally Financial, ResCap, and RFC.

294. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this complaint.

295. For the reasons set forth in paragraphs 192 through 212, among others, Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

296. FGIC has been damaged as a result of the actions Ally Financial, ResCap and RFC.

297. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

NINTH CAUSE OF ACTION

(As Against RFC: Attorneys' Fees and Costs)

298. FGIC re-alleges and incorporates by reference paragraphs 1 through 297 of this Complaint.

299. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

300. FGIC has performed its obligations under the I&I Agreement.

301. Pursuant to Section 3.03(c) of the I&I Agreement, RFC agreed to reimburse FGIC for any and all costs or expenses "including reasonable fees and expenses of attorneys" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, RFC agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2005-EFC7 Transaction.

302. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of RFC's failure to provide Mortgage Loan files, the Interim Certification, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant Residential Funding Company, LLC, with respect to (1), (2), and (4) through (15) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (12), (14), and (15) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (12), (14), and (15) below and the following relief:

(1) A declaration that, pursuant to RFC's obligations under the I&I Agreement, RFC must solely and/or Ally Financial, ResCap, and RFC must jointly and severally reimburse and indemnify FGIC for all sums arising out of the 2005-EFC7 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal rescissory, equitable, and punitive damages, to be proven at trial, for RFC's fraudulent inducement of FGIC to enter into the 2005-EFC7 Transaction and to issue the Policy;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's aiding and abetting of RFC's fraudulent inducement of FGIC to enter into the 2005-EFC7 Transaction and to issue the Policy;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for RFC's material breaches of the 2005-EFC7 Transaction;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for RFC's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that RFC must repurchase all Mortgage Loans that are in breach of RFC's representations and warranties in the 2005-EFC7 Transaction, and an order giving effect to that declaration;

(7) Further or alternatively, a declaration that RFC must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2005-EFC7 Transaction, and an order giving effect to that declaration;

(8) Further or alternatively, a declaration that RFC must allow FGIC to inspect the books and records of RFC, to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants, and an order giving effect to that declaration and to disclose information concerning the EquiFirst Settlement;

(9) Further or alternatively, a declaration that RFC must cause to be provided servicing notes for the 2005-EFC7 Transaction when requested by FGIC;

(10) Further or alternatively, a declaration that RFC must cause to be provided the custodial Interim Certification when requested by FGIC for the 2005-EFC7 Transaction stating that all mortgage files were complete and were properly transferred into the trusts, or noting any exceptions, and an order giving effect to that declaration;

(11) Further or alternatively, an award of legal and equitable damages, to be proven at trial, for RFC's purported amendment of the PSA without FGIC's consent;

(12) Further or alternatively, a declaration that Ally Financial, ResCap, and RFC are alter egos of each other;

(13) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(14) An award of prejudgment interest at the statutory rate; and

(15) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: December 27, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Alex P. McBride
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CIV 0339

FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

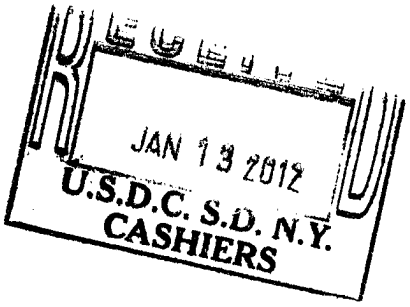
-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,

Defendants.

No. 11-cv-_____(__)

NOTICE OF REMOVAL



TO:
CLERK
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

CLERK
Supreme Court of the State of New York
County of New York
Courthouse
60 Centre Street
New York, New York 10007

Howard F. Sidman
Jones Day
222 East 41st Street
New York, New York 10017

Pursuant to 28 U.S.C. § 1441, Defendants Residential Capital, LLC ("Residential Capital") and Residential Funding Company, LLC ("Residential Funding") (collectively "Defendants") respectfully give notice of the removal this action, entitled *Financial Guaranty Insurance Company v. Ally Financial, Inc. F/K/A GMAC, LLC; Residential Capital, LLC F/K/A Residential Capital Corporation; Residential Funding Company, LLC F/K/A Residential Funding Corporation*, Index No. 653622/2011 (Supreme Court of the State of New York, County of New York), from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York based upon the following grounds:

1. Upon information and belief, this action was commenced on or about December 27, 2011, in the Supreme Court of the State of New York, County of New York. A copy of the Summons and Complaint was served on Defendant Residential Capital's appointed agent, Corporation Service Company, on December 29, 2011. A copy of the Summons and Complaint was served on Defendant Residential Funding's appointed agent, Corporation Service Company, on December 29, 2011.

2. This Notice of Removal is being filed within thirty (30) days of the date Defendants' appointed agents received service of the Summons and Complaint. This Notice of Removal includes a short and plain statement of grounds for removal together with a copy of all process, pleadings, and orders served upon Defendants in this action attached hereto as Exhibit A.

3. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) and this action may be removed to this Court by Defendants pursuant to 28 U.S.C. §

1441(a), in that it is a suit constituting a dispute between citizens of different states and the matter in controversy exceeds the sum of the value of $75,000, exclusive of interest and costs.

a. This suit constitutes a dispute between citizens of different states. As alleged in the Complaint, Plaintiff Financial Guaranty Insurance Company ("Plaintiff") is, and has been at all relevant times, a citizen of New York. Complaint ¶19. As of the date Plaintiff filed suit and currently, Defendant Residential Funding is a Delaware limited liability company. Complaint ¶21. The citizenship of a limited liability company is determined by the citizenship of its members. *Handelsman v. Bedford Vill. Assocs. Ltd. P'ship*, 213 F.3d 48, 51-52 (2nd Cir. 2000). Where the members are themselves limited liability companies, a court looks to the citizenship of their members, and continues this process until it reaches the ultimate incorporated or individual members. *See e.g., Quantlab Financial, LLC v. Tower Research Capital LLC*, 715 F.Supp.2d 542, 546-47 (S.D.N.Y. 2010); *Lindley Contours, LLC v. AABB Fitness Holdings, Inc.*, 414 Fed. Appx 62, 64 (9th Cir. 2011); *Onepoint Solutions, LLC, v. Borchert*, 486 F.3d 432, 347 n.4 (7th Cir. 2007). Residential Funding's sole member at all relevant times has been GMAC-RFC Holding Company, LLC, a Delaware limited liability company. GMAC-RFC Holding Company, LLC's sole member at all relevant times has been Residential Capital, LLC, a Delaware limited liability company. Residential Capital's sole member at all relevant times has been GMAC Mortgage Group LLC, a Delaware limited liability company. GMAC Mortgage Group LLC's sole member at all relevant times has been Ally Financial, Inc. Ally Financial, Inc. is incorporated under the laws of Delaware with its principal place of business in Michigan. Complaint ¶20. Accordingly, Residential Funding is, and has been at all relevant times, a citizen of Delaware and Michigan, the principal place of business and state of incorporation for the ultimate incorporated member. Similarly, Defendant

Residential Capital is, and has been at all relevant times, a citizen of Delaware and Michigan, as its ultimate incorporated member is also Ally Financial, Inc. Finally, defendant Ally Financial, Inc. is, and has been at all relevant times, a citizen of Delaware and Michigan. Thus, the citizenship of all parties are diverse as defined by 28 U.S.C. § 1332(a). Moreover, no defendant is a citizen of New York, the state in which the action is pending and the domicile of the Plaintiff, and none of the parties or companies identified above, other than Plaintiff, has its principal place of business in the State of New York.

b. This action involves a matter in controversy exceeding the sum or value of $75,000, exclusive of costs, in that the compensatory damages sought by the Plaintiff include, among other items, indemnification for and damages in the amount of claims made against Plaintiff's insurance policy for "more than $54 million in claims" presented to Plaintiff, and "tens of millions of dollars more in claims to be presented" under Plaintiff's policy in the future. Complaint ¶¶ 122; Prayer for Relief.

4. Venue lies in the United States District Court for the Southern District of New York because the state-court action was filed in this district. 28 U.S.C. § 1441(a).

5. As required by 28 U.S.C. § 1446(d), Defendants are serving a copy of this Notice of Removal on Plaintiff and will file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York.

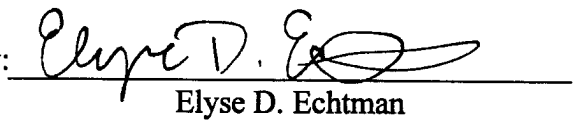
6. All Defendants have consented to removal of the instant action. Defendant Ally Financial, Inc. will be filing a separate notice of consent.

WHEREFORE, Defendants submit this Notice of Removal of this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York and pray this action stand so removed.

Dated: New York, New York
January 13, 2012

Respectfully submitted,

Orrick, Herrington & Sutcliffe LLP

By: 

Elyse D. Echtman
eechtman@orrick.com

51 West 52nd Street
New York, New York 10019-6142
+1 212-506-5000
+1 212-506-5151

Attorneys for Defendants Residential Capital, LLC, and Residential Funding Company, LLC

OHSWEST:261480592.1

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY, **Plaintiff,** **-against-** **ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,** **Defendants.**	**Index No. _____** **SUMMONS** **Date Index No. Purchased:** December 27, 2011

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiff herein and to serve a copy of your answer on the Plaintiff at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

VENUE: Plaintiff designates New York County as the place of trial. The basis of this designation is Plaintiff's residence in New York County at 125 Park Avenue, New York, New York 10017. A further basis of this designation is Defendant RESIDENTIAL FUNDING COMPANY, LLC's residence in New York County and agreed submission to this venue.

Dated: December 27, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Michael J. Dailey
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,	)	**Index No. _____**
Plaintiff,	)	
	)	**COMPLAINT**
-against-	)	
ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,	)	
Defendants.	)	

Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"); Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"); and Residential Funding Company, LLC, formerly known as Residential Funding Corporation ("RFC"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with a financial guaranty insurance policy (the "Policy") issued by FGIC in relation to an RFC-sponsored transaction (the "2005-NC1 Transaction" or the "Transaction") in which RAMP Series 2005-NC1 Trust (the "2005-NC1 Trust") issued and sold to investors $870,750,000 aggregate principal amount of insured residential mortgage-backed securities (the "2005-NC1 Certificates"). As the sponsor of the

2005-NC1 Transaction, RFC procured the Policy from FGIC in order to enhance the ratings and marketability of the 2005-NC1 Certificates. RFC fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices and the credit quality and characteristics of the thousands of mortgage loans (individually the "Mortgage Loans," and collectively the "Loan Pool") that provided the collateral for the 2005-NC1 Certificates. In short, the Mortgage Loans were different—and demonstrably worse—than RFC had represented them to be. Indeed, RFC's misrepresentations with respect to the 2005-NC1 Transaction have been so egregious that a federal government agency has alleged fraud and state and federal securities law violations against RFC relating to the 2005-NC1 Transaction.

2. FGIC's issuance of the Policy enabled the 2005-NC1 Certificates to receive an initial triple-A rating from the rating agencies, which in turn made the 2005-NC1 Transaction viable, and enabled RFC and its affiliates to earn millions of dollars in transaction fees.

3. Since the closing of the 2005-NC1 Transaction, RFC has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the 2005-NC1 Transaction, RFC has violated the essential terms of its agreement with FGIC. RFC has also breached the essential terms of the other operative documents incorporated therein.

4. The wrongdoing committed by RFC, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through ResCap. Ally Financial is the ultimate parent of ResCap, which owns RFC. Ally Financial, as the ultimate parent of ResCap and RFC, has the practical ability, which it has repeatedly exercised, to direct and control the activities of

its subsidiaries, including ResCap and RFC. At times, Ally Financial's direction and control was effected by using ResCap as an instrument to achieve its goals.

5. The 2005-NC1 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among RFC and several other parties. To facilitate the Transaction, RFC pooled together the Mortgage Loans that it purchased from the originators, New Century Financial Corporation ("New Century") and New Century's wholly owned subsidiary Home123 Corporation ("Home123," and together with New Century, the "Originators"), nationwide mortgage lenders at that time that have since gone bankrupt. The Mortgage Loans consisted of 4,613 first-lien and junior-lien mortgage loans originated by the Originators.

6. Following its acquisition of the Mortgage Loans, RFC transferred the Mortgage Loans to another Ally Financial subsidiary, Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then deposited the Mortgage Loans it received from RFC into the 2005-NC1 Trust. The trust, in turn, issued certificates representing the beneficial interest in the 2005-NC1 Trust. The 2005-NC1 Trust was a legal entity created by RFC solely for the purposes of the 2005-NC1 Transaction to hold the Mortgage Loans and to issue the 2005-NC1 Certificates to investors in a registered public offering.

7. RFC also acts as master servicer of the 2005-NC1 Transaction (the "Master Servicer"), and another Ally Financial affiliate, HomeComings Financial LLC ("HomeComings"), acts as subservicer. As Master Servicer, RFC supervises the activities of the subservicer, including the collection of borrower payments, and performs other servicing duties related to the Mortgage Loans. As discussed in more detail below, all of HomeComings' and RFC's servicing operations have since been integrated into ResCap. Yet another Ally Financial

subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was one of the underwriters of the 2005-NC1 Transaction. In addition, U.S. Bank National Association ("U.S. Bank") agreed to act as trustee of the NC1-Trust (the "Trustee").

8. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the Trust are used to pay, among other things, principal and interest due on the 2005-NC1 Certificates, and the fees and expenses of RFC and HomeComings, as well as other participants in the 2005-NC1 Transaction.

9. RFC, directed and controlled by Ally Financial, is, therefore, the hub of the 2005-NC1 Transaction: it is the sponsor of the securitization, an acquirer and seller of the Mortgage Loans, and the Master Servicer of the Transaction. The primary victim of the 2005-NC1 Transaction—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by RFC—is FGIC, which has already been presented with over $54 million in claims under the Policy, with further material losses still to come.

10. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed certificates ("RMBS Certificates"). At the time of the 2005-NC1 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Certificates typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of realized losses on the Mortgage Loans

collateralizing the insured securities. FGIC's insurance policies thus enhanced the credit quality and marketability of the insured securities.

11. To enhance the ratings and marketability of the 2005-NC1 Certificates, and to increase the profit that RFC would derive from the 2005-NC1 Transaction, RFC sought to have FGIC issue the Policy to U.S. Bank, as Trustee, for the benefit of the holders of the 2005-NC1 Certificates.

12. As an essential element of the 2005-NC1 Transaction, RFC made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated as well as their characteristics to induce FGIC to enter into the Transaction. Those representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2005-NC1 Transaction. As a result, FGIC was fraudulently induced to enter the 2005-NC1 Transaction, and the credit risk assumed by FGIC in connection with the 2005-NC1 Transaction was far greater than it would have been, had RFC's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

13. RFC received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policy. Ally Financial took actions and made statements to finance, support, and boost investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations RFC had made to FGIC. As a result of its dominance over ResCap and RFC, Ally Financial knew that the representations and warranties RFC made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted RFC's fraudulent inducement of FGIC to issue the Policy.

14. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policy in reliance on the (presumed) accuracy and truthfulness of RFC's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and therefore the amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of RFC's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policy, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of RFC's misconduct

15. In order to evaluate the extent of RFC's breaches, FGIC has requested copies of the mortgage loan files and servicing notes for the Mortgage Loans. RFC is obligated, under its agreements with FGIC, to provide those documents to FGIC. RFC has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence material breaches by RFC. This refusal to provide information in itself constitutes a material breach of RFC's insurance agreement with FGIC.

16. Certain of the material contractual breaches committed by RFC—including, but not limited to, FGIC's right to access information in RFC's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

17. Through this Complaint, FGIC seeks relief against RFC, ResCap, and Ally Financial for RFC's fraudulent inducement, and for its material breaches of its insurance agreement with FGIC and other contractual obligations owed to FGIC in connection with the 2005-NC1 Transaction.

18. FGIC seeks a declaration from the Court that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other. Further and alternatively, FGIC seeks relief against Ally Financial for aiding and abetting RFC's fraudulent inducement.

THE PARTIES

19. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

20. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial specializes in automotive financings, residential mortgage financings and services, and insurance services. Ally Financial is the parent company of ResCap, RFC, and all RFC-affiliated entities relevant to this action.

21. Defendant RFC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. In the period relevant to this action, RFC acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

22. Since 2005, RFC has been an indirect wholly owned subsidiary of ResCap; prior to that time, RFC was an indirect, wholly owned subsidiary of Ally Financial.

23. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of RFC and is a leading real estate finance company, the business of which includes acquiring, selling and servicing mortgage loans.

24. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this suit pursuant to CPLR §§ 301 and 311-a. RFC is a registered, foreign, limited liability company within the State of New York. RFC has appointed an agent for service of process in this State and transacts business within this State. Also, in an agreement at issue in this case, RFC irrevocably submitted to the jurisdiction of this Court. Ally Financial and ResCap likewise regularly transact business in this State, and the acts giving rise to the claims in this case occurred in this State.

26. Venue is proper in New York County pursuant to CPLR § 503. FGIC, as plaintiff, has designated New York County as the place of trial. RFC, a party to this action, has designated New York County as its county of residence in the State of New York, and has agreed not to challenge venue in this Court. Furthermore, substantial activity giving rise to the claims in this case occurred within New York County.

RELEVANT NON-PARTIES

27. GMAC Mortgage LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMACM is an indirect wholly-owned subsidiary of ResCap, which in turn is a wholly-owned subsidiary of Ally Financial.

28. RAMP, a special purpose vehicle, is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. To facilitate the 2005-NC1 Transaction, RAMP purchased the Mortgage Loans from RFC and deposited them into the 2005-NC1 Trust, which then issued the 2005-NC1 Certificates to underwriters to be sold to investors.

29. Ally Securities, an entity incorporated in Delaware, is an affiliate of RFC and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding

Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2005-NC1 Certificates and, on information and belief, participated in the preparation of the Prospectus and Prospectus Supplement.

30. RFC acquired of the Mortgage Loans for the 2005-NC1 Transaction from New Century and Home123, a wholly owned subsidiary of New Century. New Century and Home123 filed for bankruptcy on April 2, 2007.

31. HomeComings (*f/k/a* HomeComings Financial Network, Inc.) has continually served as primary servicer of the Mortgage Loans. HomeComings is a wholly owned subsidiary of RFC.

FACTUAL ALLEGATIONS

A. Ally Financial and Its Subsidiaries

32. In the period relevant to this action, RFC acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Certificates.

33. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults, and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including ResCap and RFC, led Ally Financial to seek a bailout by the federal government in 2008.

(1) RFC, GMACM, and GMAC-RFC

34. RFC is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

35. GMACM is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate RFC, GMACM engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

36. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

37. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

38. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with RFC. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

39. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

40. Ally Financial's business model depended on securitizations, which were conducted by its business units, including RFC. Pooling mortgage loans and selling them into securitizations enabled RFC to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

41. RFC, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third parties. RFC would typically acquire such mortgage loans and then deposit them into a securitization trust (usually through an affiliate). RFC would then procure underwriters, trustees, and (in the case of insured securities) financial guaranty insurers, and cause the securitization trust to sell securities collateralized by the relevant mortgage loans. In many instances, RFC profited from the difference between the cost it incurred to acquire mortgage loans and the price at which it sold them for deposit into the securitizations.

42. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining

whether a mortgage loan is in default based on the transaction documents, RFC typically also sought (as it did here) to be appointed as the Master Servicer for the 2005-NC1 Transaction. Moreover, RFC appointed its subsidiary, HomeComings, to act as subservicer. For acting as Master Servicer to the 2005-NC1 Transaction, RFC gained substantial additional compensation.

43. RFC also enriched Ally Financial and its subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2005-NC1 Transaction: (i) RAMP, which established the 2005-NC1 Trust and acted as depositor of the Mortgage Loans, charged fees to cover its operating expenses; (ii) Ally Securities received fees for underwriting the 2005-NC1 Certificates; and (iii) RFC and HomeComings earned fees for servicing the Mortgage Loans.

(3) Ally Financial, RFC, and GMACM Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

44. On September 2, 2011, the Federal Housing Finance Authority (the "FHFA"), as conservator for Freddie Mac, filed suit in this Court against RFC for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in RMBS issued through twenty-one RFC-sponsored transactions, including the 2005-NC1 Transaction.

45. The FHFA also alleges violations of state and federal securities laws by RFC and its parent, Ally Financial, and their affiliates, stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against RFC's affiliates and Ally Financial for their intentional and substantial assistance in rendering

material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs.

46. In addition, RFC is currently facing a lawsuit brought by MBIA Insurance Corporation in this Court for, among other things, fraud and breach of representations and warranties in connection with insured RMBS transactions. On December 22, 2009, this Court issued a ruling on RFC's motion to dismiss which allowed both the breach of contract and the fraud claims, among others, to proceed.

47. DZ Bank AG also filed a summons with notice in New York Supreme Court on December 13, 2011, against Ally Financial, ResCap, RFC, RAMP, and other Ally Financial subsidiaries for common-law fraud, fraudulent inducement, negligent misrepresentation, and aiding and abetting fraud, in connection with the 2005-NC1 Transaction. The summons with notice alleges material misrepresentations and omissions regarding the standards used to underwrite, and key statistical characteristics of, the Mortgage Loans in the 2005-NC1 Transaction. The claims arise from DZ Bank AG's purchase of $289.8 million in securities issued by Ally Financial subsidiaries, including a portion of the 2005-NC1 Certificates.

48. IKB Deutsche Industriebank AG also filed a summons with notice in New York Supreme Court on December 16, 2011, against Ally Financial, ResCap, RFC, and other Ally Financial subsidiaries for, *inter alia*, Securities Act violations, common law fraud, fraudulent inducement, and aiding and abetting fraud. The claims arise from the purchase of $4 million in securities underwritten and issued by Ally Financial subsidiaries in a similar RMBS transaction.

49. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two pending suits against Ally Financial's mortgage-related subsidiaries. The plaintiffs in those suits have alleged, among other things, that Ally's various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

50. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. In the first nine months of 2011 alone, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $254 million worth of mortgages related to securitizations it consummated between 2004 and 2007. It clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own SEC filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 88 (Nov. 4, 2011).

51. According to its most recent quarterly report, Ally Financial believes its "exposure to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008 . . . ." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 146 (Nov. 4, 2011). The 2005-NC1 Transaction is, as the name implies, of the 2005 vintage.

52. Additionally, Ally Financial also disclosed that the U.S. Securities and Exchange Commission served a subpoena on Ally Financial in June 2011, requesting documentation

regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

53. Furthermore, RFC's sister company GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." *Id.* (emphasis added).

(4) The Mortgage Loan Servicing Practices of Ally Financial and its Subsidiaries Have Come Under Scrutiny for Deficiencies

54. The Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and the Federal Deposit Insurance Corporation (the "FDIC") has ordered Ally Financial and several of its subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

55. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

56. Furthermore, under the Consent Order, Ally Financial must direct its mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id.* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

57. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure process of at least one Ally Financial subsidiary to request an independent review of their files and, if warranted, receive compensation for the financial harm they suffered as a result of any errors, misrepresentations, or other deficiencies. *See* Press Release, Federal Reserve Board (November 1, 2011).

58. Moreover, according to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep. *Federal National Mortgage Association v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Div Nine, No. Cumb.) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

59. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.*

60. The Ohio Attorney General, in October 2010, filed suit against Ally Financial and its subsidiaries, alleging, *inter alia*, that employees of Ally Financial subsidiaries had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). And in December 2011, the Massachusetts Attorney General filed a similar suit against an Ally Financial subsidiary (GMACM) for, among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston).

61. Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices, Boston Globe, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request

> that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and RFC

62. Ally Financial is considering filing for bankruptcy protection for ResCap, its wholly owned, indirect subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports, as of November 9, 2011. RFC is a wholly-owned, indirect subsidiary of ResCap.

63. Bloomberg News reported that "[d]erivatives traders are betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering," in an article, entitled "Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance," dated November 14, 2011. According to the article, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy.

64. Indeed, Ally Financial warned in its 2010 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 21 (Feb. 25, 2011).

B. RFC's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

65. To improve the marketability and ratings of the RMBS Certificates issued as part of its securitizations, RFC from time to time sought credit enhancement for the RMBS Certificates from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of

the insured RMBS Certificates that, if there is a shortfall in cash available to it to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

66. For a trust that issues RMBS Certificates, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Certificates. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the Loan Pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS Certificate investors. Such shortfalls result in claims on FGIC's policy.

(2) Securitization Sponsor's Representations and Warranties

67. The risk FGIC assumes when it agrees to issue a policy for RMBS Certificates depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originator and the characteristics of the loans. If, for instance, a loan originator employs substandard underwriting practices, the underlying mortgage loans would be of inferior credit quality. Consequently**,** the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

68. Accordingly, FGIC generally required securitization sponsors like RFC to provide substantial representations and warranties about the underlying mortgage loans, including representations about the standards and procedures used to underwrite the loans and the characteristics of the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance to

the value of the mortgaged property at origination—plus, in the case of a junior lien Mortgage Loan, the principal balance of the senior Mortgage Loan on the related mortgaged property—("LTV ratio"), the borrower's credit score ("FICO score"), and the credit grade of the loan according to RFC's grading system ("Credit Grade"). Even where, as here, RFC did not originate the loans at issue, it nonetheless is typically required to make representations about those loans, thereby assuming the risk that those representations might not be accurate. RFC's representations and warranties were intended to allow FGIC to assess the credit risk inherent in the Loan Pool before deciding to commit to the transaction.

C. The RAMP 2005-NC1 Transaction

69. In late 2005, RFC began to put together the 2005-NC1 Transaction. RFC purchased thousands of residential mortgage loans originated by New Century and Home123, pooled those loans, and deposited them in the 2005-NC1 Trust (via RAMP). The trust then issued $870,750,000 aggregate principal amount of Class A Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-NC1. The 2005-NC1 Certificates consisted of five classes of senior certificates, all of which were insured by FGIC. The 2005-NC1 Trust contained two groups of Mortgage Loans (respectively, the "2005-NC1 Group I Mortgage Loans" and the "2005-NC1 Group II Mortgage Loans"). The 2005-NC1 Group I Mortgage Loans contained 2,075 fixed-rate and adjustable-rate first-lien and junior-lien mortgage loans having an outstanding principal balance of more than $481 million. The 2005-NC1 Group II Mortgage Loans contained 2,538 fixed-rate and adjustable-rate first-lien and junior-lien mortgage loans having an outstanding aggregate principal balance of more than $418 million. The Mortgage Loans purportedly were all either acquired and evaluated by RFC under its 'AlterNet' program (the "AlterNet Program"), or under its 'Negotiated Conduit Asset' program (the "NCA Program").

70. To enhance the ratings and marketability of the 2005-NC1 Certificates, RFC sought a financial guaranty insurance policy from FGIC for the purpose of insuring the transaction for the benefit of the certificate holders. On December 28, 2005, FGIC and RFC executed an Insurance and Indemnity Agreement (the "I&I Agreement"), under which FGIC agreed to issue a financial guaranty insurance policy to insure the 2005-NC1 Certificates, and FGIC accordingly issued its policy number 05030158. The I&I Agreement was signed by FGIC (the "Insurer" for the Transaction); RFC (the "Seller" and Master Servicer for the Transaction); RAMP (the "Depositor" for the Transaction); and U.S. Bank (the Trustee for the Transaction).

71. The I&I Agreement provides that FGIC is a third-party beneficiary of, and shall have all of the rights provided for, in the "Operative Documents." The "Operative Documents" are defined to include, among other documents: (i) the 2005-NC1 Certificates; (ii) the Pooling and Servicing Agreement, dated December 1, 2005, among RFC, RAMP, and U.S. Bank (the "PSA"); and (iii) the Assignment and Assumption Agreement, dated as of December 28, 2005, between RFC and RAMP (the "A&A Agreement"). The PSA also provides that FGIC (the Certificate Insurer) "is an express third-party beneficiary of [the PSA]."

72. The Policy improved the marketability of the 2005-NC1 Certificates by mitigating risk for potential investors and making the 2005-NC1 Certificates eligible to receive an initial credit rating of triple-A by the rating agencies at closing.

73. RFC and the Depositor offered the 2005-NC1 Certificates for sale pursuant to a prospectus, dated July 26, 2005 (the "Prospectus"), and a prospectus supplement dated December 22, 2005 (the "Prospectus Supplement"), touting the Policy and the triple-A initial rating of the 2005-NC1 Certificates made possible by the Policy. The Prospectus and the Prospectus Supplement, together with certain preliminary Offering Documents, each as further

supplemented by any subsequent amendment or supplement thereto, and any other Offering Documents that makes reference to the Policy, are referred to collectively as the "Offering Documents."

74. On December 28, 2005, an Ally Financial subsidiary, Ally Securities, and Credit Suisse, formerly known as Credit Suisse First Boston (the other underwriter for the 2005-NC1 Transaction), purchased from the 2005-NC1 Trust and sold to investors the 2005-NC1 Certificates, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

D. RFC Fraudulently Induces FGIC to Insure the 2005-NC1 Certificates with Substantial Assistance from Ally Financial

(1) RFC's Fraudulent Inducement of FGIC

75. FGIC's participation in the 2005-NC1 Transaction was an essential component of the 2005-NC1 Transaction and enhanced RFC's ability to market the securitization effectively. The Policy allowed RFC to sell the 2005-NC1 Certificates with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

76. In order to induce FGIC to write financial guaranty insurance for the 2005-NC1 Transaction, RFC provided to FGIC, directly or indirectly, a variety of information.

77. First, RFC provided to FGIC initial and final Prospectus Supplements summarizing, among other material information, the credit quality and characteristics of the Mortgage Loans, and RFC's loan underwriting guidelines. RFC represented in the Prospectus Supplement that approximately 75% of the Mortgage Loans "were acquired and evaluated by [RFC] under its AlterNet Program. . . . [and] each [M]ortgage [L]oan determined by [RFC] to be acceptable for purchase would have been originated in accordance with or would have been determined to be generally consistent with the provisions of the [Client] Guide. . . ." Prospectus Supplement at S-32.

78. Second, RFC provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the 2005-NC1 Transaction, together with representations regarding material statistics about the Loan Pool.

79. Third, RFC provided to FGIC credit ratings for the 2005-NC1 Certificates determined without considering the effect of the Policy. These ratings, which RFC procured from the credit rating agencies, are known as "shadow ratings."

80. Fourth, RFC provided information regarding the performance of loans that were originally underwritten by New Century, generally complied with RFC's AlterNet Program or NCA Program at the time of purchase by RFC, and for which RFC was serving as the Master Servicer.

81. Fifth, as discussed in detail in Section E, RFC provided representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreement regarding the Mortgage Loans specifically and the Loan Pool generally.

82. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the 2005-NC1 Certificates, FGIC relied in part upon representations and warranties regarding RFC's loan underwriting standards made by RFC in the Prospectus and Prospectus Supplement. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about December 14, 2005, in an email sent by Jacob P. Sheehan on behalf of RFC. The Prospectus, as supplemented by the Prospectus Supplement, was filed with the SEC on December 22, 2005. The Final Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about December 23, 2005, in an email sent by Jacob P. Sheehan on RFC's behalf.

83. The Prospectus Supplement set forth, among other information, the following important characteristics of the Loan Pool: the ranges of and weighted average FICO scores and Credit Grades, the ranges of and weighted average LTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (i.e., whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). Prospectus Supplement at IV-1 – IV-8.

84. RFC publishes its loan underwriting standards in a document the Prospectus refers to as "Residential Funding's Client Guide" as modified from time to time (the "Client Guide"). In general, the Client Guide specifies documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories, and/or evidence of closing funds, among other things.

85. RFC disclosed additional data relevant to the AlterNet Program to FGIC. In particular, RFC provided FGIC with the AlterNet Guidelines. RFC also disclosed in the Prospectus Supplement the delinquency and foreclosure experience it had recorded for the AlterNet Program for nine months ending in September 2005 and for the preceding three years. Prospectus Supplement at S-81, S-82.

86. The Prospectus Supplement also includes substantive criteria for eligibility addressing material characteristics of a proposed loan, such as DTI ratios, LTV ratios, occupancy status, and Credit Grades.

87. In particular, RFC represented in the Offering Documents that the Mortgage Loans had been originated with a maximum monthly DTI ratio of 60% and a maximum LTV ratio of 100%. *See* Prospectus Supplement at IV-3. Moreover, with respect to at least 94.11% of the Mortgage Loans, RFC represented that the maximum DTI ratio was 50%, and the maximum LTV ratio for 97.42% of the Mortgage Loans was 95%. *See* Prospectus Supplement at IV-3.

88. RFC represented in the Prospectus Supplement that, with respect to occupancy status, 87.88% of the Mortgage Loans would be secured by the borrower's primary residence. Prospectus Supplement at IV-5.

89. ***Loan Tapes.*** RFC sent via email final loan tapes to FGIC on December 27, 2005. The loan tapes provided by RFC set forth, for each loan in the pool, key characteristics such as the borrower's FICO score, Credit Grades, DTI ratio, and the LTV ratio for the loan. RFC also disclosed in the Prospectus Supplement, with respect to the pool as a whole, aggregate characteristics relevant to the assessment of the credit risk of the pool, including FICO scores, Credit Grades, DTI ratios, and LTV ratios.

90. ***Shadow Rating Letters***. RFC, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. After assessing the credit quality of the Loan Pool, based on the information supplied by RFC, Moody's assigned a shadow rating of Baa1 to the 2005-NC1 Certificates, while S&P assigned the 2005-NC1 Certificates a shadow rating of BBB. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to insure the 2005-NC1 Transaction.

91. ***The Originators – New Century and Home123.*** FGIC relied on RFC to conduct an appropriate inquiry into the business methods and practices and procedures of the Originators.

FGIC also relied on RFC to provide FGIC with information about the Originators and the performance of loans that were originated by either. On December 6, 2005, RFC provided FGIC with a variety of information concerning New Century's practices, procedures and performance in originating mortgage loans. RFC acquired and held a portfolio of loans from New Century that were originated by New Century and serviced by RFC. RFC provided FGIC with performance data regarding these New-Century-originated loans purporting to show that New Century loans were performing better than other originators' loans. FGIC reasonably relied on such information and data in deciding to enter into the I&I Agreement and issue the Policy.

(2) RFC's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

92. Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to participate in the 2005-NC1 Transaction and, ultimately, issue the Policy. Ally Financial knew that the Mortgage Loans underlying the 2005-NC1 Transaction were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the AlterNet Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap and its other subsidiaries, Ally Financial knew that the representations and warranties RFC made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

93. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to finance, support, and engender investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until

GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

94. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

95. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Exhibit 99.1.

96. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

97. Ally Financial's corporate restructuring also allowed RFC to explicitly represent and warrant to FGIC in the I&I Agreement that RFC "is solvent, and will not be rendered insolvent by the Transaction. . . . [RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." I&I Agreement § 2.01(a)(xiii). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary RFC.

98. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the 2005-NC1 Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

99. Moreover, as a result of its domination and control over ResCap and RFC, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of RFC's representations and warranties to FGIC—and that they were untrue when stated. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including RFC, shared numerous directors and senior management as well.

100. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, and RFC, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by RFC was shared among and between RFC and its parent ResCap, as well as ResCap and its parent Ally Financial. Indeed, at least one Ally Financial employee who was involved in the 2005-NC1 Transaction appeared on the Transaction's working group list and received all

distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

101. Another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including RFC and RAMP, is David C. Walker. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In September 2005, shortly before the closing of the 2005-NC1 Transaction, Walker was a director at ResCap, GMACM, RFC, and RAMP, among other ResCap subsidiaries. In the 2005-NC1 Transaction, acting as a director of RAMP, Walker was a signatory to RAMP's May 1, 2005 "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors." Similarly, acting as a director of RFC he executed the "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors." Both of these documents were included in the closing documents of the 2005-NC1 Transaction.

102. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to RFC in fraudulently inducing FGIC to participate in the Transaction and issue the Policy. Further, the issuance of the Policy, which made the 2005-NC1 Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. RFC's Representations, Warranties, and Affirmative Covenants

103. In connection with the 2005-NC1 Transaction, RFC, at the direction of Ally Financial, either directly or indirectly through ResCap, made numerous representations, warranties, and affirmative covenants to FGIC. These representations and warranties were

material and concerned, among other things, the way the loans were selected and evaluated, the characteristics of the Mortgage Loans, and the accuracy of the information supplied to FGIC. RFC also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to RFC's books and records and to RFC's Servicing Officer and its independent accountants.

104. RFC's representation, among others, that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the 2005-NC1 Transaction and to issue the Policy. Further, the I&I Agreement's incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that RFC made in connection with the 2005-NC1 Transaction.

105. FGIC, for its part, reasonably relied on the information available to it regarding the underlying Mortgage Loans and the representations and warranties provided by RFC. Since FGIC had neither the right nor duty under the Operative Documents, nor the practical ability, to review the thousands of underlying Mortgage Loan files in the days available to it prior to the closing of the 2005-NC1 Transaction**,** RFC knew that FGIC had no choice but to rely on RFC's representations regarding the underlying loans in determining whether to issue the Policy. Further, FGIC had no reason to believe that these representations were not true and accurate.

106. RFC included 4,613 individual Mortgage Loans in the 2005-NC1 Trust. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation, and other forms of documentation necessary to support underwriting decisions. Unlike RFC, FGIC was under no contractual duty whatsoever to review the Mortgage Loans.

Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by RFC regarding its evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on the fact that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

107. Based on the information received by FGIC and the representations and warranties given by RFC, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Trustee for the benefit of the holders of the 2005-NC1 Certificates. In return for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the 2005-NC1 Certificates, commensurate with the risk FGIC thought it was taking. Specifically, FGIC received 0.20% per annum of the aggregate balance of the 2005-NC1 Certificates for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by RFC.

108. RFC's information, representations, and warranties were materially false when disclosed and/or provided by RFC. RFC knew that this information, and its representations and warranties, were materially false when made. RFC also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policy. Indeed, RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and issue the Policy. The issuance by FGIC of the Policy—induced by RFC's fraudulent misrepresentations and substantial assistance of Ally Financial—made the 2005-NC1 Certificates eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Representations, Warranties, and Affirmative Covenants Relating to the Operative and Offering Documents

109. Under Section 2.01 of the I&I Agreement, RFC made the following representations and warranties, among others (emphasis added in each case):

- *Accuracy of Information*. **None of the Operative Documents nor any other material information relating to the Mortgage Loans**, the operations of RFC . . . or the financial condition of RFC . . . furnished to [FGIC] . . . by RFC . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made**. [RFC] has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change. Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to RFC . . . that would render any of the Documents untrue or misleading in any material respect.

- *Compliance with Securities Laws*. The offering and sale of the Class A Certificates complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading** . . . .

- *Operative Documents*. **Each of the representations and warranties of RFC** . . . **contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** . . . .

- *Solvency; Fraudulent Conveyance*. [RFC] is solvent, and will not be rendered insolvent by the Transaction. . . . **[RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**. [RFC] does not intend to incur, and does not believe that it has incurred, debts beyond its ability to pay as they mature. . . . [RFC] is not entering into the Operative Documents, or transferring any of its assets in connection with the Transaction, with any intent to hinder, delay or defraud any of its creditors.

110. *First*, in the I&I Agreement, RFC represented and warranted that "[n]one of the Operative Documents nor any other material information relating to the Mortgage Loans, the operations of RFC . . . or the financial condition of RFC . . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any

material respect when made." I&I Agreement § 2.01(a)(x). Through these Operative and Offering Documents, as detailed above, RFC communicated several material facts about the characteristics of the mortgage loans sold to the 2005-NC1 Trust.

111. *Second*, in the I&I Agreement, RFC also represented and warranted that the "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. . . ." I&I Agreement § 2.01(a)(xi). As discussed above, in the Prospectus Supplement, RFC represented that the Mortgage Loans sold to the 2005-NC1 Trust had been underwritten in substantial conformity with RFC's underwriting standards.

112. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the respective related Operative Documents: "Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects . . . ." I&I Agreement § 2.01(a)(xii). The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that RFC made to other entities, such as investors or the Trustee, in connection with the 2005-NC1 Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreement § 2.02(k).

113. *Fourth*, RFC also provided information to FGIC concerning Mortgage Loans in the 2005-NC1 Transaction. *See* I&I Agreement § 2.02(c)(iii). This information included schedules (or "loan tapes") that set forth statistics about the Loan Pool. The loan tapes purported to describe key characteristics relevant to the assessment of risk, including DTI and LTV ratios,

occupancy status, Credit Grades, and FICO scores. *See* PSA § 1.01. On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the mortgage loan schedule, referred to in Section 4(a) of the A&A Agreement.

114. In turn, in the A&A Agreement, RFC represented that all the information in that mortgage loan schedule "is true and correct in all material respects as of the date or dates respecting which such information is furnished." § 4(a).

115. As a result of incorporating into the I&I Agreement the representations and warranties in the related Operative Documents, RFC incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in the 2005-NC1 Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that each Mortgage Loan had been underwritten in compliance with RFC's underwriting guidelines.

116. In particular, in the A&A Agreement, RFC represented and warranted as the Mortgage Loans:

- **Information in Mortgage Loan Schedule**: "The information set forth in the Mortgage Loan Schedule for such Mortgage Loans is true and correct in all material respects as of the date or dates respecting which such information is furnished." § 4(a).

- **No Material Breach Or Default**: "[T]here is no default, breach, violation or event of acceleration existing under the terms of any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration. . . , and no such default, breach, violation or event of acceleration has been waived by RFC or by any other entity involved in servicing a Mortgage Loan." § 4(e).

- **Delinquent Loans**: "As of the Cut-off Date. . . , 0.1% of the Mortgage Loans. . . are 30 to 59 days Delinquent in payment of principal and interest and none of the Mortgage Loans are 60 or more days Delinquent in payment of principal and interest." § 4(h).

117. Moreover, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—RFC specifically covenants that it will "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement § 2.02(a), (k).

118. RFC also agreed that it had to receive FGIC's consent before modifying or amending any of the Operative Documents. The I&I Agreement provides, "[RFC] will not modify, waive or amend, or consent to any modification, waiver or amendment of, any of the terms, provisions or conditions of the Operative Documents to which it is a party . . . without the prior written consent of [FGIC], which consent shall not be unreasonably withheld, conditioned or delayed." § 2.03(b).

(2) Representations, Warranties and Affirmative Covenants Regarding Access to Information and Servicing

119. In addition to the representations and warranties referenced above, the I&I Agreement provides that RFC has the contractual obligation, as Master Servicer, to service the Mortgage Loans in compliance with the PSA and to provide FGIC with access to the underlying Mortgage Loans and servicing notes, and as Seller, to procure custodial interim certifications stating that all mortgage files were complete and properly transferred into the appropriate trust ("Interim Certification"). Specifically, the I&I Agreement provides:

- *Other Information*. (A) Promptly upon request, such other data as [FGIC] may reasonably request relating to the Mortgage Loans, the servicing of the Mortgage Loans . . . , the Transaction or the ability of any of RFC or the Depositor to perform its obligations under the Operative Documents, and (B) all information required to be furnished to the Trustee or the Holders, as the case may be. § 2.02(c)(v).

- *Access to Records; Discussions with Officers and Accountants*. On an annual basis, or at any time when a Shortfall Event shall have occurred and be continuing, *upon the reasonable request of [FGIC], it will permit [FGIC] or its authorized agents, or cause [FGIC] or its authorized agents to be permitted* . . . to inspect the

> books and records of RFC . . . ; to discuss the affairs, finances and accounts of RFC . . . as they relate to the Mortgage Loans, the Transaction or the ability to perform [its] obligations under the Operative Documents with a Servicing Officer . . . ; [and] if [FGIC] reasonably believes that a Material Adverse Change may have occurred and with RFC's consent, which consent shall not be unreasonably withheld or delayed, to discuss the affairs, finances and accounts of RFC . . . with the independent accountants of such Person; *provided, however*, that officers of RFC shall have the right to be present during such discussions. In addition, if requested by [FGIC], on an annual basis, or otherwise when reasonably requested by [FGIC], RFC will . . . cause the Custodian to deliver to [FGIC] an updated certification, in the form of the "Interim Certification" required under the Custody Agreement, with an exceptions list attached thereto, to enable [FGIC] to track the progress of recording of Mortgages and Assignments with respect to the Mortgage Loans. . . . § 2.02(e) (emphasis added).

- *Servicing of Mortgage Loans*. All Mortgage Loans will be serviced in all material respects in compliance with the [PSA]. § 2.02(l).

- *Due Diligence*. If in [FGIC's] reasonable judgment circumstances so warrant, based on the performance of the Transaction, [FGIC] shall have the right, so long as the Class A Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices, at [FGIC]'s expense and in reasonable manner convenient to both RFC and [FGIC]. This due diligence right is in addition to the access provided and the other rights provided for in Section 2.02(e) of this Insurance Agreement. § 2.02(m).

F. RFC's Breaches of Its Representations, Warranties, and Affirmative Covenants

120. As discussed above, FGIC relied on material representations and warranties made by RFC regarding the manner in which the Mortgage Loans were selected and evaluated, the characteristics of those loans, and the accuracy and completeness of information RFC supplied to FGIC. Based on those representations and warranties, FGIC agreed to issue the Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed above, the risk that FGIC assumed when it issued the Policy was many times greater than the risk disclosed by RFC's representations and warranties. RFC breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

121. The 2005-NC1 Transaction has performed poorly; delinquencies and defaults for Mortgage Loans in the 2005-NC1 Transaction have been substantial, thus diminishing cash flow to the 2005-NC1 Trust, which caused and will continue to cause claims to be presented to FGIC under the Policy to cover these shortfalls. As of November 2011, a total of 1,933 Mortgage Loans, representing 42.6% of the loans underlying the 2005-NC1 Transaction had posted a loss or were severely delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policy, RFC assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with RFC's representations and warranties.

122. The poor performance of the Mortgage Loans has reduced the cash flow to the 2005-NC1 Trust, which has caused and will continue to cause claims to be presented to FGIC under the Policy to cover these shortfalls. Indeed, as of December 2011, more than $54 million in claims had been presented to FGIC in connection with the 2005-NC1 Transaction. FGIC expects tens of millions of dollars more in claims to be presented to it under the 2005-NC1 Transaction in the future.

(1) RFC's Denial of Loan File Requests

123. As the 2005-NC1 Transaction continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blashko, an RFC/ResCap employee, via e-mail demanding that RFC provide 500 of the Mortgage Loan files. Having received no response from RFC to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011 regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information

and belief, the request required authorization from officers at Ally Financial, and RFC/ResCap's response was directed by officers at Ally Financial.

124. On February 14, 2011, and again on April 28, 2011, FGIC sent further follow-up letters requesting loan files.

125. In finally responding to FGIC's request for information, RFC refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans"). Instead, it only provided FGIC with a portion of the requested loan files, consisting solely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

126. Pursuant to the PSA and the I&I Agreement, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(m) of the I&I Agreement provides that FGIC "shall have the right, so long as the [2005-NC1] Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I Agreement as to the nature of the Mortgage Loan files that are subject to review. Further, Section 2.02(c)(v) of the I&I Agreement states that "[p]romptly upon request," RFC must provide to FGIC "such other data as [FGIC] may reasonably request relating to the Mortgage Loans . . . ."

127. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreement, RFC has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(2) RFC's Denial of Interim Certification Requests

128. On June 21, 2011, FGIC demanded, pursuant to Section 2.02(e) of the I&I Agreement, that RFC promptly cause the Custodian under the 2005-NC1 Transaction to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement, with an exceptions list attached thereto. An Interim Certification would

enable FGIC to track the progress of the recording of mortgages and assignments with respect to the related Mortgage Loans.

129. Again on December 8, 2011, FGIC wrote RFC demanding the Interim Certification, noting that it had been over five months since FGIC's initial letter and that RFC had failed to respond.

130. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to these requests.

(3) RFC's Denial of Servicing Notes

131. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the I&I Agreement, that RFC furnish or cause to furnish the servicing notes for the Mortgage Loans.

132. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(4) RFC's Denial Of FGIC's Access To Books and Records, Servicing Officer, and RFC's Independent Accountants

133. On December 1, 2011, in accordance with its express rights under Sections 2.02(e)(i)-(iii) of the I&I Agreement, FGIC requested to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances, and accounts of RFC with the Servicing Officer of RFC; and (iii) discuss the affairs, finances, and accounts of RFC with RFC's independent accountants.

134. To date, RFC has failed to respond to this request, in violation of the I&I Agreement.

(5) Breaches Uncovered In Loan File Reviews

135. As discussed above, RFC improperly refused to provide FGIC with any loan files for "performing loans" when such loans were demanded on several occasions. Accordingly, when it requested files for 500 of the Mortgage Loans for the 2005-NC1 Transaction in

December 2010, FGIC received only a portion of that sample and that portion consisted of only Mortgage Loans that RFC characterized as "non-performing."

136. After receiving the loan files for those non-performing Mortgage Loans, FGIC evaluated those Mortgage Loans to determine whether they contained material breaches of the I&I Agreement and the 2005-NC1 Operative Documents necessitating repurchase under the related Operative Documents. To perform this review, FGIC hired an independent outside consultant, having particular skill, experience and expertise in the review, evaluation and re-underwriting of mortgage loans.

137. The independent consultant's review revealed that approximately 79% of those Mortgage Loans supposedly underwritten in accordance with the AlterNet Program contained breaches of the representations and warranties in the I&I Agreement.

138. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 10235745: the loan was approved using stated income in the amount of $3,500 with a DTI ratio of 47%; however, a written verification of employment contained in the Mortgage Loan File reported the borrower's monthly income as $2,500, raising the DTI ratio to 67%, which exceed the maximum DTI ratio of 50% allowed under the program guidelines for the particular type of loan. In addition, the loan application indicated that the borrowers rented their residence for one year prior to purchasing the property, however the mortgage loan file did not contain written verification of this, as required by the program guidelines.

- Loan Number 10235901: the Mortgage Loan File only contained a single page of the Loan Application. Furthermore, there was no credit report, appraisal, income documentation or other documents necessary to determine whether the borrower met the relevant program guidelines for inclusion in the 2005-NC1 mortgage pool.

- Loan Number 10234487: the credit report contained in the loan file reflected that the borrower had several foreclosures within the past three years, making the loan ineligible under relevant program guidelines. The borrower only provided a letter indicating that his identity was stolen and that the mortgages were not taken out by him; however, the mortgage loan file did not contain a police report nor did it

contain a formal exception authorizing the loan to be approved.

139. These examples of underwriting violations—but a small smattering of the extensive defects among the Mortgage Loans—evidence significant breaches of the A&A Agreement and the I&I Agreement.

140. On information and belief, RFC is and has long been aware that many of the Mortgage Loans were non-conforming and breached its own representations and warranties. Despite this knowledge, RFC has failed to take steps to repurchase the non-conforming loans or replace them with conforming loans.

(6) Breaches Uncovered Using Loan Pool Data

141. In addition to the loan-level review discussed above, FGIC commissioned an independent consultant—a leading provider of financial, property and consumer information, such as property valuation services using automated property valuation tools—to test the accuracy of RFC's representations and warranties relating to the Mortgage Loans regarding occupancy status and LTV ratios. The consultant extracted information and data relating to 3,933 Mortgage Loans for occupancy status and 2,311 Mortgage Loans for LTV ratios.

a. Breaches of Owner-Occupancy Representation and Warranty

142. RFC represented in the Prospectus Supplement that, with respect to occupancy status, 87.88% of the Mortgage Loans would be secured by the borrower's primary residence. Prospectus Supplement at IV-5.

143. Based on the information provided, FGIC determined that for the Mortgage Loans only approximately 76% were owner-occupied as a primary residence.

144. The Prospectus Supplement therefore materially overstated the percentage of Mortgage Loans in their respective pools that were owner-occupied as a primary residence. As

such, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

145. FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that, as of November 2011, were delinquent for more than 90 days, in foreclosure, liquidated, or have posted a loss) in the 2005-NC1 Transaction for loans that were determined after review to be non-owner-occupied was 44.7%.

b. Breaches of LTV Ratio Representation and Warranty

146. The Prospectus Supplement also provided information relating to the LTV ratios of the underlying Mortgage Loans.

147. LTV information provided in the Prospectus Supplement provided that the loans had generally been originated with a maximum LTV ratio of 100%. *See* Prospectus Supplement at IV-3. LTV information provided in the Prospectus Supplement included (1) the average weighted LTV ratio for the Mortgage Loans, and (2) the number and aggregate value of the Mortgage Loans with LTV ratios in a given percentage band (e.g., the number of Mortgage Loans with LTV ratios of between 80% and 85%, between 85% and 90%, and so on). Prospectus Supplement at IV-3. The Prospectus Supplement reported that *none* of Mortgage Loans had a LTV ratio over 100 percent. *See* Prospectus Supplement at IV-3.

148. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, FGIC determined that approximately 11.1% of the Mortgage Loans—as opposed to *none* of the loans, as reported in the Prospectus Supplement—had an original LTV ratio above 100%; and approximately 16% of the Mortgage Loans—as opposed to fewer than 2.58% of the loans, as reported in the Prospectus Supplement—had an original LTV ratio above 95%. In addition, RFC represented in the Prospectus Supplement that the weighted average LTV ratio of the Mortgage Loans at

origination was 81.64% for 2005-NC1 Group I and 79.19% for 2005-NC1 Group II, but FGIC determined that the actual weighted average LTV ratio of the Mortgage Loans at origination was approximately 86.1% for Group I and approximately 83.4% for Group II. Thus, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

149. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that, as of November 2011, were delinquent for more than 90 days, in foreclosure, liquidated, or have posted a loss) in the 2005-NC1 Transaction for loans where the automated valuation model indicated a LTV greater than 100% was over 52.5%.

150. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicates the clear breach of RFC's contractual representations, warranties, and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, RFC has breached representations and warranties stating, for the 2005-NC1 Transaction, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (i.e. the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of RFC in the Operative Documents (including each representation and warranty in the A&A Agreement) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- each Mortgage File contains all required documents and instruments, and;
- Approximately 75% of the Mortgage Loans were acquired and evaluated by RFC under its AlterNet Program and approximately 25% of the Mortgage Loans were acquired and evaluated by RFC under its NCA Program.

151. It is reasonable to conclude—based on what is known by FGIC and as a result of what is being wrongly withheld from FGIC—that many of the 4,613 Mortgage Loans held by the 2005-NC1 Trust at closing evidenced similar breaches of RFC's representations and warranties.

152. Indeed, based on the information gathered from FGIC's loan file review and the information extracted by FGIC's consultant relating to LTV ratios and owner-occupancy rates discussed above, FGIC believes that the Transaction-wide defect rate for the Mortgage Loans is likely to be at least 47.5%.

153. Moreover, the true scope of the material underwriting failures is unknown given RFC's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of RFC's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

G. RFC's Fraud

154. The material breaches of RFC's representations and warranties, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants RFC made to FGIC to induce its participation in the Transaction. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that RFC breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the Policy, RFC would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because RFC refuses to provide all of the requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

155. All of the Mortgage Loans underlying the 2005-NC1 Transaction were acquired by RFC. As such, RFC had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with the applicable RFC underwriting guidelines and if the loans breached other representations and warranties made by RFC.

156. To induce FGIC to enter into the 2005-NC1 Transaction, RFC provided FGIC with a loan tape, which contained false and misleading information regarding, among other things, the LTV and DTI ratios, occupancy status, Credit Grades and FICO scores of the borrowers.

157. In addition, RFC made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2005-NC1 Trust. RFC was well aware that FGIC would not agree to insure the 2005-NC1 Certificates unless RFC obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, RFC provided Moody's and S&P with the same false information regarding the credit quality of the underlying mortgage loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2005-NC1 Certificates that met FGIC's minimum requirements—Baa1 and BBB, respectively. In this way, RFC made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that RFC would pass on to FGIC, and second, by causing shadow ratings of the 2005-NC1 Certificates to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

158. RFC also made material representations and warranties and affirmative covenants to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the standards to which the Mortgage Loans were underwritten.

159. For example, in the Prospectus Supplement (and in the I&I Agreement by incorporation) RFC assured FGIC that approximately 75% of the Mortgage Loans "were acquired and evaluated by [RFC] under its AlterNet Program. . . . [and] each [M]ortgage [L]oan determined by [RFC] to be acceptable for purchase would have been originated in accordance with or would have been determined to be generally consistent with the provisions of the [Client] Guide." Prospectus Supplement at S-32. As such, RFC represented to FGIC that, in the case of each loan within the pool, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information, as provided for in the AlterNet Program guidelines.

160. Moreover, the A&A Agreement and Prospectus Supplement (and the I&I Agreement by incorporation) also contained false and misleading representations about the Mortgage Loans. In particular, RFC misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule was true and correct in all material respects; (ii) the Mortgage Loans met certain credit grades; and (iii) there was no default breach, violation or event of acceleration existing under any Mortgage Note or Mortgage.

161. Therefore, at the time of the closing of the 2005-NC1 Transaction, RFC either (1) knew or should have known that its representations were materially false because RFC had not, among other things, determined if the Mortgage Loans were in fact at least "generally consistent" with the AlterNet Program, or (2) had reviewed whether the Mortgage Loans were at least "generally consistent" with the AlterNet Program, had determined that they were not, but nonetheless materially misrepresented to FGIC that the Mortgage Loans were at least "generally consistent" with the AlterNet Program.

162. These representations were essential to FGIC's decision to issue the Policy. These representations and warranties were false when stated. RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and to issue the Policy. The true information regarding these loans simply could not substantiate RFC's assurances. In short, no amount of RFC promising that the loans met certain standards actually made those promises true.

163. RFC's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC as well as to a multitude of suits and the potential for more litigation to come.

164. Consistent with this pattern of behavior, RFC defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

H. Ally Financial Aids and Abets RFC's Fraud

165. Ally Financial provided substantial assistance to RFC in fraudulently inducing FGIC to issue the Policy. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties RFC made regarding the nature of RFC's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

I. The Federal Government Alleges Fraud Against RFC Relating to the 2005-NC1 Transaction

166. As discussed above, the FHFA recently filed suit in the Supreme Court of New York against RFC for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with its role in the public filing of offering documents, which allegedly contained false and misleading statements.

167. In support of its claims, the FHFA performed a review of loan-level data for randomly-selected 2005-NC1 Group II Mortgage Loans to assess whether the information provided in the Prospectus Supplement for the 2005-NC1 Transaction was true and accurate. FHFA Complaint at ¶ 94. For each of the sampled loans, FHFA used an industry standard automated valuation model ("AVM")—on information and belief, similar to the approach used by FGIC—to calculate the value of the underlying property at the time the mortgage loan was originated. (Id. ¶ 99).

168. Similar to FGIC's findings with respect to 2005-NC1, the FHFA's review of the sample data confirmed, on a statistically-significant basis, that the information provided in the 2005-NC1 Prospectus Supplement concerning owner-occupancy and LTV ratios was materially false.

169. The FHFA's analysis determined that RFC overstated the true percentage of non-owner-occupied properties within the 2005-NC1 underlying Group II Mortgage Loan pool, overstated the true percentage of 2005-NC1 underlying Group II Mortgage Loans with an LTV ratio at or below 80 percent, and falsely represented that none of the loans had an LTV ratio above 100%. FHFA Complaint ¶ 98 & Table 6; ¶ 102 & Table 7.

J. RFC's Breach of Obligations as Master Servicer

(1) Failure to Remedy Subservicing Deficiencies and to Provide Information

170. RFC, as Master Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for each of the HSA Transactions, including, but not limited to, its obligations to follow proper servicing procedures, and to sufficiently monitor and manage the performance of the subservicer with respect to its duties under each Transaction.

171. RFC took responsibility for the servicing of the Mortgage Loans through its wholly owned subsidiary HomeComings and RFC had certain related contractual obligations under the I&I Agreement and the PSA with respect to the 2005-NC1 Transaction. Under the I&I Agreement, RFC covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [PSA]." I&I Agreement § 2.02(l). Under the PSA, RFC is "obligated and liable to . . . [FGIC] for the servicing and administering of the [Mortgage Loans]," and in doing so is required to "follow[] such procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities." PSA §§ 3.01(a), 3.04. As such, on each occasion that HomeComings failed to service and administer the Mortgage Loans in conformity with generally accepted servicing practices (including RFC's own servicing guidelines), RFC is liable "to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans." PSA §§ 3.01(a), 3.04.

172. During 2007, the servicing operations of GMAC Mortgage, GMAC-RFC, and HomeComings were integrated into ResCap. Since the time of the integration, on information and belief, HomeComings has been deficient in its borrower contact, collections and loss mitigation standards. An onsite review of the Ally Financial servicing arm's headquarters, including those of HomeComings and RFC, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed, *inter alia*: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when HomeComings does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the

mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry.

173. On information and belief, RFC has failed to remedy any of the deficient servicing practices in which HomeComings is engaged as subservicer.

174. In addition, RFC disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

175. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. RFC disclosed to FGIC that all of the mortgage loans in FGIC-insured, RFC-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the 2005-NC1 Transaction, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second- lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than, loans in higher risk categories. As the purchaser of the Mortgage Loans, however, RFC clearly knew that such Mortgage Loans, by their very nature, required particularized servicing such as that provided by HomeComings before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure

by RFC to ensure that the Mortgage Loans were serviced and administered in accordance with "good faith" business practices constitutes a breach of the PSA and the I&I Agreement. *See* PSA §§ 3.01(a), 3.04; I&I Agreement § 2.02(l).

176. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, RFC has still failed to provide such information.

(2) RFC allowed Excessive Loan Modifications And Amended the PSA without FGIC's Consent

177. RFC, as Master Servicer, agreed that it would "not modify, waive or amend, or consent to any modification, waiver or amendment of" the PSA without the prior written consent of FGIC. I&I Agreement § 2.03(b).

178. On August 10, 2009, RFC requested FGIC's consent in order to execute an amendment (the "Purported Amendment") to allow RFC to modify 100% of the Mortgage Loans rather than what would otherwise be allowed under the PSA. FGIC requested that RFC provide FGIC with sufficient information, including RFC's policies and procedures used for underwriting and processing prospective mortgagors for the Home Affordable Modification Program ("HAMP"), to respond to RFC's request for FGIC's consent. RFC never provided that information. Despite the fact that FGIC never consented to the additional loan modifications, it appears that RFC nonetheless proceeded as if its Purported Amendment had been adopted in contravention of FGIC's contractual rights. *See* I&I Agreement § 2.03(b).

179. Thus, to amend the PSA, RFC had to receive FGIC's consent. FGIC never gave its consent. Therefore, RFC breached section 2.03(b) of the I&I Agreement.

180. On information and belief, RFC has collected significantly higher servicing fees as a result of adopting the Amendment and modifying particular Mortgage Loans.

181. FGIC has requested additional information in order to determine whether RFC is in breach of its servicing obligations. In contravention of FGIC's contractual rights, RFC has failed to provide such information, including servicing notes, to FGIC. On information and belief, RFC, as Master Servicer, also knew of material breaches of representations and warranties and did not notify FGIC thereof, or cause the repurchase of the Mortgage Loans affected thereby. Accordingly, FGIC reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

K. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

182. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns RFC and GMACM. Ally Financial—as the ultimate parent of ResCap, RFC and GMACM—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, RFC and GMACM.

183. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, RFC and GMACM. Ally Financial exercised its direction and control in connection with the 2005-NC1 Transaction. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

184. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and the FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and

indirect subsidiaries." *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

185. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of RFC Directly and Indirectly Through its Control of ResCap

186. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

187. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

188. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

189. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the proposed 2005 operating agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement") (emphasis added).

190. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RAMP, among other Ally Financial subsidiaries.

[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the Securities and Exchange Commission (the "SEC") on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

191. The 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

192. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

193. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of <u>our value creation</u>." *Id*. (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

194. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to

prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citi, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

195. Moreover, there is substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

196. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

197. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a

GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

198. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed RFC and GMACM as part of its own business. For example, in its investor presentation from 2007, ResCap declares that RFC and GMACM "are owned *and operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial wasn't directly controlling RFC and GMACM, it was using ResCap as an instrument to do so.

199. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

200. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage

servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one RFC has with respect to the 2005-NC1 Transaction as Master Servicer.

201. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

202. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

Q: Could you please state your name for the record.
A: My name is Jeffrey Stephan.
Q: Okay. And who do you work for?
A: GMAC, LLC [Ally Financial].
Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.

Q: Okay.
A: It's GMCA [sic] Mortgage Corporation.
Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

L. FGIC's Contractual Remedies Under The I&I Agreement

203. The I&I Agreement provides FGIC with broad remedies for RFC's breaches of its representations and warranties. Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Pooling and Servicing Agreement or the other Operative Documents, or existing at law or in equity.

204. RFC also agreed in Sections 3.03(b) and 3.03(c) of the I&I Agreement:

> Anything in Sections 2.01(l) and 3.03(a) hereof or in any Operative Document to the contrary notwithstanding, the Insurer shall be entitled to full reimbursement from RFC for (i) any payment made under the Policy arising as a result of RFC's failure to substitute for or deposit an amount in respect of any defective Mortgage Loan as required pursuant to Section 4 and Section 5 of the Assignment Agreement, together with interest on any and all such amounts remaining unreimbursed . . . from the date such amounts became due until paid in full. . . .

I&I Agreement § 3.03(b); and

> RFC agrees to pay to [FGIC] any and all reasonable charges, fees, costs and expenses that [FGIC] may reasonably pay or incur, including reasonable attorneys' and accountants' fees and expenses, in connection with (i) the enforcement, defense or preservation of any rights in respect of any of the Operative

> Documents, including defending, monitoring or participating in any litigation or proceeding . . . relating to any of the Operative Documents . . . .

I&I Agreement § 3.03(c).

205. In addition, RFC agreed in Section 3.04(a) of the I&I Agreement:

> to pay, and to protect, indemnify and save harmless, [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach by RFC or the Depositor of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the transactions contemplated by the Operative Documents by reason of . . . . the breach by RFC or the Depositor of any representation, warranty . . . or covenant under any of the Operative Documents or the occurrence, in respect of RFC or the Depositor, under any of the Operative Documents of any "event of default" . . . .

I&I Agreement § 3.04(a) & (a)(iv).

206. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, RFC agreed to repurchase or substitute Mortgage Loans that did not conform to RFC's representations and warranties, and to indemnify FGIC for claims and losses arising from RFC's breach of any representation or warranty.

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Material Breach of the I&I Agreement—Declaratory Relief Regarding RFC's Indemnification Obligation)

207. FGIC re-alleges and incorporates by reference paragraphs 1 through 206 of this Complaint.

208. The I&I Agreement is a valid and binding agreement between the parties.

209. FGIC has performed its obligations under the I&I Agreement.

210. RFC's representations and warranties were material to FGIC's decision to insure the 2005-NC1 Certificates and to issue the 2005-NC1 Policy.

211. RFC's pervasive and material breaches of its representations and warranties constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

212. Pursuant to Section 3.04(a) of the I&I Agreement, RFC must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by RFC of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

213. As explained above, RFC has breached numerous representations and warranties in the 2005-NC1 Offering and Operative Documents, for example, those contained in Section 2.01 of the I&I Agreement. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

214. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

215. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must jointly and severally indemnify FGIC for all sums arising out of the 2005-NC1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the 2005-NC1 Policy and to the payment of all future amounts that

may fall due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or claims are presented.

216. In addition, FGIC seeks a declaration that RFC must indemnify FGIC for all sums arising out of the 2005-NC1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the 2005-NC1 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2005-NC1 Policy as and when such sums fall due or claims are presented.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Fraudulent Inducement—I&I Agreement)

217. FGIC re-alleges and incorporates by reference paragraphs 1 through 216 of this Complaint

218. RFC induced FGIC to enter into the I&I Agreement and to issue the Policy by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

219. As explained above, RFC knowingly made materially false statements to, and/or omitted material facts from, FGIC with the intent to induce detrimental reliance by FGIC.

220. RFC intended for FGIC to rely on RFC's material false statements and/or omissions. FGIC had no reason to believe that RFC's representations were false, and reasonably and justifiably relied on RFC's material false statements and/or omissions regarding information uniquely in the possession of RFC when it decided to enter into the I&I Agreement and to issue the Policy for the 2005-NC1 Certificates.

221. As a result of RFC's material false statements and omissions, FGIC entered into the I&I Agreement, issued the Policy, and thereby agreed to insure certificates backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that RFC represented would collateralize the 2005-NC1 Transaction.

222. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

223. As a result of RFC's material false statements and omissions, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

224. In addition, RFC is separately liable for such damages.

THIRD CAUSE OF ACTION

(Alternatively Against Ally Financial: Aiding and Abetting Fraudulent Inducement—I&I Agreement)

225. FGIC re-alleges and incorporates by reference paragraphs 1 through 224 of this Complaint.

226. As explained above, Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to issue the Policy.

227. RFC could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

228. Both Ally Financial knew that RFC fraudulently induced FGIC issue the Policy for the 2005-NC1 Transaction.

229. Ally Financial's statements materially aided RFC's fraudulent inducement.

230. As a result of Ally Financial's aiding and abetting RFC's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Representations, Warranties and Affirmative Covenants)

231. FGIC re-alleges and incorporates by reference paragraphs 1 through 230 of this Complaint.

232. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

233. FGIC has performed its obligations under the I&I Agreement.

234. As explained above, RFC has materially breached its representations and warranties under Section 2.01 of the I&I Agreement.

235. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

236. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

237. In addition, RFC is separately liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Declaratory Relief Regarding Access to Information)

238. FGIC re-alleges and incorporates by reference paragraphs 1 through 237 of this Complaint.

239. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

240. FGIC has performed its obligations under the I&I Agreement.

241. Pursuant to Section 2.02(c) of the I&I Agreement, RFC agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such

other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the 2005-NC1 Transaction. FGIC further has the right to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(m) of the I&I Agreement.

242. As discussed above, pursuant to the I&I Agreement, FGIC made numerous reasonable written requests that RFC furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by RFC, and others, concerning the Mortgage Loans.

243. RFC has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

244. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

245. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, RFC agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer; and (iii) discuss the affairs, finances and accounts of RFC with RFC's independent accountants.

246. FGIC made a reasonable request to inspect the books and records, discuss the affairs, finances and accounts with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants on December 1, 2011.

247. RFC has failed to make available such persons or to produce such information.

248. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

249. Pursuant to Section 2.02(e) of the I&I Agreement, RFC agreed, on an annual basis or when reasonably requested by FGIC, to cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement to enable FGIC to track the progress of the recording of Mortgages and Assignments with respect to the Mortgage Loans.

250. FGIC made a reasonable request for the Interim Certification on June 21, 2011.

251. RFC has failed to cause the Interim Certification to be delivered to FGIC as requested. On December 8, 2011, FGIC again notified RFC of its failure to perform under the I&I Agreement, but RFC continued to fail to cause the Interim Certification to be delivered to FGIC.

252. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Interim Certification to be delivered to FGIC after receiving reasonable requests from FGIC.

253. Pursuant to Section 2.02(c)(iv) of the I&I Agreement, RFC agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [PSA]."

254. FGIC made a reasonable request for servicing notes on December 9, 2010.

255. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

256. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

257. Accordingly, FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must comply with sections 2.02(c), 2.02(m) and 2.02(e) of the I&I Agreement.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Master Servicer Obligations)

258. FGIC re-alleges and incorporates by reference paragraphs 1 through 257 of this Complaint.

259. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

260. FGIC has performed its obligations under the I&I Agreement.

261. As explained above, RFC has materially breached its representations and warranties under section 2.03(b) of the I&I Agreement by purporting to amend the Operative Documents without FGIC's prior and necessary consent.

262. Moreover, as explained above, RFC has breached its affirmative covenant under the I&I Agreement to service all Mortgage Loans in all material respects in compliance with the PSA.

263. RFC's breaches of the I&I Agreement has caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

264. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

265. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

266. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

267. In addition, RFC is separately liable for such damages.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief)

268. FGIC re-alleges and incorporates by reference paragraphs 1 through 267 of this Complaint.

269. This is a claim for declaratory judgment pursuant to CPLR 3001 for the purpose of determining a justiciable controversy between FGIC and Ally Financial, ResCap, and RFC.

270. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this complaint.

271. For the reasons set forth in paragraphs 182 through 202, among others, Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

272. FGIC has been damaged as a result of the actions Ally Financial, ResCap and RFC.

273. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

EIGHTH CAUSE OF ACTION

(As Against RFC: Attorneys' Fees and Costs)

274. FGIC re-alleges and incorporates by reference paragraphs 1 through 273 of this Complaint.

275. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

276. FGIC has performed its obligations under the I&I Agreement.

277. Pursuant to Section 3.03(c) of the I&I Agreement, RFC agreed to reimburse FGIC for any and all costs or expenses "including reasonable fees and expenses of attorneys" in connection with the enforcement, defense or preservation of any rights in respect of any of the

Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, RFC agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2005-NC1 Transaction.

278. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of RFC's failure to provide Mortgage Loan files, the Interim Certification, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant Residential Funding Company, LLC, with respect to (1), (2), and (4) through (15) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (12), (14), and (15) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (12), (14), and (15) below and the following relief:

(1) A declaration that, pursuant to RFC's obligations under the I&I Agreement, RFC must solely and/or Ally Financial, ResCap, and RFC must jointly and severally reimburse and indemnify FGIC for all sums arising out of the 2005-NC1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal rescissory, equitable, and punitive damages, to be proven at trial, for RFC's fraudulent inducement of FGIC to enter into the 2005-NC1 Transaction and to issue the Policy;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's aiding and abetting of RFC's fraudulent inducement of FGIC to enter into the 2005-NC1 Transaction and to issue the Policy;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for RFC's material breaches of the 2005-NC1 Transaction;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for RFC's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that RFC must repurchase all Mortgage Loans that are in breach of RFC's representations and warranties in the 2005-NC1 Transaction, and an order giving effect to that declaration;

(7) Further or alternatively, a declaration that RFC must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2005-NC1 Transaction, and an order giving effect to that declaration;

(8) Further or alternatively, a declaration that RFC must allow FGIC to inspect the books and records of RFC, to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants, and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that RFC must cause to be provided servicing notes for the 2005-NC1 Transaction when requested by FGIC;

(10) Further or alternatively, a declaration that RFC must cause to be provided the custodial Interim Certification when requested by FGIC for the 2005-NC1 Transaction stating that all mortgage files were complete and were properly transferred into the trusts, or noting any exceptions, and an order giving effect to that declaration;

(11) Further or alternatively, an award of legal and equitable damages, to be proven at trial, for RFC's purported amendment of the PSA without FGIC's consent;

(12) Further or alternatively, a declaration that Ally Financial, ResCap, and RFC are alter egos of each other;

(13) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(14) An award of prejudgment interest at the statutory rate; and

(15) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: December 27, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Michael J. Dailey
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 19

12 CIV 0340

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

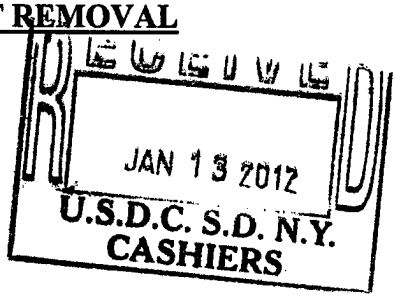
-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,

Defendants.

No. 11-cv-_____(__)

NOTICE OF REMOVAL



TO:
CLERK
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

CLERK
Supreme Court of the State of New York
County of New York
Courthouse
60 Centre Street
New York, New York 10007

Howard F. Sidman
Jones Day
222 East 41st Street
New York, New York 10017

Pursuant to 28 U.S.C. § 1441, Defendants Residential Capital, LLC ("Residential Capital") and Residential Funding Company, LLC ("Residential Funding") (collectively "Defendants") respectfully give notice of the removal this action, entitled *Financial Guaranty Insurance Company v. Ally Financial, Inc. F/K/A GMAC, LLC; Residential Capital, LLC F/K/A Residential Capital Corporation; Residential Funding Company, LLC F/K/A Residential Funding Corporation*, Index No. 653621/2011 (Supreme Court of the State of New York, County of New York), from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York based upon the following grounds:

1. Upon information and belief, this action was commenced on or about December 27, 2011, in the Supreme Court of the State of New York, County of New York. A copy of the Summons and Complaint was served on Defendant Residential Capital's appointed agent, Corporation Service Company, on December 29, 2011. A copy of the Summons and Complaint was served on Defendant Residential Funding's appointed agent, Corporation Service Company, on December 29, 2011.

2. This Notice of Removal is being filed within thirty (30) days of the date Defendants' appointed agents received service of the Summons and Complaint. This Notice of Removal includes a short and plain statement of grounds for removal together with a copy of all process, pleadings, and orders served upon Defendants in this action attached hereto as Exhibit A.

3. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) and this action may be removed to this Court by Defendants pursuant to 28 U.S.C. §

1441(a), in that it is a suit constituting a dispute between citizens of different states and the matter in controversy exceeds the sum of the value of $75,000, exclusive of interest and costs.

a. This suit constitutes a dispute between citizens of different states. As alleged in the Complaint, Plaintiff Financial Guaranty Insurance Company ("Plaintiff") is, and has been at all relevant times, a citizen of New York. Complaint ¶20. As of the date Plaintiff filed suit and currently, Defendant Residential Funding is a Delaware limited liability company. Complaint ¶22. The citizenship of a limited liability company is determined by the citizenship of its members. *Handelsman v. Bedford Vill. Assocs. Ltd. P'ship*, 213 F.3d 48, 51-52 (2nd Cir. 2000). Where the members are themselves limited liability companies, a court looks to the citizenship of their members, and continues this process until it reaches the ultimate incorporated or individual members. *See e.g., Quantlab Financial, LLC v. Tower Research Capital LLC*, 715 F.Supp.2d 542, 546-47 (S.D.N.Y. 2010); *Lindley Contours, LLC v. AABB Fitness Holdings, Inc.*, 414 Fed. Appx 62, 64 (9th Cir. 2011); *Onepoint Solutions, LLC, v. Borchert*, 486 F.3d 432, 347 n.4 (7th Cir. 2007). Residential Funding's sole member at all relevant times has been GMAC-RFC Holding Company, LLC, a Delaware limited liability company. GMAC-RFC Holding Company, LLC's sole member at all relevant times has been Residential Capital, LLC, a Delaware limited liability company. Residential Capital's sole member at all relevant times has been GMAC Mortgage Group LLC, a Delaware limited liability company. GMAC Mortgage Group LLC's sole member at all relevant times has been Ally Financial, Inc. Ally Financial, Inc. is incorporated under the laws of Delaware with its principal place of business in Michigan. Complaint ¶21. Accordingly, Residential Funding is, and has been at all relevant times, a citizen of Delaware and Michigan, the principal place of business and state of incorporation for the ultimate incorporated member. Similarly, Defendant

Residential Capital is, and has been at all relevant times, a citizen of Delaware and Michigan, as its ultimate incorporated member is also Ally Financial, Inc. Finally, defendant Ally Financial, Inc. is, and has been at all relevant times, a citizen of Delaware and Michigan. Thus, the citizenship of all parties are diverse as defined by 28 U.S.C. § 1332(a). Moreover, no defendant is a citizen of New York, the state in which the action is pending and the domicile of the Plaintiff, and none of the parties or companies identified above, other than Plaintiff, has its principal place of business in the State of New York.

b. This action involves a matter in controversy exceeding the sum or value of $75,000, exclusive of costs, in that the compensatory damages sought by the Plaintiff include, among other items, indemnification for and damages in the amount of claims made against Plaintiff's insurance policy for "more than $174 million in claims" presented to Plaintiff, and "tens of millions of dollars more in claims to be presented" under Plaintiff's policy in the future. Complaint ¶¶ 123; Prayer for Relief.

4. Venue lies in the United States District Court for the Southern District of New York because the state-court action was filed in this district. 28 U.S.C. § 1441(a).

5. As required by 28 U.S.C. § 1446(d), Defendants are serving a copy of this Notice of Removal on Plaintiff and will file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York.

6. All Defendants have consented to removal of the instant action. Defendant Ally Financial, Inc. will be filing a separate notice of consent.

WHEREFORE, Defendants submit this Notice of Removal of this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York and pray this action stand so removed.

Dated: New York, New York
January 13, 2012

Respectfully submitted,

Orrick, Herrington & Sutcliffe LLP

By: Elyse D. Echtman

Elyse D. Echtman
eechtman@orrick.com

51 West 52nd Street
New York, New York 10019-6142
+1 212-506-5000
+1 212-506-5151

Attorneys for Defendants Residential Capital, LLC, and Residential Funding Company, LLC

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY, **Plaintiff,** **-against-** **ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,** **Defendants.**	**Index No. _____** **SUMMONS** **Date Index No. Purchased:** December 27, 2011

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiff herein and to serve a copy of your answer on the Plaintiff at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

VENUE: Plaintiff designates New York County as the place of trial. The basis of this designation is Plaintiff's residence in New York County at 125 Park Avenue, New York, New York 10017. A further basis of this designation is Defendant RESIDENTIAL FUNDING COMPANY, LLC's residence in New York County and agreed submission to this venue.

Dated: December 27, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Patrick J. Smith
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,	)	**Index No. _____**
Plaintiff,	)	**COMPLAINT**
-against-	)	
ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,	)	
Defendants.	)	

Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"); Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"); and Residential Funding Company, LLC, formerly known as Residential Funding Corporation ("RFC"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with five financial guaranty insurance policies (each a "Policy" and collectively the "Policies") issued by FGIC in relation to three RFC-sponsored transactions (each a "Transaction" and collectively the "HSA Transactions" or the "Transactions") in which RFMSII Series 2005-HSA1 Trust (the "2005-HSA1 Trust"), RFMSII

Series 2006-HSA1 Trust (the "2006-HSA1 Trust"), RFMSII Series 2006-HSA2 Trust (the "2006-HSA2 Trust" and together with the 2005-HSA1 and 2006-HSA1 Trusts, the "HSA Trusts"), issued and sold to investors a combined $1.2 billion aggregate principal amount of insured residential mortgage-backed securities (collectively, the "HSA Securities"). As the sponsor of the HSA Transactions, RFC procured the Policies from FGIC in order to enhance the ratings and marketability of the HSA Securities. RFC fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices, and the credit quality and characteristics of the thousands of mortgage loans that provided the collateral for the HSA Securities. In short, the mortgage loans were different—and demonstrably worse—than RFC had represented them to be. FGIC's issuance of the Policies enabled the HSA Securities to receive an initial triple-A rating from the rating agencies, which in turn made each of the HSA Transactions viable, and enabled RFC, its affiliates, and its parent Ally Financial to earn millions of dollars in transaction fees.

2. Since the closing of the HSA Transactions, RFC has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of each of the HSA Transactions, RFC has violated the essential terms of its agreements with FGIC. RFC has also breached the essential terms of the other operative documents incorporated therein.

3. The wrongdoing committed by RFC, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through ResCap. Ally Financial is the ultimate parent of ResCap, which owns RFC. Ally Financial, as the ultimate parent of ResCap and RFC, has the practical ability, which it has repeatedly exercised, to direct and control the activities of

its subsidiaries, including ResCap and RFC. Ally Financial's direction and control was, in many instances, effected by using ResCap as an instrument to achieve its goals.

4. Each of the HSA Transactions is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among RFC and several other parties. To facilitate each Transaction, RFC pooled together thousands of mortgages (respectively, the "2005-HSA1 Mortgage Loans," "2006-HSA1 Mortgage Loans," and "2006-HSA2 Mortgage Loans," and collectively the "Mortgage Loans"). Prior to the closing of each of the HSA Transactions, RFC purchased many of the Mortgage Loans from another Ally Financial subsidiary, HomeComings Financial, LLC ("HomeComings" f/k/a HomeComings Financial Network, Inc.)—which is wholly owned by RFC—while in each case the remainder of the Mortgage Loans were purchased from a number of non-affiliate originators.

5. Additionally, RFC acquired many of the Mortgage Loans from various originators through a so-called negotiated commitment, whereby RFC agreed to acquire mortgage loans that it knew did not conform to its own underwriting guidelines. RFC failed to disclose to FGIC that a substantial number of the Mortgage Loans had been acquired pursuant to such negotiated commitments, and in fact expressly represented to FGIC that *all* of the Mortgage Loans complied with the stricter RFC underwriting guidelines that RFC had provided to FGIC. In doing so, and in many other ways, RFC fraudulently induced FGIC to issue the Policies and breached the operative documents governing the HSA Transactions.

6. In each of the three Transactions, following its acquisition of the Mortgage Loans, RFC transferred the Mortgage Loans to another Ally Financial affiliate, Residential Funding Mortgage Securities II, Inc. ("RFMSII"). RFMSII then deposited the Mortgage Loans it received from RFC into the HSA Trust designated for the transaction. Each trust, in turn, issued

securities backed by the assets deposited into each of the respective HSA Trusts. Each of the HSA Trusts is a legal entity created by RFC solely for the purposes of the applicable HSA Transaction to hold the related Mortgage Loans and to issue the related HSA Securities to investors in a registered public offering.

7. RFC also acted as master servicer of the HSA Transactions ("Master Servicer"), in which capacity it would supervise the subservicer, including overseeing the collection of borrower payments and performing other servicing duties related to the Mortgage Loans. For each of the Transactions, RFC's wholly-owned, direct subsidiary HomeComings acted as subservicer of the loans. As discussed in more detail below, all of HomeComings's and RFC's servicing operations have since been integrated into ResCap. Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), yet another Ally Financial affiliate, acted as the joint lead manager of the underwriters of each of the HSA Transactions. J.P. Morgan Chase Bank National Association ("J.P. Morgan") agreed to act as trustee (the "Trustee") of each of the HSA Trusts. The Bank of New York Trust Company, N.A., later became the successor in interest to J.P. Morgan as Trustee.

8. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the HSA Trusts are used to pay, among other things, principal and interest due on the HSA Securities, and the fees and expenses of RFC and HomeComings, as well as other participants in the Transactions.

9. RFC, directed and controlled by Ally Financial, is at the hub of the HSA Transactions: it is the sponsor of the securitizations, an acquirer and seller of the Mortgage Loans, and the Master Servicer of each of the Transactions. The primary victim of the HSA Transactions—which turned out to be backed by inferior loans that did not meet the underwriting

standards or loan characteristics warranted by RFC—is FGIC, which has already been presented with over $174 million in claims under the Policies, with further material losses still to come.

10. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed securities ("RMBS"). At the time of the HSA Transactions, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of realized losses on the Mortgage Loans collateralizing the insured securities. FGIC's insurance policies thus enhanced the credit quality and marketability of the insured securities.

11. To enhance the ratings and marketability of the HSA Securities, and to increase the profit that Ally Financial and RFC would derive from the HSA Transactions, RFC sought to have FGIC issue the Policies to J.P. Morgan, as Trustee, for the benefit of the holders of the HSA Securities.

12. As an essential element of the HSA Transactions, RFC made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated, and their characteristics, to induce FGIC to enter into the Transactions. RFC represented, among other things, that the "underwriting standards relating to the mortgage loans generally will conform to those published in [RFC's] client guide, and the provisions of the

guide applicable to the home equity program." *See* 2005-HSA1 Prospectus Supplement at S-31; 2006-HSA1 Prospectus Supplement at S-34; 2006-HSA2 Prospectus Supplement at S-43.

13. Those representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the HSA Transactions. As a result, FGIC was fraudulently induced to enter each of the Transactions, and the credit risk assumed by FGIC in connection with each Transaction was far greater than it would have been had RFC's representations and warranties been true, as demonstrated by the overwhelming number of claims that have subsequently been presented to FGIC.

14. RFC received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policies. Ally Financial took actions and made statements to finance, support, and boost investor confidence in its mortgage loan securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations RFC had made to FGIC. As a result of its dominance over ResCap and RFC, Ally Financial knew that the representations and warranties RFC made to FGIC, prior to and at the closings, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted RFC's fraudulent inducement of FGIC to issue the Policies.

15. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policies in reliance on the (presumed) accuracy and truthfulness of RFC's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and therefore the amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of RFC's underwriting and business practices and/or

the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policies, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of RFC's misconduct.

16. In order to evaluate the extent of RFC's breaches, FGIC has requested copies of the mortgage loan files, and servicing notes, for the 2005-HSA1 and 2006-HSA2 Mortgage Loans. RFC is obligated, under its agreements with FGIC, to provide those documents to FGIC. RFC has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence material breaches by RFC. This refusal to provide information in itself constitutes a material breach of RFC's insurance agreements with FGIC.

17. Certain of the material contractual breaches committed by RFC—including, but not limited to, FGIC's right to access information in RFC's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

18. Through this Complaint, FGIC seeks relief against RFC, ResCap, and Ally Financial for RFC's fraudulent inducement of, and for its material breaches of its insurance agreements with, FGIC in connection with the HSA Transactions.

19. FGIC further seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of one another. Further and alternatively, FGIC seeks relief against Ally Financial for aiding and abetting RFC's fraudulent inducement of FGIC, and for RFC's material breaches of its contractual obligations to FGIC.

THE PARTIES

20. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

21. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial specializes in automotive financings, residential mortgage financings and services, and insurance services. Ally Financial is the parent company of ResCap, RFC, and all RFC-affiliated entities relevant to this action.

22. Defendant RFC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. In the period relevant to this action, RFC acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

23. Since 2005, RFC has been an indirect wholly owned subsidiary of ResCap; prior to that time, RFC was an indirect, wholly owned subsidiary of Ally Financial.

24. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of RFC and is a leading real estate finance company, the business of which includes acquiring, selling and servicing mortgage loans.

25. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

JURISDICTION AND VENUE

26. This Court has jurisdiction over this suit pursuant to CPLR §§ 301 and 311-a. RFC is a registered, foreign, limited liability company within the State of New York. RFC has appointed an agent for service of process in this State and transacts business within this State. Also, in an agreement at issue in this case, RFC irrevocably submitted to the jurisdiction of this Court. Ally Financial and ResCap likewise regularly transact business in this State, and the acts giving rise to the claims in this case occurred in this State.

27. Venue is proper in New York County pursuant to CPLR § 503. FGIC, as plaintiff, has designated New York County as the place of trial. RFC, a party to this action, has designated New York County as its county of residence in the State of New York, and has agreed not to challenge venue in this Court. Furthermore, substantial activity giving rise to the claims in this case occurred within New York County.

RELEVANT NON-PARTIES

28. GMAC Mortgage LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMACM is an indirect wholly-owned subsidiary of ResCap, which in turn is a wholly-owned subsidiary of Ally Financial.

29. RFMSII, a special purpose vehicle, is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. To facilitate the HSA Transactions, RFMSII purchased the Mortgage Loans from RFC and deposited them into the each of the HSA Trusts. The trusts then issued the HSA Securities to underwriters to be sold to investors.

30. Ally Securities, an entity incorporated in Delaware, is an affiliate of RFC and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as the joint lead manager of the underwriters of the HSA Securities and, on information and belief, participated in the preparation of the Prospectus and Prospectus Supplement.

31. HomeComings, a Delaware limited liability corporation, is the direct, wholly-owned subsidiary of RFC. Many of the Mortgage Loans in each of the Transactions were originated and sold to RFC by HomeComings, which also acted as the subservicer of each of the HSA Transactions.

FACTUAL ALLEGATIONS

A. Ally Financial and Its Subsidiaries

32. In the period relevant to this action, RFC acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS.

33. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults, and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including RFC, led Ally Financial to seek a bailout by the federal government in 2008.

(1) RFC, GMACM, and GMAC-RFC

34. RFC is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

35. GMACM is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate RFC, GMACM engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

36. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See* 2011 Mortgage Market Statistical Annual: Volume II at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *See id*.

37. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the Financial

Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

38. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with RFC. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

39. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

40. Ally Financial's business model depended on securitizations, which were conducted by its business units, including RFC. Pooling mortgage loans and selling them into securitizations enabled RFC to fund its ongoing mortgage loan originations and acquisitions,

earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

41. RFC, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third parties. RFC would typically acquire such mortgage loans and then deposit them into a securitization trust (usually through an affiliate). RFC would then procure underwriters, trustees, and (in the case of insured securities) financial guaranty insurers, and cause the securitization trust to sell securities collateralized by the relevant mortgage loans. In many instances, RFC profited from the difference between the cost it incurred to acquire mortgage loans and the price at which it sold them for deposit into the securitizations.

42. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, RFC typically also sought (as it did here) to be appointed as the master servicer, appointing the mortgage loan originator or an affiliate to act as subservicer. For acting as Master Servicer to the HSA Transactions, RFC gained substantial additional compensation.

43. RFC also enriched Ally Financial and its subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the HSA Transactions: (i) RFMSII, which established the HSA Trusts and acted as depositor of the Mortgage Loans, charged fees to cover its operating expenses; and (ii) Ally Securities received fees for underwriting the HSA Securities.

(3) Ally Financial, RFC, and GMACM Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

44. On September 2, 2011, the Federal Housing Finance Authority (the "FHFA"), as conservator for Freddie Mac, filed suit in New York Supreme Court against RFC for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in RMBS issued through twenty-one RFC-sponsored transactions similar to the HSA Transactions.

45. The FHFA also alleges violations of state and federal securities laws by RFC and its parent, Ally Financial, and their affiliates, stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, the FHFA also alleges aiding and abetting fraud against RFC's affiliates and Ally Financial for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the RMBS. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the RMBS, including lost principal and interest, as well as punitive damages and attorneys' fees and costs.

46. In addition, RFC is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court for, among other things, fraud and breach of representations and warranties in connection with transactions that are markedly similar to those at issue here. The transactions giving rise to MBIA's claims against RFC were put together at or around the same time as the HSA Transactions here, and involve similar mortgage loan pools and securities. The transactions at issue in MBIA's suit include Home Equity Loan Trusts 2006-HSA4, 2006-HSA5, 2007-HSA1, 2007-HSA2, and 2007-HSA3. On December 22, 2009, the

Court issued a ruling on RFC's motion to dismiss, allowing both the breach of contract and the fraud claims, among others, to proceed.

47. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two pending suits against Ally Financial's mortgage-related subsidiaries. The plaintiffs in those suits have alleged, among other things, that Ally's various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

48. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. In the first nine months of 2011 alone, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $254 million worth of mortgages related to securitizations it consummated between 2004 and 2007. It clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own SEC filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 88 (Nov. 4, 2011).

49. According to its most recent quarterly report, Ally Financial believes its "exposure to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions

implemented in 2008 and forward." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 146 (Nov. 4, 2011). The Mortgage Loans in the 2006-HSA1 and 2006-HSA2 Transactions are, as the names imply, of the 2006 vintage, while those in the 2005-HSA1 Transaction are of the 2005 vintage.

50. Additionally, Ally Financial also disclosed that the U.S. Securities and Exchange Commission served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *See* Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

51. Furthermore, RFC's sister company GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." *Id.* (emphasis added).

(4) The Mortgage Loan Servicing Practices of Ally Financial and Its Subsidiaries Have Come Under Scrutiny for Deficiencies

52. The Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and the Federal Deposit Insurance Corporation (the "FDIC") has ordered Ally Financial and several of its subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

53. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

54. Furthermore, under the Consent Order, Ally Financial must direct its mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

55. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure process of at least one Ally Financial subsidiary to request an independent review of their files and, if warranted, receive compensation for the financial harm they suffered as a result of any errors, misrepresentations, or other deficiencies. *See* Press Release, Federal Reserve Board (November 1, 2011).

56. Moreover, according to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep. *Federal*

National Mortgage Association v. Bradbury, BRI-RE-09-65 (Me. Dist. Ct., Div Nine, No. Cumb.) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

57. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.*

58. The Ohio Attorney General, in October 2010, filed suit against Ally Financial and its subsidiaries, alleging, *inter alia*, that employees of Ally Financial subsidiaries had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). And in December 2011, the Massachusetts Attorney General filed a similar suit against an Ally Financial subsidiary (GMACM) for, among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston).

59. Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices, Boston Globe, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

Id.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and RFC

60. As of November 9, 2011, Ally Financial is considering filing for bankruptcy protection for ResCap, its wholly-owned, indirect subsidiary, which has reportedly lost $555 million since 2009 according to multiple published reports. RFC is a wholly-owned, indirect subsidiary of ResCap.

61. In an article, entitled "Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance," dated November 14, 2011, Bloomberg News reported that "[d]erivatives traders are betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering," According to the article, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy.

62. Indeed, Ally Financial warned in its 2010 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 21 (Feb. 25, 2011).

B. RFC's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

63. To improve the marketability and ratings of the RMBS issued as part of its securitizations, RFC from time to time sought credit enhancement for the RMBS from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the ones FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured securities that, if there is a shortfall in cash available to it to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

64. For a trust that issues RMBS, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the loan pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS Certificate investors. Such shortfalls result in claims on FGIC's policy.

(2) Securitization Sponsor's Representations and Warranties

65. The risk FGIC assumes when it agrees to issue a policy for RMBS depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originator and the characteristics of the loans. If, for instance, a loan originator employs substandard underwriting practices, the underlying mortgage loans would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage loan portfolio as a whole, would be materially increased.

66. Accordingly, FGIC generally required securitization sponsors like RFC to provide substantial representations and warranties about the underlying mortgage loans, including representations about the standards and procedures used to underwrite the loans and the characteristics of the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to month income ("DTI ratio"), the ratio of the mortgage loan principal balance or credit limit, as applicable, to the value of the mortgaged property at origination ("LTV ratio"), the ratio of the combined outstanding principal balances of the mortgage loan and all senior or subordinate mortgage loans secured by the mortgaged property to the value of the mortgaged property at origination ("CLTV ratio"), the borrower's credit score ("FICO score"), and the borrower's residual income, representing the borrower's gross monthly income less the borrower's monthly mortgage payment and other specified monthly debt payments ("Residual Income"). Even where, as here, RFC did not originate the loans at issue, it nonetheless is typically required to make representations about those loans, thereby assuming the risk that those representations might not be accurate. RFC's representations and warranties were intended to

allow FGIC to assess the credit risk inherent in the mortgage loan pool before deciding to commit to the transaction.

C. The HSA Transactions

1. The 2005-HSA1 Transaction

67. In late 2005, RFC began to put together the 2005-HSA1 Transaction. RFC purchased thousands of residential mortgage loans (the "2005-HSA1 Mortgage Loans") originated by either its wholly-owned subsidiary HomeComings or an unaffiliated originator, pooled those loans, and deposited them in the 2005-HSA1 Trust (via RFMSII). The trust then issued approximately $278 million aggregate principal amount of Home Equity Loan-Backed Term Notes, Series 2005-HSA1 (the "2005-HSA1 Notes"). The 2005-HSA1 Notes consisted of five tranches of Class I Notes and one tranche of Class II Notes, all of which would be insured by FGIC. The 2005-HSA1 Mortgage Loans consisted of 3,652 fixed-rate, closed-end home equity mortgage loans with an aggregate unpaid principal balance of $178,529,931, as well as 1,797 adjustable-rate revolving credit loans with an aggregate unpaid principal balance of $100,973,458.

2. The 2006-HSA1 Transaction

68. In early 2006, RFC began to put together the 2006-HSA1 Transaction. RFC purchased thousands of residential mortgage loans (the "2006-HSA1 Mortgage Loans") originated by either its wholly-owned subsidiary HomeComings or an unaffiliated originator, pooled those loans, and deposited them in the 2006-HSA1 Trust (via RFMSII). The trust then issued approximately $461 million aggregate principal amount of Home Equity Loan Pass-Through Certificates, Series 2006-HSA1 (the "2006-HSA1 Certificates"). The 2006-HSA1 Certificates consisted of five tranches of Class A certificates, all of which would be insured by

FGIC. The 2006-HSA1 Mortgage Loans consisted of 9,873 closed-end, fixed-rate home equity mortgage loans with an aggregate principal balance of $463,765,025.

3. The 2006-HSA2 Transaction

69. In early 2006, RFC began to put together the 2006-HSA2 Transaction. RFC purchased thousands of residential mortgage loans (the "2006-HSA2 Mortgage Loans") originated by either its wholly-owned subsidiary HomeComings or an unaffiliated originator, pooled those loans, and deposited them in the 2006-HSA2 Trust (via RFMSII). The trust then issued approximately $448 million aggregate principal amount of Home Equity Loan-Backed Term Notes, Series 2006-HSA2 (the "2006-HSA2 Notes" and together with the 2005-HSA1 Notes and the 2006-HSA1 Certificates, the "HSA Securities"). The 2006-HSA2 Notes consisted of five tranches of Class I Notes and one tranche of Class II Notes, all of which would be insured by FGIC. The 2006-HSA2 Mortgage Loans consisted of 6,085 fixed-rate, closed-end home equity mortgage loans with an aggregate unpaid principal balance of $300,004,823, as well as 2,580 adjustable rate revolving credit loans with an aggregate principal balance of $150,000,263.

4. The HSA Transactions Generally

70. To enhance the ratings and marketability of the HSA Securities, RFC sought multiple financial guaranty insurance policies from FGIC for the purpose of insuring the Transactions for the benefit of the certificate holders. For each of the HSA Transactions, FGIC and RFC executed an Insurance and Indemnity Agreement (respectively, the "2005-HSA1 I&I Agreement," the "2006-HSA1 I&I Agreement," and the "2006-HSA2 I&I Agreement," and collectively the "I&I Agreements"), under which FGIC agreed to issue one or more financial

guaranty insurance policies to insure the HSA Securities.[1] Each I&I Agreement was signed by FGIC (the Insurer for each Transaction); RFC (the Seller and Master Servicer of each Transaction); RFMSII (the Depositor for each Transaction); and J.P. Morgan (the Trustee for each Transaction).[2]

71. Each I&I Agreement provides that FGIC is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." With respect to the 2005-HSA1 and 2006-HSA2 Transactions, the "Operative Documents" are defined to include, among other documents: (i) the relevant HSA Securities; (ii) an Indenture, between J.P. Morgan and the relevant HSA Trust (respectively, the "2005-HSA1 Indenture" and the "2006-HSA2 Indenture"); (iii) a Servicing Agreement, among the relevant HSA Trust, RFC, and J.P. Morgan (respectively, the "2005-HSA1 Servicing Agreement" and the "2006-HSA2 Servicing Agreement"); and (iv) a Home Equity Loan Purchase Agreements, between RFC and RFMSII (respectively, the "2005-HSA1 HELPA" and the "2006-HSA2 HELPA").[3] The 2005-HSA1 and 2006-HSA2 Servicing Agreements also provide that FGIC, as Credit Enhancer, is an express third-party beneficiary thereof.

72. With respect to the 2006-HSA1 Transaction, the "Operative Documents" are defined to include, among other documents: (i) the 2006-HSA1 Certificates; (ii) a Pooling and

[1] With respect to the 2005-HSA1 Transaction, FGIC issued two policies: (1) for the Class I notes, policy number 05030160; and (2) for the Class II notes, policy number 05030161. With respect to the 2006-HSA1 Transaction, FGIC issued one policy: for the Class A certificates, policy number 06030003. With respect to the 2006-HSA2 Transaction: FGIC issued two policies: (1) for the Class I notes, policy number 06030022; and (2) for the Class II notes, policy number 06030026.

[2] The 2005-HSA1 I&I Agreement was executed on December 29, 2005; the 2006-HSA1 I&I Agreement was executed on January 27, 2006; and the 2006-HSA2 I&I Agreement was executed on February 24, 2006.

[3] The Indenture, Servicing Agreement, and HELPA for the 2005-HSA1 Transaction were each executed on December 29, 2005. The Indenture, Servicing Agreement, and HELPA for the 2006-HSA2 Transaction were each executed on February 24, 2006.

Servicing Agreement, among RFMSII, RFC, J.P. Morgan, N.A. (the "2006-HSA1 PSA," and together with the 2005-HSA1 and 2006-HSA2 Servicing Agreements, the "HSA Servicing Agreements"); and (iii) an Assignment and Assumption Agreement, between RFMSII and RFC (the "2006-HSA1 A&A Agreement," and together with the 2005-HSA1 HELPA and the 2006-HSA2 HELPA, the "HSA Purchase Agreements," each of which is an "HSA Purchase Agreement").[4] The 2006-HSA1 PSA provides that FGIC, as Credit Enhancer, is an express third party beneficiary of that agreement.

73. The Policies improved the marketability of the HSA Securities by mitigating risk for potential investors and making the HSA Securities eligible to receive an initial credit rating of triple-A by the rating agencies at closing.

74. RFC and RFMSII offered the HSA Securities for sale pursuant to a prospectus, (a "Prospectus," and for each Transaction respectively, the "2005-HSA1 Prospectus," the "2006-HSA1 Prospectus," and the "2006-HSA2 Prospectus"), and a prospectus supplement (a "Prospectus Supplement," and for each transaction respectively, the "2005-HSA1 Prospectus Supplement," the "2006-HSA1 Prospectus Supplement," and the "2006-HSA2 Prospectus Supplement"), each touting the respective Policies and triple-A initial rating of the respective HSA Securities made possible by those Policies.[5] The "Offering Documents" for each transaction consist of the related Prospectus and Prospectus Supplement, together with any

[4] The 2006-HSA1 PSA was executed on January 1, 2006, and the 2006-HSA1 A&A Agreement was executed on January 27, 2006.

[5] The 2005-HSA1 Prospectus is dated as of October 24, 2005; the 2006-HSA1 Prospectus is dated as of January 19, 2006; and the 2006-HSA2 Prospectus is dated as of January 19, 2006. The 2005-HSA1 Prospectus Supplement is dated as of December 22, 2005; the 2006-HSA1 Prospectus Supplement is dated as of January 25, 2006; and the 2006-HSA2 Prospectus Supplement is dated as of February 22, 2006.

related preliminary Offering Documents, as further supplemented by any subsequent amendment or supplement thereto, and any other related Offering Documents that make reference to a Policy.

75. Upon the closing of each HSA Transaction, Ally Securities, an Ally Financial subsidiary, acted as co-lead manager for a syndicate of underwriters that purchased from the respective HSA Trust and sold to investors the related HSA Securities, and FGIC, for its part, issued the related Policy or Policies in accordance with the terms of the related I&I Agreement.

D. RFC Fraudulently Induces FGIC to Insure the HSA Securities with Substantial Assistance from Ally Financial

(1) RFC's Fraudulent Inducement of FGIC

76. FGIC's participation in the HSA Transactions was an essential component of the HSA Transactions and enhanced RFC's ability to market the securitizations effectively. The Policies allowed RFC to sell the HSA Securities with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

77. In order to induce FGIC to write financial guaranty insurance for the HSA Transactions, RFC provided to FGIC, directly or indirectly, a variety of information.

78. First and foremost, RFC provided to FGIC initial and final Prospectus Supplements summarizing, among other material information, the credit quality and characteristics of the Mortgage Loans, and RFC's loan underwriting guidelines. RFC represented in each Prospectus Supplement that the "seller's underwriting standards relating to the mortgage loans generally will conform to those published in [RFC's] client guide, and the provisions of the guide applicable to the home equity program." 2005-HSA1 Prospectus Supplement at S-32; 2006-HSA1 Prospectus Supplement at S-36; 2006-HSA2 Prospectus Supplement at S-43.

79. Second, RFC provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in each HSA Transaction, together with representations regarding material statistics about the loan pool as a whole.

80. Third, for each Transaction, RFC provided to FGIC credit ratings for the HSA Securities determined without considering the effect of the relevant Policy. These ratings, which RFC procured from the credit rating agencies, are known as "shadow ratings."

81. Fourth, as discussed in detail below, RFC provided representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreements for each Transaction regarding the related Mortgage Loans specifically and the related loan pool generally.

82. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the HSA Securities, FGIC relied in part upon representations and warranties regarding RFC's loan underwriting standards made by RFC in the respective Prospectuses and Prospectus Supplements. For the 2005-HSA1 Transaction, a Preliminary 2005-HSA1 Prospectus Supplement was transmitted to, among others, Benjamin Perlman of FGIC, on or about December 19, 2005, in an email sent by Marie Athaide on behalf of RFC. The 2005-HSA1 Prospectus, as supplemented by the 2005-HSA1 Prospectus Supplement, was filed with the SEC and became effective on December 29, 2005. The Final 2005-HSA1 Prospectus Supplement was transmitted to, among others, Benjamin Perlman of FGIC, on or about December 22, 2005, in an email sent by Marie Athaide on behalf of RFC.

83. For the 2006-HSA1 Transaction, a Preliminary 2006-HSA1 Prospectus Supplement was transmitted to, among others, Benjamin Perlman of FGIC, on or about January

19, 2006, in an email sent by Marie Athaide on behalf of RFC. The 2006-HSA1 Prospectus, as supplemented by the 2006-HSA1 Prospectus Supplement, was filed with the SEC and became effective on January 27, 2006. The Final 2006-HSA1 Prospectus Supplement was transmitted to, among others, Benjamin Perlman of FGIC, on or about January 25, 2006, in an email sent by Marie Athaide on behalf of RFC.

84. For the 2006-HSA2 Transaction, a Preliminary 2006-HSA2 Prospectus Supplement was transmitted to, among others, Benjamin Perlman of FGIC, on or about February 15, 2006, in an email sent by Kara Moskowitz on behalf of RFC. The 2006-HSA2 Prospectus, as supplemented by the 2006-HSA2 Prospectus Supplement, was filed with the SEC and became effective on February 24, 2006. The Final 2006-HSA2 Prospectus Supplement was transmitted to, among others, Benjamin Perlman of FGIC, on or about February 23, 2006, in an email sent by Marie Athaide on behalf of RFC.

85. Each Prospectus Supplement sets forth generally, and among other information, the following important characteristics of the Mortgage Loan pool: the ranges of and weighted average FICO scores, the ranges of and weighted average CLTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (i.e., whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). *See* 2005-HSA1 Prospectus Supplement at II-1-II-23; 2006-HSA1 Prospectus Supplement at II-1-13; 2006-HSA2 Prospectus Supplement at II-1-II-20.

86. Each Prospectus Supplement expressly states: "[The] underwriting standards relating to the mortgage loans generally will conform to those published in [RFC's] client guide, and the provisions of the guide applicable to the home equity program." 2005-HSA1 Prospectus

Supplement at S-32 (emphasis added); 2006-HSA1 Prospectus Supplement at S-36 (emphasis added); 2006-HSA2 Prospectus Supplement at S-43 (emphasis added).

87. RFC publishes its loan underwriting standards in a document the Prospectuses refer to as "Residential Funding's Client Guide," which is modified from time to time (the "Client Guide"). In general, the Client Guide specifies documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories, and/or evidence of closing funds, among other things. The Client Guide also includes substantive criteria for eligibility, addressing material characteristics of a proposed loan, such as DTI ratios, LTV and CLTV ratios, occupancy status, and the borrower's Residual Income.

88. RFC represented that, in all instances, the Mortgage Loans had been originated pursuant to maximum monthly DTI and CLTV ratios, which typically did not exceed 55% and 100% respectively. *See* 2005-HSA1 Prospectus Supplement at II-4, II-11, II-16, II-22; 2006-HSA1 Prospectus Supplement at II-4, II-11; 2006-HSA2 Prospectus Supplement at II-3, II-9, II-14, II-19.

89. For each Transaction, RFC also represented that, with respect to occupancy status, between 91.71% and 97.81% of the Mortgage Loans would be secured by the borrower's primary residence. *See* 2005-HSA1 Prospectus Supplement at S-24, S-27; 2006-HSA1 Prospectus Supplement at S-30; 2006-HSA2 Prospectus Supplement at S-35, S-38.

90. ***Loan Tapes.*** RFC sent via email final loan tapes to FGIC for each of the Transactions. The 2005-HSA1 Transaction final loan tape was sent by RFC to FGIC on or about

December 20, 2005. The 2006-HSA1 Transaction final loan tape was sent by RFC to FGIC on or about January 23, 2006. The 2006-HSA2 Transaction final loan tape was sent by RFC to FGIC on or about February 21, 2006. These loan tapes set forth, for each loan in the pool, key characteristics such as the borrower's FICO score, Residual Income, DTI ratio, and the LTV and CLTV ratios for the loan. RFC also disclosed in the Prospectus Supplement, with respect to the pool as a whole, aggregate characteristics relevant to the assessment of the credit risk of the pool, including FICO scores, Residual Income, DTI ratios, and LTV and CLTV ratios.

91. ***Shadow Rating Letters***. RFC, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. Based on the information supplied by RFC, Moody's and S&P assessed the credit quality of the loan pool and assigned shadow ratings to each of the HSA Securities as set forth in the table below.

	Moody's	**S&P**
2005-HSA1 Class I	A3	BBB-
2005-HSA1 Class II-A	A2	BBB+
2006-HSA1 Class A	Baa1	BBB-
2006-HSA2 Class I	Baa2	BBB-
2006-HSA2 Class II-A	A3	BBB+

92. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to issue the Policies.

93. ***Negotiated Conduit Asset Program.*** As part of its securitization activities, RFC engaged in negotiated commitments with various mortgage loan originators, whereby RFC agreed to purchase from those originators mortgage loans that did not "comply with one or more of the criteria" stated in its standard programs, such as the home equity program. Client Guide at

6J.1. RFC's negotiated commitment program (referred to in the Client Guide as the "Negotiated Conduit Asset Program") by its plain language governs purchases by RFC that are considered by RFC to be "non-standard," and thus exceptions to the use of RFC's general underwriting criteria. *See id*. As the Prospectus for each of the HSA Transactions expressly notes: "The underwriting standards used in negotiated [commitment] transactions . . . may vary substantially from the underwriting standards contained in the [Client] Guide." 2005-HSA1 Prospectus at 17; 2006-HSA1 Prospectus at 18; 2006-HSA2 Prospectus at 18.

94. In similar (but distinct) transactions between RFC and FGIC, where mortgage loans purchased by RFC pursuant to negotiated commitments were to be included in a trust, RFC made significant and explicit disclosures regarding that fact. Nevertheless, neither the Prospectus Supplements provided to FGIC for each of the HSA Transactions, nor any other material provided by RFC, disclosed that any of the Mortgage Loans had been acquired by RFC pursuant to a negotiated commitment involving underwriting standards that do not conform—and are qualitatively inferior—to the underwriting standards set forth in RFC's Client Guide. On the contrary, the Offering Documents—which RFC held out to FGIC and warranted were true and accurate—expressly represented that the Mortgage Loans would comply with the superior underwriting standards applicable to RFC's home equity program as outlined in the Client Guide. *See* 2005-HSA1 Prospectus Supplement at S-32; 2006-HSA1 Prospectus Supplement at S-36; 2006-HSA2 Prospectus Supplement at S-43. In agreeing to issue the Policies, FGIC materially relied on the representations by RFC that the Mortgage Loans would conform to the more restrictive underwriting standards of the home equity program, and would not—as turned out to be the case—include mortgage loans purchased by RFC as exceptions to its general

underwriting criteria, utilizing inferior non-conforming underwriting standards, pursuant to separately negotiated agreements between RFC and third party originators.

(2) RFC's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

95. Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to participate in each of the HSA Transactions and, ultimately, issue the Policies. Ally Financial knew that the Mortgage Loans underlying each of the HSA Transactions were of a substantially poorer quality than was represented to FGIC and other participants in the Transactions, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in each Transaction's Offering Documents and warranted in each Transaction's Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap and its other subsidiaries, Ally Financial knew that the representations and warranties RFC made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

96. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to finance, support, and engender investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

97. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

98. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries."

99. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries were undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

100. Ally Financial's corporate restructuring also allowed RFC to explicitly represent and warrant to FGIC in the I&I Agreements that RFC "is solvent, and will not be rendered insolvent by the Transaction. . . . [RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." 2005-HSA1 I&I Agreement § 2.01(m) (emphasis added); 2006-HSA1 I&I Agreement § 2.01(a)(xiii) (emphasis added); 2006-HSA2 I&I Agreement § 2.01(m) (emphasis added). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary RFC.

101. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the HSA Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in

the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

102. Moreover, as a result of its domination and control over ResCap and RFC, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of RFC's representations and warranties to FGIC—and that they were untrue when stated. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including RFC, shared numerous directors and senior management as well.

103. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, and RFC, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by RFC was shared among and between RFC and its parent ResCap, as well as ResCap and its parent Ally Financial. Indeed, at least one Ally Financial employee who was involved in each of the HSA Transactions appeared on the Transactions' working group lists and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

104. David C. Walker, another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, joined Ally Financial in 1985 and also

served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In September 2005, shortly before the closing of the HSA Transactions, Walker was a director at ResCap, GMACM, RFC, and RFMSII, among other ResCap subsidiaries. In each of the HSA Transactions, Walker, acting as a Director of RFMSII, was a signatory to a "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which was included in the closing documents of each Transaction.

105. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to RFC in fraudulently inducing FGIC to participate in the HSA Transactions and issue the Policies. Further, the issuance of the Policies, which made each Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. RFC's Representations, Warranties, and Affirmative Covenants

106. In connection with the HSA Transactions, RFC, at the direction of Ally Financial, either directly or indirectly through ResCap, made numerous representations, warranties, and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way the loans were selected and evaluated, the characteristics of, and the underwriting standards used for, the Mortgage Loans, and the accuracy of the information supplied to FGIC. RFC also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to RFC's books and records and to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer and, under some circumstances, RFC's accountants.

107. RFC's representation, among others, that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into each HSA Transaction and to issue each Policy in connection therewith. Further, the I&I Agreements' incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that RFC made in connection with the relevant HSA Transaction.

108. FGIC, for its part, reasonably relied on the information available to it regarding the underlying mortgage loans and the representations and warranties provided by RFC. Since FGIC had neither the right nor duty under the Operative Documents, nor the practical ability, to review the thousands of underlying Mortgage Loan files in the days available to it prior to the closing of each HSA Transaction, RFC knew that FGIC had no choice but to rely on RFC's representations regarding the underlying loans in determining whether to issue the Policies. Further, FGIC had no reason to believe that these representations were not true and accurate.

109. RFC included 23,987 individual Mortgage Loans in the HSA Trusts collectively. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation, and other forms of documentation necessary to support underwriting decisions. Unlike RFC, FGIC was under no contractual duty whatsoever to review the Mortgage Loans. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by RFC regarding its evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on the fact that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

110. In each instance, based on the information received by FGIC and the representations and warranties given by RFC, FGIC entered into the respective I&I Agreements and agreed to issue the relevant Policy or Policies to the Trustee for the benefit of the holders of the respective HSA Securities. In return for doing so, in each case, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the related HSA Securities, commensurate with the risk FGIC thought it was taking. Specifically, FGIC received a small percentage of the aggregate balance of the HSA Securities, ranging from 0.16% to 0.17%, for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by RFC.

111. In each case, RFC's information, representations, and warranties were materially false when disclosed and/or provided by RFC. RFC knew that this information, and its representations and warranties, in each instance, were materially false when made. RFC also knew that, with respect to each HSA Transaction individually, this information and the representations and warranties were essential to FGIC's decision in each instance to issue the related Policy or Policies. Indeed, RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreements and issue the Policies. The issuance by FGIC of the Policies—induced by RFC's fraudulent misrepresentations and substantial assistance of Ally Financial—made the HSA Securities eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(3) Representations, Warranties, and Affirmative Covenants Relating to the Operative and Offering Documents

112. In each of the HSA Transactions, under Section 2.01 of each I&I Agreement, RFC made the following representations and warranties, among others:

- *Accuracy of Information*. **None of the Operative Documents nor any other material information relating to the [Mortgage Loans]**, the operations of RFC . . . or the financial condition of RFC . . . furnished to [FGIC] . . . by RFC . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made**. [RFC] has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change. Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to RFC . . . that would render any of the Documents untrue or misleading in any material respect.

- *Compliance with Securities Laws*. The offering and sale of the [HSA Securities] complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading**.

- *Operative Documents*. **Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects**.

  Solvency; Fraudulent Conveyance. [RFC] is solvent, and will not be rendered insolvent by the Transaction . . . . **[RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**. [RFC] does not intend to incur, and does not believe that it has incurred, debts beyond its ability to pay as they mature . . . . [RFC] is not entering into the Operative Documents, or transferring any of its assets in connection with the Transaction, with any intent to hinder, delay or defraud any of its creditors.

I&I Agreements § 2.01.

113. *First*, in each I&I Agreement, RFC represented and warranted that "[n]one of the Operative Documents nor any other material information relating to the [Mortgage Loans], the operations of RFC . . . or the financial condition of RFC . . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." 2005-HSA1 I&I Agreement § 2.01(j); 2006-HSA1 I&I Agreement § 2.01(a)(x); 2006-HSA2 I&I Agreement § 2.01(j). Through these Operative and Offering

Documents, as detailed above, RFC communicated several material facts about the characteristics of the Mortgage Loans.

114. *Second*, in each I&I Agreement, RFC also separately represented and warranted that "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading . . . ." 2005-HSA1 I&I Agreement § 2.01(k); 2006-HSA1 I&I Agreement § 2.01(a)(xi); 2006-HSA2 I&I Agreement § 2.01(k). As discussed above, in each Prospectus Supplement, RFC represented that the Mortgage Loans sold to the HSA Trusts had been underwritten in conformity with RFC's underwriting standards and, specifically, those of the home equity program. *See* 2005-HSA1 Prospectus Supplement at S-32; 2006-HSA1 Prospectus Supplement at S-36; 2006-HSA2 Prospectus Supplement at S-43.

115. *Third*, the I&I Agreements incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the related Operative Documents: "Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects . . . ." 2005-HSA1 I&I Agreement § 2.01(l); 2006-HSA1 I&I Agreement § 2.01(a)(xii); 2006-HSA2 I&I Agreement § 2.01(l). The incorporation by reference of the Operative Documents into each I&I Agreement was intended to allow FGIC to rely on any representation and warranty that RFC made to other entities, such as investors or the Trustee, in connection with the relevant HSA Transaction. Indeed, each I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. *See* 2005-HSA1 I&I Agreement § 2.02(k); 2006-HSA1 I&I Agreement § 2.02(k); 2006-HSA2 I&I Agreement § 2.02(k).

116. *Fourth*, RFC also provided information to FGIC concerning the Mortgage Loans in each of the Transactions. *See* 2005-HSA1 I&I Agreement § 2.02(c)(iii); 2006-HSA1 I&I Agreement § 2.02(c)(iii); 2006-HSA2 I&I Agreement § 2.02(c)(iii). This information included schedules (or "loan tapes") that set forth statistics about the loan pool. The schedules purported to describe key characteristics relevant to the assessment of risk, including DTI, LTV and CLTV ratios, occupancy status, FICO scores, and Residual Income. *See* 2005-HSA1 Indenture, Appendix A; 2006-HSA1 PSA §1.01; 2006-HSA2 Indenture, Appendix A. On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the schedule, referenced in the relevant HSA Purchase Agreement. In turn, in each HSA Purchase Agreement, RFC represented that all the information in those schedules was true and correct in all material respects as of the date on which the information was furnished. *See* 2005-HSA1 HELPA § 3.1(b)(ii),(c)(i); 2006-HSA1 A&A Agreement § 4(b); 2006-HSA2 HELPA § 3.1(b)(ii),(c)(i).

117. As a result of incorporating into each I&I Agreement the representations and warranties in the relevant Operative Documents, RFC incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in each Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that each Mortgage Loan had been underwritten in compliance with RFC's underwriting guidelines.

118. In particular, in the HSA Purchase Agreements, RFC represented and warranted, in sum and substance, as to the Mortgage Loans:

- **Information in Mortgage Loan Schedule**. The information set forth on the Mortgage Loan Schedule with respect to each Mortgage Loan is true and correct in all material respects as of the date or dates which such information is furnished.

See 2005-HSA1 HELPA § 3.1(b)(ii),(c)(i); 2006-HSA1 A&A Agreement § 4(b); 2006-HSA2 HELPA § 3.1(b)(ii),(c)(i).

- **No Material Breach or Default**. Other than with respect to a payment default, there is no material default breach, violation or event of acceleration existing under the terms of any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration under the terms of any Mortgage Note or Mortgage, and no such material default, breach, violation or event acceleration has been waived by RFC or by any other entity, involved in originating or servicing a Mortgage Loan. *See* 2005-HSA1 HELPA § 3.1(b)(xix), (c)(xxx); 2006-HSA1 A&A Agreement § 4(s); 2006-HSA2 HELPA § 3.1(b)(xix), (c)(xxx).

- **Delinquent Loans**. As of the Cut-off Date, no Mortgage Loan is 30 days or more Delinquent in payment of principal and interest. *See* 2005-HSA1 HELPA § 3.1(b)(i), (c)(viii); 2006-HSA1 A&A Agreement § 4(a); 2006-HSA2 HELPA § 3.1(b)(i), (c)(viii).

- **Conformity with Underwriting Guidelines.** All of the Mortgage Loans have been underwritten in substantial compliance with the criteria set forth in RFC's underwriting guidelines. *See* 2005-HSA1 HELPA § 3.1(b)(xxxvii), (c)(xli); 2006-HSA1 A&A Agreement § 4(kk); 2006-HSA2 HELPA § 3.1(b)(xxxvii),(c)(xli).

- **CLTV.** The ratio, expressed as a percentage, of (A) the sum of (i) the Principal Balance of such Mortgage Loan and (ii) any outstanding principal balance of all other mortgage loans, if any, secured by senior or subordinate liens on the related Mortgaged Property, to (B) the Appraised Value, or, to the extent permitted by the RFC's underwriting guidelines, the Stated Value of such Mortgaged Property, was not in excess of 100%. *See* 2005-HSA1 HELPA § 3.1(b)(x), (c)(xxxv); 2006-HSA1 A&A Agreement § 4(j); 2006-HSA2 HELPA § 3.1(b)(x), (c)(xxxv).

119. Moreover, in each I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—RFC specifically covenants that it would comply in all material respects with the terms and conditions of and perform its obligations under the relevant Operative Documents. *See* 2005-HSA1 I&I Agreement § 2.02(a),(k); 2006-HSA1 I&I Agreement § 2.02(a),(k); 2006-HSA2 I&I Agreement § 2.02(a),(k).

(4) Representations, Warranties, and Affirmative Covenants Regarding Access to Information and Servicing

120. In addition to the representations and warranties referenced above, the I&I Agreements provide that RFC has the contractual obligation, as Master Servicer, to service the Mortgage Loans in compliance with the HSA Servicing Agreements and to provide FGIC with access to the underlying Mortgage Loans and servicing notes, and, as Seller, to procure custodial interim certifications stating that all mortgage files were complete and properly transferred into the appropriate HSA Trust ("Interim Certification"). Specifically, each of the I&I Agreements provides FGIC, in sum and substance, with the following access to information rights:

- *Other Information*. RFC shall furnish to FGIC, promptly upon request, such data as FGIC may reasonably request relating to the Mortgage Loans, the servicing of the Mortgage Loans, the Transaction, or the ability of RFC to perform its obligations under the Operative Documents. *See* 2005-HSA1 I&I Agreement § 2.02(c)(v); 2006-HSA1 I&I Agreement § 2.02(c)(v); 2006-HSA2 I&I Agreement § 2.02(c)(v).

- *Access to Records; Discussions with Officers and Accountants*. On an annual basis, or at any time when a Shortfall Event shall have occurred and be continuing, upon the reasonable request of FGIC, RFC will permit FGIC or its authorized agents to inspect the books and records of RFC, discuss the affairs, finances and accounts of RFC as they relate to the Mortgage Loans, the Transaction, or the ability of RFC to perform its obligations under the Operative Documents with a Servicing Officer. If FGIC reasonably believes that a Material Adverse Change may have occurred and with RFC's consent, which consent shall not be unreasonably withheld or delayed, FGIC shall have the right to discuss the affairs, finances and accounts of RFC with RFC's independent accountants. In addition, if requested by FGIC, on an annual basis, or otherwise when reasonably requested by FGIC, RFC will cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custody Agreement, with an exceptions list attached thereto, to enable FGIC to track the progress of recording of Mortgages and Assignments with respect to the Mortgage Loans. *See* 2005-HSA1 I&I Agreement § 2.02(e); 2006-HSA1 I&I Agreement § 2.02(e); 2006-HSA2 I&I Agreement § 2.02(e).

- *Due Diligence*. If in FGIC's reasonable judgment circumstances so warrant, based on the performance of the Transaction, FGIC shall have the right, so long as the HSA Securities remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, reappraisals of

Mortgaged Properties and reviews of servicing practices, at FGIC's expense and in reasonable manner convenient to both RFC and FGIC. This due diligence right is in addition to the access provided and the other rights provided for in Section 2.02(e) of each I&I Agreement. *See* 2005-HSA1 I&I Agreement § 2.02(m); 2006-HSA1 I&I Agreement § 2.02(m); 2006-HSA2 I&I Agreement § 2.02(m).

- *Servicing of Mortgage Loans*. All Mortgage Loans will be serviced in all material respects in compliance with the HSA Servicing Agreements. *See* 2005-HSA1 I&I Agreement § 2.02(l); 2006-HSA1 I&I Agreement § 2.02(l); 2006-HSA2 I&I Agreement § 2.02(l).

F. RFC's Breaches of Its Representations, Warranties, and Affirmative Covenants

121. As discussed above, in relation to each of the three HSA Transactions, FGIC relied on material representations and warranties made by RFC regarding the manner in which the Mortgage Loans were selected and evaluated, the characteristics of those loans, and the accuracy and completeness of information RFC supplied to FGIC. Based on those representations and warranties, FGIC agreed in each case to issue the related Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed below, the risk that FGIC ultimately assumed when it issued each Policy was many times greater than the risk it could have reasonably anticipated based on the information disclosed by RFC's representations and warranties. RFC breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

122. The HSA Transactions have performed poorly, and delinquencies and defaults for Mortgage Loans in each Transaction have been substantial. As of November 2011, a total of 1,419 mortgage loans, representing 26.0% of the loans underlying the 2005-HSA1 Transaction, had posted a loss or were severely delinquent, while 1,904 loans, representing 19.3% of the loans underlying the 2006-HSA1 Transaction and 2,062 loans, representing 23.8% of the loans underlying the 2006-HSA2 Transaction, had posted a loss or were severely delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby

inducing FGIC to issue each Policy, RFC assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with RFC's representations and warranties.

123. The poor performance of the Mortgage Loans has reduced the cash flow to each of the HSA Trusts, which has caused and will continue to cause claims to be presented to FGIC under all the Policies to cover these shortfalls. Indeed, as of December 2011, a total of more than $174 million in claims had been presented to FGIC in connection with the three HSA Transactions. FGIC expects tens of millions of dollars more in claims to be presented to it under the HSA Transactions in the future.

(1) RFC's Denial of Loan File Requests

124. As the HSA Transactions continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blaschko, an RFC/ResCap employee, via e-mail demanding that RFC provide FGIC with 960 Mortgage Loan files relating to the 2005-HSA1 Transaction and 963 Mortgage Loan files relating to the 2006-HSA2 Transaction. Having received no response to this request, FGIC sent a follow-up e-mail on February 3, 2011 regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, the request required authorization from officers at Ally Financial, and RFC/ResCap's response was directed by officers at Ally Financial.

125. On February 14, 2011, and again on April 26, 2011, FGIC sent further follow-up letters requesting loan files.

126. In finally responding to FGIC's request for information, RFC refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans").

Instead, it only provided FGIC with a portion of the requested loan files, consisting solely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

127. Pursuant to the I&I Agreements, FGIC is entitled to reasonable access to the documentation regarding the relevant Mortgage Loans. The relevant I&I Agreements provide that FGIC shall have the right, so long as the HSA Securities remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans. *See* 2005-HSA1 I&I Agreement § 2.02(m); 2006-HSA2 I&I Agreement § 2.02(m). Notably, there is no limitation in any of the I&I Agreements as to the nature of the Mortgage Loan files that are subject to review. Further, the relevant I&I Agreements state that promptly upon request, RFC must provide to FGIC such other data as FGIC may reasonably request relating to the Mortgage Loans. *See* 2005-HSA1 I&I Agreement § 2.02(c)(v); 2006-HSA2 I&I Agreement § 2.02(c)(v). By producing only non-performing Mortgage Loan files, in contravention of the relevant I&I Agreements, RFC has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(2) RFC's Denial of Interim Certification Requests

128. On June 21, 2011, FGIC demanded, pursuant to Section 2.02(e) of the I&I Agreements, that RFC promptly cause the Custodians under each HSA Transaction to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement for the Transaction, with an exceptions list attached thereto. An Interim Certification would enable FGIC to track the progress of the recording of mortgages and assignments with respect to the related Mortgage Loans.

129. Again on September 30, 2011, FGIC wrote RFC demanding the Interim Certification, noting that it had been over three months since FGIC's initial letter and that RFC had failed to respond.

130. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to these requests.

(3) RFC's Denial of Servicing Notes

131. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the 2005-HSA1 and 2006-HSA2 I&I Agreement, that RFC furnish or cause to furnish the servicing notes for the 2005-HSA1 and 2006-HSA2 Mortgage Loans.

132. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(4) RFC's Denial Of FGIC's Access To Books and Records, Servicing Officer, and RFC's Independent Accountants

133. On December 8, 2011, in accordance with its express rights under Sections 2.02(e)(i)-(ii) of the 2005-HSA1 and 2006-HSA2 I&I Agreements, FGIC requested to (i) inspect the books and records of RFC; and (ii) discuss the affairs, finances, and accounts of RFC with the Servicing Officer of RFC. On December 13, FGIC sent a similar request pursuant to Sections 2.02(e)(i)-(ii) of the 2006-HSA1 I&I Agreement.

134. To date, RFC has failed to respond to these requests, in violation of the I&I Agreements.

(5) Breaches Regarding the Accuracy of the Offering Documents and the Underwriting Standards Employed for the Mortgage Loans

135. As discussed, RFC made a number of specific representations and warranties regarding the accuracy of the information contained in the Offering Documents for each of the HSA Transactions, as well as the characteristics of the Mortgage Loans. Specifically, irrespective of the source of origination, all of the Mortgage Loans in the HSA Transactions were expressly represented by RFC to comply with the underwriting standards of RFC's home equity program, as disclosed to FGIC in the Offering Documents for each Transaction. On this basis,

among other material (fraudulent) inducements, FGIC agreed to issue the Policies. As such, RFC has materially breached these obligations by, inter alia, including in the HSA Trusts mortgage loans that were purchased by RFC pursuant to negotiated commitments, and thus underwritten to standards far inferior to the general home equity program standards RFC represented in the Offering Documents.

136. In a series of correspondence in August 2009 between RFC and FGIC regarding FGIC's request that RFC repurchase Mortgage Loans that were purchased by RFC pursuant to negotiated commitments and, thus, not in compliance with the underwriting standards of the home equity program, RFC recognized that it had indeed included in the HSA Transactions such non-compliant mortgage loans. Nevertheless, RFC expressly "reject[ed] the repurchase of each and every loan [referenced by FGIC] where the basis of [FGIC's repurchase request] is based on the loans underwritten pursuant to a negotiated commitment." In doing so, RFC has confirmed its breach of the representations and warranties regarding the accuracy of the information detailed in the Offering Documents as it pertains to the underwriting standards that were supposed to have been used for each of the Mortgage Loans, namely that the RFC home equity program guidelines, as detailed in the Client Guide, would be used. Moreover, RFC has further breached its obligations to FGIC to repurchase non-conforming Mortgage Loans.

(6) Breaches Uncovered In Loan File Reviews

137. During the ordinary course of its business, FGIC evaluated a substantial number of Mortgage Loans to determine whether they contained material breaches of the HSA Transactions' I&I Agreements and Operative Documents necessitating repurchase under the related Operative Documents. To perform this review, FGIC hired an independent outside consultant, having particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

138. The independent consultant's review revealed that approximately 69% of the 2005-HSA1 Mortgage Loans, 60% of the 2006-HSA1 Mortgage Loans, and 59% of the 2006-HSA2 Mortgage Loans reviewed by the outside consultant contained breaches of the representations and warranties in the I&I Agreement. In addition, the review indicated that the defective loans comprised 72%, 68%, and 60% of the total balance of the 2005-HSA1 Mortgage Loans, 2006-HSA1 Mortgage Loans, and 2006-HSA2 Mortgage Loans reviewed by the outside independent consultant respectively.

139. Following the discovery of these high defect rates and pursuant to the HSA Purchase Agreements and the I&I Agreements, FGIC demanded that RFC repurchase the non-compliant Mortgage Loans discovered during its repurchase review. For each Transaction, RFC has expressly refused to repurchase a substantial number of non-conforming Mortgage Loans. This failure constitutes a material breach of the I&I Agreements and HSA Purchase Agreements.

140. Moreover, on information and belief, RFC is and has long been aware that many of the Mortgage Loans were non-conforming and breached its own representations and warranties. Despite this knowledge, and as noted above, RFC has failed to take steps to repurchase the non-conforming loans or replace them with conforming loans.

(7) Breaches Uncovered Using Loan Pool Data

141. In addition to the loan-level review discussed above, FGIC commissioned an independent consultant—a leading provider of financial, property and consumer information, such as property valuation services using automated property valuation tools—to test the accuracy of RFC's representations and warranties relating to the Mortgage Loans regarding occupancy status and CLTV ratios. The consultant extracted information and data relating to over 11,000 Mortgage Loans.

a. Breaches of Owner-Occupancy Representation and Warranty

142. RFC represented that 91.71% of the group one Mortgage Loans and 97.81% of the group two Mortgage Loans in the 2005-HSA1 Transaction would be secured by the borrower's primary residence. *See* 2005-HSA1 Prospectus Supplement at S-24, S-27. RFC represented that 94.09% of the Mortgage Loans in the 2006-HSA1 Transaction would be secured by the borrower's primary residence. *See* 2006-HSA1 Prospectus Supplement at S-30.

143. Based on the information provided, however, FGIC determined that, with respect to the 2005-HSA1 Transaction, only 85.6% of the Mortgage Loans were owner-occupied properties. With respect to the 2006-HSA1 Transaction, and based on the information provided, FGIC determined that only 83.6% of the Mortgage Loans were owner-occupied properties.

144. The Prospectus Supplements therefore materially overstated the percentage of Mortgage Loans in their respective pools that were owner-occupied. As such, RFC breached its representation and warranty that the information in the Prospectus Supplements did not contain any untrue statements of material fact.

145. FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that, as of November 2011, were delinquent for more than 90 days, in foreclosure, charged-off or liquidated) for loans that were determined after review to be non-owner-occupied was approximately 30.2% for the 2005-HSA1 Transaction and 26.6% for the 2006-HSA1 Transaction.

b. Breaches of CLTV Ratio Representation and Warranty

146. The HSA Prospectus Supplements also provided information relating to the CLTV ratios of the underlying Mortgage Loans.

147. CLTV information provided in the HSA Prospectus Supplements provided that the loans generally had been originated with a maximum CLTV ratio of 100%. *See* 2005-HSA1

Prospectus Supplement at S-7; 2006-HSA1 Prospectus Supplement at S-9. CLTV information provided in the HSA Prospectus Supplements included, *inter alia*, (1) the average weighted CLTV ratio for the Mortgage Loans, and (2) the number and aggregate value of the Mortgage Loans with CLTV ratios in a given percentage band (e.g., the number of Mortgage Loans with CLTV ratios of between 80% and 85%, between 85% and 90%, and so on). *See* 2005-HSA1 Prospectus Supplement at II-4, II-16; 2006-HSA1 Prospectus Supplement at II-4. The HSA Prospectus Supplements reported that *none* of the Mortgage Loans had a CLTV ratio over 100 percent. *See id.*

148. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, FGIC determined that 16.14% of the 2005-HSA1 Mortgage Loans and 25.6% of the 2006-HSA1 Mortgage Loans—as opposed to *none* of the loans, as reported in the HSA Prospectus Supplements—had an original CLTV ratio above 100%. In addition, RFC represented in the 2005-HSA1 Prospectus Supplement that the weighted average CLTV ratio of the Mortgage Loans at origination was 93.25% for Group I loans and 89.39% Group II loans, but FGIC determined that the actual weighted average CLTV ratio of the Mortgage Loans at origination was approximately 101.39%. *See* 2005-HSA1 Prospectus Supplement at S-7. RFC represented in the 2006-HSA1 Prospectus Supplement that the weighted average CLTV ratio of the Mortgage Loans at origination was 93.33%, but FGIC determined that the actual weighted average CLTV ratio of the Mortgage Loans at origination was approximately 101.65%. 2006-HSA1 Prospectus Supplement at S-9. Thus, RFC breached its representation and warranty that the information in the HSA Prospectus Supplements did not contain any untrue statements of material fact.

149. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that were delinquent for more than 90 days, in foreclosure, charged-off or liquidated) in the 2005-HSA1 and 2006-HSA1 Transactions for loans where the automated valuation model indicated a CLTV greater than 100% was over 28.44%. This non-performance rate was almost 48.23% greater than the non-performance rate of those loans whose automated valuation model indicated a CLTV below 100%.

150. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicates the clear breach of RFC's contractual representations, warranties, and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, for the HSA Transactions, RFC has breached representations and warranties stating that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (i.e. the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of RFC in the Operative Documents (including each representation and warranty in the HSA Purchase Agreements) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- each Mortgage File contains all required documents and instruments;
- the Mortgage Loans were underwritten in substantial compliance with RFC's underwriting guidelines; and
- the CLTV of each Mortgage Loan did not exceed 100%.

151. It is reasonable to conclude—based on what is known by FGIC and as a result of what is being wrongly withheld from FGIC—that many of the thousands of Mortgage Loans

held by the HSA Trusts at closing evidenced similar breaches of RFC's representations and warranties.

152. Indeed, based on the information gathered from FGIC's loan file review and the information extracted by FGIC's consultant relating to owner-occupancy rates discussed above, on information and belief, the Mortgage Loans across the HSA Transactions have suffered defect rates far in excess of what FGIC could have reasonably anticipated.

153. Moreover, the true scope of the material underwriting failures is unknown given RFC's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of RFC's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

G. RFC's Fraud

154. The material breaches of RFC's representations and warranties, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants RFC made to FGIC to induce its participation in the Transactions. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that RFC breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the relevant Policy, RFC would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because RFC refuses to provide all of the requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

155. All of the Mortgage Loans underlying the Transactions were acquired by RFC. As such, RFC had the access and ability to evaluate the Mortgage Loan files and to determine if

the loans were in substantial compliance with the applicable RFC underwriting guidelines and if the loans breached other representations and warranties made by RFC.

156. To induce FGIC to enter into the HSA Transactions, RFC provided FGIC with a loan tape, which contained false and misleading information regarding, among other things, the CLTV, LTV and DTI ratios, occupancy status, FICO scores, and Residual Income of the borrowers.

157. In addition, RFC made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the each HSA Trust. RFC was well aware that FGIC would not agree to insure the respective HSA Securities unless RFC obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, RFC provided Moody's and S&P with the same false information regarding the credit quality of the underlying mortgage loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the HSA Securities that met FGIC's minimum requirements. In this way, RFC made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that RFC would pass on to FGIC, and second, by causing shadow ratings of the HSA Securities to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

158. RFC also made material representations and warranties and affirmative covenants to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the standards and specific underwriting guidelines to which the Mortgage Loans were underwritten.

159. For example, in each Prospectus Supplement (and in each I&I Agreement by incorporation) RFC assured FGIC that the "underwriting standards relating to the [Mortgage

Loans] generally will conform to those published in [RFC's] client guide, and the provisions of the guide applicable to the home equity program." *See* 2005-HSA1 Prospectus Supplement at S-31; 2006-HSA1 Prospectus Supplement at S-36; 2006-HSA2 Prospectus Supplement at S-43. As such, RFC represented to FGIC that, in the case of each loan within the pool, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information.

160. Moreover, the HSA Purchase Agreements—and the I&I Agreements for each Transaction by incorporation—also contained false and misleading representations about the Mortgage Loans. In particular, for the HSA Transactions, RFC misrepresented that, as of the closing: (i) the information set forth on the Mortgage Loan Schedule with respect to each Mortgage Loan was true and correct in all material respects as of the date which such information was furnished; (ii) other than with respect to a payment default, there was no material default breach or violation under the terms of any Mortgage Note or Mortgage; (iii) as of the Cut-off Date, no Mortgage Loan was 30 days or more Delinquent in payment of principal and interest; (iv) all of the Mortgage Loans had been underwritten in substantial compliance with the criteria set forth in RFC's underwriting guidelines; and (v) the CLTV for each Mortgage Loan did not exceed 100%.

161. Therefore, at the time of the closing of each of the HSA Transactions, RFC either (1) knew or should have known that its representations were materially false because RFC had not, among other things, determined if the Mortgage Loans did in fact conform to the standards of the home equity program contained in the Client Guide, or (2) had reviewed whether the Mortgage Loans were in conformity with the home equity program, had determined that they

were not, but nonetheless materially misrepresented to FGIC that each Mortgage Loan conformed to the home equity program as set forth in the Client Guide.

162. For each of the Transactions, these representations were essential to FGIC's decision to issue each HSA Policy. In each instance, these representations and warranties were false when stated. RFC, in each case, intentionally made these material misrepresentations to induce FGIC to enter into the relevant I&I Agreement and to issue the relevant Policy or Policies. The true information regarding these loans simply could not substantiate RFC's assurances. In short, no amount of RFC promising that the loans met certain standards actually made those promises true.

163. RFC's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC as well as to a multitude of suits and the potential for more litigation to come.

164. Consistent with this pattern of behavior, RFC defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

H. Ally Financial Aids and Abets RFC's Fraud

165. Ally Financial provided substantial assistance to RFC in fraudulently inducing FGIC to issue each of the HSA Policies. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties RFC made regarding the nature of RFC's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

I. RFC's Breach of Obligations as Master Servicer

166. RFC, as Master Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the

relevant Operative Documents for each of the HSA Transactions, including, but not limited to, its obligations to follow proper servicing procedures, and to sufficiently monitor and manage the performance of the subservicer with respect to its duties under each Transaction.

167. RFC took responsibility for the servicing of the Mortgage Loans through its wholly-owned subsidiary HomeComings, and RFC had certain related contractual obligations under the I&I Agreements and the HSA Servicing Agreements with respect to the HSA Transactions. Under the I&I Agreements, RFC covenanted that "[a]ll [Mortgage Loans] will be serviced in all material respects in compliance with the [relevant HSA Servicing Agreement]." 2005-HSA1 I&I Agreement § 2.02(l); 2006-HSA1 I&I Agreement § 2.02(l); 2006-HSA2 I&I Agreement § 2.02(l). Under the HSA Servicing Agreements, RFC is "obligated and liable to . . . [FGIC] for the servicing and administering of the [Mortgage Loans]," and in doing so is required to "follow[] such procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities." 2006-HSA1 PSA §§ 3.01(a), 3.04; 2005-HSA1 Servicing Agreement §§ 3.01(a),(c); 2006-HSA2 Servicing Agreement §§ 3.01(a),(c). As such, on each occasion that HomeComings failed to service and administer the Mortgage Loans in conformity with generally accepted servicing practices (including RFC's own servicing guidelines), RFC was liable "to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the [Mortgage Loans]." 2006-HSA1 PSA § 3.04; 2005-HSA1 Servicing Agreement § 3.01(c); 2006-HSA2 Servicing Agreement § 3.01(c).

168. During 2007, the servicing operations of GMAC Mortgage, GMAC-RFC, and HomeComings were integrated into ResCap. Since the time of the integration, on information and belief, HomeComings has been deficient in its borrower contact, collections and loss

mitigation standards. An onsite review of the Ally Financial servicing arm's headquarters, including those of HomeComings and RFC, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis revealed *inter alia*: (i) inadequate call center staffing (staff unable to handle increased incoming and outgoing call volumes); (ii) call center staffing turnover as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when HomeComings does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; (v) with respect to second lien loans, a policy of extending largely nonrecoverable advances to delinquent borrowers; and (vi) severely infrequent use of alternative loss mitigation strategies as compared to the industry.

169. RFC, on information and belief, has failed to remedy any of the deficient practices in which HomeComings has engaged as subservicer.

170. In addition, RFC disclosed to FGIC that it classified loans into one of three categories or "Risk Tiers" under a protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

171. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. RFC disclosed to FGIC that all of the mortgage loans in FGIC-insured, RFC-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the Transactions, were placed in the lowest category of risk. For such mortgage loans, regardless of whether they were (i) secured by

second-lien mortgages, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities (all of which are factors that require more attentive servicing), delinquent borrowers were called at a later stage of delinquency, and less frequently, than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, RFC clearly knew that the Mortgage Loans, by their very nature, required particularized servicing such as that provided by HomeComings before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by RFC to ensure that the Mortgage Loans were serviced and administered in accordance with "good faith" business practices constitutes a breach of the HSA Servicing Agreements and the I&I Agreements. *See* 2006-HSA1 PSA §§ 3.01(a), 3.04; 2005-HSA1 Servicing Agreement § 3.01(a),(c); 2006-HSA2 Servicing Agreement § 3.01(a),(c); 2005-HSA1 I&I Agreement § 2.02(l); 2006-HSA1 I&I Agreement § 2.02(l); 2006-HSA2 I&I Agreement § 2.02(l).

172. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, RFC has failed to provide such information.

173. On information and belief, RFC, as Master Servicer, also knew of material breaches of representations and warranties and did not notify FGIC thereof, or cause the repurchase of the Mortgage Loans affected thereby. Accordingly, FGIC reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

J. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

174. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns RFC and GMACM. Ally Financial—as the ultimate parent of ResCap, RFC and GMACM—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, RFC and GMACM.

175. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, RFC and GMACM. Upon information and belief, Ally Financial exercised its direction and control in connection with the HSA Transactions. At times, upon information and belief, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

176. Ally Financial has recently admitted to the Federal Reserve Board and the FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries." *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

177. As further discussed below, Ally Financial's public statements and actions at or around the time of each Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of RFC Directly and Indirectly Through its Control of ResCap

178. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

179. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

180. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[6] Since incorporation, the ownership of ResCap has not changed—Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

181. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial shared at least three common board members, including two individuals who were active participants with respect to

[6] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the Securities and Exchange Commission (the "SEC") on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the proposed 2005 operating agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement") (emphasis added).

182. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RFMSII, among other Ally Financial subsidiaries.

183. The 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

184. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

185. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally

Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of GMAC, a strong ResCap with an investment grade rating is a key part of our plan of our value creation." *Id*. (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

186. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citi, which provided "funding of up to $13.8bln." A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap]" businesses.

187. Moreover, there is substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

188. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

189. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

190. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed RFC and GMACM as part of its own business. For example, in its investor presentation from 2007, ResCap declares that RFC and GMACM "are owned *and operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally

Financial wasn't directly controlling RFC and GMACM, it was using ResCap as an instrument to do so.

191. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

192. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one RFC has with respect to the HSA Transactions as Master Servicer.

193. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18,

2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

194. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

Q: Could you please state your name for the record.
A: My name is Jeffrey Stephan.
Q: Okay. And who do you work for?
A: GMAC, LLC [Ally Financial].
Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
Q: Okay.
A: It's GMCA [sic] Mortgage Corporation.
Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

K. FGIC's Contractual Remedies Under The I&I Agreements

195. The I&I Agreements provide FGIC with broad remedies for RFC's breaches of its representations and warranties. Each of the I&I Agreements state that, unless otherwise expressly provided, no remedy conferred in the relevant I&I Agreement is intended to be

exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the relevant I&I Agreement or any other relevant Operative Document, or existing at law or in equity. *See* 2005-HSA1 I&I Agreement § 5.02(b); 2006-HSA1 I&I Agreement § 5.02(b); 2006-HSA2 I&I Agreement § 5.02(b).

196. In each of the HSA Transactions, RFC also agreed that, any provision in the relevant I&I Agreement or any Operative Document to the contrary notwithstanding, FGIC shall be entitled to full reimbursement from RFC for any payment made under any Policy arising as a result of RFC's failure to substitute for or deposit an amount in respect of any defective Mortgage Loan as required by the relevant HSA Purchase Agreement, together with interest on any and all such amounts remaining unreimbursed from the date such amounts became due until paid in full. *See* 2005-HSA1 I&I Agreement § 3.03(b); 2006-HSA1 I&I Agreement § 3.03(b); 2006-HSA2 I&I Agreement § 3.03(b).

197. Further, in each Transaction, RFC expressly agreed to pay to FGIC any and all reasonable charges, fees, costs and expenses that FGIC may reasonably pay or incur, including reasonable attorneys' and accountants' fees and expenses, in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents, including defending, monitoring or participating in any litigation or proceeding relating to any of the Operative Documents. *See* 2005-HSA1 I&I Agreement § 3.03(c); 2006-HSA1 I&I Agreement § 3.03(c); 2006-HSA2 I&I Agreement § 3.03(c).

198. In addition, in each of the HSA Transactions, RFC agreed to pay, protect, indemnify and save harmless FGIC from and against any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys) of any nature arising out of or relating to the

transactions contemplated by the Operative Documents by reason of the breach by RFC of any representation, warranty or covenant under any of the Operative Documents or the occurrence, in respect of RFC, under any of the Operative Documents, of any event of default. *See* 2005-HSA1 I&I Agreement § 3.04(a); 2006-HSA1 I&I Agreement § 3.04(a); 2006-HSA2 I&I Agreement § 3.04(a).

199. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, RFC agreed to repurchase or substitute Mortgage Loans that did not conform to RFC's representations and warranties, and to indemnify FGIC for claims and losses arising from RFC's breach of any representation or warranty.

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Material Breach of the I&I Agreement—Declaratory Relief Regarding RFC's Indemnification Obligation)

200. FGIC re-alleges and incorporates by reference paragraphs 1 through 199 of this Complaint.

201. The I&I Agreements are valid and binding agreements between the parties.

202. FGIC has performed its obligations under each of the I&I Agreements.

203. RFC's representations and warranties were material to FGIC's decision to insure the HSA Securities and to issue the Policies.

204. RFC's pervasive and material breaches of its representations and warranties constitute a material breach of each of the I&I Agreements that has deprived FGIC of the purpose of the parties' bargain.

205. Pursuant to the I&I Agreements, RFC must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by RFC of any of the representations or warranties contained in the I&I

Agreements or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by RFC of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

206. As explained above, RFC has breached numerous representations and warranties in the Offering and Operative Documents for the HSA Transactions, including for example, those contained in the I&I Agreements. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

207. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

208. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must jointly and severally indemnify FGIC for all sums arising out of the HSA Transactions for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the Policies and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policies as and when such sums fall due or claims are presented.

209. In addition, FGIC seeks a declaration that RFC must indemnify FGIC for all sums arising out of the HSA Transactions for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the Policies and to

the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policies as and when such sums fall due or claims are presented.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Fraudulent Inducement—I&I Agreement)

210. FGIC re-alleges and incorporates by reference paragraphs 1 through 209 of this Complaint

211. RFC induced FGIC to enter into the I&I Agreements and to issue the Policies by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

212. As explained above, RFC knowingly made materially false statements to, and/or omitted material facts from, FGIC with the intent to induce detrimental reliance by FGIC.

213. RFC intended for FGIC to rely on RFC's material false statements and/or omissions. FGIC had no reason to believe that RFC's representations were false, and reasonably and justifiably relied on RFC's material false statements and/or omissions regarding information uniquely in the possession of RFC when it decided to enter into the I&I Agreements and to issue the Policies for the HSA Securities.

214. As a result of RFC's material false statements and omissions, FGIC entered into the I&I Agreements, issued the Policies, and thereby agreed to insure securities backed by pools of Mortgage Loans that were, in actuality, materially different from the mortgage loan pools that RFC represented would collateralize the HSA Transactions.

215. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

216. As a result of RFC's material false statements and omissions, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

217. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

218. In addition, RFC is separately liable for such damages.

THIRD CAUSE OF ACTION

(Alternatively Against Ally Financial: Aiding and Abetting Fraudulent Inducement—I&I Agreement)

219. FGIC re-alleges and incorporates by reference paragraphs 1 through 218 of this Complaint.

220. As explained above, Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to issue the Policies.

221. RFC could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

222. Both Ally Financial knew that RFC fraudulently induced FGIC issue the Policies for the HSA Transactions.

223. Ally Financial's statements and actions materially aided RFC's fraudulent inducement.

224. As a result of Ally Financial's aiding and abetting RFC's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Representations, Warranties, and Affirmative Covenants)

225. FGIC re-alleges and incorporates by reference paragraphs 1 through 224 of this Complaint.

226. The I&I Agreements are valid and binding agreements between FGIC and RFC.

227. FGIC has performed its obligations under each of the I&I Agreements.

228. As explained above, RFC has materially breached its representations and warranties under the I&I Agreements.

229. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

230. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

231. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

232. In addition, RFC is separately liable for such damages.

FIFTH CAUSE OF ACTION
(As Against Ally Financial, ResCap, and RFC: Breach of Repurchase Obligation)

233. FGIC re-alleges and incorporates by reference paragraphs 1 through 232 of this Complaint.

234. The I&I Agreements are valid and binding agreements between the parties.

235. FGIC has performed its obligations under each I&I Agreement.

236. Pursuant to the terms of the I&I Agreements, and the provisions of the HSA Purchase Agreements incorporated therein, FGIC has demanded that RFC repurchase non-complying Mortgage Loans. RFC has refused to repurchase numerous such Mortgage Loans.

237. RFC has breached the I&I Agreements, and the provisions of the HSA Purchase Agreements incorporated therein, by failing to repurchase those Mortgage Loans that violated RFC's representations and warranties that FGIC has noticed to RFC.

238. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

239. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

240. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

241. In addition, RFC is separately liable for such damages.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Declaratory Relief Regarding Access to Information)

242. FGIC re-alleges and incorporates by reference paragraphs 1 through 241 of this Complaint.

243. The I&I Agreements are valid and binding agreements between FGIC and RFC.

244. FGIC has performed its obligations under each of the I&I Agreements.

245. Pursuant to the I&I Agreements, RFC agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the HSA Transactions. FGIC further has the right to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans pursuant to the I&I Agreements.

246. As discussed above, pursuant to the I&I Agreements, and with regard to requests for access to Mortgage Loan files pursuant to the 2005-HSA1 I&I Agreement and the 2006-HSA2 I&I Agreement, FGIC made numerous reasonable written requests that RFC furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by RFC, and others, concerning the Mortgage Loans.

247. RFC has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

248. RFC has failed to comply with its contractual obligations and breached the I&I Agreements, and with regard to requests for access to Mortgage Loan files RFC has failed to comply with its contractual obligations and breached the 2005-HSA1 I&I Agreement and the 2006-HSA2 I&I Agreement, by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

249. Pursuant to the I&I Agreements, RFC agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer; and (iii) discuss the affairs, finances and accounts of RFC with RFC's independent accountants.

250. FGIC made a reasonable request to inspect the books and records, discuss the affairs, finances and accounts with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants in December 2011.

251. RFC has failed to make available such persons or to produce such information.

252. RFC has failed to comply with its contractual obligations and breached the I&I Agreements by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreements.

253. Pursuant to the I&I Agreements, RFC agreed, on an annual basis or when reasonably requested by FGIC, to cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreements for each of the HSA Transactions to enable FGIC to track the progress of the recording of Mortgages and Assignments with respect to the Mortgage Loans.

254. FGIC made a reasonable request for the Interim Certification on June 21, 2011.

255. RFC has failed to cause the Interim Certification to be delivered to FGIC as requested. On September 30, 2011, FGIC again notified RFC of its failure to perform under the I&I Agreements, but RFC continued to fail to cause the Interim Certification to be delivered to FGIC.

256. RFC has failed to comply with its contractual obligations and breached the I&I Agreements by failing to cause the Interim Certification to be delivered to FGIC after receiving reasonable requests from FGIC.

257. Pursuant to the I&I Agreements, RFC agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [HSA Servicing Agreements]."

258. FGIC made a reasonable request for servicing notes on December 9, 2010.

259. RFC has failed to comply with its contractual obligations and breached the I&I Agreements by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

260. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

261. Accordingly, FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must comply with the I&I Agreements as they relate to the matters in this cause of action.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief)

262. FGIC re-alleges and incorporates by reference paragraphs 1 through 261 of this Complaint.

263. This is a claim for declaratory judgment pursuant to CPLR 3001 for the purpose of determining a justiciable controversy between FGIC and Ally Financial, ResCap, and RFC.

264. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this complaint.

265. For the reasons set forth in paragraphs 174 through 194, among others, Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

266. FGIC has been damaged as a result of the actions Ally Financial, ResCap and RFC.

267. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Master Servicer Obligations)

268. FGIC re-alleges and incorporates by reference paragraphs 1 through 267 of this Complaint.

269. Each of the I&I Agreements is a valid and binding agreement between FGIC and RFC.

270. FGIC has performed its obligations under each of the I&I Agreements.

271. RFC has breached its affirmative covenants under the I&I Agreements to service all Mortgage Loans in all material respects in compliance with the HSA Servicing Agreements.

272. RFC's breaches of the I&I Agreements have caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

273. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

274. RFC, ResCap, and Ally Financial are jointly and severally liable for such damages.

275. In addition, RFC is separately liable for such damages.

NINTH CAUSE OF ACTION

(As Against RFC: Attorneys' Fees and Costs)

276. FGIC re-alleges and incorporates by reference paragraphs 1 through 275 of this Complaint.

277. The I&I Agreements are valid and binding agreements between FGIC and RFC.

278. FGIC has performed its obligations under each of the I&I Agreements.

279. Pursuant to the I&I Agreements, RFC agreed to reimburse FGIC for any and all costs or expenses "including reasonable fees and expenses of attorneys" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to the I&I Agreements, RFC agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by RFC of any of the representations or warranties contained in each of the I&I Agreements or arising out of or relating to the HSA Transactions.

280. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of RFC's failure to provide Mortgage Loan files, the Interim Certification, Servicing Reports, and financial information, and its breach of the representations and warranties contained in the I&I Agreements and other representations, warranties, and covenants within the Operative Documents.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant Residential Funding Company, LLC, with respect to (1), (2), and (4) through (14) below, and in its favor and against Residential Capital, LLC, with

respect to (1), (2), (4) through (11), (13), and (14) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (11), (13), and (14) below and the following relief:

(1) A declaration that, pursuant to RFC's obligations under the I&I Agreements, RFC solely and/or Ally Financial, ResCap, and RFC must jointly and severally reimburse and indemnify FGIC for all sums arising out of the HSA Transactions for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policies and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policies as and when such sums fall due or such claims are presented, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal rescissory, equitable, and punitive damages, to be proven at trial, for RFC's fraudulent inducement of FGIC to enter into the HSA Transactions and to issue the Policies;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's aiding and abetting of RFC's fraudulent inducement of FGIC to enter into the HSA Transactions and to issue the Policies;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for RFC's material breaches of the HSA Transactions;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for RFC's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreements and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that RFC must repurchase all Mortgage Loans that are in breach of RFC's representations and warranties in the HSA Transactions, and an order giving effect to that declaration;

(7) Further or alternatively, a declaration that RFC must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2005-HSA1 Transaction and 2006-HSA2 Transaction, and an order giving effect to that declaration;

(8) Further or alternatively, a declaration that RFC must allow FGIC to inspect the books and records of RFC, to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants, and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that RFC must cause to be provided servicing notes for the HSA Transactions when requested by FGIC;

(10) Further or alternatively, a declaration that RFC must cause to be provided the custodial Interim Certification when requested by FGIC for the HSA Transactions stating that all mortgage files were complete and were properly transferred into the trusts, or noting any exceptions, and an order giving effect to that declaration;

(11) Further or alternatively, a declaration that Ally Financial, ResCap, and RFC are alter egos of each other;

(12) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreements and other Operative Documents, as defined in the I&I Agreements;

(13) An award of prejudgment interest at the statutory rate; and

(14) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: December 27, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Patrick J. Smith
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CIV 0341

No. 11-cv-_____(__)

FINANCIAL GUARANTY INSURANCE COMPANY,

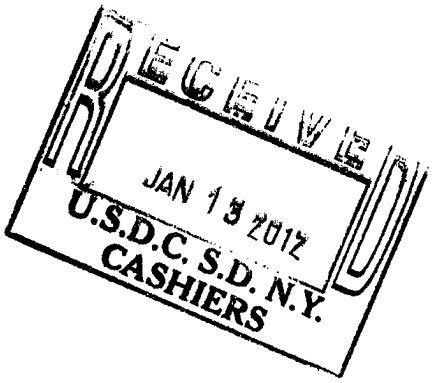
Plaintiff,

-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,

Defendants.

NOTICE OF REMOVAL



TO:
CLERK
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

CLERK
Supreme Court of the State of New York
County of New York
Courthouse
60 Centre Street
New York, New York 10007

Howard F. Sidman
Jones Day
222 East 41st Street
New York, New York 10017

Pursuant to 28 U.S.C. § 1441, Defendants Residential Capital, LLC ("Residential Capital") and Residential Funding Company, LLC ("Residential Funding") (collectively "Defendants") respectfully give notice of the removal this action, entitled *Financial Guaranty Insurance Company v. Ally Financial, Inc. F/K/A GMAC, LLC; Residential Capital, LLC F/K/A Residential Capital Corporation; Residential Funding Company, LLC F/K/A Residential Funding Corporation*, Index No. 653493/2011 (Supreme Court of the State of New York, County of New York), from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York based upon the following grounds:

1. Upon information and belief, this action was commenced on or about December 15, 2011, in the Supreme Court of the State of New York, County of New York. A copy of the Summons and Complaint was served on Defendant Residential Capital's appointed agent, Corporation Service Company, on December 19, 2011. A copy of the Summons and Complaint was served on Defendant Residential Funding's appointed agent, Corporation Service Company, on December 19, 2011.

2. This Notice of Removal is being filed within thirty (30) days of the date Defendants' appointed agents received service of the Summons and Complaint. This Notice of Removal includes a short and plain statement of grounds for removal together with a copy of all process, pleadings, and orders served upon Defendants in this action attached hereto as Exhibit A.

3. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) and this action may be removed to this Court by Defendants pursuant to 28 U.S.C. §

1441(a), in that it is a suit constituting a dispute between citizens of different states and the matter in controversy exceeds the sum of the value of $75,000, exclusive of interest and costs.

a. This suit constitutes a dispute between citizens of different states. As alleged in the Complaint, Plaintiff Financial Guaranty Insurance Company ("Plaintiff") is, and has been at all relevant times, a citizen of New York. Complaint ¶18. As of the date Plaintiff filed suit and currently, Defendant Residential Funding is a Delaware limited liability company. Complaint ¶20. The citizenship of a limited liability company is determined by the citizenship of its members. *Handelsman v. Bedford Vill. Assocs. Ltd. P'ship*, 213 F.3d 48, 51-52 (2nd Cir. 2000). Where the members are themselves limited liability companies, a court looks to the citizenship of their members, and continues this process until it reaches the ultimate incorporated or individual members. *See e.g., Quantlab Financial, LLC v. Tower Research Capital LLC*, 715 F.Supp.2d 542, 546-47 (S.D.N.Y. 2010); *Lindley Contours, LLC v. AABB Fitness Holdings, Inc.*, 414 Fed. Appx 62, 64 (9th Cir. 2011); *Onepoint Solutions, LLC, v. Borchert*, 486 F.3d 432, 347 n.4 (7th Cir. 2007). Residential Funding's sole member at all relevant times has been GMAC-RFC Holding Company, LLC, a Delaware limited liability company. GMAC-RFC Holding Company, LLC's sole member at all relevant times has been Residential Capital, LLC, a Delaware limited liability company. Residential Capital's sole member at all relevant times has been GMAC Mortgage Group LLC, a Delaware limited liability company. GMAC Mortgage Group LLC's sole member at all relevant times has been Ally Financial, Inc. Ally Financial, Inc. is incorporated under the laws of Delaware with its principal place of business in Michigan. Accordingly, Residential Funding is, and has been at all relevant times, a citizen of Delaware and Michigan, the principal place of business and state of incorporation for the ultimate incorporated member. Similarly, Defendant Residential Capital is,

and has been at all relevant times, a citizen of Delaware and Michigan, as its ultimate incorporated member is also Ally Financial, Inc. Finally, defendant Ally Financial, Inc. is, and has been at all relevant times, a citizen of Delaware and Michigan. Thus, the citizenship of all parties are diverse as defined by 28 U.S.C. § 1332(a). Moreover, no defendant is a citizen of New York, the state in which the action is pending and the domicile of the Plaintiff, and none of the parties or companies identified above, other than Plaintiff, has its principal place of business in the State of New York.

b. This action involves a matter in controversy exceeding the sum or value of $75,000, exclusive of costs, in that the compensatory damages sought by the Plaintiff include, among other items, indemnification for and damages in the amount of claims made against Plaintiff's insurance policy for "more than $32 million in claims" presented to Plaintiff, and "tens of millions of dollars more in claims to be presented" under Plaintiff's policy in the future. Complaint ¶¶ 112; Prayer for Relief.

4. Venue lies in the United States District Court for the Southern District of New York because the state-court action was filed in this district. 28 U.S.C. § 1441(a).

5. As required by 28 U.S.C. § 1446(d), Defendants are serving a copy of this Notice of Removal on Plaintiff and will file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York.

6. All Defendants have consented to removal of the instant action. Defendant Ally Financial, Inc. will be filing a separate notice of consent.

WHEREFORE, Defendants submit this Notice of Removal of this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York and pray this action stand so removed.

Dated: New York, New York
January 13, 2012

Respectfully submitted,

Orrick, Herrington & Sutcliffe LLP

By: Elyse D. Echtman

Elyse D. Echtman
eechtman@orrick.com

51 West 52nd Street
New York, New York 10019-6142
+1 212-506-5000
+1 212-506-5151

Attorneys for Defendants Residential Capital, LLC, and Residential Funding Company, LLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,

Defendants.

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Index No. _____

SUMMONS

Date Index No. Purchased:

December 15, 2011

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint of the Plaintiff herein and to serve a copy of your answer on the Plaintiff at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

VENUE: Plaintiff designates New York County as the place of trial. The basis of this designation is Plaintiff's residence in New York County at 125 Park Avenue, New York, New York 10017. A further basis of this designation is Defendant RESIDENTIAL FUNDING COMPANY, LLC's residence in New York County and agreed submission to this venue.

Dated: December 15, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Bart Green
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY, **Plaintiff,** **-against-** **ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,** **Defendants.**	**Index No. _____** **COMPLAINT**

Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"), Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"), and Residential Funding Company, LLC, formerly known as Residential Funding Corporation ("RFC"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with a financial guaranty insurance policy (the "Policy") issued by FGIC in relation to an RFC-sponsored transaction (the "2005-EMX5 Transaction" or the "Transaction") in which RASC Series 2005-EMX5 Trust (the "2005-EMX5 Trust") issued and sold to investors roughly $380 million aggregate principal amount of insured residential mortgage-backed securities (the "2005-EMX5 Certificates"). As the sponsor of the

2005-EMX5 Transaction, RFC procured the Policy from FGIC in order to enhance the ratings and marketability of the 2005-EMX5 Certificates. RFC fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices, and the credit quality and characteristics of the thousands of mortgage loans that provided the collateral for the 2005-EMX5 Certificates. In short, the mortgage loans were different—and demonstrably worse—than RFC had represented them to be. FGIC's issuance of the Policy enabled the 2005-EMX5 Certificates to receive an initial triple-A rating from the rating agencies, which in turn made the 2005-EMX5 Transaction viable, and enabled RFC and its affiliates to earn millions of dollars in transaction fees.

2. Since the closing of the 2005-EMX5 Transaction, RFC has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the 2005-EMX5 Transaction, RFC has violated the essential terms of its agreement with FGIC. RFC has also breached the essential terms of the other operative documents incorporated therein.

3. The wrongdoing committed by RFC, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through ResCap. Ally Financial is the ultimate parent of ResCap, which owns RFC. Ally Financial, as the ultimate parent of ResCap and RFC, has the practical ability, which it has repeatedly exercised, to direct and control the activities of its subsidiaries, including ResCap and RFC. At times, Ally Financial's direction and control was effected by using ResCap as an instrument to achieve its goals.

4. The 2005-EMX5 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among RFC and several other

parties. To facilitate the Transaction, RFC pooled together thousands of mortgages (the "Mortgage Loans"), which RFC had purchased from an affiliate of the originator, Mortgage Lenders Network USA, Inc. ("MLN"), a nationwide mortgage lender at that time. The Mortgage Loans consisted of 2,544 first-lien and junior-lien mortgage loans originated by MLN. After origination, the Mortgage Loans were transferred to Emax Financial Group, LLC ("Emax"), an MLN affiliate. RFC acquired the Mortgage Loans from Emax prior to the closing of the 2005-EMX5 Transaction.

5. Following its acquisition of the Mortgage Loans, RFC transferred the Mortgage Loans to another Ally Financial affiliate, Residential Asset Securities Corporation ("RASC"). RASC then deposited the Mortgage Loans it received from RFC into the 2005-EMX5 Trust. The trust, in turn, issued certificates representing the beneficial interest in the 2005-EMX5 Trust. The 2005-EMX5 Trust was a legal entity created by RFC solely for the purposes of the 2005-EMX5 Transaction to hold the Mortgage Loans and to issue the 2005-EMX5 Certificates to investors in a registered public offering.

6. RFC also acted as master servicer of the 2005-EMX5 Transaction, in which capacity it would collect the payments of the borrowers and perform other servicing duties related to the Mortgage Loans. Yet another Ally Financial affiliate, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was the sole underwriter of the 2005-EMX5 Transaction. U.S. Bank National Association ("U.S. Bank") agreed to act as trustee of the 2005-EMX5 Trust (the "Trustee").

7. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the Trust are used to pay, among other things, principal and interest due on the

2005-EMX5 Certificates, and the fees and expenses of RFC and other participants in the Transaction.

8. RFC, directed and controlled by Ally Financial, is, therefore, the hub of the 2005-EMX5 Transaction: it is the sponsor of the securitization, an acquirer and seller of the Mortgage Loans, and the master servicer of the Transaction. The primary victim of the 2005-EMX5 Transaction—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by RFC—is FGIC, which has already been presented with over $32 million in claims under the Policy, with further material losses still to come.

9. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed certificates ("RMBS Certificates"). At the time of the 2005-EMX5 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Certificates typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of realized losses on the Mortgage Loans collateralizing the insured securities. FGIC's insurance policies thus enhanced the credit quality and marketability of the insured securities.

10. To enhance the ratings and marketability of the 2005-EMX5 Certificates, and to increase the profit that RFC would derive from the 2005-EMX5 Transaction, RFC sought to have FGIC issue the Policy to U.S. Bank, as Trustee, for the benefit of the holders of the 2005-EMX5 Certificates.

11. As an essential element of the 2005-EMX5 Transaction, RFC made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated and their characteristics to induce FGIC to enter into the Transaction. RFC represented, among other things, that the Mortgage Loans "were in substantial conformity with the standards set forth in Residential Funding's AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement." Prospectus Supplement at S-31; *see also* Prospectus Supplement at S-36. Those representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2005-EMX5 Transaction. As a result, FGIC was fraudulently induced to enter the Transaction, and the credit risk assumed by FGIC in connection with the Transaction was far greater than it would have been had RFC's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

12. RFC received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policy. Ally Financial took actions and made statements to finance, support, and boost investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations RFC had made to FGIC. As a result of its dominance over ResCap and RFC, Ally Financial knew that the representations and warranties RFC made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted RFC's fraudulent inducement of FGIC to issue the Policy.

13. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims

presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policy in reliance on the (presumed) accuracy and truthfulness of RFC's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and therefore the amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of RFC's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policy, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of RFC's misconduct

14. In order to evaluate the extent of RFC's breaches, FGIC has requested copies of the mortgage loan files and servicing notes for the Mortgage Loans. RFC is obligated, under its agreements with FGIC, to provide those documents to FGIC. RFC has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence material breaches by RFC. This refusal to provide information in itself constitutes a material breach of RFC's insurance agreement with FGIC.

15. Certain of the material contractual breaches committed by RFC—including, but not limited to, FGIC's right to access information in RFC's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

16. Through this Complaint, FGIC seeks relief against RFC, ResCap, and Ally Financial for RFC's fraudulent inducement, and for its material breaches of its insurance agreement with FGIC and other contractual obligations owed to FGIC in connection with the 2005-EMX5 Transaction.

17. FGIC seeks a declaration from the Court that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other. Further and alternatively, FGIC seeks relief

against Ally Financial for aiding and abetting RFC's fraudulent inducement, and for RFC's material breaches of its contractual obligations to FGIC.

THE PARTIES

18. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

19. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial specializes in automotive financings, residential mortgage financings and services, and insurance services. Ally Financial is the parent company of ResCap, RFC, and all RFC-affiliated entities relevant to this action.

20. Defendant RFC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. In the period relevant to this action, RFC acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

21. Since 2005, RFC has been an indirect wholly owned subsidiary of ResCap; prior to that time, RFC was an indirect, wholly owned subsidiary of Ally Financial.

22. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of RFC and is a leading real estate finance company, the business of which includes acquiring, selling and servicing mortgage loans.

23. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this suit pursuant to CPLR §§ 301 and 311-a. RFC is a registered, foreign, limited liability company within the State of New York. RFC has

appointed an agent for service of process in this State and transacts business within this State. Also, in an agreement at issue in this case, RFC irrevocably submitted to the jurisdiction of this Court. Ally Financial and ResCap likewise regularly transact business in this State, and the acts giving rise to the claims in this case occurred in this State.

25. Venue is proper in New York County pursuant to CPLR § 503. FGIC, as plaintiff, has designated New York County as the place of trial. RFC, a party to this action, has designated New York County as its county of residence in the State of New York, and has agreed not to challenge venue in this Court. Furthermore, substantial activity giving rise to the claims in this case occurred within New York County.

RELEVANT NON-PARTIES

26. GMAC Mortgage LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMACM is an indirect wholly-owned subsidiary of ResCap, which in turn is a wholly-owned subsidiary of Ally Financial.

27. RASC, a special purpose vehicle, is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. To facilitate the 2005-EMX5 Transaction, RASC purchased the Mortgage Loans from RFC and deposited them into the 2005-EMX5 Trust. The trust then issued the 2005-EMX5 Certificates to underwriters to be sold to investors.

28. Ally Securities, an entity incorporated in Delaware, is an affiliate of RFC and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2005-EMX5 Certificates and, on information and belief, participated in the preparation of the Prospectus and Prospectus Supplement.

29. RFC acquired all of the Mortgage Loans for the 2005-EMX5 Transaction from MLN, which originated and acted as the subservicer of the Mortgage Loans in the Transaction. MLN filed for bankruptcy on February 5, 2007.

FACTUAL ALLEGATIONS

A. RFC

30. In the period relevant to this action, RFC acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Certificates.

31. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults, and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including RFC, led Ally Financial to seek a bailout by the federal government in 2008.

(1) RFC, GMACM, and GMAC-RFC

32. RFC is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

33. GMACM is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate RFC, GMACM engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

34. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical*

Annual: Volume II at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

35. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

36. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with RFC. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

(2) Ally Financial's Securitization Business

37. Ally Financial's business model depended on securitizations, which were conducted by its business units, including RFC. Pooling mortgage loans and selling them into securitizations enabled RFC to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

38. RFC, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third

parties. RFC would typically acquire such mortgage loans and then deposit them into a securitization trust (usually through an affiliate). RFC would then procure underwriters, trustees, and (in the case of insured securities) financial guaranty insurers, and cause the securitization trust to sell securities collateralized by the relevant mortgage loans. In many instances, RFC profited from the difference between the cost it incurred to acquire mortgage loans and the price at which it sold them for deposit into the securitizations.

39. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, RFC typically also sought (as it did here) to be appointed as the master servicer, appointing the mortgage loan originator or an affiliate to act as subservicer. For acting as master servicer to the 2005-EMX5 Transaction, RFC gained substantial additional compensation.

40. RFC also enriched Ally Financial and its subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2005-EMX5 Transaction: (i) RASC, which established the 2005-EMX5 Trust and acted as depositor of the Mortgage Loans, charged fees to cover its operating expenses; and (ii) Ally Securities received fees for underwriting the 2005-EMX5 Certificates.

(3) Ally Financial, RFC, and GMACM Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

41. On September 2, 2011, the Federal Housing Finance Authority (the "FHFA"), as conservator for the Federal Home Loan Mortgage Corporation ("Freddie Mac"), filed suit in this Court against RFC for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with its role in the public filing of offering documents containing false and

misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in RMBS issued through twenty-one RFC-sponsored transactions similar to the 2005-EMX5 Transaction.

42. The FHFA also alleges violations of state and federal securities laws by RFC and its parent, Ally Financial, and their affiliates, stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against RFC's affiliates and Ally Financial for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs.

43. In addition, RFC is currently facing a lawsuit brought by MBIA Insurance Corporation in this Court for, among other things, fraud and breach of representations and warranties. On December 22, 2009, this Court issued a ruling on RFC's motion to dismiss which allowed both the breach of contract and the fraud claims, among others, to proceed.

44. DZ Bank AG also filed a summons with notice in New York Supreme Court on December 13, 2011, against Ally Financial, ResCap, RFC, RASC, and other Ally Financial subsidiaries for common-law fraud, fraudulent inducement, negligent misrepresentation, and aiding and abetting fraud, in connection with the 2005-EMX5 Transaction. The summons with notice alleges material misrepresentations and omissions regarding the standards used to underwrite, and key statistical characteristics of, the Mortgage Loans in the 2005-EMX5

Transaction. The claims arise from DZ Bank AG's purchase of $289.8 million in securities issued by Ally Financial subsidiaries, including a portion of the 2005-EMX5 Certificates.

45. As of November 4, 2011, there were twenty-two pending suits against Ally Financial's mortgage-related subsidiaries, according to Ally Financial's quarterly report for the third quarter of 2011. The plaintiffs in those suits have alleged, among other things, that Ally's various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

46. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. In the first nine months of 2011 alone, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $254 million worth of mortgages related to securitizations it consummated between 2004 and 2007. It clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own SEC filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 88 (Nov. 4, 2011).

47. According to its most recent quarterly report, Ally Financial believes its "exposure to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008 . . . ." Ally Fin. Inc., Quarterly Report (Form

10-Q), at 146 (Nov. 4, 2011). The 2005-EMX5 Transaction is, as the name implies, of the 2005 vintage.

48. Additionally, Ally Financial also disclosed that the U.S. Securities and Exchange Commission served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

49. Furthermore, RFC's sister company GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." *Id.* (emphasis added).

(4) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and RFC

50. Ally Financial is considering filing for bankruptcy protection for ResCap, its wholly-owned, indirect subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports, as of November 9, 2011. RFC is a wholly-owned, indirect subsidiary of ResCap.

51. Bloomberg News reported that "[d]erivatives traders are betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering," in an article, entitled "Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance," dated

November 14, 2011. According to the article, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy.

52. Indeed, Ally Financial warned in its 2010 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 21 (Feb. 25, 2011).

B. RFC's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

53. To improve the marketability and ratings of the RMBS Certificates issued as part of its securitizations, RFC from time to time sought credit enhancement for the RMBS Certificates from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Certificates that, if there is a shortfall in cash available to it to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

54. For a trust that issues RMBS Certificates, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Certificates. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the loan pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS Certificate investors. Such shortfalls result in claims on FGIC's policy.

(2) Securitization Sponsor's Representations and Warranties

55. The risk FGIC assumes when it agrees to issue a policy for RMBS Certificates depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originator and the characteristics of the loans. If, for instance, a loan originator employs substandard underwriting practices, the underlying mortgage loans would be of inferior credit quality. Consequently**,** the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

56. Accordingly, FGIC generally required securitization sponsors like RFC to provide substantial representations and warranties about the underlying mortgage loans, including representations about the standards and procedures used to underwrite the loans and the characteristics of the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to month income ("DTI ratio"), the ratio of the mortgage loan principal balance to the value of the mortgaged property at origination ("LTV ratio"), the ratio of the combined outstanding principal balances of the mortgage loan and all senior mortgage loans secured by the mortgaged property to the value of the mortgaged property at origination ("CLTV ratio"), the borrower's credit score ("FICO score"), and the credit grade of the loan according to RFC's grading system ("Credit Grade"). Even where, as here, RFC did not originate the loans at issue, it nonetheless is typically required to make representations about those loans, thereby assuming the risk that those representations might not be accurate. RFC's representations and warranties were intended to allow FGIC to assess the credit risk inherent in the mortgage loan pool before deciding to commit to the transaction.

C. The RASC 2005-EMX5 Transaction

57. In late 2005, RFC began to put together the 2005-EMX5 Transaction. RFC purchased thousands of residential mortgage loans originated by MLN from Emax, pooled those loans, and deposited them in the 2005-EMX5 Trust (via RASC). The trust then issued $380 million aggregate principal amount of Class A Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX5. The 2005-EMX5 Certificates consisted of three classes of senior certificates, all of which were insured by FGIC.

58. The Mortgage Loans comprised 2,544 fixed and adjustable-rate first-lien and junior-lien mortgage loans having an outstanding aggregate principal balance of $400,000,044. To enhance the ratings and marketability of the 2005-EMX5 Certificates, RFC sought a financial guaranty insurance policy from FGIC for the purpose of insuring the transaction for the benefit of the certificate holders. On December 16, 2005, FGIC and RFC executed an Insurance and Indemnity Agreement (the "I&I Agreement"), under which FGIC agreed to issue a financial guaranty insurance policy to insure the 2005-EMX5 Certificates, and FGIC accordingly issued its policy number 05030153. The I&I Agreement was signed by FGIC (the Insurer of the Transaction); RFC (the Seller and Master Servicer of the Transaction); RASC (the Depositor for the Transaction); and U.S. Bank (the Trustee for the Transaction).

59. The I&I Agreement provides that FGIC is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." The "Operative Documents" are defined to include, among other documents: (i) the 2005-EMX5 Certificates; (ii) the Pooling and Servicing Agreement (the "PSA"), dated December 1, 2005, among RFC, RASC, and U.S. Bank; and (iii) the Assignment and Assumption Agreement (the "A&A Agreement"), dated as of December 16, 2005, between RFC and RASC. The PSA also provides that FGIC (the Certificate Insurer) "is an express third-party beneficiary of [the PSA]."

60. The Policy improved the marketability of the 2005-EMX5 Certificates by mitigating risk for potential investors and making the 2005-EMX5 Certificates eligible to receive an initial credit rating of triple-A by the rating agencies at closing.

61. RFC and the Depositor offered the 2005-EMX5 Certificates for sale pursuant to a prospectus, dated May 2, 2005 (the "Prospectus"), and a prospectus supplement (the "Prospectus Supplement"), dated December 13, 2005, touting the Policy and the triple-A initial rating of the 2005-EMX5 Certificates made possible by the Policy. The Prospectus and the Prospectus Supplement, together with certain preliminary Offering Documents, each as further supplemented by any subsequent amendment or supplement thereto, and any other Offering Documents that makes reference to the Policy, are referred to collectively as the "Offering Documents."

62. On December 16, 2005, an Ally Financial subsidiary, Ally Securities, sold the 2005-EMX5 Certificates to investors, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

D. RFC Fraudulently Induces FGIC to Insure the 2005-EMX5 Certificates with Substantial Assistance from Ally Financial

(1) RFC's Fraudulent Inducement of FGIC

63. FGIC's participation in the 2005-EMX5 Transaction was an essential component of the 2005-EMX5 Transaction and enhanced RFC's ability to market the securitization effectively. The Policy allowed RFC to sell the 2005-EMX5 Certificates with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

64. In order to induce FGIC to write financial guaranty insurance for the 2005-EMX5 Transaction, RFC provided to FGIC, directly or indirectly, a variety of information.

65. First and foremost, RFC provided to FGIC initial and final Prospectus Supplements summarizing, among other material information, the credit quality and characteristics of the Mortgage Loans, and RFC's loan underwriting guidelines. RFC represented in the Prospectus Supplement that the Mortgage Loans "were in substantial conformity with the standards set forth in Residential Funding's AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement." Prospectus Supplement at S-31; *see also* Prospectus Supplement at S-36.

66. Second, RFC provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the 2005-EMX5 Transaction, together with representations regarding material statistics about the loan pool as a whole.

67. Third, RFC provided to FGIC credit ratings for the 2005-EMX5 Certificates determined without considering the effect of the Policy. These ratings, which RFC procured from the credit rating agencies, are known as "shadow ratings."

68. Fourth, RFC provided information regarding MLN's practices and procedures for originating and servicing mortgage loans, and the prior performance of such loans.

69. Fifth, as discussed in detail in Section E, RFC provided representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreement regarding the mortgage loans specifically and the loan pool generally.

70. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the 2005-EMX5 Certificates, FGIC relied in part upon representations and warranties regarding RFC's loan underwriting standards made by RFC in the Prospectus and

Prospectus Supplement. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about December 6, 2005, in an email sent by Duane K. Beasley on behalf of RFC. The Prospectus, as supplemented by the Prospectus Supplement, was filed with the SEC and became effective on December 13, 2005. The Final Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about December 14, 2005, in an email sent by Duane K. Beasley on RFC's behalf.

71. The Prospectus Supplement set forth, among other information, the following important characteristics of the Mortgage Loan pool: the ranges of and weighted average FICO scores and Credit Grades, the ranges of and weighted average LTV and CLTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (i.e., whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). Prospectus Supplement at II-1 – II-11.

72. The Prospectus Supplement expressly states: "Prior to assignment to the depositor, [RFC] reviewed the underwriting standards for the mortgage loans and all of the mortgage loans were in substantial conformity with the standards set forth in Residential Funding's AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement." Prospectus Supplement at S-31; *see also* Prospectus Supplement at S-36.

73. RFC publishes its loan underwriting standards in a document the Prospectus refers to as "Residential Funding's Client Guide" as modified from time to time (the "Client Guide"). In general, the Client Guide specifies documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a

particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories, and/or evidence of closing funds, among other things.

74. RFC disclosed additional data relevant to the AlterNet Program to FGIC. In particular, RFC provided FGIC with the AlterNet Guidelines. RFC also disclosed in the Prospectus Supplement the delinquency and foreclosure experience it had recorded for the AlterNet Program for nine months ending in September 2005 and for the preceding three years. Prospectus Supplement at S-78, S-79.

75. The Prospectus Supplement and Prospectus Supplement also include substantive criteria for eligibility addressing material characteristics of a proposed loan, such as DTI ratios, LTV and CLTV ratios, occupancy status, and Credit Grades.

76. In particular, RFC represented in the Offering Documents that the loans had been originated with a maximum monthly DTI ratio of 55%, a maximum LTV ratio of 100% for first-lien loans, and a maximum CLTV ratio of 100% for junior-lien loans. *See* Prospectus Supplement at II-3, II-11. Moreover, with respect to at least 98.8% of the Mortgage Loans, RFC represented that the maximum DTI ratio was 50%, and the maximum CLTV ratio was 95%. *See* Prospectus Supplement at S-33, S-34 and II-7.

77. RFC also represented in the Offering Documents, as well as in the A&A Agreement, that 97.56% of the Mortgage Loans would be owner-occupied. Prospectus Supplement at II-6; A&A Agreement § 4(xxiii).

78. ***Loan Tapes.*** RFC sent via email final loan tapes to FGIC on December 12, 2005. The loan tapes provided by RFC set forth, for each loan in the pool, key characteristics such as

the borrower's FICO score, Credit Grades, DTI ratio, and the LTV and CLTV ratios for the loan. RFC also disclosed in the Prospectus Supplement, with respect to the pool as a whole, aggregate characteristics relevant to the assessment of the credit risk of the pool, including FICO scores, Credit Grades, DTI ratios, and LTV and CLTV ratios.

79. ***Shadow Rating Letters***. RFC, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. Based on the information supplied by RFC, Moody's assessed the credit quality of the loan pool and assigned a shadow rating of A3 to the 2005-EMX5 Certificates, while S&P assigned the 2005-EMX5 Certificates a shadow rating of A. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to insure the 2005-EMX5 Transaction.

80. ***MLN.*** FGIC, having had no prior experience with MLN, and having no direct contact with MLN, relied on RFC to conduct an appropriate inquiry into the business methods and practices and procedures of MLN. FGIC also relied on RFC to provide FGIC with information about MLN and the performance of loans that were originated and/or serviced by MLN. On November 30 and December 2, 2005, RFC provided FGIC with a variety of information concerning MLN's practices, procedures, and performance in originating and servicing mortgage loans.

81. RFC acquired and held a portfolio of loans from MLN that were originated and serviced between 2003 and 2005. RFC provided FGIC with performance data regarding these MLN originated loans purporting to show that such loans performed substantially better than RFC's own comparable mortgage loan portfolio.

82. In addition, the Prospectus Supplement included performance data for the mortgage loans acquired by RFC and serviced by MLN for the years 2003, 2004, and the first nine months of 2005.

(2) RFC's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

83. Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to participate in the 2005-EMX5 Transaction and, ultimately, issue the Policy. Ally Financial knew that the Mortgage Loans underlying the 2005-EMX5 Transaction were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap and its other subsidiaries, Ally Financial knew that the representations and warranties RFC made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

84. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to finance, support, and engender investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

85. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

86. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Exhibit 99.1.

87. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

88. Ally Financial's corporate restructuring also allowed RFC to explicitly represent and warrant to FGIC in the I&I Agreement that RFC "is solvent, and will not be rendered insolvent by the Transaction. . . . [RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary RFC. I&I Agreement § 2.01(xiii).

89. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the 2005-EMX5 Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in

the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

90. Moreover, as a result of its domination and control over ResCap and RFC, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of RFC's representations and warranties to FGIC—and that they were untrue when stated. For example, Thomas Marano served as an officer of Ally Financial as well as Chairman and CEO of ResCap, and Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a Director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including RFC, shared numerous directors and senior management as well.

91. As a result of the overlapping personnel, intertwined business operations, and the freeflow of information among Ally Financial, ResCap, and RFC, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by RFC was shared among and between RFC and its parent ResCap, as well as ResCap and its parent Ally Financial. Indeed, at least one Ally Financial employee who was involved in the 2005-EMX5 Transaction appeared on the Transaction's working group list and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

92. Another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries is David C. Walker. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In

September 2005, shortly before the closing of the 2005-EMX5 Transaction, Walker was a director at ResCap, GMACM, RFC, and RASC, among other ResCap subsidiaries. In the 2005-EMX5 Transaction, acting as a Director of RASC, Walker was a signatory to a "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which was included in the closing documents of the Transaction.

93. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to RFC in fraudulently inducing FGIC to participate in the Transaction and issue the Policy. Further, the issuance of the Policy, which made the 2005-EMX5 Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. RFC's Representations, Warranties, and Affirmative Covenants

94. In connection with the 2005-EMX5 Transaction, RFC, at the direction of Ally Financial, either directly or indirectly through ResCap, made numerous representations, warranties, and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way the loans were selected and evaluated, the characteristics of the Mortgage Loans, and the accuracy of the information supplied to FGIC. RFC also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to RFC's books and records and to RFC's Servicing Officer and its independent accountants.

95. RFC's representation, among others, that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the 2005-EMX5 Transaction

and to issue the Policy. Further, the I&I Agreement's incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that RFC made in connection with the 2005-EMX5 Transaction.

96. FGIC, for its part, reasonably relied on the information available to it regarding the underlying mortgage loans and the representations and warranties provided by RFC. Since FGIC had neither the right under the Operative Documents, nor the practical ability, to review the thousands of underlying Mortgage Loan files in the four days available to it prior to the closing of the 2005-EMX5 Transaction, RFC knew that FGIC had no choice but to rely on RFC's representations regarding the underlying loans in determining whether to insure the 2005-EMX5 Transaction. Further, FGIC had no reason to believe that these representations were not true and accurate.

97. RFC included 2,544 individual Mortgage Loans in the 2005-EMX5 Trust. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation, and other forms of documentation necessary to support underwriting decisions. Unlike RFC, FGIC was under no contractual duty whatsoever to review the Mortgage Loans. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by RFC regarding its evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on the fact that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

98. Based on the information received by FGIC and the representations and warranties given by RFC, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Trustee for the benefit of the holders of the 2005-EMX5 Certificates. In return for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the 2005-EMX5 Certificates, commensurate with the risk FGIC thought it was taking. Specifically, FGIC received 0.20% per annum of the aggregate balance of the 2005-EMX5 Certificates for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by RFC.

99. RFC's information, representations, and warranties were materially false when disclosed and/or provided by RFC. RFC knew that this information, and its representations and warranties, were materially false when made. RFC also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policy. Indeed, RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and issue the Policy. The issuance by FGIC of the Policy—induced by RFC's fraudulent misrepresentations and substantial assistance of Ally Financial—made the 2005-EMX5 Certificates eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(3) Representations, Warranties, and Affirmative Covenants Relating to the Operative and Offering Documents

100. Under Section 2.01 of the I&I Agreement, RFC made the following representations and warranties, among others (emphasis added in each case):

- *Accuracy of Information*. **None of the Operative Documents nor any other material information relating to the Mortgage Loans**, the operations of RFC . . . or the financial condition of RFC . . . furnished to [FGIC] . . . by RFC . . . including the Offering Documents . . . **contains any statement of a material fact**

which was untrue or misleading in any material respect when made. [RFC] has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change. Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to RFC . . . that would render any of the Documents untrue or misleading in any material respect.

- *Compliance with Securities Laws*. The offering and sale of the Class A Certificates complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading** . . . .

- *Operative Documents*. **Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** . . . .

- *Solvency; Fraudulent Conveyance*. [RFC] is solvent, and will not be rendered insolvent by the Transaction. . . . **[RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**. [RFC] does not intend to incur, and does not believe that it has incurred, debts beyond its ability to pay as they mature. . . . [RFC] is not entering into the Operative Documents, or transferring any of its assets in connection with the Transaction, with any intent to hinder, delay or defraud any of its creditors.

101. *First*, in the I&I Agreements, RFC represented and warranted that "[n]one of the Operative Documents nor any other material information relating to the Mortgage Loans, the operations of RFC . . . or the financial condition of RFC . . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreement § 2.01(x). Through these Operative and Offering Documents, as detailed above, RFC communicated several material facts about the characteristics of the mortgage loans sold to the 2005-EMX5 Trust.

102. *Second*, in the I&I Agreement, RFC also represented and warranted that the "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances

under which they were made, not misleading." I&I Agreement § 2.01(xi). As discussed above, in the Prospectus Supplement, RFC represented that the Mortgage Loans sold to the 2005-EMX5 Trust had been underwritten in substantial conformity with RFC's underwriting standards.

103. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the respective related Operative Documents: "Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects . . . ." I&I Agreement § 2.01(xii). The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that RFC made to other entities, such as investors or the Trustee, in connection with the 2005-EMX5 Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreement § 2.02(k).

104. *Fourth*, RFC also provided information to FGIC concerning Mortgage Loans in the 2005-EMX5 Transaction. *See* I&I Agreement § 2.02(c)(iii). This information included schedules or data tape that set forth statistics about the loan pool. The schedules purported to describe key characteristics relevant to the assessment of risk, including DTI, LTV and CLTV ratios, occupancy status, Credit Grades, and FICO scores. *See* PSA § 1.01. On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the schedule, referred to in Section 4(xv) of the A&A Agreement. In turn, in the A&A Agreement, RFC represented that all the information in those schedules "is true and correct in all material respects as of the date or dates which such information is furnished." § 4(xv).

105. As a result of incorporating into the I&I Agreement the representations and warranties in the related Operative Documents, RFC incorporated representations and warranties

regarding the underwriting of the Mortgage Loans included in the 2005-EMX5 Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that each Mortgage Loan had been underwritten in compliance with RFC's underwriting guidelines.

106. In particular, in the A&A Agreement, RFC represented and warranted as the Mortgage Loans:

- **Information in Mortgage Loan Schedule**: "The information set forth on the Mortgage Loan Schedule with respect to each Mortgage Loan is true and correct in all material respects as of the date or dates which such information is furnished." § 4(xv).

- **No Material Breach Or Default**: "[T]here is no default, breach, violation or event of acceleration existing under any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and no such default, breach, violation or event of acceleration has been waived by RFC or by any other entity involved in originating or servicing a Mortgage Loan." § 4(xxviii).

- **LTV Ratio**: "The weighted average Loan-to-Value Ratio with respect to the Mortgage Loans, by outstanding principal balance at origination, is 83.80%." § 4(xviii).

- **Delinquent Loans**: "As of the Cut-off Date, 0. 1% of the Mortgage Loans are 30 or more days Delinquent in payment of principal and interest." § 4(xvi).

- **Credit Grades**: "No more than 61.41% of the Mortgage Loans have been classified by RFC as Credit Grade A4, no more than 26.69% of the Mortgage Loans have been classified by RFC as Credit Grade AX Mortgage Loans, no more than 10.71% of the Mortgage Loans have been classified by RFC as Credit Grade AM Mortgage Loans, no more than 1.18% of the Mortgage Loans have been classified by RFC as Credit Grade B Mortgage Loans, none of the Mortgage Loans have been classified by RFC as Credit Grade C Mortgage Loans and 0.01% of the Mortgage Loans have been classified by RFC as Credit Grade CM Mortgage Loans, in each case as described generally in the Preliminary Prospectus Supplement." § 4(xxx).

- **Occupancy Status**: "Approximately 93.87% of the [Mortgage Loans] (by outstanding principal balance as of the Cut-Off Date) are secured by the owner's primary residence." § 4(xxiii).

107. Moreover, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—RFC specifically covenants that it would "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement § 2.02(a), (k).

108. RFC also agreed that it had to receive FGIC's consent before modifying or amending any of the Operative Documents. The I&I Agreement provides, "[RFC] will not modify, waive or amend, or consent to any modification, waiver or amendment of, any of the terms, provisions or conditions of the Operative Documents to which it is a party . . . without the prior written consent of [FGIC], which consent shall not be unreasonably withheld, conditioned or delayed." § 2.03(b).

(4) Representations, Warranties and Affirmative Covenants Relating to Access to Documents and RFC

109. In addition to the representations and warranties referenced above, the I&I Agreements provide that RFC, as Seller and Master Servicer, has the contractual obligation to provide FGIC with access to the underlying Mortgage Loans, servicing notes, and custodial interim certification stating that all mortgage files were complete and properly transferred into the appropriate trust ("Interim Certification"). Specifically, the I&I Agreement provides:

- *Other Information*. (A) Promptly upon request, such other data as [FGIC] may reasonably request relating to the Mortgage Loans, the servicing of the Mortgage Loans . . . the Transaction or the ability of any of RFC or the Depositor to perform its obligations under the Operative Documents, and (B) all information required to be furnished to the Trustee or the Holders, as the case may be. § 2.02(c)(v).

- *Access to Records; Discussions with Officers and Accountants*. On an annual basis, or at any time when a Shortfall Event shall have occurred and be continuing, *upon the reasonable request of [FGIC], it will permit [FGIC] or its authorized agents, or cause [FGIC] or its authorized agents to be permitted* . . . to inspect the books and records of RFC . . . . to discuss the affairs, finances and accounts of

> RFC . . . as they relate to the Mortgage Loans, the Transaction or the ability to perform [its] obligations under the Operative Documents with a Servicing Officer . . . [and] if [FGIC] reasonably believes that a Material Adverse Change may have occurred and with RFC's consent, which consent shall not be unreasonably withheld or delayed, to discuss the affairs, finances and accounts of RFC or the Depositor with the independent accountants of such Person; provided, however, that officers of RFC shall have the right to be present during such discussions. In addition, if requested by [FGIC], on an annual basis, or otherwise when reasonably requested by [FGIC], RFC will . . . cause the Custodian to deliver to [FGIC] an updated certification, in the form of the "Interim Certification" required under the Custody Agreement, with an exceptions list attached thereto, to enable [FGIC] to track the progress of recording of Mortgages and Assignments with respect to the Mortgage Loans. § 2.02(e) (emphasis added).

- *Due Diligence*. If in [FGIC's] reasonable judgment circumstances so warrant, based on the performance of the Transaction, [FGIC] shall have the right, so long as the Class A Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices, at [FGIC]'s expense and in reasonable manner convenient to both RFC and [FGIC]. This due diligence right is in addition to the access provided and the other rights provided for in Section 2.02(e) of this Insurance Agreement. § 2.02(m).

F. RFC's Breaches of Its Representations, Warranties, and Affirmative Covenants

110. As discussed above, FGIC relied on material representations and warranties made by RFC regarding the manner in which the Mortgage Loans were selected and evaluated, the characteristics of those loans, and the accuracy and completeness of information RFC supplied to FGIC. Based on those representations and warranties, FGIC agreed to issue the Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed above, the risk that FGIC assumed when it issued the Policy was many times greater than the risk disclosed by RFC's representations and warranties. RFC breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

111. The 2005-EMX5 Transaction has performed poorly, and delinquencies and defaults for Mortgage Loans in the 2005-EMX5 Transaction have been substantial. As of November 2011, a total of 1,083 mortgage loans, representing 42.6% of the loans underlying the

2005-EMX5 Transaction, had posted a loss or were severely delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policy, RFC assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with RFC's representations and warranties.

112. The poor performance of the Mortgage Loans has reduced the cash flow to the 2005-EMX5 Trust, which has caused and will continue to cause claims to be presented to FGIC under the Policy to cover these shortfalls. Indeed, as of November 2011, more than $32 million in claims had been presented to FGIC in connection with the 2005-EMX5 Transaction. FGIC expects tens of millions of dollars more in claims to be presented to it under the 2005-EMX5 Transaction in the future.

(1) RFC's Denial of Loan File Requests

113. As the 2005-EMX5 Transaction continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blashko, an RFC/ResCap employee, via e-mail demanding that RFC provide 500 of the Mortgage Loan files. Having received no response from RFC to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011 regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, the request required authorization from officers at Ally Financial, and RFC/ResCap's response was directed by officers at Ally Financial.

114. On February 14, 2011, and again on April 26, 2011, FGIC sent further follow-up letters requesting loan files.

115. In finally responding to FGIC's request for information, RFC refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans").

Instead, it only provided FGIC with a portion of the requested loan files, consisting solely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

116. Pursuant to the PSA and the I&I Agreement, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(m) of the I&I Agreement provides that FGIC "shall have the right, so long as the [2005-EMX5] Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I Agreement as to the nature of the Mortgage Loan files that are subject to review. Further, Section 2.02(c)(v) of the I&I Agreement states that "[p]romptly upon request," RFC must provide to FGIC "such other data as [FGIC] may reasonably request relating to the Mortgage Loans . . . ."

117. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreement, RFC has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(2) RFC's Denial of Interim Certification Requests

118. On June 21, 2011, FGIC demanded, pursuant to Section 2.02(e) of the I&I Agreement, that RFC promptly cause the Custodian under the 2005-EMX5 Transaction to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement for the Transaction, with an exceptions list attached thereto. An Interim Certification would enable FGIC to track the progress of the recording of mortgages and assignments with respect to the related Mortgage Loans.

119. Again on December 8, 2011, FGIC wrote RFC demanding the Interim Certification, noting that it had been over five months since FGIC's initial letter and that RFC had failed to respond.

120. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to these requests.

(3) RFC's Denial of Servicing Notes

121. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the I&I Agreement, that RFC furnish or cause to furnish the servicing notes for the Mortgage Loans.

122. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(4) RFC's Denial Of FGIC's Access To Books and Records, Servicing Officer, and RFC's Independent Accountants

123. On December 1, 2011, in accordance with its express rights under Sections 2.02(e)(i)-(iii) of the I&I Agreement, FGIC requested to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances, and accounts of RFC with the Servicing Officer of RFC; and (iii) discuss the affairs, finances, and accounts of RFC with RFC's independent accountants.

124. To date, RFC has failed to respond to this request, in violation of the I&I Agreement.

(5) Breaches Uncovered In Loan File Reviews

125. As discussed above, RFC improperly refused to provide FGIC with any loan files for "Performing Loans" when such loans were demanded on several occasions. Accordingly, when it requested files for 500 of the Mortgage Loans for the 2005-EMX5 Transaction in December 2010, FGIC received only a portion of that sample and that portion consisted of only Mortgage Loans that RFC characterized as "non-performing."

126. After receiving those loan files, FGIC evaluated them to determine whether they contained material breaches of the I&I Agreement and the 2005-EMX5 Operative Documents necessitating repurchase under the related Operative Documents. To perform this review, FGIC

hired an independent outside consultant, having particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

127. The independent consultant's review revealed that approximately 70% of the Mortgage Loans reviewed by the outside consultant contained breaches of the representations and warranties in the I&I Agreement.

128. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 10060154: the loan file is lacking a number of documents: a loan application, a loan approval, a credit report, an appraisal, income documentation, a verification of mortgage/verification of residence, a HUD-1 settlement statement, a hazard insurance policy, a flood certification, and a first lien note. All of the missing documentation was required under the relevant underwriting guidelines.

- Loan Number 10062240: the loan application indicated the loan is for an owner-occupied property. However, FGIC's investigation of tax records reflect that the tax bills were not sent to the borrower at the subject property address, indicating the borrower most likely did not occupy the subject property.

- Loan number 10048194: the loan file shows income misrepresentation. The loan application indicated that the borrower earned $7,083 per month as a sales representative with ATS Travel and that the co-borrower earned $2,500 per month as a sales associate with Hecht's Department Store. The loan file contained copies of the borrower's bank statement (the co-borrower's name was not listed on them), which reflected direct deposit payroll from CVS. The borrowers did not indicate on the loan application that either one of them was employed by CVS. Also, the monthly deposits made to the borrower's checking account, for less than $3,500 per month, were far less than the $7,083 per month in income he stated he earned. Prudent underwriting should not have qualified the loan as stated income documentation with the above mentioned discrepancies found on the bank statements.

- Loan Number 10059906: the loan file shows that the borrower had a foreclosure within the past three years, which violates the relevant underwriting guidelines.

- Loan Number 10047054: the loan was approved with a credit score of 511 and a LTV ratio of 89%. RFC represented that there was no loan program, however, that would permit a borrower to be approved with a FICO score under 520 and an LTV greater than 70%.

These examples of underwriting violations—but a small smattering of the extensive defects among the Mortgage Loans—evidence significant breaches of the A&A Agreement and the I&I Agreement.

129. On information and belief, RFC is and has long been aware that many of the Mortgage Loans were non-conforming and breached its own representations and warranties. Despite this knowledge, RFC has failed to take steps to repurchase the non-conforming loans or replace them with conforming loans.

(6) Breaches Uncovered Using Loan Pool Data

130. In addition to the loan-level review discussed above, FGIC commissioned an independent consultant—a leading provider of financial, property, and consumer information, such as property valuation services using automated property valuation tools—to test the accuracy of RFC's representations and warranties relating to the Mortgage Loans regarding occupancy status and LTV ratios. The consultant extracted information and data relating to 2,137 Mortgage Loans.

a. Breaches of Owner-Occupancy Representation and Warranty

131. RFC represented in the A&A Agreement and the Prospectus Supplement that 93.87% of the Mortgage Loans would be secured by the owner's primary residence. A&A Agreement § 4(xxiii); Prospectus Supplement at II-6.

132. Based on the information provided, FGIC determined that only 80.7% of the Mortgage Loans were owner-occupied properties.

133. The A&A Agreement and the Prospectus Supplement therefore materially overstated the percentage of Mortgage Loans in their respective pools that were owner-occupied.

As such, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

134. FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that, as of November 2011, were delinquent for more than 90 days, in foreclosure, or liquidated) in the 2005-EMX5 Transaction for loans that were determined after review to be non owner-occupied was approximately 59.1%. This non-performance rate was over 56% greater than the non-performance rate of those loans that were determined after review to be owner-occupied.

b. Breaches of LTV Ratio Representation and Warranty

135. The Prospectus Supplement also provided information relating to the LTV and CLTV ratios of the underlying Mortgage Loans.

136. LTV information provided in the Prospectus Supplement provided that the loans had generally been originated with a maximum LTV ratio of 100% for first lien loans and a maximum CLTV ratio of 100% for junior-lien loans. *See* Prospectus Supplement at II-3. LTV information provided in the Prospectus Supplement included (1) the average weighted LTV ratio for the Mortgage Loans, and (2) the number and aggregate value of the Mortgage Loans with LTV ratios in a given percentage band (e.g., the number of Mortgage Loans with LTV ratios of between 80% and 85%, between 85% and 90%, and so on). Prospectus Supplement at II-3. The Prospectus Supplement reported that *none* of Mortgage Loans had a LTV ratio over 100 percent. *See* Prospectus Supplement at II-3.

137. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, FGIC determined that approximately 13% of the Mortgage Loans—as opposed to *none* of the loans, as reported in the Prospectus Supplement—had an original LTV ratio above 100%. FGIC also determined that approximately 22% of the Mortgage Loans—as opposed to fewer than 2%, as reported in the

Prospectus Supplement—had an original LTV ratio above 95%. In addition, RFC represented in the A&A Agreement that the weighted average LTV of the Mortgage Loans at origination was 83.80%, but FGIC determined that the actual weighted average LTV of the Mortgage Loans at origination was approximately 89%. Thus, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact, as well as its representations regarding weighted average LTV in the A&A Agreement.

138. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that were delinquent for more than 90 days, in foreclosure, or liquidated) in the 2005-EMX5 Transaction for loans where the automated valuation model indicated a LTV greater than 100% was over 53%. This non-performance rate was over 30% greater than the non-performance rate of those loans whose automated valuation model indicated a LTV below 100%.

139. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicates the clear breach of RFC's contractual representations, warranties, and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, RFC has breached representations and warranties stating, for the 2005-EMX5 Transaction, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (i.e. the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of RFC in the Operative Documents (including each representation and warranty in the A&A Agreement) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- each Mortgage File contains all required documents and instruments, and;

- the Mortgage Loans were in substantial conformity with the standards in RFC's AlterNet Program or in the description of the Credit Grades.

140. It is reasonable to conclude—based on what is known by FGIC and as a result of what is being wrongly withheld from FGIC—that many of the 2,544 Mortgage Loans held by the 2005-EMX5 Trust at closing evidenced similar breaches of RFC's representations and warranties.

141. Indeed, based on the information gathered from FGIC's loan file review and the information extracted by FGIC's consultant relating to LTV ratios and owner-occupancy rates discussed above, FGIC believes that the Transaction-wide defect rate for the Mortgage Loans is likely to be at least as 50%.

142. Moreover, the true scope of the material underwriting failures is unknown given RFC's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of RFC's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

G. RFC's Fraud

143. The material breaches of RFC's representations and warranties, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants RFC made to FGIC to induce its participation in the Transaction. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that RFC breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the Policy, RFC would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because RFC refuses to provide all of the

requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

144. All of the Mortgage Loans underlying the 2005-EMX5 Transaction were acquired by RFC. As such, RFC had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with the applicable RFC underwriting guidelines and if the loans breached other representations and warranties made by RFC.

145. To induce FGIC to enter into the 2005-EMX5 Transaction, RFC provided FGIC with a loan tape, which contained false and misleading information regarding, among other things, the CLTV, LTV and DTI ratios, occupancy status, Credit Grades, and FICO scores of the borrowers.

146. In addition, RFC made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2005-EMX5 Trust. RFC was well aware that FGIC would not agree to insure the 2005-EMX5 Certificates unless RFC obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, RFC provided Moody's and S&P with the same false information regarding the credit quality of the underlying mortgage loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2005-EMX5 Certificates that met FGIC's minimum requirements—A3 and A, respectively. In this way, RFC made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that RFC would pass on to FGIC, and second, by causing shadow ratings of the 2005-EMX5 Certificates to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

147. RFC also made material representations and warranties and affirmative covenants to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the standards to which the Mortgage Loans were underwritten.

148. For example, in the Prospectus Supplement (and in the I&I Agreement by incorporation) RFC assured FGIC that "all of the mortgage loans were in substantial conformity with the standards set forth in Residential Funding's AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement." Prospectus Supplement at S-31; *see also* Prospectus Supplement at S-36. As such, RFC represented to FGIC that, in the case of each loan within the pool, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information, as provided for in the AlterNet Program guidelines.

149. Moreover, the A&A Agreement (and the I&I Agreement by incorporation) also contained false and misleading representations about the Mortgage Loans. In particular, RFC misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule was true and correct in all material respects; (ii) the Mortgage Loans met certain credit grades; (iii) there was no default breach, violation or event of acceleration existing under any Mortgage Note or Mortgage; and (iv) the weighted average LTV Ratio for the Mortgage Loans was 83.80%.

150. Therefore, at the time of the closing of the 2005-EMX5 Transaction, RFC either (1) knew or should have known that its representations were materially false because RFC had not, among other things, determined if the Mortgage Loans were in fact in "substantial conformity" with the AlterNet Program, or (2) had reviewed whether the Mortgage Loans were

in "substantial conformity" with the AlterNet Program, had determined that they were not, but nonetheless materially misrepresented to FGIC that the Mortgage Loans were in "substantial conformity" with the AlterNet Program.

151. These representations were essential to FGIC's decision to issue the Policy. These representations and warranties were false when stated. RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and to issue the Policy. The true information regarding these loans simply could not substantiate RFC's assurances. In short, no amount of RFC promising that the loans met certain standards actually made those promises true.

152. RFC's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC as well as to a multitude of suits and the potential for more litigation to come.

153. Consistent with this pattern of behavior, RFC defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

H. Ally Financial Aids and Abets RFC's Fraud

154. Ally Financial provided substantial assistance to RFC in fraudulently inducing FGIC to issue the Policy. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties RFC made regarding the nature of RFC's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

I. RFC's Breach of Obligations as Master Servicer

155. RFC, as Master Servicer, agreed to indirectly service the Mortgage Loans, and had certain related contractual obligations under the I&I Agreement and the PSA with respect to

the 2005-EMX5 Transaction. Although RFC did not service the individual Mortgage Loans, it was still "obligated and liable to . . . [FGIC] for the servicing and administering of the Mortgage Loans in accordance with the [PSA]." PSA § 3.04. As such, RFC was liable "to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans." PSA § 3.04.

156. In addition, under the I&I Agreement, RFC agreed that it would "not modify, waive or amend, or consent to any modification, waiver or amendment of" the PSA without the prior written consent of FGIC. I&I Agreement § 2.03(b). Similarly, the PSA provides that it "may be amended from time to time by the Depositor, the Master Servicer and the Trustee, with the consent of the Certificate Insurer . . . ." PSA § 11.01(a).

157. On August 10, 2009, RFC requested FGIC's consent in order to execute an amendment (the "Purported Amendment") to allow RFC to modify 100% of the Mortgage Loans rather than what would otherwise be allowed under the PSA. FGIC requested that RFC provide FGIC with sufficient information, including RFC's policies and procedures used for underwriting and processing prospective mortgagors for the Home Affordable Modification Program ("HAMP"), to respond to RFC's request for FGIC's consent. RFC never provided that information. Despite the fact that FGIC never consented to the additional loan modifications, it appears that RFC nonetheless proceeded as if its Purported Amendment had been adopted in contravention of FGIC's contractual rights. *See* I&I Agreement § 2.03(b).

158. Thus, to amend the PSA, RFC had to receive FGIC's consent. FGIC never gave its consent. Therefore, RFC breached section 2.03(b) of the I&I Agreement.

159. On information and belief, RFC has collected significantly higher servicing fees as a result of adopting the Amendment and modifying particular Mortgage Loans.

160. FGIC has requested additional information in order to determine whether RFC is in breach of its servicing obligations. In contravention of FGIC's contractual rights, RFC has failed to provide such information, including servicing notes, to FGIC. On information and belief, RFC, as Master Servicer, also knew of material breaches of representations and warranties and did not notify FGIC thereof, or cause the repurchase of the Mortgage Loans affected thereby. Accordingly, FGIC reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

J. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

161. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns RFC and GMACM. Ally Financial—as the ultimate parent of ResCap, RFC and GMACM—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, RFC and GMACM.

162. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, RFC and GMACM. Ally Financial exercised its direction and control in connection with the 2005-EMX5 Transaction. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

163. Ally Financial has recently admitted to the Board of Governors of the Federal Reserve System (the "Fed") and the Federal Deposit Insurance Corporation (the "FDIC") that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries." *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

164. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of RFC Directly and Indirectly Through its Control of ResCap

165. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

166. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

167. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—Ally

[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the Securities and Exchange Commission (the "SEC") on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's

Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

168. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, ResCap and Ally Financial shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the 2005 Operating Agreement, which upon information and belief is still currently in effect, "*requires* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." (emphasis added).

169. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RASC, among other Ally Financial subsidiaries.

170. The proposed 2005 operating agreement between ResCap and Ally Financial, which Ally Financial filed with the SEC, indicated that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See* Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

171. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand

(continued…)

corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

172. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of GMAC, a strong ResCap with an investment grade rating is a key part of our plan of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

173. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citi, which provided

"funding of up to $13.8bln." A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap]" businesses.

174. Moreover, there is substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

175. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

176. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

177. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed RFC and GMACM as part of its own business. For example, in its investor presentation from 2007, ResCap declares that RFC and GMACM "are owned *and operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial wasn't directly controlling RFC and GMACM, it was using ResCap as an instrument to do so.

178. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

179. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and Homecomings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual

relationships, such as the one RFC has with respect to the 2005-EMX5 Transaction as master servicer.

180. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

181. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

Q: Could you please state your name for the record.
A: My name is Jeffrey Stephan.
Q: Okay. And who do you work for?
A: GMAC, LLC [Ally Financial].
Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
Q: Okay.
A: It's GMCA [sic] Mortgage Corporation.
Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?

A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

K. FGIC's Contractual Remedies Under The I&I Agreement

182. The I&I Agreement provides FGIC with broad remedies for RFC's breaches of its representations and warranties. Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Pooling and Servicing Agreement or the other Operative Documents, or existing at law or in equity.

183. RFC also agreed in Sections 3.03(b) and 3.03(c) of each of the I&I Agreement:

> Anything in Sections 2.01(l) and 3.03(a) hereof or in any Operative Document to the contrary notwithstanding, the Insurer shall be entitled to full reimbursement from RFC for (i) any payment made under the Policy arising as a result of RFC's failure to substitute for or deposit an amount in respect of any defective Mortgage Loan as required pursuant to Section 4 and Section 5 of the Assignment Agreement, together with interest on any and all such amounts remaining unreimbursed . . . from the date such amounts became due until paid in full . . .

I&I Agreement § 3.03(b); and

> RFC agrees to pay to [FGIC] any and all reasonable charges, fees, costs and expenses that [FGIC] may reasonably pay or incur, including reasonable attorneys' and accountants' fees and expenses, in connection with (i) the enforcement, defense or preservation of any rights in respect of any of the Operative Documents, including defending, monitoring or participating in any litigation or proceeding . . . relating to any of the Operative Documents . . . .

I&I Agreement § 3.03(c).

184. In addition, RFC agreed in Section 3.04(a) of each of the I&I Agreement:

> to pay, and to protect, indemnify and save harmless, [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach by RFC or the Depositor of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the transactions contemplated by the Operative Documents by reason of . . . . the breach by RFC or the Depositor of any representation, warranty . . . or covenant under any of the Operative Documents or the occurrence, in respect of RFC or the Depositor, under any of the Operative Documents of any "event of default" . . . .

I&I Agreement § 3.04(a) & (a)(iv).

185. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, RFC agreed to repurchase or substitute Mortgage Loans that did not conform to RFC's representations and warranties, and to indemnify FGIC for claims and losses arising from RFC's breach of any representation or warranty.

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Material Breach of the I&I Agreement—Declaratory Relief Regarding RFC's Indemnification Obligation)

186. FGIC re-alleges and incorporates by reference paragraphs 1 through 185 of this Complaint.

187. The I&I Agreement is a valid and binding agreement between the parties.

188. FGIC has performed its obligations under the I&I Agreement.

189. RFC's representations and warranties were material to FGIC's decision to insure the 2005-EMX5 Certificates and to issue the 2005-EMX5 Policy.

190. RFC's pervasive and material breaches of its representations and warranties constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

191. Pursuant to Section 3.04(a) of the I&I Agreement, RFC must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by RFC of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

192. As explained above, RFC has breached numerous representations and warranties in the 2005-EMX5 Offering and Operative Documents, for example, those contained in Section 2.01 of the I&I Agreement. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

193. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

194. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must jointly and severally indemnify FGIC for all sums arising out of the 2005-EMX5 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the 2005-EMX5 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2005-EMX5 Policy as and when such sums fall due or claims are presented.

195. In addition, FGIC seeks a declaration that RFC must indemnify FGIC for all sums arising out of the 2005-EMX5 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity for all sums it has paid to date under the 2005-EMX5 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2005-EMX5 Policy as and when such sums fall due or claims are presented.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Fraudulent Inducement—I&I Agreement)

196. FGIC re-alleges and incorporates by reference paragraphs 1 through 194 of this Complaint

197. RFC induced FGIC to enter into the I&I Agreement and to issue the Policy by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

198. As explained above, RFC knowingly made materially false statements to, and/or omitted material facts from, FGIC with the intent to induce detrimental reliance by FGIC.

199. RFC intended for FGIC to rely on RFC's material false statements and/or omissions. FGIC had no reason to believe that RFC's representations were false, and reasonably and justifiably relied on RFC's material false statements and/or omissions regarding information uniquely in the possession of RFC when it decided to enter into the I&I Agreement and to issue the Policy for the 2005-EMX5 Certificates.

200. As a result of RFC's material false statements and omissions, FGIC entered into the I&I Agreement, issued the Policy, and thereby agreed to insure a pool of Mortgage Loans

that was, in actuality, materially different from the mortgage loan pool that RFC represented would collateralize the 2005-EMX5 Transaction.

201. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

202. As a result of RFC's material false statements and omissions, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

203. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

204. In addition, RFC is separately liable for such damages.

THIRD CAUSE OF ACTION

(Alternatively Against Ally Financial: Aiding and Abetting Fraudulent Inducement—I&I Agreement)

205. FGIC re-alleges and incorporates by reference paragraphs 1 through 203 of this Complaint.

206. As explained above, Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to issue the Policy.

207. RFC could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

208. Both Ally Financial knew that RFC fraudulently induced FGIC issue the Policy for the 2005-EMX5 Transaction.

209. Ally Financial's statements materially aided RFC's fraudulent inducement.

210. As a result of Ally Financial's aiding and abetting RFC's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract 2005-EMX5 Transaction—Representations, Warranties, and Affirmative Covenants)

211. FGIC re-alleges and incorporates by reference paragraphs 1 through 209 of this Complaint.

212. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

213. FGIC has performed its obligations under the I&I Agreement.

214. As explained above, RFC has materially breached its representations and warranties under Section 2.01 of the I&I Agreement.

215. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

216. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

217. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

218. In addition, RFC is separately liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract 2005-EMX5 Transaction—Declaratory Relief Regarding Access to Information)

219. FGIC re-alleges and incorporates by reference paragraphs 1 through 217 of this Complaint.

220. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

221. FGIC has performed its obligations under the I&I Agreement.

222. Pursuant to Section 2.02(c) of the I&I Agreement, RFC agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such

other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the 2005-EMX5 Transaction. FGIC further has the right to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(m) of the I&I Agreement.

223. As discussed above, pursuant to the I&I Agreement, FGIC made numerous reasonable written requests that RFC furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by RFC, and others, concerning the Mortgage Loans.

224. RFC has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

225. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

226. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, RFC agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer; and (iii) discuss the affairs, finances and accounts of RFC with RFC's independent accountants.

227. FGIC made a reasonable request to inspect the books and records, discuss the affairs, finances and accounts with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants on December 1, 2011.

228. RFC has failed to make available such persons or to produce such information.

229. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

230. Pursuant to Section 2.02(e) of the I&I Agreement, RFC agreed, on an annual basis or when reasonably requested by FGIC, to cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the 2005-EMX5 Custodial Agreements to enable FGIC to track the progress of the recording of Mortgages and Assignments with respect to the Mortgage Loans.

231. FGIC made a reasonable request for the Interim Certification on June 21, 2011.

232. RFC has failed to cause the Interim Certification to be delivered to FGIC as requested. On December 8, 2011, FGIC again notified RFC of its failure to perform under the I&I Agreement, but RFC continued to fail to cause the Interim Certification to be delivered to FGIC.

233. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Interim Certification to be delivered to FGIC after receiving reasonable requests from FGIC.

234. Pursuant to Section 2.02(c)(iv) of the I&I Agreement, RFC agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [PSA]."

235. FGIC made a reasonable request for servicing notes on December 9, 2010.

236. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

237. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

238. Accordingly, FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must comply with Sections 2.02(c), 2.02(m) and 2.02(e) of the I&I Agreement.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract 2005-EMX5 Transaction—Purported Amendment of the Operative Documents)

239. FGIC re-alleges and incorporates by reference paragraphs 1 through 237 of this Complaint.

240. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

241. FGIC has performed its obligations under the I&I Agreement.

242. As explained above, RFC has materially breached its representations and warranties under section 2.03(b) of the I&I Agreement and section 11.01(a) of the PSA by purporting to amend the Operative Documents without FGIC's prior and necessary consent. FGIC also reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

243. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

244. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

245. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

246. In addition, RFC is separately liable for such damages.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief)

247. FGIC re-alleges and incorporates by reference paragraphs 1 through 245 of this Complaint.

248. This is a claim for declaratory judgment pursuant to CPLR 3001 for the purpose of determining a justiciable controversy between FGIC and Ally Financial, ResCap, and RFC.

249. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this complaint.

250. For the reasons set forth in paragraphs 160 through 180, among others, Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

251. FGIC has been damaged as a result of the actions Ally Financial, ResCap and RFC.

252. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

EIGHTH CAUSE OF ACTION

(As Against RFC: Attorneys' Fees and Costs—2005-EMX5 Transaction)

253. FGIC re-alleges and incorporates by reference paragraphs 1 through 250 of this Complaint.

254. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

255. FGIC has performed its obligations under the I&I Agreement.

256. Pursuant to Section 3.03(c) of the I&I Agreement, RFC agreed to reimburse FGIC for any and all costs or expenses "including reasonable fees and expenses of attorneys" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, RFC agreed to

pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2005-EMX5 Transaction.

257. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of RFC's failure to provide Mortgage Loan files, the Interim Certification, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant Residential Funding Company, LLC, with respect to (1), (2), and (4) through (15) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (12), (14), and (15) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (12), (14), and (15) below and the following relief:

(1) A declaration that, pursuant to RFC's obligations under the I&I Agreement, RFC solely and/or Ally Financial, ResCap, and RFC must jointly and severally reimburse and indemnify FGIC for all sums arising out of the 2005-EMX5 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal rescissory, equitable, and punitive damages, to be proven at trial, for RFC's fraudulent inducement of FGIC to enter into the 2005-EMX5 Transaction and to issue the Policy;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's aiding and abetting of RFC's fraudulent inducement of FGIC to enter into the 2005-EMX5 Transaction and to issue the Policy;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for RFC's material breaches of the 2005-EMX5 Transaction;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for RFC's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that RFC must repurchase all Mortgage Loans that are in breach of RFC's representations and warranties in the 2005-EMX5 Transaction, and an order giving effect to that declaration;

(7) Further or alternatively, a declaration that RFC must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2005-EMX5 Transaction, and an order giving effect to that declaration;

(8) Further or alternatively, a declaration that RFC must allow FGIC to inspect the books and records of RFC, to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants, and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that RFC must cause to be provided servicing notes for the 2005-EMX5 Transaction when requested by FGIC;

(10) Further or alternatively, a declaration that RFC must cause to be provided the custodial Interim Certification when requested by FGIC for the 2005-EMX5 Transaction stating that all mortgage files were complete and were properly transferred into the trusts, or noting any exceptions, and an order giving effect to that declaration;

(11) Further or alternatively, an award of legal and equitable damages, to be proven at trial, for RFC's purported amendment of the PSA without FGIC's consent;

(12) Further or alternatively, a declaration that Ally Financial, ResCap, and RFC are alter egos of each other;

(13) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(14) An award of prejudgment interest at the statutory rate; and

(15) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: December 15, 2011

JONES DAY

/s/ Howard F. Sidman

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Bart Green
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

-against-

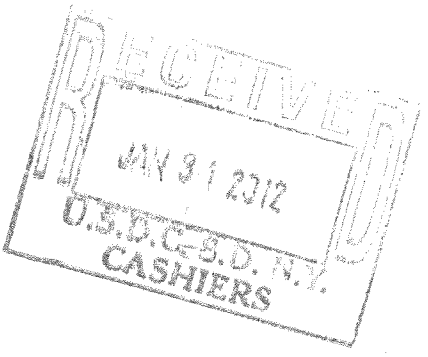
ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; ALLY BANK F/K/A GMAC BANK; GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION

Defendants.

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No. 12 CIV 0780

COMPLAINT



Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"), Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"), Ally Bank, formerly known as GMAC Bank ("Ally Bank"), and GMAC Mortgage, LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), alleges as follows:

NATURE OF THE ACTION

1. This breach of contract action arises in connection with a financial guaranty insurance policy (the "Policy") issued by FGIC in relation to a GMACM-sponsored transaction (the "2005-HE1 Transaction" or the "Transaction"), in which GMACM Home Equity Loan Trust 2005-HE1 (the "2005-HE1 Trust" or the "Trust") issued and sold to investors over $991 million aggregate principal amount of insured residential mortgage-backed securities (the "2005-HE1

Notes"). As the sponsor of the 2005-HE1 Transaction, GMACM procured the Policy from FGIC in order to enhance the ratings and marketability of the 2005-HE1 Notes by, among other things, providing FGIC with certain material representations, warranties and affirmative covenants. In reliance on those representations, warranties and affirmative covenants FGIC issued the Policy, thereby enabling the 2005-HE1 Notes to receive a triple-A rating from the rating agencies. This, in turn, made the 2005-HE1 Transaction viable and enabled GMACM and its affiliates to earn millions of dollars in transaction fees. GMACM, however, has failed to honor its contractual obligations by materially breaching the essential terms of its agreement with FGIC and the essential terms of the other operative documents incorporated therein.

2. The breaches committed by GMACM, as detailed more fully below, were directed by Ally Financial, acting directly or indirectly through its wholly-owned subsidiary, ResCap. Ally Financial is the ultimate parent of ResCap, which owns GMACM. Ally Financial, as the ultimate parent of ResCap and GMACM, has the practical ability, which it has repeatedly exercised, to direct and control the activities of these (and other) subsidiaries. In many instances—including in this Transaction—Ally Financial's direction and control was effected by using ResCap as an intermediary instrument to achieve its goals.

3. The 2005-HE1 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among GMACM and several other parties, pursuant to which the Trust acquired a pool of home equity lines of credit ("HELOCs" or "Mortgage Loans") and issued securities, including the 2005-HE1 Notes, which were intended to be repaid out of the cash flow from those HELOCs. The Transaction was sponsored by GMACM. To facilitate the Transaction, GMACM pooled together over eighteen thousand

Mortgage Loans to provide collateral for the 2005-HE1 Notes. All of the Mortgage Loans were either originated or acquired by GMACM or Ally Bank, another Ally Financial subsidiary.

4. After pooling the Mortgage Loans originated or acquired by GMACM and Ally Bank, GMACM transferred the Mortgage Loans directly or indirectly to another Ally Financial subsidiary, Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then deposited the Mortgage Loans it received from GMACM into the 2005-HE1 Trust. The 2005-HE1 Trust, in turn, issued the 2005-HE1 Notes to investors. Thereafter, the 2005-HE1 Trust used the periodic payments made by the borrowers under the Mortgage Loans to pay, among other things, principal and interest due on the 2005-HE1 Notes and the fees and expenses of GMACM and other participants in the Transaction.

5. The 2005-HE1 Trust was a legal entity created by GMACM solely for the purposes of the 2005-HE1 Transaction to hold the Mortgage Loans and to issue the 2005-HE1 Notes to investors in a registered public offering. Wells Fargo Bank, N.A. ("Wells Fargo") agreed to act as indenture trustee of the 2005-HE1 Trust (the "Indenture Trustee").

6. As well as being the Sponsor, GMACM also acts as servicer of the 2005-HE1 Transaction (the "Servicer"). As Servicer, GMACM supervises the collection of borrower payments and performs other servicing duties related to the Mortgage Loans. As discussed in more detail below, all of GMACM's servicing operations have since been integrated into ResCap.

7. GMACM, directed and controlled by Ally Financial, is, therefore, the hub of the 2005-HE1 Transaction: it is the sponsor of the securitization, the originator of most of the Mortgage Loans, the seller of the Mortgage Loans directly or indirectly to the 2005-HE1 Trust, and the servicer of the Mortgage Loans. The primary victim of the 2005-HE1 Transaction is

FGIC, which has already paid out tens of millions of dollars in losses under the Policy, with further material losses still to come.

8. In addition to originating some of the Mortgage Loans used in the 2005-HE1 Transaction, Ally Bank also entered into its own separate contractual agreement with FGIC regarding its duties as custodian of the Transaction. As custodian, Ally Bank (then doing business as GMAC Bank) was one of the critical parties to the Transaction, charged with certain oversight and maintenance duties with respect to the 2005-HE1 Trust for which it collected substantial fees. Like GMACM, however, Ally Bank has materially breached the terms of its agreements with FGIC, in particular by failing to ensure that essential documents were included in the loan file, such as the loan agreements.

9. Yet another Ally Financial subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was an underwriter for the 2005-HE1 Transaction.

10. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed notes ("RMBS Notes"). At the time of the 2005-HE1 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Notes typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of principal losses allocated to the RMBS Notes. FGIC's insurance policies thus enhanced the credit quality, and marketability, of the insured securities.

11. At GMACM's request, FGIC agreed pursuant to the Insurance and Indemnity Agreement, dated as of March 29, 2005 (the "I&I Agreement"), among FGIC, GMACM and the Trust (among others), to issue an insurance policy to insure the repayment of the 2005-HE1 Notes. On March 29, 2005, FGIC issued the Policy to Wells Fargo, as Indenture Trustee under the Indenture, dated as of March 29, 2005 (the "Indenture"), between the Trust and the Indenture Trustee, with respect to the insured securities. The Policy thus enhanced the credit quality, and marketability, of the 2005-HE1 Notes.

12. As explained more fully in this Complaint, the 2005-HE1 Trust was permitted to execute subsequent transfers of new collateral (in the form of additional Mortgage Loans) into the loan pool, in exchange for a portion of the payments made by borrowers under the Mortgage Loans, provided, however, that certain conditions precedent had been met—including, among other things, GMACM providing FGIC with proper notice, and an "Early Amortization Event" not having occurred (as this would close the period during which new mortgage loans could be added (the "Revolving Period")).

13. Following the closing of the 2005-HE1 Transaction, GMACM failed to recognize and give effect to the occurrence of an Early Amortization Event as defined by the plain language of the transaction documents. Such failure was a breach of its contractual obligations under the transaction documents.

14. In all, GMACM added approximately $851 million in additional Mortgage Loans (the "Subsequent Mortgage Loans") to the 2005-HE1 Trust through subsequent transfers that it was not permitted to make because, among other reasons, the Revolving Period had closed. As a result, FGIC is being asked to pay significant losses incurred on a substantial number of loans that should never have been added to the 2005-HE1 Trust under the express terms of the

transaction documents. GMACM also failed to give notice to FGIC of the occurrence of an Early Amortization Event or of the many occasions on which it executed subsequent transfers. This also resulted in the improper funding of certain 2005-HE1 Notes, which also increased FGIC's exposure under the Policy.

15. Accordingly, GMACM has committed multiple breaches of the contractual provisions governing transfers of Subsequent Mortgage Loans to the 2005-HE1 Trust.

16. Faced with substantial claims under the Policy, FGIC requested copies of the Mortgage Loan files and servicing notes for the Mortgage Loans. GMACM is obligated under its agreements with FGIC to provide these documents to FGIC. Notwithstanding its contractual obligations, GMACM has refused to provide FGIC with all of the requested documentation, which, on information and belief, will provide further evidence of GMACM's material breaches of representations and warranties. This refusal to provide information is itself a material breach of GMACM's contractual obligations to FGIC.

17. Through this Complaint, FGIC seeks relief against GMACM, Ally Bank, ResCap, and Ally Financial for GMACM's material breaches of the I&I Agreement and other contractual obligations owed to FGIC in connection with the 2005-HE1 Transaction.

18. Further, FGIC seeks relief against Ally Bank for its material breaches of its contractual obligations to FGIC.

19. FGIC also seeks a declaration from the Court that Ally Financial, ResCap, and GMACM were, and continue to be, alter egos of one another.

THE PARTIES

20. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

21. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial is the parent company of ResCap, GMACM, and all GMACM-affiliated entities relevant to this action.

22. Defendant GMACM is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. In the period relevant to this action, GMACM originated, acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

23. Since 2005, GMACM has been an indirect wholly-owned subsidiary of ResCap; prior to that time, GMACM was an indirect, wholly-owned subsidiary of Ally Financial.

24. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of GMACM and its business includes originating, acquiring, selling, and servicing mortgage loans.

25. Ally Bank (f/k/a GMAC Bank) is an indirect, wholly-owned subsidiary of Ally Financial, and was at all times relevant to this Complaint a loan originator. To facilitate the 2005-HE1 Transaction, Ally Bank sold to GMACM many of the Mortgage Loans, which it had originated or acquired to be securitized in the Transaction. GMAC Bank was renamed Ally Bank in May 2009. Ally Bank is an online bank chartered under Utah law.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

27. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred within this judicial district. Moreover, GMACM,

a party to this action, has agreed to submit to the jurisdiction of this Court, and has agreed not to challenge venue in this Court.

RELEVANT NON-PARTIES

28. RAMP, a special purpose vehicle, is an indirect, wholly owned subsidiary of Ally Financial and a Delaware corporation with its principal place of business in Minnesota. To facilitate the 2005-HE1 Transaction, RAMP purchased mortgage loans from GMACM and Walnut Grove Mortgage Loan Trust 2003-A ("Walnut Grove") and deposited those loans into the 2005-HE1 Trust. The Trust then issued the 2005-HE1 Notes to the underwriters, including Ally Securities (then doing business as GMAC RFC Securities), to be sold to investors.

29. Ally Securities, an entity incorporated in Delaware, is an affiliate of GMACM and RAMP and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2005-HE1 Notes and, on information and belief, participated in the preparation of certain of the key offering documents for the 2005-HE1 Transaction.

30. Walnut Grove is a Delaware statutory trust established by an affiliate of GMACM. Beginning in 2003, GMACM sold to Walnut Grove second-lien mortgage loans that it had originated or acquired. To facilitate the 2005-HE1 Transaction, Walnut Grove sold certain of the Mortgage Loans to RAMP.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

31. In the period relevant to this action, GMACM originated, acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of

those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Notes.

32. The mortgage loans included in securitizations sponsored by GMACM have suffered extremely high rates of delinquencies, defaults and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including in large part GMACM, Ally Bank, and ResCap, led Ally Financial to seek a bailout by the federal government in 2008.

(1) GMACM, GMAC-RFC, and RFC

33. GMACM is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

34. Residential Funding Corporation, LLC ("RFC") is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate GMACM, RFC engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

35. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

36. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See*

FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

37. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with GMACM. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

38. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

39. Ally Financial's business model depended on securitizations, which were conducted by its business units, including GMACM. Pooling mortgage loans and selling them into securitizations enabled GMACM to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

40. GMACM, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third parties. GMACM would acquire such mortgage loans and then deposit them (usually through an affiliate), along with mortgage loans it had originated, into a securitization trust. In many instances, GMACM profited from the difference between the cost GMACM incurred to originate or acquire mortgage loans, and the price at which it sold them for deposit into the securitizations.

41. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, GMACM generally acted as servicer of its own securitizations. GMACM thereby earned servicing fees that normally amounted to—as it did in the 2005-HE1 Transaction—0.50% per annum of the aggregate principal balance of the mortgage loans, and also collected substantial fees amounting to a large percentage of any subsequent recoveries from charged-off or liquidated loans.

42. GMACM also enriched Ally Financial and its other subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2005-HE1 Transaction:

- Ally Bank gained fees for originating many of the loans initially comprising the 2005-HE1 Trust, and proceeds from selling those loans to GMACM; Ally Bank also gained fees as custodian of the 2005-HE1 Trust for holding certain documents;

- Walnut Grove received the proceeds from selling certain of the Mortgage Loans to RAMP;

- RAMP received payments for serving as the depositor of the Mortgage Loans to the 2005-HE1 Trust; and

- Ally Securities received fees for underwriting the 2005-HE1 Notes.

(3) Ally Financial, GMACM, and RFC Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

43. GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011) (emphasis added).

44. Additionally, on September 2, 2011, the Federal Housing Finance Authority ("FHFA"), as conservator for Freddie Mac, filed suit in the Supreme Court of the State of New York, New York County against Ally Financial and several of its subsidiaries for claims arising in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in certificates issued through twenty-one transactions similar to the transactions at issue here. Among other claims, FHFA brought suit for common law fraud against various Ally Financial subsidiaries and aiding and abetting fraud against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with

the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs.

45. Ally Financial also disclosed that the U.S. Securities and Exchange Commission (the "SEC") served a subpoena on Ally Financial, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *Id.*

46. GMACM and RFC face numerous pending lawsuits brought by RMBS investors and insurers. For example, GMACM is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that in connection with three transactions similar to the one at issue here, GMACM affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of more than $4 billion, as a means of unfairly shifting to investors and MBIA risks that GMACM should have borne itself. On December 15, 2010, the New York Supreme Court issued a ruling on GMACM's motion to dismiss which allowed both the breach of representations and warranties and fraud claims, among others, to proceed to trial.

47. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two pending suits against Ally Financial's mortgage-related subsidiaries. The plaintiffs in those suits have alleged, among other things, that Ally Financial's various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

48. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. In the first nine months of 2011 alone, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $254 million worth of mortgages related to securitizations it consummated between 2004 and 2007. It clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own SEC filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 88, 159 (Nov. 4, 2011).

49. According to its most recent quarterly report, Ally Financial believes its "exposure to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008 . . . ." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 146 (Nov. 4, 2011). The 2005-HE1 Transaction is, as its name implies, of the 2005 vintage.

(4) The Mortgage Loan Servicing Practices of Ally Financial and GMACM Have Come Under Scrutiny for Deficiencies

50. The Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and the Federal Deposit Insurance Corporation (the "FDIC") has ordered Ally Financial, GMACM, and several other Ally Financial subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

51. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries, including GMACM, have been accused, *inter alia*, of (1) failing to properly increase financial,

staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

52. Furthermore, under the Consent Order, Ally Financial must direct GMACM and its other mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id.* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

53. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure processes of GMACM to request an independent review of their files. *See* Press Release, Federal Reserve Board (November 1, 2011). This independent review will determine whether errors and misrepresentations in GMACM's foreclosure processes indeed caused financial harm to the borrower. *See id.* If the foreclosure process is found to have caused financial injury to the borrower, GMACM will then be required to provide full compensation. *See id.*

54. Moreover, according to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits

in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep. *Federal National Mortgage Association v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Div Nine, No. Cumb.) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

55. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.* at 51:15-23. Stephan further testified that when he signed an affidavit affirming that the foreclosure was proper, all he knew was the borrower's name and whether he had signing authority for the GMAC entity foreclosing on the property. *Id.* at 62:23-25, 63:2-6. Stephan testified that the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required by GMACM. *Id.* at 64:8-14.

56. The Ohio Attorney General, in October 2010, filed suit against GMACM and Ally Financial, alleging, *inter alia*, that employees of GMACM had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). And in December 2011, the Massachusetts Attorney General filed a similar suit against GMACM for,

among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston).

57. Indeed, as recently as January 31, 2012, Ally Financial reported that it was forced to record a charge of approximately $270 million in the fourth quarter of 2011, as a result of penalties expected to be imposed against ResCap by regulators and governmental agencies in connection with ResCap's improper foreclosure processes. *See* Ally Fin. Inc., Form 8-K, at 2 (Jan. 31, 2012).

58. Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial and GMACM for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices, Boston Globe, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and GMACM

59. Ally Financial is considering filing for bankruptcy protection for ResCap, its wholly-owned, indirect subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports, as of November 9, 2011. GMACM is a wholly-owned, indirect subsidiary of ResCap.

60. Bloomberg News reported that "[d]erivatives traders are betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering," in an article entitled "*Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance*," dated November 14, 2011. According to the article, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy.

61. Indeed, Ally Financial warned in its 2010 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 21 (Feb. 25, 2011). Additionally, on January 31, 2012, Ally Financial disclosed that it "will record a charge of approximately $270 million in the fourth quarter of 2011 for penalties expected to be imposed by certain of [its] regulators and other governmental agencies in connection with foreclosure related Matters . . . [t]he majority of [which] was recorded at Residential Capital, LLC ('ResCap') . . . . [This] resulted in a covenant breach in certain of ResCap's credit facilities." Ally Financial, Current Report (Form 8-K) (January 31, 2012).

B. GMACM's Securitizations and Financial Guaranty Insurance Generally

62. To improve the marketability and ratings of the RMBS Notes issued as part of its securitizations, GMACM from time to time sought credit enhancement for the RMBS Notes from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Notes that, if there is a shortfall in cash available to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

63. For a trust that issues RMBS Notes, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Certificates. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the loan pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS investors. Such shortfalls result in claims on FGIC's policies.

C. The GMACM 2005-HE1 Transaction

64. On March 29, 2005, GMACM pooled together and deposited many thousands of HELOCs into the GMACM Home Equity Loan Trust 2005-HE1. The 2005-HE1 Trust served as the Issuer of $991,087,000 in aggregate principal amount of 2005-HE1 Notes. HELOCs are typically adjustable rate revolving credit line loans collateralized by second-lien mortgages, which can be drawn on at any time during an extended period, and repaid at any time, subject to a maximum repayment period.

65. The initial conveyance to the 2005-HE1 Trust by RAMP (acting as Depositor) contained over 18,100 Mortgage Loans (*i.e.*, HELOCs) with an aggregate outstanding principal balance of approximately $732 million. Investors in the GMACM-sponsored 2005-HE1 Transaction were issued six classes of securities—Class A-I Notes, Class A-2 Notes, and Class A-3 Notes, Class A-1 Variable Pay Revolving Notes ("VPRNs"), Class A-2 VPRNs, and Class A-3 VPRNs (collectively, the "2005-HE1 Notes")—which were collateralized by the Mortgage Loans transferred to and held by the 2005-HE1 Trust. In addition, approximately $243 million was deposited into a pre-funding account at closing, which was used to acquire additional Mortgage Loans in the 90 days following closing (the "Prefunding Period").

66. To enhance the ratings and marketability of the 2005-HE1 Notes, GMACM sought a financial guaranty insurance policy from FGIC for the purpose of insuring the transaction for the benefit of the certificate holders. On March 29, 2005, GMACM and FGIC executed the I&I Agreement, under which FGIC agreed to and did issue the Policy (number 05030011) to insure the 2005-HE1 Notes. The I&I Agreement was signed by FGIC (as the Insurer), GMACM (as a Seller and Servicer), RAMP (as the Depositor), Walnut Grove (as a Seller), and Wells Fargo (as the Indenture Trustee).

67. Also on March 29, 2005, Ally Bank (using its then-current name, GMAC Bank) entered into the 2005-HE1 Custodial Agreement (the "Custodial Agreement") whereby it agreed, among other things, to serve as Custodian of the underlying mortgage loan notes on behalf of the 2005-HE1 Trust. FGIC is an express third party beneficiary of that agreement. *See* Custodial Agreement § 4.6.

68. The I&I Agreement provides, in part, that FGIC is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." I&I Agreement § 2.02(k). "Operative Documents" are defined to include, among other documents: (i) the 2005 HE-1 Notes; (ii) the Mortgage Loan Purchase Agreement dated as of March 29, 2005 among GMACM, RAMP, Walnut Grove, the 2005-HE1 Trust, and Wells Fargo (the "MLPA"); (iii) the Servicing Agreement dated as of March 29, 2005 among GMACM, the 2005-HE1 Trust and Wells Fargo; (iv) the Indenture dated as of March 29, 2005 between the 2005-HE1 Trust and Wells Fargo; (v) the Custodial Agreement dated as of March 29, 2005 among GMACM, Wells Fargo, and Ally Bank; and (vi) any Subsequent Transfer Agreement in respect of Subsequent Mortgage Loans entered between GMACM and the 2005-HE1 Trust. *See* I&I Agreement § 1.01.

69. Pursuant to the I&I Agreement, FGIC—termed the "Enhancer" under certain of the Operative Documents—insured the 2005-HE1 Notes. The Policy improved the marketability of the 2005-HE1 Notes by mitigating risk for potential investors and making the 2005-HE1 Notes eligible to receive a credit rating of triple-A by the rating agencies at closing.

70. GMACM and the Depositor offered the 2005-HE1 Notes for sale pursuant to a prospectus, dated December 22, 2004 (the "2005-HE1 Prospectus"), a prospectus supplement, dated March 23, 2005 (the "2005-HE1 Prospectus Supplement"), and a Private Placement Memorandum for the VPRNs, dated March 29, 2005 (the "2005-HE1 PPM"), which touted the Policy and the "triple-A" initial rating of the 2005-HE1 Notes made possible by the Policy. The 2005-HE1 Prospectus, 2005-HE1 Prospectus Supplement, and 2005-HE1 PPM, together with certain preliminary offering documents, each as further supplemented by any subsequent amendment or supplement thereto and any other offering document that makes reference to the Policy, are referred to collectively as the "2005-HE1 Offering Documents."

71. On March 29, 2005, an Ally Financial subsidiary, Ally Securities, sold the 2005-HE1 Notes to investors, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

72. The 2005-HE1 Transaction was structured in such a way as to permit GMACM to add additional collateral in the form of Subsequent Mortgage Loans to the 2005-HE1 Trust during a specifically defined Revolving Period, which enabled GMACM to continue to shift the credit risk of such loans to investors and to FGIC for a defined period after closing, and to realize immediate gains on the loans it sold to the Trust. GMACM represented and warranted to FGIC that the Subsequent Mortgage Loans would conform to the same contractual representations and

warranties GMACM made about the characteristics and the underwriting procedures of the Mortgage Loans that were in the pool at closing. *See* MLPA § 3.1(b).

73. Nevertheless, by express contractual provisions, Subsequent Mortgage Loans were not permitted to be added to the pool following the occurrence of an Early Amortization Event. An Early Amortization Event was deemed to occur whenever, for three consecutive months, the average amount in the Funding Account which has not been used during a month to purchase Additional Balances or Subsequent Mortgage Loans is greater than 30% of such amount plus the amount which had been used during that month to purchase Additional Balances and Subsequent Mortgage Loans. Indenture, Appendix A. The "Funding Account" is an account held by the 2005-HE1 Trust and used, among other things, to purchase Additional Balances (*i.e.*, subsequent draws on the Mortgage Loans) and Subsequent Mortgage Loans during the Revolving Period. *See* Servicing Agreement § 3.16.

D. GMACM's Representations, Warranties and Affirmative Covenants

74. In connection with the 2005-HE1 Transaction, GMACM, at the direction of Ally Financial, either directly or indirectly through ResCap, made numerous representations, warranties and affirmative covenants to FGIC. Among other things, GMACM covenanted that it would comply with and perform its obligations under the Operative Documents. Moreover, GMACM promised to service the Mortgage Loans in accordance with the terms of the Operative Documents, provide timely Mortgage Loan file information, and provide FGIC with a variety of information, including access to GMACM's books and records and to GMACM's Servicing Officer and its independent accountants.

75. Based on the information received by FGIC and the representations and warranties given by GMACM, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Indenture Trustee for the benefit of the holders of the 2005-HE1 Notes. In return

for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the 2005-HE1 Notes. Specifically, FGIC received 0.125% per annum of the aggregate balance of the 2005-HE1 Notes for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties and affirmative covenants provided by GMACM.

(1) Representations, Warranties and Affirmative Covenants Relating to the Operative and Offering Documents

76. Under Article II of the I&I Agreement, GMACM made the following representations, warranties, and covenants, among others. *First*, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—GMACM specifically covenants that it will "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement § 2.02(a).

77. *Second*, in the I&I Agreement, GMACM represented and warranted to FGIC that "[n]either the Operative Documents to which it is a party nor other information relating to the Mortgage Loans. . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreement § 2.01(j). GMACM further represented and warranted that "[t]he Offering Document does not contain any untrue statement of a material fact and does not omit to state [any] material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading[.]" § 2.01(k).

78. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the "Operative Documents," as that term was defined in the I&I Agreement: "[e]ach of the representations and warranties . . . contained in the

applicable Operative Documents . . . is true and correct in all material respects[.]" *See* I&I Agreement § 2.01(l); *see also id.* § 1.01. The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that GMACM made to other entities, such as investors or the Indenture Trustee, in connection with the 2005-HE1 Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreement § 2.02(k).

(2) Representations, Warranties, and Affirmative Covenants Regarding Access to Information and Servicing

79. The I&I Agreement also provides that "[a]ll the Mortgage Loans will be serviced in all material respects in compliance with the Servicing Agreement and the Indenture[.]" *See* I&I Agreement § 2.02(l). In the Servicing Agreement, GMACM covenanted, represented, and warranted that it would service and administer the Mortgage Loans in the 2005-HE1 Transaction in a manner consistent with its own servicing guidelines. *See* Servicing Agreement § 3.01(a).

80. The I&I Agreement requires, among other things, that GMACM furnish or cause to be furnished to FGIC "promptly upon receipt thereof, copies of all schedules, financial statements or other similar reports delivered to or by GMACM . . . [as well as] [p]romptly upon request such other data as [FGIC] may reasonably request." I&I Agreement § 2.02(c)(v).

81. The I&I Agreement further affords FGIC the express right "to conduct an ongoing review of GMACM's practices as Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices." I&I Agreement § 2.02(p). FGIC also has the express right to "inspect the books and records of GMACM . . . [and to] discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and with GMACM's consent, which consent shall not be unreasonably withheld or delayed, to

discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants[.]" I&I Agreement § 2.02(e).

E. GMACM's Breaches of Its Representations, Warranties and Affirmative Covenants

(1) GMACM Improperly Transferred Over $850 Million in Subsequent Mortgage Loans

82. As discussed below, GMACM improperly and repeatedly transferred Subsequent Mortgage Loans into the 2005-HE1 Trust long after the Operative Documents forbade it from doing so. Moreover, GMACM failed to give FGIC required information and data concerning the Subsequent Mortgage Loans, and/or to obtain FGIC's consent prior to transferring the Subsequent Mortgage Loans into the 2005-HE1 Trust. GMACM transferred loans with an aggregate principal amount of $851,740,479 to the 2005-HE1 Trust through these improper subsequent transfers (the "Subsequent Transfers").

a. "Revolving Period," "Subsequent Mortgage Loans" And An "Early Amortization Event"

83. Under the Operative Documents, GMACM, as Servicer of the 2005-HE1 Trust, is required to establish a Custodial Account in which it must deposit any payments made by borrowers on the Mortgage Loans (*i.e.*, the principal and interest payments made by mortgagors). Servicing Agreement § 3.02(b). Additionally, under the Operative Documents, the Indenture Trustee is required to establish a segregated trust account known as the Funding Account. Servicing Agreement § 3.16(a).

84. As Servicer of the 2005-HE1 Trust, GMACM is required, "[o]n each Payment Date during the Revolving Period, . . . to withdraw from the Custodial Account and deposit into the Funding Account . . . the aggregate amount of Principal Collections remaining after the

purchase of all Additional Balances or Subsequent Mortgage Loans on or prior to such Payment Date." Servicing Agreement § 3.16(a).

85. A revolving period, in the context of a securitization, is generally the time during which cash available to the trust may properly be reinvested in new collateral for the pool rather than being used to pay down the principal balance of the securities. Under the Operative Documents, the Revolving Period is defined in pertinent part as: "The period beginning on the Closing Date and ending on the earlier of (i) the Payment Date occurring in September 2006, [and] (ii) the occurrence of an event described in clause (iv) of the definition of Early Amortization Event[.]" Indenture, Appendix A.

86. During the Revolving Period and subject to certain conditions, GMACM, as Seller, could purchase Subsequent Mortgage Loans and transfer them into the 2005-HE1 Trust. MLPA § 2.2(a). GMACM could then be reimbursed with funds from the Custodial Account and/or the Funding Account. *See* MLPA § 2.2(a); Servicing Agreement § 3.16(c)(i)(B).

87. Even during the period in which GMACM is authorized under the Operative Documents to execute the purchase and transfer of Subsequent Mortgage Loans, it is required to seek and obtain FGIC's permission to do so prior to transferring those loans into the 2005-HE1 Trust. *See* MLPA § 2.2(b)(vi); 2005-HE1 Prospectus Supplement at S-43. In addition, the MLPA also requires GMACM to deliver to FGIC, within five days after the transfer, a copy of the Mortgage Loan Schedule reflecting the Subsequent Mortgage Loans in electronic format. *See* MLPA § 2.2(c).

88. Moreover, GMACM may only transfer Subsequent Mortgage Loans if "the Revolving Period shall not have terminated." MLPA § 2.2(b)(v). As detailed above, the

Revolving Period ends, *inter alia*, upon "the occurrence of an event described in clause (iv) of the definition of Early Amortization Event." Indenture, Appendix A.

89. An Early Amortization Event, as defined, is "[t]he occurrence of one of the following events: . . . (iv) if beginning in June 2005 (a) for three consecutive months, the average amount in the Funding Account which has not been used during a month to purchase Additional Balances or Subsequent Mortgage Loans is greater than 30% of such amount plus the amount which had been used during that month to purchase Additional Balances and Subsequent Mortgage Loans. . . ." Indenture, Appendix A.

b. An Early Amortization Event Occurs no later than January 2006

90. Under the Operative Documents, an Early Amortization Event occurred no later than January 2006. By that date, at the latest, for three consecutive months the average amount in the Funding Account which had not been used during a month to purchase Additional Balances or Subsequent Mortgage Loans was greater than 30% of such amount plus the amount which had been used during that month to purchase Additional Balances and Subsequent Mortgage Loans.

91. Because the condition specified in clause (iv) of the definition of "Early Amortization Event" was satisfied, at the latest, on one or more occasions by January 2006, an Early Amortization Event occurred by operation of the express terms of the Operative Documents in January 2006, or earlier.

c. GMACM Failed to Notify FGIC of the Occurrence of the Early Amortization Event and the Resulting "Material Adverse Change"

92. Under the Operative Documents, "[u]pon [GMACM's] becoming aware of any Early Amortization Event, [GMACM] shall forward to the Indenture Trustee a statement to such

effect, including the nature of such Early Amortization Event." Servicing Agreement § 4.01(a). In turn, the Indenture Trustee must then deliver by mail such notice to other parties to the Transaction, including FGIC. *Id.*

93. GMACM has failed to notify the Indenture Trustee of the occurrence of an Early Amortization Event, which occurred no later than January 2006, in breach of its obligations under the Servicing Agreement. Consequently, the Indenture Trustee failed to notify FGIC of the occurrence of the Early Amortization Event. Accordingly, GMACM has breached, and continues to breach, its obligations under the Servicing Agreement to provide notice of the occurrence of the Early Amortization Event.

94. Moreover, pursuant to the I&I Agreement, GMACM must promptly inform FGIC of the occurrence of any "Material Adverse Change." I&I Agreement § 2.02(f). A "Material Adverse Change" is defined in the I&I Agreement as "a material adverse change in the ability of such Person [*i.e.*, any individual or entity] to perform its obligations under any of the Operative Documents including any material adverse change in the business, financial condition, results of operations or properties of such Person on a consolidated basis with its subsidiaries which might have such effect." *Id.* § 1.01.

95. The occurrence of the Early Amortization Event resulted in an Event of Default under the Indenture, which is a Material Adverse Change under the I&I Agreement. *See* Indenture, Appendix A; I&I Agreement § 1.01. Therefore, GMACM had an obligation to promptly notify FGIC of this Material Adverse Change.

96. GMACM has failed to notify FGIC of the occurrence of this Material Adverse Change. Accordingly, GMACM has breached, and continues to breach, its obligations under the

I&I Agreement to provide prompt notice to FGIC of the occurrence of this Material Adverse Change.

d. Subsequent Transfers in Contravention of the Operative Documents

97. GMACM was permitted to transfer new loans to the 2005-HE1 Trust only during the Revolving Period. Accordingly, under the express provisions in the Operative Documents, the Revolving Period automatically (and without the need for any action by any party) ended when the Early Amortization Event occurred no later than January 2006. As of that point in time, the Revolving Period ended and GMACM was prohibited from transferring any new loans to the 2005-HE1 Trust.

98. Notwithstanding the fact that the Revolving Period had ended no later than January 2006, GMACM continued to improperly transfer Subsequent Mortgage Loans into the 2005-HE1 Trust after that date. In total, GMACM improperly added to the 2005-HE1 Trust, through at least nine (9) Subsequent Transfers starting on or after the January 2006 Payment Date, an aggregate principal amount of $397,444,259 in improper Subsequent Mortgage Loans.

99. The table below sets forth the aggregate outstanding principal balance of the Subsequent Mortgage Loans in each of the at least nine (9) improper Subsequent Transfers that GMACM effected:

Month	Subsequent Transfer Amount ($)
February 2006	**83,499,906**
March 2006	**35,799,998**
April 2006	**34,799,950**
May 2006	**45,499,830**
June 2006	**40,299,989**
July 2006	**41,299,967**
August 2006	**39,000,000**
September 2006	**35,999,999**
October 2006	**41,244,620**
Total	**397,444,259**

100. In short, Subsequent Mortgage Loans improperly transferred to the 2005-HE1 Trust despite the fact that an Early Amortization Event had already triggered the termination of the Revolving Period. GMACM had no authority to execute such transfers. As such, under the express terms of the Operative Documents, the subsequently transferred loans were not properly transferred to the 2005-HE1 Trust in accordance with the terms of the 2005-HE1 Transaction. Accordingly, GMACM breached the I&I Agreement by failing to comply with the Operative Documents.

e. Improper Transfer Following Natural Expiration of Revolving Period

101. As described above, the Revolving Period terminated, at the latest, on the Payment Date occurring in September 2006, even if there had been no Early Amortization Event. Nevertheless, GMACM improperly transferred approximately $41,244,620 in Subsequent Mortgage Loans into the 2005-HE1 Trust in October 2006. Therefore, in the alternative, even if an Early Amortization Event had not occurred no later than January 2006 and the Revolving Period had not then ended (which it did), GMACM improperly transferred Subsequent Mortgage

Loans beyond the scheduled close of the Revolving Period in September 2006, which is a separate breach of the I&I Agreement. *See* I&I Agreement § 2.02(a).

f. GMACM Failed to Obtain FGIC's Consent or Furnish Required Data and Documents In Transferring Subsequent Mortgage Loans

102. Separately and independently from its obligation to refrain from transferring Subsequent Mortgage Loans following an Early Amortization Event, GMACM must execute a Subsequent Transfer Agreement on or prior to each Subsequent Transfer of Subsequent Mortgage Loans. *See* MLPA § 2.2(b)(ii); MLPA Exhibit 2. In each Subsequent Transfer Agreement, GMACM must restate therein all applicable representations and warranties regarding the Mortgage Loans and certify that it is complying with the requirements of the Operative Documents, including that its actions are not in contravention of any of those agreements. *See* MLPA §§ 2.2(b)(ii), (iv); MLPA Exhibit 2. GMACM must also certify that it had satisfied each condition precedent to effecting a Subsequent Transfer. *See* MLPA § 2.2(b)(ii); MLPA Exhibit 2. As explained further below, GMACM has failed to provide either FGIC or the Indenture Trustee with any Subsequent Transfer Agreement in respect of the Subsequent Transfers.

103. In addition, pursuant to the MLPA, before it can transfer any Subsequent Mortgage Loan into the 2005-HE1 Trust, GMACM must: (i) deliver to FGIC a timely "Addition Notice" no later than seven Business Days prior to the Subsequent Transfer Date, (ii) deliver to FGIC an executed copy of the related Subsequent Transfer Agreement together with a Mortgage Loan Schedule listing the related Subsequent Mortgage Loans, and (iii) obtain the approval of FGIC for the sale of the related Subsequent Mortgage Loans within five Business Days of FGIC's receipt of an updated loan tape containing information on the Subsequent Mortgage

Loans. *See* MLPA § 2.2(b). GMACM failed to deliver such Addition Notices, Subsequent Transfer Agreements, and Mortgage Loan Schedules, or to obtain such approvals.

104. On November 2, 2011, FGIC sent a notice to GMACM stating that it may have transferred approximately $851,740,479 in Subsequent Mortgage Loans to the 2005-HE1 Trust without satisfying all of the conditions described above. FGIC advised it had no evidence that GMACM provided FGIC with the required notices, electronic tapes and other information, or had obtained FGIC's consent prior to the transfer. Specifically, FGIC had no record of receiving any Addition Notice, Subsequent Transfer Agreement, related Mortgage Loan Schedule, or electronic tape with respect to any Subsequent Mortgage Loan transferred. Nor did FGIC have any record of its approval for the sale of any Subsequent Mortgage Loan. Further, FGIC advised that it had made inquiries with the Indenture Trustee, and determined that the Indenture Trustee did not have any record of receiving any Addition Notice or copies of Subsequent Transfer Agreements in respect of the Subsequent Mortgage Loans.

105. To date, GMACM has failed to respond to this notice. FGIC has no records of the required notices, tapes, information, or approvals in respect of the Subsequent Mortgage Loans.

g. GMACM Selected Subsequent Mortgage Loans in a Manner Adverse to the Interests of FGIC by Reselling Loans to the Trust that GMACM Had Been Required to Repurchase

106. Separately and independently from its obligation to refrain from transferring Subsequent Mortgage Loans following an Early Amortization Event, or to provide the required notices, tapes, information, and approvals prior to the Subsequent Transfers, GMACM may not adversely select Subsequent Mortgage Loans to transfer into the 2005-HE1 Trust.

107. As discussed above, during the Revolving Period and subject to certain conditions, GMACM, as Seller, may purchase Subsequent Mortgage Loans and transfer them into the 2005-HE1 Trust. MLPA § 2.2(a). Among the conditions GMACM must satisfy in order to transfer

Subsequent Mortgage Loans to the 2005-HE1 Trust, GMACM must not "select[] such Subsequent Mortgage Loans in a manner that it reasonably believes is adverse to the interests of [FGIC] . . . ." MLPA § 2.2(b).

108. In its role as Servicer, GMACM also has the discretion to increase the credit limit on a given Mortgage Loan, subject to certain limitations, if such an increase is requested by the mortgagor. In order to maintain the integrity of the overall loan pool, however, GMACM is also required to repurchase, and thereby remove, any such Mortgage Loan from the 2005-HE1 Trust if GMACM agrees to such an increase. Specifically, pursuant to the Servicing Agreement, "[GMACM] shall repurchase any Mortgage Loan . . . [if] at the request of the Mortgagor, [GMACM] at its option and in its sole discretion agrees to an increase in the Credit Limit above the Credit Limit of such Mortgage Loan as of the related Cut-Off Date . . . ." Servicing Agreement § 3.15(b).

109. During the Revolving Period, GMACM increased the credit limits on certain Mortgage Loans held by the 2005-HE1 Trust. As a result, GMACM repurchased and removed some or all of these Mortgage Loans from the 2005-HE1 Trust (the "Repurchased Mortgage Loans").

110. Nevertheless, GMACM then resold those very same Repurchased Mortgage Loans back into the 2005-HE1 Trust, even though it knew that it had been required to remove (and had previously removed) the Repurchased Mortgage Loans from the 2005-HE1 Trust pursuant to the Servicing Agreement. In fact, in a June 9, 2008 e-mail to FGIC, GMACM conceded that it had resold the Repurchased Mortgage Loans back to the 2005-HE1 Trust. By selecting the Repurchased Mortgage Loans for resale back to the 2005-HE1 Trust—Mortgage Loans that GMACM knew it was required to remove from the Trust—GMACM not only

circumvented the intended operation of the Servicing Agreement, but also breached the MLPA by selecting "such Mortgage Loans in a manner . . . adverse to the interests of [FGIC]." MLPA § 2.2(b).

111. Accordingly, because it has failed to comply with conditions precedent before transferring the Subsequent Mortgage Loans, GMACM has breached and continues to breach Section 2.2(b) of the MLPA and Section 2.02(a) of the I&I Agreement.

h. Subsequent Transfers Damaged FGIC

112. Further, the Subsequent Mortgage Loans transferred into the 2005-HE1 Trust have performed much worse than the initial Mortgage Loans. As of January 1, 2012, approximately 16% of the balance of the over $397 million in improperly transferred Subsequent Mortgage Loans added in or after January 2006 has been charged-off, defaulted, or was severely delinquent, as compared to approximately 3% of the balance of the initial Mortgage Loans and other loans added during the Prefunding Period.

(2) GMACM Caused Funding of Variable Pay Revolving Notes Following the Early Amortization Event in Contravention of the Contracts

113. The 2005-HE1 Transaction was structured using what is known as a "soft-bullet" structure, whereby the principal balances of the Class A-I Notes, Class A-2 Notes, and Class A-3 Notes (collectively, the "Term Notes") were to be satisfied and retired sequentially with a single, "bullet" payment to each class on a specified payment date (the "Targeted Final Payment Date"). In order to fund this bullet payment, the Indenture Trustee was to request advances from existing holders of associated VPRNs and/or the Issuer was to issue and sell additional associated VPRNs in the amount of the principal balance of the Term Note that was scheduled to be retired (*i.e.*, Class A-1 VPRNs were to be funded to retire Class A-1 Notes, Class A-2 VPRNs were to be

funded to retire the Class A-2 Notes, Class A-3 VPRNs were to be funded to retire the Class A-3 Notes). The associated class of VPRNs would then be amortized over a specified term.

114. The Targeted Final Payment Date for the Term Notes was September 25, 2006 for the Class A-1 Notes. *See* Indenture, Appendix A. On or about this date, the Class A-1 VPRNs were funded and the Class A-1 Notes were retired.

115. Under the Operative Documents, "[u]pon [GMACM's] becoming aware of any Early Amortization Event, [GMACM] shall forward to the Indenture Trustee a statement to such effect, including the nature of such Early Amortization Event." Servicing Agreement § 4.01(a). Furthermore, "if an Early Amortization Event has occurred . . . the Indenture Trustee will not request an Advance and the Issuer will not issue any additional Variable Pay Revolving Notes." Indenture § 2.03.

116. An Early Amortization Event occurred no later than January 2006. As such, under the express terms of the Operative Documents, GMACM should have notified the Indenture Trustee of the Early Amortization Event. Notwithstanding this obligation, GMACM failed to notify the Indenture Trustee that the Early Amortization Event had occurred, thereby causing the Indenture Trustee to fund the Class A-1 VPRNs—with an aggregate principal amount of $423,800,000—on or about the Targeted Final Payment Date of September 25, 2006. The issuance of such Class A-1 VPRNs after the Early Amortization Event occurred constituted a breach of the Operative Documents.

117. The funding of Class A-1 VPRNs caused an improper outflow of funds from the 2005-HE1 Trust to the holders of the VPRNs, because the interest rate on the improperly issued Class A-1 VPRNs was higher than the interest rate of the Class A-1 Notes that were improperly retired. The funds applied to cover the higher interest rate on the Class A-1 VPRNs would have

otherwise been used to cover other liabilities of the Trust, including payment shortfalls on the remaining 2005-HE1 Notes. The failure to cover these shortfalls because of the higher interest rate of the Class A-1 VPRNs has resulted in additional claims on the Policy to the detriment of FGIC.

118. Accordingly, because it failed to notify the Trustee of the occurrence of an Early Amortization Event, and caused the Trust to issue Class A-1 VPRNs after the occurrence of such Early Amortization Event, GMACM has breached and continues to breach Section 4.01(a) of the Servicing Agreement and Section 2.02(a) of the I&I Agreement.

(3) GMACM's Denial of Loan File Requests

119. As the 2005-HE1 Transaction continued to perform poorly, on December 9, 2010, FGIC wrote to GMACM via e-mail demanding that GMACM provide additional Mortgage Loan files to FGIC, including origination files, servicing notes, and custodian files, for a random sample of 350 2005-HE1 loans. Having received no response from GMACM to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011, regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, ResCap's response required authorization from officers at Ally Financial, and GMACM/ResCap's response was directed by officers at Ally Financial.

120. On February 14, 2011, and again on April 26, 2011, FGIC sent further follow-up letters requesting loan files.

121. In finally responding to FGIC's request for information, GMACM refused to provide any loan files or other information relating to current or pre-paid loans ("Performing

Loans"). Instead, it only provided FGIC with only some of the requested loan files, consisting largely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

122. Pursuant to the Servicing Agreement and the I&I Agreement, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(p) of the I&I Agreement provides that "FGIC shall have the right, so long as any of the [2005-HE1] Notes remains outstanding, to conduct an ongoing review of GMACM's practices as Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I Agreement as to the nature of the Mortgage Loans files that are subject to review. Further, Section 2.02(c)(v) of the I&I Agreement states that "[p]romptly upon request," GMACM must provide to FGIC "such other data as [FGIC] may reasonably request. . . ."

123. On April 26, 2011, having still received none of the remaining performing Mortgage Loan files it requested, FGIC sent a further letter requesting the remaining loan files. To date, GMACM has not responded.

124. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreement, GMACM has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

125. As a result of the failure of GMACM to fulfill this contractually-sanctioned request, despite its obligation to do so, FGIC is unable to evaluate the full extent of potential breaches of the representations and warranties of GMACM, and in that regard reserves its rights to bring further claims. Moreover, on information and belief, GMACM is and has been aware that a substantial number of the Mortgage Loans, whether acquired at the closing or thereafter, were nonconforming and, thus, in breach of its own representations and warranties. Despite this

knowledge, GMACM has failed to repurchase the nonconforming loans or replace them with conforming loans, as is required under the Operative Documents.

(4) GMACM's Denial of Servicing Notes

126. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(v) of the I&I Agreement, that GMACM furnish the servicing notes for the Mortgage Loans.

127. GMACM, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(5) GMACM's Denial of FGIC's Access To Books and Records, Servicing Officer, and GMACM's Independent Accountants

128. On January 20, 2012, in accordance with its express rights under Sections 2.02(e)(i),(ii), (iii) of the I&I Agreement, FGIC requested (i) to inspect the books and records of GMACM; (ii) to discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and (iii) to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

129. To date, GMACM has failed to respond to this request, in violation of the I&I Agreement.

F. Ally Bank's Breaches of The Custodial Agreement

130. Under the Custodial Agreement, to which FGIC is an express third party beneficiary, *see* Custodial Agreement § 4.6, and through which Ally Bank received substantial fees, Ally Bank undertook several obligations to FGIC concerning the manner in which Ally Bank would ensure that the Mortgage Loans contained complete and accurate information and that GMACM was in compliance with its representations and warranties regarding the origination, selection, and characteristics of those loans.

131. Ally Bank agreed that it would "hold the Loan Agreements [for the initial Mortgage Loans] and any Loan Agreement relating to any Subsequent Mortgage Loan," and that it would review the Loan Agreements and deliver to FGIC a certification of "the completeness of the receipt of the Loan Agreements." Custodial Agreement §§ 2.1, 2.2(b).

132. Ally Bank further agreed to notify FGIC of breaches of the MLPA by GMACM, by providing that: "Upon discovery by the Custodian of a breach of any representation or warranty made by [GMACM] in the Purchase Agreement . . . with respect to a Mortgage Loan . . . the Custodian shall give prompt written notice to [FGIC]." Custodial Agreement § 2.3.

133. An initial review of a small percentage of defective Mortgage Loans has revealed that in some instances the Mortgage Note or Second Lien Note (*i.e.*, the Loan Agreement) was not included in the loan file. The lack of a Loan Agreement within a particular file constitutes a breach of the representations and warranties given by GMACM in the MLPA. Ally Bank should have been aware of the fact that Loan Agreements were missing from certain Mortgage Loan files, and that this was a breach of the MLPA's representations and warranties. Consequently, it should have notified FGIC of such breaches pursuant to its own obligations under the Custodial Agreement. *See* Custodial Agreement §§ 2.1-2.3. Ally Bank has, however, failed to provide FGIC with any notices regarding defects in any Mortgage Loan file, and has further provided inaccurate and/or incomplete certifications regarding the Mortgage Loans, thereby breaching the Custodial Agreement to which FGIC is an express third party beneficiary.

134. Moreover, Ally Bank had an obligation to notify FGIC of any breach by GMACM of the MLPA representations and warranties that it discovered, not just those pertaining to the Loan Agreement, and its failure to so notify FGIC was a further breach of the Custodial Agreement.

G. GMACM's Breach of Obligations as Servicer

135. GMACM, as Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for the 2005-HE1 Transaction, including, but not limited to, its obligations to follow proper servicing procedures.

136. GMACM took responsibility for the servicing of the Mortgage Loans and had certain related contractual obligations under the I&I Agreement and the Servicing Agreement with respect to the 2005-HE1 Transaction. Under the I&I Agreement, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the Servicing Agreement and the Indenture." I&I Agreement § 2.02(l). Under the Servicing Agreement, GMACM is liable to FGIC for the servicing and administration of the Mortgage Loans, and in doing so is required to "follow such collection procedures as shall be normal and usual in its general mortgage servicing activities and consistent with the procedures the Servicer employs in servicing all other Mortgage Loans in the servicing portfolio with characteristics similar to those of the Mortgage Loans." Servicing Agreement §§ 3.02(a), 6.01.

137. During 2007, the servicing operations of GMACM were integrated into ResCap. Since the time of the integration, on information and belief, GMACM breached these obligations by, among other things, being deficient in its borrower contact, collections, and loss mitigation standards, and by failing to honor FGIC's contractual rights to information. In particular, an onsite review of the Ally Financial servicing arm's practices, including those of GMACM, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed *inter alia*: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when GMACM does

not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry. GMACM, as servicer, also had an obligation to notify FGIC of any material breaches of representations and warranties, and to cause GMACM, as seller, to repurchase the affected Mortgage Loans.

138. On information and belief, GMACM has failed to remedy any of its deficient servicing practices.

139. In addition, GMACM disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a servicing protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

140. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. GMACM disclosed to FGIC that all of the mortgage loans in FGIC-insured, GMACM-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the 2005-HE1 Transaction, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second- lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than loans in higher risk categories. As the purchaser of the Mortgage Loans, however,

GMACM clearly knew that such Mortgage Loans, by their very nature, required particularized servicing before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by GMACM to ensure that the Mortgage Loans were serviced and administered in accordance with "procedures as shall be normal and usual in its general mortgage servicing activities" constitutes a breach of the Servicing Agreement and the I&I Agreement. *See* Servicing Agreement § 3.02(a); I&I Agreement § 2.02(l).

141. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, GMACM has failed to provide such information in breach of Section 2.02(c)(v) of the I&I Agreement.

H. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

142. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns GMACM and RFC. Ally Financial—as the ultimate parent of ResCap, GMACM, Ally Bank, and RFC—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC.

143. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC. Ally Financial exercised its direction and control in connection with the 2005-HE1 Transaction. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

144. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries[.]" *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

145. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of GMACM Directly and Indirectly Through its Control of ResCap

146. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

147. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

148. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

149. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would

agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

150. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

151. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

152. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—Ally

[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the Securities and Exchange

Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

153. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the proposed 2005 operating agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." 2005 Operating Agreement (emphasis added).

154. Moreover, on April 26, 2007, "ResCap Investor Relations" announced the release of Ally Financial's 2007 first quarter financial results to investors in an email bearing the ResCap logo. That announcement stated that Ally Financial's financial results were found on both Ally Financial's and ResCap's websites.

155. Another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including GMACM and RAMP, is David C. Walker. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In September 2005, around the closing of the 2005-HE1 Transaction,

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(continued...)

Commission (the "SEC") on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

Walker was a director at ResCap, GMACM, RFC, and RAMP, among other ResCap subsidiaries.

156. Similarly, William F. Muir, Ally Financial's President, has served in that capacity since at least 2004 (first at GMAC and then at Ally Financial) while also serving as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

157. The 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

158. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

159. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the

strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

160. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citi, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

161. Moreover, there is substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

162. Additionally, as discussed above, Ally Financial recorded a $270 million charge in the fourth quarter of 2011, the majority of which was recorded at its controlled subsidiary, ResCap. In the wake of anticipated penalties to be assessed against ResCap by government regulators, and the fact that ResCap failed to maintain sufficient tangible net worth to comply

with the requirements of the terms of certain credit facilities, Ally Financial propped up its subsidiary ResCap with a $196.5 million capital contribution in the form of intercompany debt forgiveness. *See* Ally Fin. Inc., Form 8-K, at 2 (Jan. 31, 2012).

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

163. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Jan. 26, 2012).

164. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured, including this Transaction. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

165. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed GMACM and RFC as part of its own business. For example, in its investor presentation from 2007, ResCap declares that GMACM and RFC "are owned and

operated by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies."

166. Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial was not directly controlling GMACM and RFC, it was using ResCap as an instrument to do so.

167. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

168. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one GMACM has with respect to the 2005-HE1 Transaction as Servicer.

169. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

170. In another example, Larry Hipp, a member of ResCap's Risk Analyst/Investor Repurchase Department, communicated with FGIC regarding rescission requests using an Ally Financial email address, but in those very same emails, lists his ResCap contact information, including a ResCap email address. In addition, Ally Financial/ResCap used to send FGIC secure communications bearing a "GMAC ResCap" header, but those secure communications now have an Ally Financial header.

171. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

> Q: Could you please state your name for the record.
> A: My name is Jeffrey Stephan.
> Q: Okay. And who do you work for?
> A: GMAC, LLC [Ally Financial].
> Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
> A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
> Q: Okay.
> A: It's GMCA [sic] Mortgage Corporation.

Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

I. FGIC's Contractual Remedies Under The I&I Agreement

172. The I&I Agreement provides FGIC with broad remedies for GMACM's breaches of its representations and warranties. The breadth of these remedies provided further material inducement for FGIC to issue the Policy. Specifically, Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Indenture or existing at law or in equity.

173. Moreover, the I&I Agreement provides that, upon an "Event of Default" – which is defined to include when "[a]ny representation or warranty" by GMACM in the I&I Agreement or the Operative Documents is materially untrue or incomplete – FGIC can "take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts, if any, then due under [the I&I Agreement] or any other Operative Document or to enforce performance and observance of any obligation, agreement or covenant of GMACM." I&I Agreement §§ 5.01(a), 5.02(a).

174. In addition, GMACM agreed in Section 3.04(a) of the I&I Agreement:

> to pay, and to protect, indemnify and save harmless [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys . . .) . . . of any nature arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the Transaction contemplated by the Operative Documents . . . .

I&I Agreement § 3.04(a).

175. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, GMACM agreed to repurchase or substitute Mortgage Loans that did not conform to GMACM's representations and warranties, and to indemnify FGIC for claims and losses arising from GMACM's breach of any representation or warranty. *See* I&I Agreement §§ 3.03(b), 3.04(a).

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Material Breach of the I&I Agreement – Declaratory Relief Regarding GMACM's Indemnification Obligation)

176. FGIC re-alleges and incorporates by reference paragraphs 1 through 175 of this Complaint.

177. The I&I Agreement is a valid and binding agreement between the parties.

178. FGIC has performed its obligations under the I&I Agreement.

179. GMACM's representations and warranties were material to FGIC's decision to insure the Notes and to issue the Policy.

180. GMACM's pervasive and material breaches of its representations and warranties, from the very inception of the Transaction and in the years since, constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

181. Pursuant to Section 3.04(a) of the I&I Agreement, GMACM must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things, the breach by GMACM of any representation, warranty, or covenant under any of the related Operative Documents.

182. As explained above, GMACM has breached numerous representations, warranties, and covenants in the Offering and Operative Documents, for example, those contained in Section 2.01 of the I&I Agreement. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

183. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

184. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM must jointly and severally indemnify and reimburse FGIC for all sums arising out of the 2005-HE1 Transaction for which FGIC has or will become liable, or, alternatively, for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents, or, alternatively, in an amount to be determined at trial, and an order giving effect to such indemnification.

185. In addition, FGIC seeks a declaration that GMACM must indemnify and reimburse FGIC for all sums arising out of the 2005-HE1 Transaction for which FGIC has or will become liable, or, alternatively, for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative

Documents, or, alternatively, in an amount to be determined at trial, and an order giving effect to such indemnification.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Material Breach of the Operative Documents — Indemnification for Improper Subsequent Transfers, or, Alternatively, Repurchase of Improper Subsequent Transfers, or, Alternatively, Damages for all Losses Sustained from Improper Subsequent Transfers)

186. FGIC re-alleges and incorporates by reference paragraphs 1 through 185 of this Complaint.

187. The I&I Agreement is a valid and binding agreement between the parties.

188. FGIC has performed its obligations under the I&I Agreement.

189. GMACM has breached the I&I Agreement, and the provisions of the MLPA and the Operative Documents incorporated therein, by executing improper Subsequent Transfers to the 2005-HE1 Trust despite the occurrence of an Early Amortization Event having terminated the Revolving Period no later than January 2006, and—independently—after the stated date for the termination of the Revolving Period on the September 2006 Payment Date.

190. Moreover, GMACM has breached the MLPA by failing to provide FGIC with the required agreements, notices, information, and data, and failing to obtain from FGIC the required approvals, prior to transferring the Subsequent Mortgage Loans into the 2005-HE1 Trust.

191. In addition, GMACM has breached and continues to breach the Servicing Agreement by failing to notify the Indenture Trustee of the occurrence of the Early Amortization Event no later than January 2006. Further, GMACM has breached and continues to breach the I&I Agreement by failing to promptly notify FGIC of the same, which constitutes a Material Adverse Change.

192. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

193. FGIC has been damaged in an amount to be proven at trial as a result of the improper transfer of Mortgage Loans to the 2005-HE1 Trust.

194. FGIC is entitled to indemnification for any claim it has paid or which it may be required to pay arising from a Subsequent Mortgage Loan that was improperly transferred to the 2005-HE1 Trust.

195. FGIC therefore seeks a declaration that GMACM must reimburse and indemnify FGIC for all sums arising out of the 2005-HE1 Transaction for which FGIC has or will become liable and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, as a result of the improper transfer of Subsequent Mortgage Loans to the 2005-HE1 Trust.

196. Further, FGIC seeks an order that GMACM must repurchase the Mortgage Loans that were improperly transferred to the 2005-HE1 Trust.

197. In the alternative, FGIC has been damaged in an amount to be proven at trial because it has paid or remains liable for certain claims arising from Subsequent Mortgage Loans that GMACM was obligated to repurchase as a result of their improper transfer to the 2005-HE1 Trust.

198. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

199. Alternatively, GMACM is liable for such damages.

THIRD CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Material Breach of the Operative Documents — Indemnification for Improper Funding of Variable Pay Revolving Notes Following Early Amortization Event, or, Alternatively, Damages for such Improper Funding)

200. FGIC re-alleges and incorporates by reference paragraphs 1 through 199 of this Complaint.

201. The I&I Agreement is a valid and binding agreement between the parties.

202. FGIC has performed its obligations under the I&I Agreement.

203. GMACM has breached the I&I Agreement, and the provisions of the Indenture and the Operative Documents incorporated therein, by failing to notify the Indenture Trustee that the Early Amortization Event had occurred, thereby causing the Indenture Trustee and Issuer to improperly fund the Class A-I VPRNs following the Early Amortization Event.

204. FGIC therefore seeks a declaration that GMACM must reimburse and indemnify FGIC for all sums arising out of the 2005-HE1 Transaction for which FGIC has or will become liable and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, as a result of the improper funding of the VPRNs following the Early Amortization Event.

205. In the alternative, FGIC has been damaged in an amount to be proven at trial because it has paid or remains liable for certain claims as a result of the improper funding of the VPRNs following the Early Amortization Event.

206. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

207. Alternatively, GMACM is liable for such damages.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract – Declaratory Relief Regarding Access to Information)

208. FGIC re-alleges and incorporates by reference paragraphs 1 through 207 of this Complaint.

209. The I&I Agreement is a valid and binding agreement between the parties.

210. FGIC has performed its obligations under the I&I Agreement.

211. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, GMACM agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the 2005-HE1 Transaction. FGIC further has the right to conduct reviews of GMACM's practices as Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(p) of the I&I Agreement.

212. As discussed above, pursuant to the I&I Agreement, FGIC made numerous reasonable written requests that GMACM furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by GMACM, and others, concerning the Mortgage Loans.

213. GMACM has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

214. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

215. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, GMACM agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of GMACM; (ii)

discuss the affairs, finances and accounts of GMACM with GMACM's Servicing Officer; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

216. On January 20, 2012, FGIC made a reasonable written request that GMACM permit FGIC or its authorized agent to conduct an inspection of the books and records of GMACM, as well as permit FGIC to (i) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and (ii) with GMACM's consent, which consent shall not be unreasonably withheld or delayed, discuss the affairs, finances, and accounts of GMACM with GMACM's independent accountants.

217. GMACM has failed to make available such persons or to produce such information.

218. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

219. Pursuant to Section 2.02(c)(v) of the I&I Agreement, GMACM agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [Servicing Agreement]."

220. FGIC made a reasonable request for servicing notes on December 9, 2010.

221. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

222. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

223. Accordingly, FGIC seeks a declaration that GMACM has failed to comply with Sections 2.02(c)(v), 2.02(e)(i)-(iii), and 2.02(p) of the I&I Agreement, and an order requiring GMACM to promptly remedy those breaches and therefore comply with FGIC's requests and notices to GMACM pursuant to the relevant provisions, as detailed above.

FIFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Servicer Obligations)

224. FGIC re-alleges and incorporates by reference paragraphs 1 through 223 of this Complaint.

225. The I&I Agreement is a valid and binding agreement between the parties.

226. FGIC has performed its obligations under the I&I Agreement.

227. As explained above, GMACM has breached its affirmative covenant under the I&I Agreement to service all Mortgage Loans in all material respects in compliance with the Servicing Agreement.

228. GMACM's breaches of the I&I Agreement have caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on the Policy and other losses and expenses.

229. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

230. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

231. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

232. Alternatively, GMACM is liable for such damages.

SIXTH CAUSE OF ACTION

(As Against Ally Bank: Breach of the Custodial Agreement

233. FGIC re-alleges and incorporates by reference paragraphs 1 through 232 of this Complaint.

234. The Custodial Agreement is a valid and binding agreement between the parties thereto.

235. FGIC is an express third party beneficiary of the Custodial Agreement.

236. As explained above, Ally Bank has materially breached its obligations under Sections 2.1, 2.2, and 2.3 of the Custodial Agreement.

237. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

238. Ally Bank is liable for such damages.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Declaratory Relief)

239. FGIC re-alleges and incorporates by reference paragraphs 1 through 238 of this Complaint.

240. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this complaint.

241. For the reasons set forth in paragraphs 142 through 171, among others, Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other.

242. FGIC has been damaged as a result of the actions Ally Financial, ResCap, and GMACM.

243. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other, and therefore are jointly and severely liable for each other's liabilities.

EIGHTH CAUSE OF ACTION

(As Against GMACM: Attorneys' Fees and Costs)

244. FGIC re-alleges and incorporates by reference paragraphs 1 through 243 of this Complaint.

245. The I&I Agreement is a valid and binding agreement between the parties.

246. FGIC has performed its obligations under the I&I Agreement.

247. Pursuant to Section 3.03(c) of the I&I Agreement, GMACM agreed to reimburse FGIC for any and all costs or expenses "including reasonable attorneys' . . . fees and expenses" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, GMACM agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2005-HE1 Transaction.

248. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of GMACM's failure to provide Mortgage Loan files, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant GMAC Mortgage Company, LLC, with respect to (1) through (3) and (5) through (14) below, and in its favor and against Residential Capital, LLC, with respect to (1) through (3), (5) through (11), (13), and (14), below, and in its favor and against Ally Bank, with respect to (4), (13), and (14) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (3), (5) through (11), (13), and (14) below and the following relief:

(1) A declaration that, pursuant to GMACM's obligations under the I&I Agreements, GMACM must solely and/or Ally Financial, ResCap, and GMACM must jointly and severally reimburse and indemnify FGIC for all sums arising out of the 2005-HE1 Transaction for which FGIC has or will become liable, or, alternatively, for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents, or, alternatively, in an amount to be determined at trial, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for GMACM's material breaches of the I&I Agreement and the Operative Documents incorporated therein;

(3) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for GMACM's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain;

(4) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for Ally Bank's material breaches of its obligations under the Custodial Agreement;

(5) Further or alternatively, a declaration that GMACM reimburse and indemnify FGIC for all sums arising out of the 2005-HE1 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policy and to the payment of all future amounts due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented, as a result of Subsequent Mortgage Loans that were improperly transferred to the 2005-HE1 Trust, and the

improper funding of the VPRNs, and an order giving effect to that declaration;

(6) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for GMACM's improper transfer of Subsequent Mortgage Loans to the 2005-HE1 Trust and improper funding of the VPRNs;

(7) Further or alternatively, a declaration that GMACM must repurchase the Mortgage Loans that were improperly transferred to the 2005-HE1 Trust, and/or must reimburse the 2005-HE1 Trust for monies improperly distributed to the VPRNs, and order giving effect to that declaration;

(8) Further or alternatively, a declaration that GMACM must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2005-HE1 Transaction, and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that GMACM must allow FGIC to inspect the books and records of GMACM, to discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants, and an order giving effect to that declaration;

(10) Further or alternatively, a declaration that GMACM must cause servicing notes to be provided for the 2005-HE1 Transaction when requested by FGIC, and an order giving effect to that declaration;

(11) Further or alternatively, a declaration that Ally Financial, ResCap, and GMACM are alter egos of each other and are jointly and severely liable for each other's liabilities;

(12) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(13) An award of prejudgment interest at the statutory rate; and

(14) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: January 31, 2012

JONES DAY

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Alex P. McBride
222 East 41st Street
New York, New York 10017
(212) 326-3939

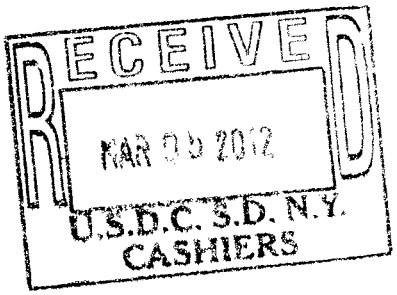
Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 22

JUDGE BAER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,	12 CV 1601
Plaintiff,	**COMPLAINT**
-against-	**Civil Action No.** _____
ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC; RESIDENTIAL FUNDING COMPANY, LLC,	**ECF Filed**
Defendants.	



Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"); Residential Capital, LLC ("ResCap"); and Residential Funding Company, LLC ("RFC"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with a financial guaranty insurance policy (the "Policy") issued by FGIC in relation to an RFC-sponsored transaction (the "2007-EMX1 Transaction" or the "Transaction") in which the RASC Series 2007-EMX1 Trust (the "2007-EMX1 Trust") issued and sold to investors $692,852,000 aggregate principal amount of insured residential mortgage-backed securities (the "2007-EMX1 Certificates"). As the sponsor of the 2007-EMX1 Transaction, RFC procured the Policy from FGIC in order to enhance the ratings

and marketability of the 2007-EMX1 Certificates. RFC fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices, and the credit quality and characteristics of the thousands of mortgage loans that provided the collateral for the 2007-EMX1 Certificates (individually the "Mortgage Loans" and collectively the "Loan Pool"). In short, the Mortgage Loans were different—and demonstrably worse—than RFC had represented them to be. Indeed, RFC's misrepresentations with respect to the 2007-EMX1 Transaction have been so egregious that a federal government agency has alleged fraud and state and federal securities law violations against RFC, ResCap and Ally Financial relating to the 2007-EMX1 Transaction.

2. FGIC's issuance of the Policy enabled the 2007-EMX1 Certificates to receive an initial triple-A rating from the rating agencies, which in turn made the 2007-EMX1 Transaction viable, and enabled RFC and its affiliates to earn millions of dollars in transaction fees.

3. Since the closing of the 2007-EMX1 Transaction, RFC has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the 2007-EMX1 Transaction, RFC has violated the essential terms of its agreement with FGIC. RFC has also breached the essential terms of the other operative documents incorporated therein.

4. The wrongdoing committed by RFC, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through ResCap. Ally Financial is the ultimate parent of ResCap, which owns RFC. Ally Financial, as the ultimate parent of ResCap and RFC, has the practical ability, which it has repeatedly exercised, to direct and control the activities of

its subsidiaries, including ResCap and RFC. At times, Ally Financial's direction and control was effected by using ResCap as an instrument to achieve its goals.

5. The 2007-EMX1 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among RFC and several other parties whereby the Mortgage Loans were pooled together and transferred to the 2007-EMX1 Trust, which then issued to investors securities (*i.e.*, the 2007-EMX1 Certificates) collateralized by those loans.

6. To facilitate the Transaction, RFC pooled together the Mortgage Loans, which RFC had previously purchased from an affiliate of the originator, Mortgage Lenders Network USA, Inc. ("MLN"), a nationwide mortgage lender at that time. The Mortgage Loans consisted of 4,051 first-lien and junior-lien mortgage loans originated by MLN. After origination, the Mortgage Loans were sold to Emax Financial Group, LLC ("Emax"), an MLN affiliate. RFC acquired the Mortgage Loans from Emax prior to the closing of the 2007-EMX1 Transaction.

7. Following its acquisition of the Mortgage Loans, RFC transferred the Mortgage Loans to another Ally Financial subsidiary, Residential Asset Securities Corporation ("RASC"). RASC then deposited the Mortgage Loans it received from RFC into the 2007-EMX1 Trust. The trust, in turn, issued certificates representing the beneficial interest in the 2007-EMX1 Trust. The 2007-EMX1 Trust was a legal entity created by RFC solely for the purpose of the 2007-EMX1 Transaction: to hold the Mortgage Loans and to issue the 2007-EMX1 Certificates to investors in a registered public offering.

8. RFC also acts as master servicer of the 2007-EMX1 Transaction (the "Master Servicer"), and two other Ally Financial subsidiaries—HomeComings Financial, LLC ("HomeComings") and GMAC Mortgage, LLC ("GMACM")—act as subservicers of the 2007-

EMX1 Transaction (the "Subservicers"). As Master Servicer, RFC supervises the activities of the Subservicers, including the collection of borrower payments, and performs other servicing duties related to the Mortgage Loans. As discussed in more detail below, all of HomeComings' and GMACM's servicing operations have since been integrated into ResCap. Yet another Ally Financial subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was a joint lead manager of the underwriters of the 2007-EMX1 Transaction. U.S. Bank National Association ("U.S. Bank") agreed to act as trustee of the 2007-EMX1 Trust (the "Trustee").

9. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the Trust are used to pay, among other things, principal and interest due on the 2007-EMX1 Certificates, and the fees and expenses of RFC, GMACM and HomeComings, as well as other participants in the Transaction.

10. RFC, directed and controlled by Ally Financial, is, therefore, the hub of the 2007-EMX1 Transaction: it is the sponsor of the securitization, an acquirer and seller of the Mortgage Loans, and the Master Servicer of the Transaction. The primary victim of the 2007-EMX1 Transaction—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by RFC—is FGIC, which has already been presented with over $26.9 million in claims under the Policy, with further material losses still to come.

11. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed certificates ("RMBS Certificates"). At the time of the 2007-EMX1 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by

FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Certificates typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of realized losses on the Mortgage Loans collateralizing the insured securities. FGIC's insurance policies thus enhanced the credit quality and marketability of the insured securities.

12. To enhance the ratings and marketability of the 2007-EMX1 Certificates, and to increase the profit that RFC would derive from the 2007-EMX1 Transaction, RFC sought to have FGIC issue the Policy to U.S. Bank, as Trustee, for the benefit of the holders of the 2007-EMX1 Certificates.

13. As an essential element of the 2007-EMX1 Transaction, RFC made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated and their characteristics to induce FGIC to enter into the Transaction. RFC represented, among other things, that the Mortgage Loans "were in substantial conformity with the standards set forth in [RFC's] AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement." Prospectus Supplement at S-57; *see also* Prospectus Supplement at S-60. Those representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2007-EMX1 Transaction. As a result, FGIC was fraudulently induced to enter into the Transaction, and the credit risk assumed by FGIC in connection with the Transaction was far greater than it would have been had RFC's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

14. RFC received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policy. Ally Financial took actions and made statements to finance, support, and boost investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations RFC had made to FGIC. As a result of its dominance over ResCap and RFC, Ally Financial knew that the representations and warranties RFC made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted RFC's fraudulent inducement of FGIC to issue the Policy.

15. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policy in reliance on the (presumed) accuracy and truthfulness of RFC's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and therefore the amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of RFC's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policy, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of RFC's misconduct.

16. In order to evaluate the extent of RFC's breaches, FGIC has requested copies of the mortgage loan files and servicing notes for the Mortgage Loans. RFC is obligated, under its agreements with FGIC, to provide those documents to FGIC. RFC has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence

material breaches by RFC. This refusal to provide information in itself constitutes a material breach of RFC's insurance agreement with FGIC.

17. Certain of the material contractual breaches committed by RFC—including, but not limited to, FGIC's right to access information in RFC's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

18. Through this Complaint, FGIC seeks relief against RFC, ResCap, and Ally Financial for RFC's fraudulent inducement, and for RFC's material breaches of its insurance agreement with FGIC and other contractual obligations owed to FGIC in connection with the 2007-EMX1 Transaction.

19. FGIC seeks a declaration from the Court that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other. Further and alternatively, FGIC seeks relief against Ally Financial for aiding and abetting RFC's fraudulent inducement.

THE PARTIES

20. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

21. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial specializes in automotive financings, residential mortgage financings and services, and insurance services. Ally Financial is the parent company of ResCap, RFC, and all RFC-affiliated entities relevant to this action.

22. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of RFC and is a leading real estate finance company, the business of which includes acquiring, selling and servicing mortgage loans.

23. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

24. Defendant RFC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. In the period relevant to this action, RFC acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

25. Since 2005, RFC has been an indirect wholly owned subsidiary of ResCap; prior to that time, RFC was an indirect, wholly owned subsidiary of Ally Financial.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

27. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred within this judicial district. Moreover, at least one of the defendants in this action, RFC, has agreed to submit to the jurisdiction of this Court, and has agreed not to challenge venue in this Court.

RELEVANT NON-PARTIES

28. GMACM is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMACM is an indirect wholly owned subsidiary of ResCap, which in turn is a wholly owned subsidiary of Ally Financial. GMACM has served as one of the two Subservicers.

29. HomeComings, formerly known as HomeComings Financial Network, Inc., is a limited liability company with its principal place of business in Minneapolis, Minnesota. It,

along with GMACM, has served as a Subservicer of the Mortgage Loans. HomeComings is a wholly owned subsidiary of RFC.

30. RASC, a special purpose vehicle, is a Delaware corporation with its principal place of business in Minneapolis, Minnesota. To facilitate the 2007-EMX1 Transaction, RASC purchased the Mortgage Loans from RFC and deposited them into the 2007-EMX1 Trust, which then issued the 2007-EMX1 Certificates to underwriters to be sold to investors.

31. Ally Securities, an entity incorporated in Delaware, is an affiliate of RFC and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2011, Ally Securities was known as Residential Funding Securities LLC, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2007-EMX1 Certificates and, on information and belief, participated in the preparation of the Prospectus and Prospectus Supplement.

32. MLN was the originator of the Mortgage Loans, which were bought by Emax, and then sold to RFC. MLN filed for bankruptcy on February 5, 2007.

33. Emax was the seller of the Mortgage Loans to RFC. Emax made a written request to the State of Illinois Department of Financial and Professional Regulation on February 27, 2007, to surrender its residential mortgage license. That request was ultimately approved and Emax's residential mortgage license was revoked on June 11, 2008.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

34. In the period relevant to this action, RFC acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans

and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Certificates.

35. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults, and losses; and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including ResCap and RFC, led Ally Financial to seek a bailout by the federal government in 2008.

(1) RFC, GMACM, and GMAC-RFC

36. RFC is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

37. GMACM is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate RFC, GMACM engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

38. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

39. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See*

FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

40. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with RFC. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

41. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

42. Ally Financial's business model depended on securitizations, which were conducted by its business units, including RFC. Pooling mortgage loans and selling them into securitizations enabled RFC to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

43. RFC, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third parties through its warehouse lending business. In fact, as of 2006, "ResCap's warehouse lending business [was] the largest provider of warehouse lending services for mortgage loans in the US, with more than $17 billion in commitments." ResCap, *Residential Capital Corporation's CFO to Lead Company's Warehouse Lending Business*, (May 4, 2006) *available at* http://www.businesswire.com/news/home/20060504006138/en/Residential-Capital-Corporations-CFO-Lead-Companys-Warehouse.

44. When securitizing mortgage loans originated by other parties, RFC would typically acquire such mortgage loans and then deposit them into a securitization trust (usually through an affiliate). RFC would then procure underwriters, trustees, and (in the case of insured securities) financial guaranty insurers, and cause the securitization trust to sell securities collateralized by the relevant mortgage loans. RFC would also (i) make representations and warranties with respect to the origination and characteristics of the individual mortgage loans and the mortgage loan pool as a whole, and (ii) arrange to provide mortgage loan servicing, typically through one of its affiliates. By this means, RFC presented securitizations of loans originated by other lenders as the equivalent of securitizations of RFC-originated loans. Since these other lenders typically had lesser reputations in the market— and in the case of MLN, were in fact in bankruptcy and out of business entirely— the presentation of transactions collateralized by such loan pools as the equivalent of transactions collateralized by RFC-originated loan pools substantially improved the marketability of such loan pools.

45. In many instances, when RFC arranged for the securitization of mortgage loans originated by other lenders, RFC profited from the difference between the cost it incurred to acquire mortgage loans and the price at which it sold them for deposit into the securitizations.

46. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, RFC typically also sought (as it did here) to be appointed as the Master Servicer for the 2007-EMX1 Transaction. Moreover, RFC appointed its affiliate, GMACM, and its subsidiary, HomeComings, to act as Subservicers. For acting as Master Servicer to the 2007-EMX1 Transaction, RFC gained substantial additional compensation.

47. RFC also enriched Ally Financial and its subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2007-EMX1 Transaction: (i) HomeComings and GMACM gained fees servicing the Mortgage Loans; (ii) RASC, which established the 2007-EMX1 Trust and acted as depositor of the Mortgage Loans, charged fees to cover its operating expenses; and (iii) Ally Securities received fees for underwriting the 2007-EMX1 Certificates.

48. In 2000, GMAC-RFC entered into a strategic alliance with MLN under which it provided MLN with a warehouse lending facility and a revolving line of credit, whereby GMACM could make funds available to MLN in exchange for MLN's future volume of subprime mortgage originations. At the time of the alliance, GMACM's Director of Strategic Alliances and Acquisitions for GMAC-RFC, Marty McCormack, announced that "[b]y pairing

GMAC-RFC's access to capital markets with MLN's quality products, we can leverage both companies' strengths into a strong financing relationship."

49. In addition to the lending relationship, as further evidence of this strategic alliance, GMAC-RFC also received convertible debt of MLN, which created a further incentive to make MLN as profitable as possible regardless of the consequences to third parties, such as FGIC.

(3) Ally Financial, RFC, and GMACM Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

50. On September 2, 2011, the Federal Housing Finance Authority (the "FHFA"), as conservator for Freddie Mac, alleged fraud and state and federal securities laws violations against Ally Financial, ResCap, GMACM and RFC relating to the 2007-EMX1 Transaction, among others. On September 2, 2011, the FHFA filed suit in the Supreme Court of the State of New York, New York County ("New York Supreme Court") against various Ally Financial entities, for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with their roles in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in RMBS issued through twenty-one RFC-sponsored transactions, including the 2007-EMX1 Transaction.

51. The FHFA also alleges violations of state and federal securities laws by RFC, its parent, Ally Financial, and their affiliates. The violations stem from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6

billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs. In October 2011, Ally Financial and its co-defendants removed the FHFA action to the United States District Court for the Southern District of New York.

52. In addition, RFC is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that in various RMBS transactions, similar to the 2007-EMX1 Transaction, RFC affirmatively misrepresented the credit quality of tens of thousands of mortgage loans with an aggregate principal balance worth billions of dollars, as a means of unfairly shifting to investors and MBIA risks that RFC should have borne itself. On December 22, 2009, that court issued a ruling on RFC's motion to dismiss, which allowed both the breach of contract and the fraud claims, among others, to proceed to trial.

53. RFC's sister company, GMACM, is also currently facing a lawsuit brought by MBIA in New York Supreme Court for, among other things, fraud and breach of representations and warranties in connection with RMBS transactions. In December 2010, the New York Supreme Court rejected GMACM's motion to dismiss certain of the claims brought against it, allowing both the breach of contract and fraud claims, among others, to proceed.

54. DZ Bank AG also filed a summons with notice in New York Supreme Court on December 13, 2011, against Ally Financial, ResCap, RFC, RASC, and other Ally Financial subsidiaries for common-law fraud, fraudulent inducement, negligent misrepresentation, and aiding and abetting fraud, in connection with various RMBS transactions, including the 2007-EMX1 Transaction. The summons with notice alleges material misrepresentations and omissions regarding the standards used to underwrite, and key statistical characteristics of, the

Mortgage Loans in the 2007-EMX1 Transaction. The claims arise from DZ Bank AG's purchase of $289.8 million in securities issued by Ally Financial subsidiaries, including a portion of the 2007-EMX1 Certificates.

55. IKB Deutsche Industriebank AG also filed two summonses with notices in New York Supreme Court on December 16, 2011 and January 17, 2012, against Ally Financial, ResCap, RFC, and other Ally Financial subsidiaries for securities law violations, common law fraud, fraudulent inducement, and aiding and abetting fraud among others. The claims arise from the purchase of $14 million in securities underwritten and issued by Ally Financial subsidiaries in similar RMBS transactions.

56. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two suits in various jurisdictions pending against Ally Financial's mortgage-related business units and subsidiaries arising from numerous mortgage-backed securities offerings. The plaintiffs in those suits have alleged, among other things, that Ally Financial's various mortgage subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011). Further, in its 2011 annual report, Ally Financial stated that it expects additional similar claims to be brought against Ally Financial and/or its subsidiaries in the future. *See* Ally Fin. Inc., Annual Report (Form 10-K), at 20 (Feb. 28, 2011).

57. Since the filing of its November 2011 quarterly report, moreover, Ally Financial and its subsidiaries have been sued by additional plaintiffs, including HSH Nordbank AG, which

have alleged, among other things, material misrepresentations and omissions about the loans backing RMBS securities issued by Ally Financial's affiliates.

58. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. During 2011, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. Ally Financial evidently recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims, and, according to its own Securities and Exchange Commission ("SEC") filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Annual Report (Form 10-K), at 98 (Feb. 28, 2012).

59. Indeed, according to Ally Financial's 2011 annual report, Ally Financial, RFC's parent, also believes that "[t]he total exposure. . . to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions implemented in 2008 and forward." Ally Fin. Inc., Annual Report (Form 10-K), at 224 (Feb. 28, 2012). The 2007-EMX1 Transaction is comprised of mostly Mortgage Loans originated in 2006.

60. Additionally, Ally Financial also disclosed that the SEC served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. Ally Fin. Inc., Amendment No. 3

to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

61. Furthermore, RFC's sister company GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." *Id.* (emphasis added).

(4) The Mortgage Loan Servicing Misconduct of Ally Financial and its Subsidiaries Has Come Under Scrutiny and Resulted in Severe Sanctions

62. On February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, and several other mortgage loan servicers would be required to pay $766.5 million in monetary sanctions for "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Federal Reserve Board (February 9, 2011). On February 12, 2012, the Federal Reserve Board imposed well over $200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an Assessment Order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See* Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, FRB Docket No. 12-006-CMP-HC (February 12, 2012) (the "Assessment Order"). According to the Federal Reserve Board, the sanction "takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the institutions' misconduct, and the comparative sizes of the

institutions' foreclosure activities." *See* Press Release, Federal Reserve Board (February 9, 2011).

63. Furthermore, also on February 9, 2012, the U.S. Attorney General announced that Ally Financial will take part in a $25 billion settlement to resolve claims brought by the government in response to the "reckless and abusive mortgage practices" of Ally Financial and four similarly situated bank holding companies. *See* Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple state attorneys general, *see id.*; National Mortgage Settlement Website, Settlement Documents > Servicing Standard Highlights, available at http://www.nationalmortgagesettlement.com/ (last visited Feb. 12, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper origination, securitization, and servicing practices, *see id.*, About the Settlement, *available at* http://www.nationalmortgagesettlement.com/about (last visited Feb. 12, 2012).

64. According to the U.S. Attorney General, the $25 billion settlement and $766.5 million sanction are just "the latest step forward" in holding Ally Financial and others accountable for "egregious mortgage loan servicing abuses." *See* Attorney General Holder, Remarks at the Mortgage Servicers Settlement Press Conference.

65. Indeed, the New York Attorney General recently announced that his office will lead the new Residential Mortgage-Backed Securities Working Group, a component of the interagency Financial Fraud Enforcement Task Force, which is led by the DOJ. *See* Office of the New York Attorney General Website, *available at* http://www.ag.ny.gov/media_center/2012 /feb/feb9b_12.html; *see also* http://www.stopfraud.gov/docs/FFETF-Report-LR.pdf. According

to a statement by the New York Attorney General's Office, the Working Group's joint investigation "brings together the Department of Justice, several state law enforcement officials, and other federal agencies to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities [and builds] upon ongoing state and federal investigations, while also launching new ones." *See id.*

66. In addition to the recent $25 billion settlement and Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the "FDIC") have previously ordered Ally Financial and several of its subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

67. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

68. Furthermore, under the Consent Order, Ally Financial must direct its mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id.* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [and to assess the performance of]

residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

69. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure processes of GMACM, one of the Subservicers of the 2007-EMX1 Transaction, to request an independent review of their files. *See* Press Release, Federal Reserve Board (November 1, 2011). This independent review will determine whether errors and misrepresentations in GMACM's foreclosure processes indeed caused financial harm to the borrower. *See id.* If the foreclosure process is found to have caused financial injury to the borrower, GMACM will then be required to provide full compensation. *See id.*

70. Pursuant to the Consent Order, Ally Financial and other bank holding companies will also now be required to adhere to new, heightened servicing standards. *See* Press Release, Federal Reserve Board (February 9, 2011). The Federal Reserve Board will require Ally Financial to remedy its servicing practices by, among other things, "strengthen[ing] the coordination of communications with borrowers by providing borrowers the name of the person at the service who is their primary point of contact, establish[ing] limits on foreclosures where loan modifications have been approved, establish[ing] robust third party vendor controls, strengthen[ing] compliance programs, and provid[ing] appropriate remediation to borrowers who suffered financial injury as a result of errors by the servicers." *See id.*

71. Moreover, the servicing and foreclosure improprieties of Ally Financial and its subsidiaries are a matter of public account. According to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan

Dep. *Federal National Mortgage Association v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Div Nine, No. Cumb.) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

72. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.* at 51:15-23. Stephan further testified that when he signed an affidavit affirming that the foreclosure was proper, all he knew was the borrower's name and whether he had signing authority for the GMAC entity foreclosing on the property. *Id.* at 62:23-25, 63:2-6. Stephan testified that the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required by GMACM. *Id.* at 64:8-14.

73. Additionally, in October 2010, the Ohio Attorney General filed suit against Ally Financial and its subsidiaries, alleging, among other things, that employees of Ally Financial subsidiaries had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). Although some of the claims brought by this suit

may ultimately be resolved by the $25 billion multi-party settlement, other claims not encompassed by the settlement, including those relating to the improper assignment of mortgage notes, will likely survive. As of March 2012, the action remains pending.

74. Similarly, in December 2011, the Massachusetts Attorney General filed suit against GMACM for, among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston). Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial and GMACM for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Boston Globe, Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

Letter from Martha Coakley, Massachusetts Attorney General, to the Hon. Tim Johnson, Chairman, U.S. Senate Committee on Banking, Housing, and Urban Affairs, and the Hon. Spencer Bachus, Chairman, U.S. House Committee on Financial Services (Dec. 6, 2011).

75. While the $25 billion settlement ultimately resolved certain claims brought by the Massachusetts Attorney General in this action, several claims relating to improper foreclosure practices and abuse of certain state recordation systems have survived and will continue to be prosecuted. *See* Press Release, Office of the Attorney General of Massachusetts, *Massachusetts*

Homeowners to Receive $318 Million in Relief as Part of State-Federal Agreement Over Unlawful Foreclosures and Loan Servicing, Feb. 9, 2012.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and RFC

76. Since at least as far back as November 2011, Ally Financial has been considering filing for bankruptcy protection for ResCap, its wholly owned subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports, as of November 9, 2011. RFC is a wholly owned, indirect subsidiary of ResCap.

77. Around that time, the financial industry was "betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering." Bloomberg News, *Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance*, Nov. 14, 2011.

78. As the article notes, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy. *See id.*

79. Indeed, Ally Financial warned in its 2011 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 19 (Feb. 29, 2012).

80. That risk ultimately came to pass as Ally Financial recently disclosed that the penalties assessed by the federal government and numerous state attorneys general regarding the foreclosure practices of Ally Financial and its subsidiaries "resulted in our Mortgage operations recording a $230 million charge in the fourth quarter of 2011." *Id.* at 31. As Ally Financial detailed in its previous public filing, the "[t]he majority of [the charge] was recorded at Residential Capital, LLC ('ResCap') . . . [which] resulted in a covenant breach in certain of

ResCap's credit facilities." Ally Financial, Current Report (Form 8-K) (January 31, 2012). Indeed, as Ally Financial more recently explained, "ResCap is required to maintain consolidated net worth . . . of $250 million at the end of each month under the terms of certain of its credit facilities. . . [and] as a result of the fourth quarter charge, ResCap's consolidated net worth was $92 million at December 31, 2011." Ally Fin. Inc., Annual Report (Form 10-K), at 31-32 (Feb. 28, 2012). ResCap's substantial shortfall, however, was "immediately remediated by Ally through a capital contribution of $197 million, which was provided through forgiveness of intercompany debt during January 2012." *Id.*

81. Moreover, in February 2012, it was reported that Ally Financial had contacted buyout firms such as Fortress Investment Group LLC and Cerberus Capital Management LP regarding a potential sale of ResCap through a pre-packaged bankruptcy to be effectuated by the end of March as ResCap faces financing and liquidity deadlines. *See* Bloomberg Businessweek, *Ally's ResCap Said to Seek Buyers for Prearranged Bankruptcy*, Feb. 8, 2012.

82. According to the report, "[p]otential bidders are being told that a pre-packaged bankruptcy filing would allow the buyer to leave behind liabilities such as [RMBS] securitizations that have been the subject of litigation." *Id.* To that end, Ally Financial's CEO, Michael Carpenter, has stated that he will not pursue the aforementioned initial public offering for Ally Financial "until [these] legacy mortgage issues are resolved." *Id.* Nevertheless, a bondholder group representing holders of approximately $800 million in ResCap debt has expressed its desire to "fight [Ally Financial] tooth and nail" to oppose the bankruptcy, in part on the belief that "Ally [Financial] can't legally separate itself from ResCap because it has stripped assets from the unit." Bloomberg News, *Paulson, Tepper Said Among Investors Urging Ally to Back ResCap*, Jan. 10, 2012.

83. Indeed, as Ally Financial has pointedly noted in its most recent annual report; "In light of ResCap's liquidity and capital needs combined with volatile conditions in the marketplace, there is substantial doubt about ResCap's ability to continue as a going concern." Ally Fin. Inc., Annual Report (Form 10-K), at 18 (Feb. 28, 2012).

B. RFC's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

84. To improve the marketability and ratings of the RMBS Certificates issued as part of its securitizations, RFC from time to time sought credit enhancement for the RMBS Certificates from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. In some cases, such as the 2007-EMX1 Transaction, RFC sought FGIC's participation in transactions that were collateralized by mortgage loans originated by other lenders, such as MLN. RFC's sponsorship of such transactions, and the inducements provided by RFC in connection with such transactions, were critical to FGIC's willingness to issue its insurance policies with respect to the resulting RMBS Certificates.

85. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Certificates that, if there is a shortfall in cash available to it to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

86. For a trust that issues RMBS Certificates, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS

Certificates. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the loan pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS Certificate investors. Such shortfalls result in claims on FGIC's policy.

(2) Securitization Sponsor's Representations and Warranties

87. The risk FGIC assumes when it agrees to issue a policy for RMBS Certificates depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originator and the characteristics of the loans. If, for instance, a loan originator employs substandard underwriting practices, the underlying mortgage loans would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

88. Accordingly, FGIC generally required securitization sponsors like RFC to provide substantial representations and warranties about the underlying mortgage loans, including representations about the standards and procedures used to underwrite the loans and the characteristics of the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance to the value of the mortgaged property at origination—plus, in the case of a junior lien Mortgage Loan, the principal balance of the senior Mortgage Loan on the related mortgaged property ("LTV ratio"), the borrower's credit score ("FICO score"), and the credit grade of the loan according to RFC's grading system ("Credit Grade"). Even where, as here, RFC did not originate the loans at issue, it nonetheless is typically required to make representations about those loans, thereby assuming the risk that those representations might not be accurate. RFC's

representations and warranties were intended to allow FGIC to assess the credit risk inherent in the mortgage Loan Pool before deciding to commit to the transaction.

C. The RASC 2007-EMX1 Transaction

89. In late 2006, RFC began to put together the 2007-EMX1 Transaction. RFC had, at that time, a long-standing relationship with MLN, having sponsored prior transactions collateralized by MLN-originated mortgage loans. As part of that relationship RFC maintained a warehouse lending facility for the purpose of financing MLN's mortgage loan originations in anticipation of securitization by RFC of such loans.

90. On information and belief, at the time of MLN's bankruptcy RFC held tens of millions of dollars in aggregate principal amount of MLN-originated mortgage loans pursuant to such warehouse lending facility. RFC was unable to sell the mortgage loans on the open market without taking an unacceptable loss on the sale. RFC was able to dispose of such loans, however, by arranging an RFC-sponsored securitization collateralized by those loans—the 2007-EMX1 Transaction.

91. MLN sold the Mortgage Loans that comprised the 2007-EMX1 Transaction to Emax, which in turn sold the Mortgage Loans to RFC. In the securitization, RFC pooled those Mortgage Loans, and deposited them in the 2007-EMX1 Trust (via RASC). The trust then issued $692,852,000 aggregate principal amount of Class A Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-EMX1. The 2007-EMX1 Certificates consisted of five classes of senior certificates, all of which were insured by FGIC.

92. The 2007-EMX1 Trust contains two groups of Mortgage Loans (respectively, the "2007-EMX1 Group I Loans" and the "2007-EMX1 Group II Loans"). The 2007-EMX1 Group I Loans consist of 2,084 fixed-rate and adjustable-rate first-lien and junior-lien mortgage loans

having an outstanding principal balance of more than $395 million. The 2007-EMX1 Group II Loans are comprised of 1,967 fixed-rate and adjustable-rate first-lien and junior-lien mortgage loans having an outstanding aggregate principal balance of more than $353 million. The Mortgage Loans were purportedly acquired and evaluated by RFC under its "AlterNet" program (the "AlterNet Program") or the credit grades as described in the Prospectus Supplement.

93. To enhance the ratings and marketability of the 2007-EMX1 Certificates, RFC sought a financial guaranty insurance policy from FGIC for the purpose of insuring the Transaction for the benefit of the certificate holders. On March 12, 2007, FGIC and RFC executed an Insurance and Indemnity Agreement (the "I&I Agreement"), under which FGIC agreed to issue a financial guaranty insurance policy to insure the 2007-EMX1 Certificates, and FGIC accordingly issued its policy number 07030010. The I&I Agreement was signed by FGIC (the "Insurer" for the Transaction); RFC (the "Seller" and Master Servicer for the Transaction); RASC (the "Depositor" for the Transaction); and U.S. Bank (the "Trustee" for the Transaction).

94. The I&I Agreement provides that FGIC is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." The "Operative Documents" are defined to include, among other documents: (i) the 2007-EMX1 Certificates; (ii) the Pooling and Servicing Agreement, dated as of February 1, 2007, among RFC, RASC, and U.S. Bank (the "PSA"); and (iii) the Assignment and Assumption Agreement, dated as of March 12, 2007, between RFC and RASC (the "A&A Agreement"). The PSA also provides that FGIC (the Certificate Insurer) "is an express third-party beneficiary of [the PSA]."

95. The Policy improved the marketability of the 2007-EMX1 Certificates by mitigating risk for potential investors and making the 2007-EMX1 Certificates eligible to receive an initial credit rating of triple-A by the rating agencies at closing.

96. RFC and the Depositor offered the 2007-EMX1 Certificates for sale pursuant to a prospectus, dated December 6, 2006 (the "Prospectus"), and a prospectus supplement, dated March 8, 2007 (the "Prospectus Supplement"), touting the Policy and the triple-A initial rating of the 2007-EMX1 Certificates made possible by the Policy. The Prospectus and the Prospectus Supplement, together with certain preliminary Offering Documents, each as further supplemented by any subsequent amendment or supplement thereto, and any other Offering Documents that makes reference to the Policy, are referred to collectively as the "Offering Documents."

97. On March 12, 2007, an Ally Financial subsidiary, Ally Securities, and Credit Suisse (the other underwriter for the 2007-EMX1 Transaction), purchased from the 2007-EMX1 Trust and sold to investors the 2007-EMX1 Certificates, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

D. RFC Fraudulently Induces FGIC to Insure the 2007-EMX1 Certificates with Substantial Assistance from Ally Financial

(1) RFC's Fraudulent Inducement of FGIC

98. FGIC's participation in the 2007-EMX1 Transaction was an essential component of the 2007-EMX1 Transaction and enhanced RFC's ability to market the securitization effectively. On information and belief, RFC had been unable to execute a securitization of the Mortgage Loans on an unwrapped basis, due to the provenance of the Mortgage Loans. The Policy allowed RFC to sell the 2007-EMX1 Certificates with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

99. In order to induce FGIC to write financial guaranty insurance for the 2007-EMX1 Transaction, RFC provided to FGIC, directly or indirectly, a variety of information and covenants, which comprised several features that were specifically required by FGIC in order to

induce it to enter into a transaction based on loans originated by MLN, which at that time had already filed for bankruptcy.

100. First and foremost, RFC provided to FGIC the initial and final Prospectus Supplements, which summarized, among other material information, the credit quality and characteristics of the Mortgage Loans, and RFC's loan underwriting guidelines.

101. Second, RFC provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the 2007-EMX1 Transaction, together with representations regarding material statistics about the Loan Pool.

102. Third, RFC provided to FGIC credit ratings for the 2007-EMX1 Certificates determined without considering the effect of the Policy. These ratings, which RFC procured from the credit rating agencies, are known as "shadow ratings."

103. Fourth, RFC provided FGIC with an express representation that there was no fraud in the origination of the Mortgage Loans.

104. Fifth, as discussed in detail in Section E, RFC provided representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreement regarding the Mortgage Loans specifically and the Loan Pool generally. These covenants included, among other things, representations that the Mortgage Loans would be "seasoned" (*i.e.*, that they were originated at least four months before the closing date), and that RFC would itself service the Mortgage Loans, through its HomeComings and GMACM affiliates as Subservicers.

105. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the 2007-EMX1 Certificates, FGIC relied in part upon representations and warranties regarding RFC's loan underwriting standards made by RFC in the Prospectus and

Prospectus Supplement. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about March 8, 2007, in an email sent by Jeffrey Wittenberg on behalf of RFC. The Prospectus, as supplemented by the Prospectus Supplement, was filed with the SEC on March 9, 2007. The Final Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about March 9, 2007, in an email sent by John Farmer on RFC's behalf.

106. The Prospectus Supplement set forth, among other information, the following important characteristics of the Loan Pool: the ranges of and weighted average FICO scores and Credit Grades, the ranges of and weighted average LTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (i.e., whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). Prospectus Supplement at II-25 – II-37.

107. RFC publishes its loan underwriting standards in a document the Prospectus refers to as "Residential Funding Company, LLC's Client Guide" as modified from time to time (the "Client Guide"). In general, the Client Guide specifies documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories, and/or evidence of closing funds, among other things. RFC disclosed additional data relevant to the AlterNet Program to FGIC. In particular, RFC provided FGIC with the AlterNet Program.

108. The Prospectus Supplement and Prospectus Supplement also include substantive criteria for eligibility addressing material characteristics of a proposed loan, such as DTI ratios, LTV ratios, occupancy status, and Credit Grades.

109. In particular, RFC represented in the Offering Documents that only one of the Mortgage Loans had been originated with a maximum monthly DTI ratio of greater than 55% (0.02% of the Loan Pool); furthermore, RFC represented that the Mortgage Loans had a maximum LTV ratio of 100%. *See* Prospectus Supplement at II-28, II-37. Moreover, with respect to at least 80.55% of the Mortgage Loans, RFC represented that the maximum DTI ratio was 50%, and the maximum LTV ratio for 82.02% of the Mortgage Loans was 95%. *See id.*

110. RFC also represented in the Prospectus Supplement that 92.72% of the Mortgage Loans would be owner-occupied. Prospectus Supplement at II-6. The A&A Agreement further indicated that "[a]pproximately 91.8% and 93.8% of the Mortgage Properties related to the Group I Loans and the Group II Loans, respectively, are secured by the owner's primary residence." A&A Agreement § 4(xxiii); *see also* Prospectus Supplement at II-7, II-19.

111. ***Loan Tape.*** RFC sent via email a final loan tape to FGIC on February 21, 2007. The loan tape provided by RFC set forth, for each Mortgage Loan, key characteristics such as the borrower's FICO score, Credit Grade, DTI ratio, the LTV ratio and for each Mortgage Loan. RFC also disclosed in the Prospectus Supplement, with respect to the pool as a whole, aggregate characteristics relevant to the assessment of the credit risk of the Loan Pool, including FICO scores, Credit Grades, DTI ratios and LTV ratios.

112. ***Shadow Rating Letters***. RFC, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. Based on the information supplied by RFC, Moody's assessed the credit quality of the loan pool and

assigned a shadow rating of A2 to the 2007-EMX1 Certificates, while S&P assigned the 2007-EMX1 Certificates a shadow rating of BBB. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to insure the 2007-EMX1 Transaction.

113. ***No Fraud in the Origination of the Mortgage Loans.*** MLN had filed for bankruptcy on February 5, 2007. Accordingly, as an additional inducement to FGIC, and in order to persuade FGIC to enter into a transaction based on MLN-originated mortgage loans, RFC offered to provide a representation that there was no fraud in the origination of the Mortgage Loans. Although RFC indicated its strong preference to not give a fraud representation or put a fraud representation in public agreements, it ultimately agreed to do so. RFC represented in the A&A Agreement that "[n]o fraud or misrepresentation has taken place in connection with the origination of any Mortgage Loan." § 4(lx).

(2) RFC's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

114. Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to participate in the 2007-EMX1 Transaction and, ultimately, issue the Policy. Ally Financial knew that the Mortgage Loans underlying the 2007-EMX1 Transaction were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap and its other subsidiaries, Ally Financial knew that the representations and warranties RFC made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

115. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to finance, support, and engender investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

116. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

117. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Exhibit 99.1.

118. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

119. Ally Financial's corporate restructuring also allowed RFC to explicitly represent and warrant to FGIC in the I&I Agreement that RFC "is solvent, and will not be rendered

insolvent by the Transaction. . . . [RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." I&I Agreement § 2.01(xiii). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary RFC.

120. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the 2007-EMX1 Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

121. Moreover, as a result of its domination and control over ResCap and RFC, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of RFC's representations and warranties to FGIC—and that they were untrue when stated. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including RFC, shared numerous directors and senior management as well.

122. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, and RFC, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by RFC was shared among and between RFC and its parent ResCap, as well as ResCap and its parent Ally Financial. Indeed, at least one Ally Financial employee who was involved in the 2007-EMX1 Transaction appeared on the Transaction's working group list and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

123. Another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including RFC and RASC, is David C. Walker. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. In September 2005, shortly before the closing of the 2007-EMX1 Transaction, Walker was a director at ResCap, GMACM, RFC, and RASC, among other ResCap subsidiaries. In the 2007-EMX1 Transaction, acting as a director of RASC, Walker was a signatory to both RASC's and RFC's "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors." Both documents were dated December 20, 2005. Both of these documents were included in the closing documents of the 2007-EMX1 Transaction.

124. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to RFC in fraudulently inducing FGIC to participate in the Transaction and issue the Policy. Further, the issuance of the Policy, which made the

2007-EMX1 Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. RFC's Representations, Warranties, and Affirmative Covenants

125. In connection with the 2007-EMX1 Transaction, RFC, at the direction of Ally Financial, either directly or indirectly through ResCap, made numerous representations, warranties, and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way the loans were selected and evaluated, the characteristics of the Mortgage Loans, and the accuracy of the information supplied to FGIC. RFC also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to RFC's books and records and to RFC's Servicing Officer and its independent accountants.

126. RFC's representation, among others, that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the 2007-EMX1 Transaction and to issue the Policy. Further, the I&I Agreement's incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that RFC made in connection with the 2007-EMX1 Transaction.

127. FGIC, for its part, reasonably relied on the information available to it regarding the underlying Mortgage Loans and the representations and warranties provided by RFC. Since FGIC had neither the right nor duty under the Operative Documents, nor the practical ability, to review the thousands of underlying Mortgage Loan files in the days available to it prior to the closing of the 2007-EMX1 Transaction, RFC knew that FGIC had no choice but to rely on RFC's representations regarding the underlying Mortgage Loans in determining whether to issue

the Policy. Further, FGIC had no reason to believe that these representations were not true and accurate.

128. RFC included 4,051 individual Mortgage Loans in the 2007-EMX1 Trust. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation, and other forms of documentation necessary to support underwriting decisions. Unlike RFC, FGIC was under no contractual duty whatsoever to review the Mortgage Loans. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by RFC regarding its evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on the fact that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

129. Based on the information received by FGIC and the representations and warranties given by RFC, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Trustee for the benefit of the holders of the 2007-EMX1 Certificates. In return for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the 2007-EMX1 Certificates, commensurate with the risk FGIC thought it was taking. Specifically, FGIC received 0.20% per annum of the aggregate balance of the 2007-EMX1 Certificates for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by RFC.

130. RFC's information, representations, and warranties were materially false when disclosed and/or provided by RFC. RFC knew that this information, and its representations and

warranties, were materially false when made. RFC also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policy. Indeed, RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and issue the Policy. The issuance by FGIC of the Policy—induced by RFC's fraudulent misrepresentations and substantial assistance of Ally Financial—made the 2007-EMX1 Certificates eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Representations, Warranties, and Affirmative Covenants Relating to the Operative and Offering Documents

131. Under Section 2.01(a) of the I&I Agreement, RFC made the following representations and warranties, among others (emphasis added in each case):

- *Accuracy of Information*. **None of the Operative Documents nor any other material information relating to the Mortgage Loans**, the operations of RFC . . . or the financial condition of RFC . . . furnished to [FGIC] . . . by RFC . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made**. [RFC] has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change. . . Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to RFC . . . that would render any of the Documents untrue or misleading in any material respect. § (x).

- *Compliance with Securities Laws*. The offering and sale of the [2007-EMX1] Certificates complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading** . . . . § (xi).

- *Operative Documents*. **Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** . . . . § (xii).

- *Solvency; Fraudulent Conveyance*. [RFC] is solvent, and will not be rendered insolvent by the Transaction. . . . **[RFC] shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**. [RFC] does not intend to incur, and does not believe that it has incurred, debts beyond its ability to pay as

> they mature. . . . [RFC] is not entering into the Operative Documents, or transferring any of its assets in connection with the Transaction, with any intent to hinder, delay or defraud any of its creditors. § (xiii).

132. *First*, in the I&I Agreement, RFC represented and warranted that "[n]one of the Operative Documents nor any other material information relating to the Mortgage Loans, the operations of RFC . . . or the financial condition of RFC . . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreement § 2.01(a)(x). Through these Operative and Offering Documents, as detailed above, RFC communicated several material facts about the characteristics of the mortgage loans sold to the 2007-EMX1 Trust.

133. *Second*, in the I&I Agreement, RFC also represented and warranted that the "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading." I&I Agreement § 2.01(a)(xi). As discussed above, in the Prospectus Supplement, RFC represented that the Mortgage Loans sold to the 2007-EMX1 Trust had been evaluated in conformity with RFC's underwriting standards.

134. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the respective related Operative Documents: "Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects . . . ." I&I Agreement § 2.01(a)(xii). The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that RFC made to other entities, such as investors or the Trustee, in connection with the 2007-EMX1

Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreement § 2.02(k).

135. Such representations and warranties included the representation that there was no fraud or misrepresentation in connection with the origination of the Mortgage Loans.

136. *Fourth*, RFC also provided information to FGIC concerning the Mortgage Loans in the 2007-EMX1 Transaction. *See* I&I Agreement § 2.02(c)(iii). This information included a schedule (or "loan tape") that set forth statistics about the Loan Pool. The loan tape purported to describe key characteristics relevant to the assessment of risk, including DTI ratios, LTV ratios, occupancy status, Credit Grades, and FICO scores. *See* PSA § 1.01. On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the Mortgage Loan Schedule, referred to in Section 4(xv) of the A&A Agreement. In turn, in the A&A Agreement, RFC represented that all the information in that schedule "is true and correct in all material respects as of the date or dates which such information is furnished." § 4(xv).

137. As a result of incorporating into the I&I Agreement the representations and warranties in the related Operative Documents, RFC incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in the 2007-EMX1 Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that each Mortgage Loan had been underwritten in compliance with RFC's own underwriting guidelines.

138. In particular, in the A&A Agreement, RFC represented and warranted as the Mortgage Loans:

- **No Fraud in the Origination**: "No fraud or misrepresentation has taken place in connection with the origination of any Mortgage Loan." § 4(lx).

- **Information in Mortgage Loan Schedule**: "The information set forth on the Mortgage Loan Schedule with respect to each Mortgage Loan is true and correct in all material respects as of the date or dates which such information is furnished." § 4(xv).

- **No Material Breach Or Default**: "[T]here is no default, breach, violation or event of acceleration existing under any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and no such default, breach, violation or event of acceleration has been waived by RFC or by any other entity involved in originating or servicing a Mortgage Loan." § 4(xxviii).

- **LTV Ratio**: "The weighted average [LTV] Ratios with respect to the Group I Loans, and the Group II Loans, in each case by outstanding principal balance at origination, are 84.1% and 83.8%, respectively." § 4(xviii).

- **Delinquent Loans**: "None of the Group I Loans are 30 [or more] days Delinquent in payment of principal and interest. . . . None of the Group II Loans have been a maximum of 30 or more days Delinquent in payment of principal or interest in the last 12 months." § 4(xvi).

- **Credit Grades**: "No more than 49.5% of the Group I Loans [and 51.4% of the Group II Loans] have been classified by RFC as Credit Grade A4 Mortgage Loans, no more than 33.6% of the Group I Loans [and 31.7% of the Group II Loans] have been classified by RFC as Credit Grade A5 Mortgage Loans, no more than 8.1% of the Group I Loans [and 8.8% of the Group II Loans] have been classified by RFC as Credit Grade AX Mortgage Loans, no more than 5.4% of the Group I Loans [and 4.3% of the Group II Loans] have been classified by RFC as Credit Grade AM Mortgage Loans, no more than 1.6% of the Group I Loans [and 2.0% of the Group II Loans] have been classified by RFC as Credit Grade B Mortgage Loans and no more than 2.1% of the Group I Loans [and 2.2% of the Group II Loans] have been classified by RFC as Credit Grade C Mortgage Loans, in each case as described generally in the Prospectus Supplement." §§ 4(xxx), 4(xxxi).

- **Occupancy Status**: "Approximately 91.8% and 93.8% of the Mortgaged Properties related to the Group I Loans and the Group II Loans, respectively, are secured by the owner's primary residence." § 4(xxiii).

- **The Originator Considered the Borrower's Ability to Repay**: "The originator of the Group II Loans adequately considered the borrower's ability to make payments by employing underwriting techniques that considered a variety of factors, such as: the borrower's income, assets and liabilities, and not solely the collateral value, in deciding to extend the credit at the time of origination." § 4(liii).

- **Residence is Borrower's Principal Residence**: "With respect to any Group II Loan that is a subordinate lien mortgage loan: (i) such lien is a one- to four-family residence that is the principal residence of the borrower. . . ." § 4(lvii).

139. Moreover, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—RFC specifically covenants that it "shall comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement §§ 2.02(a), 2.02(k).

140. RFC also agreed that it had to receive FGIC's consent before modifying or amending any of the Operative Documents. The I&I Agreement provides, that RFC will not "modify, waive or amend, or consent to any modification, waiver or amendment of, any of the terms, provisions or conditions of the Operative Documents to which it is a party . . . without the prior written consent of [FGIC], which consent shall not be unreasonably withheld, conditioned or delayed." § 2.03(b).

(2) Representations, Warranties and Affirmative Covenants Regarding Servicing and Access to Information

141. In addition to the representations and warranties referenced above, the I&I Agreement provides that RFC has the contractual obligation, as Master Servicer, to service the Mortgage Loans in compliance with the PSA and to provide FGIC with access to the underlying Mortgage Loans and servicing notes, and as Seller, to procure custodial interim certifications stating that all mortgage files were complete and properly transferred into the appropriate trust ("Interim Certification"). Specifically, the I&I Agreement provides:

- *Other Information.* (A) Promptly upon request, such other data as [FGIC] may reasonably request relating to the Mortgage Loans, the servicing of the Mortgage Loans . . . the Transaction or the ability of any of RFC. . . to perform its obligations under the Operative Documents, and (B) all information required to be furnished to the Trustee or the Holders, as the case may be. § 2.02(c)(v).

- *Access to Records; Discussions with Officers and Accountants.* On an annual basis, or at any time when a Material Adverse Change shall have occurred and be continuing, *upon the reasonable request of [FGIC], [RFC] will permit [FGIC] or its authorized agents, or cause [FGIC] or its authorized agents to be permitted* . . . to inspect the books and records of RFC . . . . to discuss the affairs, finances and accounts of RFC . . . as they relate to the Mortgage Loans, the Transaction or the ability to perform [its] obligations under the Operative Documents with a Servicing Officer . . . [and] if [FGIC] reasonably believes that a Material Adverse Change may have occurred and with RFC's consent, which consent shall not be unreasonably withheld or delayed, to discuss the affairs, finances and accounts of RFC . . . with the independent accountants of such Person; provided, however, that officers of RFC shall have the right to be present during such discussions. In addition, if requested by [FGIC], on an annual basis, or otherwise when reasonably requested by [FGIC], RFC will . . . cause the Custodian to deliver to [FGIC] an updated certification, in the form of the "Interim Certification" required under the Custody Agreement, with an exceptions list attached thereto, to enable [FGIC] to track the progress of recording of Mortgages and Assignments with respect to the Mortgage Loans. § 2.02(e) (emphasis added).

- *Servicing of Mortgage Loans.* All Mortgage Loans will be serviced in all material respects in compliance with the [PSA]. § 2.02(l).

- *Due Diligence.* If in [FGIC's] reasonable judgment circumstances so warrant, based on the performance of the Transaction, [FGIC] shall have the right, so long as the [2007-EMX1] Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices, at [FGIC]'s expense and in reasonable manner convenient to both RFC and [FGIC]. This due diligence right is in addition to the access provided and the other rights provided for in Section 2.02(e) of this Insurance Agreement. § 2.02(m).

F. RFC's Breaches of Its Representations, Warranties, and Affirmative Covenants

142. As discussed above, FGIC relied on material representations and warranties made by RFC regarding the manner in which the Mortgage Loans were selected and evaluated, the characteristics of those loans, and the accuracy and completeness of information RFC supplied to FGIC. Based on those representations and warranties, FGIC agreed to issue the Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed above, the risk that FGIC assumed when it issued the Policy was many times greater than the risk disclosed by

RFC's representations and warranties. RFC breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

143. The 2007-EMX1 Transaction has performed poorly; delinquencies and defaults for Mortgage Loans in the 2007-EMX1 Transaction have been substantial. As of January 2012, a total of 2,828 Mortgage Loans, representing 73.4% of the Mortgage Loans underlying the 2007-EMX1 Transaction, had posted a loss or were severely delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policy, RFC assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with RFC's representations and warranties.

144. The poor performance of the Mortgage Loans has reduced the cash flow to the 2007-EMX1 Trust, which has caused and will continue to cause claims to be presented to FGIC under the Policy to cover these shortfalls. Indeed, as of February 2012, more than $26.9 million in claims had been presented to FGIC in connection with the 2007-EMX1 Transaction. FGIC expects tens of millions of dollars more in claims to be presented to it under the 2007-EMX1 Transaction in the future.

(1) RFC's Denial of Loan File Requests

145. As the 2007-EMX1 Transaction continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blaschko, an RFC/ResCap employee, via e-mail demanding that RFC provide 367 of the Mortgage Loan files. Having received no response from RFC to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011 regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On

information and belief, the request required authorization from officers at Ally Financial, and RFC/ResCap's response was directed by officers at Ally Financial.

146. On February 14, 2011, and again on April 26, 2011, FGIC sent further follow-up letters requesting loan files.

147. In finally responding to FGIC's request for information, RFC refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans"). Instead, it only provided FGIC with a portion of the requested loan files, consisting solely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

148. Pursuant to the PSA and the I&I Agreement, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(m) of the I&I Agreement provides that FGIC "shall have the right, so long as the [2007-EMX1] Certificates remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, [and] to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I Agreement as to the nature of the Mortgage Loan files that are subject to review. Further, Section 2.02(c)(v) of the I&I Agreement states that "[p]romptly upon request," RFC must provide to FGIC "such other data as [FGIC] may reasonably request relating to the Mortgage Loans . . . ."

149. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreement, RFC has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files.

(2) RFC's Denial of Interim Certification Requests

150. On February 24, 2011, FGIC demanded, pursuant to Section 2.02(e) of the I&I Agreement, that RFC promptly cause the Custodian of the 2007-EMX1 Transaction to deliver to

FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement for the Transaction, with an exceptions list attached thereto. An Interim Certification would enable FGIC to track the progress of the recording of mortgages and assignments with respect to the related Mortgage Loans.

151. Again on May 24, 2011, FGIC wrote RFC demanding the Interim Certification, noting that its prior request dated February 24, 2011—three months earlier—had gone unanswered.

152. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to these requests.

(3) RFC's Denial of Servicing Notes

153. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the I&I Agreement, that RFC furnish or cause to furnish the servicing notes for the Mortgage Loans.

154. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to requests for servicing notes.

(4) RFC's Denial of FGIC's Access To Books and Records, Servicing Officer, and RFC's Independent Accountants

155. On December 8, 2011, in accordance with its express rights under Sections 2.02(e)(i)-(ii) of the I&I Agreement, FGIC requested to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances, and accounts of RFC with the Servicing Officer of RFC; and (iii) discuss the affairs, finances, and accounts of RFC with RFC's independent accountants.

156. To date, RFC has failed to respond to this request, in violation of the I&I Agreement.

(5) Breaches Uncovered In Loan File Reviews

157. When FGIC became concerned about the high delinquencies and default rates in the 2007-EMX1 Transaction, FGIC requested that RFC provide it with certain Mortgage Loan files in the Loan Pool. FGIC selected for review 1,188 non-performing (i.e., non-current or charged-off) loans that had resulted in a loss to the 2007-EMX1 Trust. To perform this review, FGIC hired an independent outside consultant with particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

158. That review revealed that RFC had breached one or more material representations and warranties in 795 of the 1,062 loans, or approximately 75% of the Mortgage Loans initially reviewed. As a result, FGIC requested that RFC repurchase those Mortgage Loans because they were non-conforming. RFC agreed with FGIC's identification of various breaches with regard to approximately 40% of those Mortgage Loans.

159. As discussed above, in 2010 FGIC randomly selected 500 Mortgage Loans. Of those Mortgage Loans, FGIC found that it already possessed loan files for 133 of them so FGIC requested the additional 367 Mortgage Loan files from RFC. When RFC finally responded to FGIC's multiple requests, RFC improperly refused to provide FGIC with any Mortgage Loan files for loans RFC deemed to be Performing Loans. Thus, of the 367 Mortgage Loan files FGIC requested, FGIC received only 140 Mortgage Loan files to review.

160. After receiving the additional Mortgage Loan files, FGIC evaluated them to determine whether they contained material breaches of the 2007-EMX1 Operative Documents necessitating repurchase under the related Operative Documents. To perform this review, FGIC once again engaged an independent outside consultant, having particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

161. The independent consultant's review revealed that over 86% of the Mortgage Loans that were reviewed contained breaches of the representations and warranties in the Operative Documents, including the I&I Agreement.

162. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 10755392: The borrower provided a stated monthly income of $9,200 a head chef for a diner, but information provided by the borrower for loan modification in 2009 indicated that the borrower was working 30 hours per week as a cook for the same diner for $7.50 per hour (approximately $975 per month). It is unlikely that the borrower earned a tenth as much income in 2009 as he did in 2006, when the loan was originated. Based on the 2009 income, the DTI ratio for the loan is 399.44%, well in excess of the maximum allowable DTI ratio of 55%.

- Loan Number 10754554: Among other defects, the borrower did not disclose two additional mortgages that were closed prior to the subject loan, in the amounts of $217,520 and $54,380, respectively. As a result, the loan had a significantly higher DTI ratio than what was disclosed to FGIC. The borrower's self-employment also was not verified and therefore was not eligible for financing.

- Loan Number 10776558: Among other defects, the borrower did not disclose a prior mortgage in the amount of $222,300 secured by the same property. Therefore the DTI ratio was 67.46% instead of 39.42% as represented in the Mortgage Loan Schedule. Additionally, salary data and business earning information indicate that the borrower vastly overstated his monthly income. Using a more reliable income figure, and combined with the undisclosed mortgage, further increased the DTI ratio to 143.66%. The AlterNet [Program] indicated the maximum allowable DTI ratio was 50% and up to 55% with two months reserves or $1,500 residual income.

These examples of underwriting violations—but a small smattering of the extensive defects among the Mortgage Loans—evidence significant breaches of the Operative Documents for the 2007-EMX1 Transaction.

163. Following the discovery of these high defect rates, and pursuant to the I&I Agreement and the A&A Agreement, FGIC demanded that RFC repurchase the non-compliant Mortgage Loans discovered during its repurchase review. RFC has expressly refused to

repurchase a significant number of non-conforming Mortgage Loans or replace them with conforming Mortgage Loans. This failure constitutes a material breach of the I&I Agreement and Operative Documents incorporated therein.

164. Moreover, RFC's responses in connection with FGIC's loan file review indicate that RFC was aware that the representations and warranties it provided FGIC were not truthful. For example, RFC has admitted to FGIC that the information RFC provided to FGIC via the loan tape was not accurate. In response to FGIC's repurchase requests, RFC stated that repurchase was not required because under the Prospectus, only "substantial compliance" with underwriting standards was required. RFC's response is an admission that the loan tape, which indicated the borrower's assets had been verified, was not accurate—a breach of Section 2.01(x) of the I&I Agreement.

(6) Breaches Uncovered Using Loan Pool Data

165. In addition to the loan-level review discussed above, FGIC commissioned an independent consultant—a leading provider of financial, property, and consumer information, such as property valuation services using automated property valuation tools—to test the accuracy of RFC's representations and warranties relating to the Mortgage Loans regarding occupancy status and LTV ratios. The consultant extracted information and data relating to 3,558 Mortgage Loans.

a. Breaches of Owner-Occupancy Representation and Warranty

166. RFC represented in the A&A Agreement and the Prospectus Supplement that approximately 91.8% of the Group I Loans and 93.8% of the Group II Loans—92.7% of all Mortgage Loans—would be secured by the borrower's primary residence. A&A Agreement § 4(xxiii); Prospectus Supplement at II-7, II-19, II-31.

167. Based on the information provided by RFC, FGIC determined that only 78% of the Mortgage Loans were owner-occupied properties.

168. The A&A Agreement and the Prospectus Supplement therefore materially overstated the percentage of Mortgage Loans in their respective pools that were owner-occupied as a primary residence. As such, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

169. FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that, as of January 2012 were delinquent for more than 60 days, in foreclosure, liquidated, or have posted a loss) in the 2007-EMX1 Transaction for loans that were determined after review to be non owner-occupied was approximately 74.7%.

b. Breaches of LTV Ratio Representation and Warranty

170. The Prospectus Supplement also provided information relating to the LTV ratios of the underlying Mortgage Loans.

171. LTV information provided in the Prospectus Supplement provided that the loans had generally been originated with a maximum LTV ratio of 100%. *See* Prospectus Supplement at II-28. LTV information provided in the Prospectus Supplement included (1) the average weighted LTV ratio for the Mortgage Loans, and (2) the number and aggregate value of the Mortgage Loans with LTV ratios in a given percentage band (e.g., the number of Mortgage Loans with LTV ratios of between 80% and 85%, between 85% and 90%, and so on). Prospectus Supplement at II-28. The Prospectus Supplement reported that *none* of Mortgage Loans had a LTV ratio over 100 percent. *See* Prospectus Supplement at II-28.

172. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, FGIC determined that

approximately 19% of the aggregate principal balance of the Mortgage Loans—as opposed to *none* of the loans, as reported in the Prospectus Supplement—had an original LTV ratio above 100%. FGIC also determined that approximately 30% of the aggregate principal balance of the Mortgage Loans—as opposed to fewer than 18%, as reported in the Prospectus Supplement—had an original LTV ratio above 95%. In addition, RFC represented in the A&A Agreement that the weighted average LTV ratio of the Group I Loans and Group II Loans at origination were 84.1% and 83.8%, respectively. *See* A&A Agreement § 2.02(xviii). However, FGIC determined that the actual weighted average LTV ratio of the aggregate principal balance of the Mortgage Loans at origination was approximately 91.1% for Group I Loans and 90.3% for Group II Loans. Thus, RFC breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact, as well as its representations regarding weighted average LTV in the A&A Agreement.

173. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (i.e., Mortgage Loans that, as of January 2012 were delinquent for more than 60 days, in foreclosure, liquidated, or have posted a loss) in the 2007-EMX1 Transaction for Mortgage Loans where the automated valuation model indicated a LTV greater than 100% was over 77.5%. This non-performance rate was over 15.4% greater than the non-performance rate of those Mortgage Loans whose automated valuation model indicated a LTV below 100%.

174. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicates the clear breach of RFC's contractual representations, warranties, and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, RFC has breached representations and warranties stating, for the 2007-EMX1 Transaction, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (i.e. the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of RFC in the Operative Documents (including each representation and warranty in the A&A Agreement) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- each Mortgage File contains all required documents and instruments; and
- the Mortgage Loans were in substantial conformity with the standards in RFC's AlterNet Program or in the description of the Credit Grades.

175. It is reasonable to conclude—based on what is known by FGIC and as a result of what is being wrongly withheld from FGIC—that many of the 4,051 Mortgage Loans held by the 2007-EMX1 Trust at closing evidenced similar breaches of RFC's representations and warranties.

176. Indeed, based on the information gathered from FGIC's loan file review and the information extracted by FGIC's consultant relating to LTV ratios and owner-occupancy rates discussed above, FGIC believes that the Transaction-wide defect rate for the Mortgage Loans is likely to be at least 66%.

177. Moreover, the true scope of RFC's underwriting failures is unknown given RFC's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of RFC's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

G. RFC's Fraud

178. The material breaches of RFC's representations and warranties, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of material representations and warranties and affirmative covenants RFC made to FGIC to induce its participation in the Transaction. The extraordinarily high defect and default rate among the Mortgage Loans, among other things, demonstrates not merely that RFC breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the Policy, RFC would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because RFC refuses to provide all of the requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

179. All of the Mortgage Loans underlying the 2007-EMX1 Transaction were acquired by RFC. In addition, as of early 2007 RFC employees were working in MLN's servicing department in order to ensure the continuing servicing of the loans and to prevent the deterioration of the quality of the MLN portfolio. As such, even before acquiring the loans from MLN's affiliate, RFC had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with RFC's AlterNet Program.

180. On information and belief, RFC did in fact examine the Mortgage Loans when it assisted with servicing, and thereby became (if it had not been already) aware that many of the Mortgage Loans actually did breach one or more of the representations and warranties that were to be made by RFC in connection with the 2007-EMX1 Transaction.

181. To induce FGIC to enter into the 2007-EMX1 Transaction, RFC provided FGIC with a loan tape, which contained false and misleading information regarding, among other

things, the LTV and DTI ratios, occupancy status, Credit Grades, and FICO scores of the borrowers.

182. In addition, RFC made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2007-EMX1 Trust. RFC was well aware that FGIC would not agree to insure the 2007-EMX1 Certificates unless RFC obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, RFC provided Moody's and S&P with the same false information regarding the credit quality of the underlying mortgage loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2007-EMX1 Certificates that met FGIC's minimum requirements. In this way, RFC made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that RFC would pass on to FGIC, and second, by causing shadow ratings of the 2007-EMX1 Certificates to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

183. In connection with MLN's bankruptcy proceeding, on January 29, 2008, RFC filed a proof of claim in the aggregate amount of $495,766,952.77 against MLN. As MLN's largest unsecured and one of its largest secured creditors, RFC was able to wield great influence over MLN. For example, shortly after MLN filed for bankruptcy the press reported that Mitchell Heffernan, former CEO and president of MLN, made allegations that during the approximately 45-day period preceding MLN's bankruptcy RFC and others took over the cash management of MLN. *See* Bloomberg News, *Mortgage Lenders Judge Can't Block Arrest, State Says*, Apr. 5,

2007. As a result, all of MLN's financial transactions and payments to creditors had to be approved by RFC.

184. Moreover, as discussed above, RFC extended warehouse lending facilities to MLN. On information and belief, these lending arrangements gave RFC access to the underlying Mortgage Loan file information, thus providing RFC the opportunity to assess the characteristics and performance of the loans, including increases in early payment defaults of the Mortgage Loans that occurred shortly after origination. In light of the increased defaults and RFC's access to the Mortgage Loan files, RFC was (or should have been) aware that MLN's underwriting practices did not conform to the requirements of the applicable underwriting standards.

185. RFC also made material misrepresentations to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the standards to which the Mortgage Loans were underwritten.

186. For example, RFC knowingly misrepresented to FGIC that the Mortgage Loans were evaluated by RFC at several critical junctures and determined by RFC to comply with RFC's own underwriting guidelines . In the Prospectus Supplement (and in the I&I Agreement by incorporation), RFC represented to FGIC that, prior to assigning the Mortgage Loans to its affiliate RASC, RFC "reviewed the underwriting standards for the mortgage loans" and determined that "all of the [M]ortgage [L]oans were in substantial conformity with the standards set forth in [RFC's] AlterNet Program or are otherwise in conformity with the standards set forth in the description of credit grades set forth in this prospectus supplement." Prospectus Supplement at S-56. In addition, in the section of the Prospectus Supplement titled "AlterNet Program," RFC represented that each and every Mortgage Loan purchased from the Seller was determined to be acceptable by RFC for inclusion in the 2007-EMX1 Transaction due to having

been originated in accordance with or generally consistent with the underwriting program applicable to this Transaction—namely, the AlterNet Program. *See* Prospectus Supplement at S-60. RFC also provided FGIC with the AlterNet Program's guidelines, which detailed the program's extensive underwriting standards and requirements. Moreover, the loan tape provided by RFC indicated that the Mortgage Loans were acquired and evaluated under those same guidelines.

187. Despite all of RFC's above-referenced representations to FGIC, among others, RFC was well aware at the closing of the 2007-EMX1 Transaction that those representations were false. It was not until years after the Transaction closed that RFC admitted that the Mortgage Loans were not underwritten to RFC's AlterNet Program. In 2009, FGIC sent RFC numerous repurchase requests after reviewing certain Mortgage Loans in the 2007-EMX1 Transaction. In those requests, FGIC cited material breaches of the I&I Agreement and the Operative Documents, including non-conformity to RFC underwriting guidelines, which rendered certain Mortgage Loans ineligible or non-conforming and required RFC to repurchase those loans. RFC responded to many of FGIC's repurchase requests by claiming that the Mortgage Loans *were* conforming because they were underwritten to MLN's guidelines and not RFC's AlterNet Program.

188. For example, in 2009, FGIC sent RFC repurchase requests for loan numbers 11213763 and 10687886 because those loans were non-conforming under the applicable AlterNet Program. In response to FGIC's repurchase request for loan number 11213763, RFC asserted that the loan *was* conforming because it was underwritten "using a Lite Documentation Program with a Negotiated Commitment between RFC and EMAX/MLN." RFC attached a chart purporting to represent the requirements of the program and admitted that such a program

required less documentation than the AlterNet Program. In response to FGIC's repurchase request for loan number 10687886, RFC asserted that the loan *did* qualify because "[t]he subject transaction was underwritten according to the EMAX Financial Group Wholesale Loan Program Guide for Stated Income Documentation Program." RFC asserted that this program allowed such a loan because, unlike the AlterNet Program, this other program "do[es] not have a minimum credit depth requirement."

189. RFC's responses noted above further indicate that the Loan Pool was not compliant with RFC's representation in the Prospectus Supplement that the Mortgage Loans were underwritten to AlterNet Program.

190. These admissions demonstrate that RFC did not review the underwriting standards for the Mortgage Loans and determine that all of the Mortgage Loans were in substantial conformity with RFC's AlterNet Program or the credit grades listed in the Prospectus Supplement. Instead, as RFC implicitly conceded in the rescission letters, these loans were evaluated and acquired under Emax and/or MLN's less demanding underwriting guidelines. Accordingly, RFC knew that its representations were materially false at the time of the closing or should have known that its representations were materially false.

191. Moreover, the A&A Agreement (and Prospectus Supplement as incorporated by reference in the I&I Agreement) also contained false and misleading representations about the Mortgage Loans. In particular, RFC misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule was true and correct in all material respects; (ii) the Mortgage Loans met certain credit grades; (iii) there was no default breach, violation or event of acceleration existing under any Mortgage Note or Mortgage; and (iv) the weighted average LTV

Ratio with respect to the Group I Loans, and the Group II Loans were 84.1% and 83.8%, respectively.

192. Therefore, at the time of the closing of the 2007-EMX1 Transaction, RFC either (1) knew or should have known that its representations were materially false because RFC had not, among other things, determined if the Mortgage Loans were in fact in "substantial conformity" with the AlterNet Program, or (2) had reviewed whether the Mortgage Loans were in "substantial conformity" with the AlterNet Program, had determined that they did not meet the standards of this program, but nonetheless materially misrepresented to FGIC that the Mortgage Loans were in "substantial conformity" with the AlterNet Program.

193. These representations were essential to FGIC's decision to issue the Policy. These representations and warranties were false when stated. RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and to issue the Policy. The true information regarding these loans, as detailed above, simply could not substantiate RFC's assurances. In short, no amount of RFC promising that the loans met certain standards actually made those promises true.

194. RFC's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC as well as to a multitude of suits and the potential for more litigation to come.

195. Consistent with this pattern of behavior, RFC defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

H. Ally Financial Aids and Abets RFC's Fraud

196. Ally Financial provided substantial assistance to RFC in fraudulently inducing FGIC to issue the Policy. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's

securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties RFC made regarding the nature of RFC's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

I. The Federal Government Alleges Fraud Against Ally Financial and Its Subsidiaries Relating to the 2007-EMX1 Transaction

197. As discussed above, the FHFA recently filed suit in the Supreme Court of New York against RFC for fraud, aiding and abetting fraud, and violating state and federal securities laws in connection with its role in the public filing of offering documents which allegedly contained false and misleading statements.

198. In support of its claims, the FHFA performed a review of loan-level data for randomly-selected 2007-EMX1 Group II Loans to assess whether the information provided in the Prospectus Supplement for the 2007-EMX1 Transaction was true and accurate. *See* FHFA Complaint at ¶ 94; Table 6. For each of the sampled loans, the FHFA used an industry standard automated valuation model ("AVM")—on information and belief, similar to the approach used by FGIC—to calculate the value of the underlying property at the time the mortgage loan was originated. (Id. ¶ 99).

199. Similar to FGIC's findings with respect to 2007-EMX1, the FHFA's review of the sample data confirmed, on a statistically-significant basis, that the information provided in the 2007-EMX1 Prospectus Supplement concerning owner-occupancy and LTV ratios was materially false.

200. The FHFA's analysis determined that RFC overstated the true percentage of non-owner-occupied properties within the 2007-EMX1 underlying Group II Loan Pool, overstated the true percentage of 2007-EMX1 underlying Group II Loans with a LTV ratio at or below 80

percent, and falsely represented that none of the loans had a LTV ratio above 100%. FHFA Complaint ¶ 98 & Table 6; ¶ 102 & Table 7.

J. RFC's Breach of Obligations as Master Servicer

(1) Failure to Remedy Subservicing Deficiencies and to Provide Information

201. RFC, as Master Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for the 2007-EMX1 Transaction, including, but not limited to, its obligations to follow proper servicing procedures, and to sufficiently monitor and manage the performance of the Subservicers with respect to their duties under the Transaction.

202. RFC took responsibility for the servicing of the Mortgage Loans through its wholly owned subsidiary HomeComings and affiliate GMACM. RFC had certain related contractual obligations under the I&I Agreement and the PSA with respect to the 2007-EMX1 Transaction. Under the I&I Agreement, RFC covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [PSA]." I&I Agreement § 2.02(l). Under the PSA, RFC is "obligated and liable to . . . [FGIC] for the servicing and administering of the Mortgage Loans," and in doing so is required to "follow[] such procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities. . . ." PSA §§ 3.01(a), 3.04. As such, on each occasion that HomeComings and/or GMACM failed to service and administer the Mortgage Loans in conformity with generally accepted servicing practices (including RFC's own servicing guidelines), RFC was liable "to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the Mortgage Loans." PSA §§ 3.01(a), 3.04.

203. During 2007, the servicing operations of RFC, GMACM and HomeComings were integrated into ResCap. Since the time of the integration, on information and belief, the Subservicers have been deficient in their borrower contact, collections and loss mitigation standards. An onsite review of the Ally Financial servicing arm's headquarters, including those of GMACM, HomeComings and RFC, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed among other issues: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when GMACM or HomeComings does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry, including forbearance plans and workout programs.

204. As performance of this transaction quickly began to deteriorate, FGIC hired a consultant to conduct an onsite servicing review focusing specifically on the servicing of loans in the 2007-EMX1 transaction. The onsite review revealed numerous deviations from industry standards specific to the servicing procedures used with respect to the mortgage loans backing the 2007-EMX1 Certificates. For example, borrowers of the 2007-EMX1 Mortgage Loans who were at risk of defaulting were offered forbearance plans more infrequently than the industry norm, and where forbearance plans were offered to such borrowers, the terms did not comport to, and were generally less generous than, typical industry standards. For instance, at-risk borrowers of the Mortgage Loans were offered only six-month forbearance plans, while the industry norm is to extend borrowers a twelve-month plan.

205. Beyond these forbearance deficiencies, the Subservicers of the Transaction committed other loss mitigation failures. For example, according to industry standards at that time, approximately 85% to 90% of the delinquent mortgage loans in a particular RMBS transaction are involved in some stage of the workout solution process that is designed to mitigate loss. Yet, with respect to the 2007-EMX1 Transaction, FGIC's March 25, 2009 onsite review revealed that only 73% of delinquencies for the preceding month had a workout solution in process, while 27% of the delinquent mortgage loans were not involved in any loss mitigation process whatsoever.

206. The failure by the Subservicers to follow appropriate standards likely resulted from, and was compounded by, the fact that, as of February 2009, the average loss mitigation associate employed by the Subservicers was handling approximately 250 accounts—a workload that was more than double the industry norm at that time.

207. The onsite review further revealed that the Subservicers had employed inadequate and improper practices concerning charged off loans and short sales, which, as of February 2009, had contributed to a pool-wide deficiency rate for the 2007-EMX1 Transaction of over 52%.

208. On information and belief, RFC has failed to remedy any of the deficient servicing practices of the Subservicers.

209. In addition, RFC disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

210. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. RFC disclosed to FGIC that all of the mortgage loans in FGIC-insured, RFC-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the 2007-EMX1 Transaction, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second- lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, RFC clearly knew that such Mortgage Loans, by their very nature, required particularized servicing such as that provided by HomeComings before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by RFC to ensure that the Mortgage Loans were serviced and administered in accordance with "good faith" business practices constitutes a breach of the PSA and the I&I Agreement. *See* PSA §§ 3.01(a), 3.04; I&I Agreement § 2.02(l).

211. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, RFC has still failed to provide such information.

(2) RFC allowed Excessive Loan Modifications And Amended the PSA without FGIC's Consent

212. RFC, as Master Servicer, agreed that it would "not modify, waive or amend, or consent to any modification, waiver or amendment of" the PSA without the prior written consent of FGIC. I&I Agreement § 2.03(b).

213. On August 12, 2009, RFC, through its counsel, requested FGIC's consent in order to execute an amendment (the "Purported Amendment") to allow RFC to modify 100% of the Mortgage Loans rather than what would otherwise be allowed under the PSA. On information and belief, as of December 2008 RFC had already far exceeded the 5% cap on allowable modifications in the 2007-EMX1 Transaction. FGIC requested that RFC provide FGIC with sufficient information, including RFC's policies and procedures used for underwriting and processing prospective mortgagors for the Home Affordable Modification Program, to respond to RFC's request for FGIC's consent. RFC never provided that information. Despite the fact that FGIC never consented to the additional loan modifications, it appears that RFC nonetheless proceeded as if its Purported Amendment had been adopted in contravention of FGIC's contractual rights. *See* I&I Agreement § 2.03(b).

214. Thus, to amend the PSA, RFC had to receive FGIC's consent. FGIC never gave its consent. Therefore, RFC breached section 2.03(b) of the I&I Agreement.

215. As of January 25, 2012 a total of approximately 25% of the original pool had been modified. Of the cumulative losses incurred to date, approximately $27 million or 13% of the loss is a result of the servicing modifications improperly performed to date.

216. On information and belief, RFC has collected significantly higher servicing fees as a result of adopting the Amendment and modifying particular Mortgage Loans.

217. FGIC has requested additional information in order to determine whether RFC is in breach of its servicing obligations. In contravention of FGIC's contractual rights, RFC has failed to provide such information, including servicing notes, to FGIC. On information and belief, RFC, as Master Servicer, also knew of material breaches of representations and warranties and did not notify FGIC thereof, or cause the repurchase of the Mortgage Loans affected thereby. Accordingly, FGIC reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

(3) RFC has been Improperly Removing Funds from the 2007-EMX1 Trust's Custodial Account

218. The Master Servicer is permitted under the 2007-EMX1 Transaction to withdraw funds from the 2007-EMX1 Transaction's custodial account ("Custodial Account"), into "which the Master Servicer shall deposit or cause to be deposited on a daily basis. . . payments and collections remitted by Subservicers or received by it in respect of the Mortgage Loans," including all principal and interest payments made by the borrowers, among other funds. PSA § 3.07(b). Such withdrawals are meant "to reimburse [RFC] or the related Subservicer for" an advance of funds that RFC, GMACM or HomeComings makes that is deemed to be "nonrecoverable." *See* PSA § 3.10(a)(vii). An advance is nonrecoverable when the Master Servicer determines, in its "good faith judgment," that the advance will not "be ultimately recoverable by the Master Servicer from related Late Collections, Insurance Proceeds, Liquidation Proceeds or REO Proceeds. . . and the Master Servicer determines that no other source of payment or reimbursement for such advances is available to it. . . ." PSA § 1.01.

219. Upon information and belief, RFC has been improperly declaring advances nonrecoverable in order to seek reimbursement of monies that RFC has been advancing as Master Servicer. Such declaration has improperly allowed RFC to remove funds from the

Custodial Account by improperly reimbursing itself for advances that should not be deemed nonrecoverable.

220. Even if RFC were to prove successfully that its reimbursements were made in good faith, RFC is still in breach of its servicing obligations because it has failed to comply with the provisions in the PSA regarding the process of declaring an advance nonrecoverable. The PSA requires RFC to transmit "a certificate of a Servicing Officer, Responsible Officer or Vice President or its equivalent" to FGIC that evidences RFC's decision to declare an advance nonrecoverable. However, the certificate must "include any other information or reports obtained by [RFC]. . . , which may support such determinations." PSA § 1.01. The so-called "Officer's Certificates" sent by RFC to FGIC to date have been executed by an employee identified as a "Manager," not a Servicing Officer, Responsible Officer, Vice President or its equivalent. Furthermore, RFC has also failed to include any supporting information or reports with its Officer's Certificates that would allow FGIC to determine that RFC is in fact using its good faith judgment.

K. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

221. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns RFC and GMACM. Ally Financial—as the ultimate parent of ResCap, RFC and GMACM—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, RFC and GMACM.

222. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, RFC and GMACM. Ally Financial exercised its

direction and control in connection with the 2007-EMX1 Transaction. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

223. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and the FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries[.]" *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

224. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of RFC Directly and Indirectly Through its Control of ResCap

225. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

226. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

227. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

228. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

229. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

230. On December 1, 2006, Ally Financial had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." GMAC LLC – Sale of Controlling Interest in GMAC Investor Conference Call (Dec. 1, 2006). On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

231. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

232. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the proposed 2005 operating agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." 2005 Operating Agreement (emphasis added).

233. Moreover, on April 26, 2007, "ResCap Investor Relations" announced the release of Ally Financial's 2007 first quarter financial results to investors in an email bearing the ResCap logo. That announcement stated that Ally Financial's financial results were found on both Ally Financial's and ResCap's websites.

234. Additionally, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a

[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the SEC Con March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

director at ResCap, GMACM, RFC, and RASC, among other Ally Financial subsidiaries. In the 2007-EMX1 Transaction, acting as a director of both RASC and RFC, Walker was a signatory to the "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors." Both documents are dated December 20, 2005.

235. Ally Financial's domination and control of its subsidiaries, and in particular its use of ResCap to effectuate that control, is further evidenced by John Ruckdaschel, who, according to publicly available information, has served as in-house counsel at Ally Financial since October 2006. According to an e-mail sent from ResCap to FGIC, Ruckdaschel has served as "internal legal counsel for all [] securitizations" since at least May 2008. Although purportedly an Ally Financial employee, Ruckdaschel also sent and received e-mail using a ResCap e-mail address. Furthermore, an employee of ResCap specifically instructed FGIC that all "official letters" regarding several Ally Financial subsidiaries—including GMACM, RFC, RASC, and others—should be sent not to the relevant (and supposedly independent) subsidiary, but rather to Ruckdaschel, Ally Financial's internal counsel.

236. Additionally, as discussed above, on May 24, 2011, FGIC sent RFC a demand for an Interim Certification for the 2007-EMX1 Transaction that has been unanswered to date. That same day, FGIC's demand was forwarded from Jeffrey Blaschko at RFC directly to Ruckdaschel at Ally Financial with "high importance." Blaschko included a note to Ruckdaschel that this was FGIC's "[s]econd request" for the Interim Certification.

237. Upon information and belief, that (1) FGIC was directed to address official correspondence that would otherwise go to ResCap and/or RFC to Ally Financial's in-house counsel, and (2) FGIC's demand letter was sent by RFC to Ruckdaschel, were done at Ally Financial's direction in order for Ally Financial to provide its subsidiaries with its controlling

input and approval before acting on FGIC's requests. As such, the ultimate decision by RFC not to respond to FGIC's request for the Interim Certification, and any other demands for information and remedies to which FGIC has a clear contractual right, was made by Ally Financial, which continues to direct the activities of its subsidiaries in their dealings with FGIC and others.

238. As further evidence of Ally Financial's domination over ResCap, the 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See* 2005 Operating Agreement.

239. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

240. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the

strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

241. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citi, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

242. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

243. Additionally, Annual Reports prepared by Ally Financial further note its pursuit of strategic alternatives with ResCap, and highlight the extent to which Ally Financial manipulated its control over its subsidiaries to enhance its own financial health. According to Ally Financial: "On December 31, 2009, we announced that due to our ongoing strategic review of how to best deploy GMAC's current and future liquidity, we decided to pursue strategic alternatives with respect to ResCap and committed to a plan . . . related to management's intent

to sell certain ResCap related assets and businesses. . . . In order to maximize value, we will consider a variety of options including one or more sales, spin-offs, or other potential transactions . . . [that we believe] should minimize the impact of any significant future losses related to ResCap's legacy mortgage business . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3-4 (Feb. 26, 2010).

244. There is also substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

245. Further, Ally Financial has established a "Mortgage Repurchase Reserve" to account for the potentially significant liabilities stemming from repurchase demands made on its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was $825 million as of the fourth quarter of 2011. See Ally Financial's 4Q 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of $44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

246. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable mortgage loan repurchases as belonging to Ally Financial, when he stated: "Our mortgage repurchase reserve is [as it then stood] $829 million . . . . Our loss experience improved during

the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011) (emphases added). Making this point even more explicitly, on the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8 (emphasis added).

247. Additionally, as discussed above, Ally Financial recorded a $230 million charge in the fourth quarter of 2011, $212 million of which was recorded at its controlled subsidiary, ResCap. As a result of the penalties assessed against ResCap by government regulators, and the fact that ResCap failed to maintain sufficient tangible net worth to comply with the requirements of the terms of certain credit facilities, Ally Financial propped up its subsidiary ResCap with a $197 million capital contribution in the form of intercompany debt forgiveness. *See* Ally Fin. Inc., Form 10-K, at 31-32 (Feb. 28, 2012).

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

248. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

249. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving

ResCap subsidiaries that FGIC insured, including the 2007-EMX1 Transaction. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

250. The origination and securitization of mortgage loans by ResCap and its subsidiaries have long been an integral part of Ally Financial's core business. In its 2006 Annual Report, Ally Financial (then reporting as GMAC LLC) stated that "[w]e are a leading real estate finance company focused primarily on the residential real estate market. Our business activities include the origination, purchase, servicing, sale and securitization of residential mortgage loans." GMAC LLC, Annual Report (Form 10-K), at 3 (Mar. 13, 2007) (emphasis added). Ally Financial further stated that "we utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy." *Id.* at 5 (emphasis added).

251. Ally Financial continued to publicly report on its own business and that of its subsidiaries in later filings on an integrated basis: "We engage in the origination, purchase, servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products. Mortgage operations include the Residential Capital, LLC (ResCap) legal entity, [and] the mortgage operations of Ally Bank . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3 (Feb. 26, 2010). More recently, continuing to discuss its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United

States and we provide collateralized lines of credit to other mortgage originators." Ally Fin. Inc., Annual Report (Form 10-K), at 4 (Feb. 28, 2012).

252. Moreover, as discussed above, Ally Financial—at least in the view of certain of ResCap's bondholders—is believed to have stripped assets from its subsidiary.

253. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed RFC and GMACM as part of its own business. For example, in its investor presentation from 2007, ResCap declares that RFC and GMACM "are owned *and operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial was not directly controlling RFC and GMACM, it was using ResCap as an instrument to do so.

254. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

255. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap

combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one RFC has with respect to the 2007-EMX1 Transaction as Master Servicer.

256. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

257. In another example, Larry Hipp, a member of ResCap's Risk Analyst/Investor Repurchase Department, communicated with FGIC regarding rescission requests using an Ally Financial email address, but in those very same emails, lists his ResCap contact information, including a ResCap email address. In addition, Ally Financial/ResCap used to send FGIC secure communications bearing the "GMAC ResCap" logo, but those same secure communications now have an "Ally Financial" logo.

258. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

Q: Could you please state your name for the record.
A: My name is Jeffrey Stephan.
Q: Okay. And who do you work for?
A: GMAC, LLC [Ally Financial].
Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
Q: Okay.
A: It's GMCA [sic] Mortgage Corporation.
Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

L. FGIC's Contractual Remedies Under The I&I Agreement

259. The I&I Agreement provides FGIC with broad remedies for RFC's breaches of its representations and warranties. The breadth of these remedies provided further material inducement for FGIC to issue the Policy. Specifically, Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this [I&I] Agreement, the [PSA] or the other Operative Documents, or existing at law or in equity.

260. RFC also agreed in Sections 3.03(b) and 3.03(c) of the I&I Agreement:

> Anything in Sections 2.01(a)(xii) and 3.03(a) hereof or in any Operative Document to the contrary notwithstanding, [FGIC] shall be entitled to full reimbursement from RFC for (i) any payment made under the Policy arising as a result of RFC's failure to substitute for or deposit an amount in respect of any defective Mortgage Loan as required pursuant to Section 4 and Section 5 of the [A&A] Agreement, together with interest on any and all such amounts remaining unreimbursed . . . from the date such amounts became due until paid in full. . . .

I&I Agreement § 3.03(b); and

> RFC agrees to pay to [FGIC] any and all reasonable charges, fees, costs and expenses that [FGIC] may reasonably pay or incur, including reasonable attorneys' and accountants' fees and expenses, in connection with (i) the enforcement, defense or preservation of any rights in respect of any of the Operative Documents, including defending, monitoring or participating in any litigation or proceeding . . . relating to any of the Operative Documents . . . .

I&I Agreement § 3.03(c).

261. In addition, RFC agreed in Section 3.04(a) of the I&I Agreement:

> to pay, and to protect, indemnify and save harmless, [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach by RFC. . . of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the transactions contemplated by the Operative Documents by reason of . . . . the breach by RFC. . . of any representation, warranty . . . or covenant under any of the Operative Documents or the occurrence, in respect of RFC. . . , under any of the Operative Documents of any "event of default" . . . .

I&I Agreement §§ 3.04(a), 3.04(a)(iv).

262. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, RFC agreed to repurchase or substitute Mortgage Loans that did not conform

to RFC's representations and warranties, and to indemnify FGIC for claims and losses arising from RFC's breach of any representation or warranty.

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Material Breach of the I&I Agreement—Declaratory Relief Regarding RFC's Indemnification Obligation)

263. FGIC re-alleges and incorporates by reference paragraphs 1 through 262 of this Complaint.

264. The I&I Agreement is a valid and binding agreement between the parties.

265. FGIC has performed its obligations under the I&I Agreement.

266. RFC's representations and warranties were material to FGIC's decision to insure the 2007-EMX1 Certificates and to issue the Policy.

267. RFC's pervasive and material breaches of its representations and warranties, from the very inception of the Transaction and in the years since, constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

268. Pursuant to Section 3.04(a) of the I&I Agreement, RFC must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things, the breach by RFC of any representation, warranty, or covenant under any of the respective Operative Documents.

269. As explained above, RFC has breached numerous representations and warranties in the 2007-EMX1 Offering and Operative Documents, for example, those contained in Section 2.01 of the I&I Agreement. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

270. On April 13, 2011, FGIC sent RFC a request for reimbursement in the amount of $197,990 for fees FGIC incurred in connection with the repurchases by RFC of the Mortgage Loans RFC admitted did not qualify for inclusion in the 2007-EMX1 Transaction. RFC never responded to FGIC's request and has not tendered payment.

271. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

272. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must jointly and severally indemnify and reimburse FGIC for all sums arising out of the 2007-EMX1 Transaction for which FGIC has or will become liable, or, alternatively, for all loss resulting from any breaches of the representations, warranties and covenants of the I&I Agreement or any of the respective Operative Documents, or alternatively, in an amount to be determined at trial, and an order giving effect to such indemnification.

273. In addition, FGIC seeks a declaration that RFC must indemnify and reimburse FGIC for all sums arising out of the 2007-EMX1 Transaction for which FGIC has or will become liable, or, alternatively, for all loss resulting from any breaches of the representations, warranties and covenants of the I&I Agreement or any of the respective Operative Documents, or alternatively, in an amount to be determined at trial, and an order giving effect to such indemnification.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Fraudulent Inducement—I&I Agreement)

274. FGIC re-alleges and incorporates by reference paragraphs 1 through 273 of this Complaint.

275. RFC induced FGIC to enter into the I&I Agreement and to issue the Policy by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

276. As explained above, RFC knowingly made materially false statements to, and/or omitted material facts from, FGIC with the intent to induce detrimental reliance by FGIC.

277. RFC intended for FGIC to rely on RFC's material false statements and/or omissions. FGIC had no reason to believe that RFC's representations were false, and reasonably and justifiably relied on RFC's material false statements and/or omissions regarding information uniquely in the possession of RFC when it decided to enter into the I&I Agreement and to issue the Policy for the 2007-EMX1 Certificates.

278. As a result of RFC's material false statements and omissions, FGIC entered into the I&I Agreement, issued the Policy, and thereby agreed to insure certificates backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that RFC represented would collateralize the 2007-EMX1 Transaction.

279. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

280. As a result of RFC's material false statements and omissions, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

281. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

282. In addition, RFC is separately liable for such damages.

THIRD CAUSE OF ACTION

(Alternatively Against Ally Financial: Aiding and Abetting Fraudulent Inducement—I&I Agreement)

283. FGIC re-alleges and incorporates by reference paragraphs 1 through 282 of this Complaint.

284. As explained above, Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to issue the Policy.

285. RFC could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

286. Ally Financial knew that RFC fraudulently induced FGIC to issue the Policy for the 2007-EMX1 Transaction.

287. Ally Financial's statements materially aided RFC's fraudulent inducement.

288. As a result of Ally Financial's aiding and abetting RFC's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Representations, Warranties, and Affirmative Covenants)

289. FGIC re-alleges and incorporates by reference paragraphs 1 through 288 of this Complaint.

290. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

291. FGIC has performed its obligations under the I&I Agreement.

292. As explained above, RFC has materially breached its representations, warranties and affirmative covenants under the I&I Agreement.

293. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

294. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

295. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

296. In addition, RFC is separately liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Repurchase Obligations)

297. FGIC re-alleges and incorporates by reference paragraphs 1 through 296 in this Complaint.

298. The I&I Agreement is a valid and binding agreement between the parties.

299. FGIC has performed its obligations under the I&I Agreement.

300. Pursuant to the terms of the I&I Agreement, and the provisions of the Operative Documents incorporated therein, FGIC has demanded that RFC repurchase non-complying Mortgage Loans. RFC has refused to repurchase numerous such Mortgage Loans.

301. RFC has breached the I&I Agreement, and the provisions of the Operative Documents incorporated therein, by failing to repurchase those Mortgage Loans that violated RFC's representations and warranties that FGIC has noticed to RFC.

302. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

303. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

304. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

305. In addition, RFC is separately liable for such damages.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Declaratory Relief Regarding Access to Information)

306. FGIC re-alleges and incorporates by reference paragraphs 1 through 305 of this Complaint.

307. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

308. FGIC has performed its obligations under the I&I Agreement.

309. Pursuant to Section 2.02(c) of the I&I Agreement, RFC agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the 2007-EMX1 Transaction. FGIC further has the right to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(m) of the I&I Agreement.

310. As discussed above, pursuant to the I&I Agreement, FGIC made numerous reasonable written requests that RFC furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by RFC, and others, concerning the Mortgage Loans.

311. RFC has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

312. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

313. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, RFC agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer; and (iii) discuss the affairs, finances and accounts of RFC with RFC's independent accountants.

314. On December 8, 2011, FGIC made a reasonable, written request that RFC permit FGIC or its authorized agent to conduct an inspection of the books and records of RFC, as well as permit FGIC to (i) discuss the affairs, finances and accounts of RFC with (i) RFC's Servicing Officer, and (ii) RFC's independent accountants with RFC's consent, which consent shall not be unreasonably withheld or delayed.

315. RFC has failed to make available such persons or to produce such information.

316. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

317. Pursuant to Section 2.02(e) of the I&I Agreement, RFC agreed, on an annual basis or when reasonably requested by FGIC, to cause the Custodian to deliver to FGIC an updated certification, in the form of the Interim Certification required under the 2007-EMX1 Custodial Agreement to enable FGIC to track the progress of the recording of Mortgages and Assignments with respect to the Mortgage Loans.

318. FGIC made a reasonable request for the Interim Certification on June 21, 2011.

319. RFC has failed to cause the Interim Certification to be delivered to FGIC as requested. On December 8, 2011, FGIC again notified RFC of its failure to perform under the I&I Agreement, but RFC continued to fail to cause the Interim Certification to be delivered to FGIC.

320. RFC has failed to comply with its contractual obligations and breached the I&I Agreement by failing to cause the Interim Certification to be delivered to FGIC after receiving reasonable requests from FGIC.

321. Pursuant to Section 2.02(c)(iv) of the I&I Agreement, RFC agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [PSA]."

322. FGIC made a reasonable request for servicing notes on December 9, 2010.

323. RFC has failed to comply with its contractual obligations and breached the I&I Agreement, Section 2.02(e), by failing to cause the Servicing Notes to be delivered to FGIC after receiving reasonable requests from FGIC.

324. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action, as evidenced by Ally Financial's involvement as described more fully in paragraphs 235-237 above.

325. Accordingly, FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must comply with Sections 2.02(c), 2.02(e) and 2.02(m) of the I&I Agreement, and an order requiring RFC to promptly remedy those breaches and therefore comply with FGIC's requests and notices to RFC pursuant to relevant provisions, as detailed above.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Master Servicer Obligations)

326. FGIC re-alleges and incorporates by reference paragraphs 1 through 325 of this Complaint.

327. The I&I Agreement is a valid and binding agreement between FGIC and RFC.

328. FGIC has performed its obligations under the I&I Agreement.

329. As explained above, RFC has materially breached its representations and warranties under section 2.03(b) of the I&I Agreement by purporting to amend the Operative Documents without FGIC's prior and necessary consent.

330. Moreover, as explained above, RFC has breached its affirmative covenant under the I&I Agreement to service all Mortgage Loans in all material respects in compliance with the PSA.

331. RFC's breaches of the I&I Agreement have caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on the Policy and other losses and expenses.

332. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

333. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

334. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

335. In addition, RFC is separately liable for such damages.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief)

336. FGIC re-alleges and incorporates by reference paragraphs 1 through 335 of this Complaint.

337. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this complaint.

338. For the reasons set forth in paragraphs 221 through 258, among others, Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

339. FGIC has been damaged as a result of the actions of Ally Financial, ResCap and RFC.

340. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other, and therefore are jointly and severally liable for each other's liabilities.

NINTH CAUSE OF ACTION

(As Against RFC: Attorneys' Fees and Costs)

341. FGIC re-alleges and incorporates by reference paragraphs 1 through 340 of this Complaint.

342. The I&I Agreement is a valid and binding agreement between the parties.

343. FGIC has performed its obligations under the I&I Agreement.

344. Pursuant to Section 3.03(c) of the I&I Agreement, RFC agreed to reimburse FGIC for any and all costs or expenses "including reasonable attorneys'. . . fees and expenses" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, RFC agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2007-EMX1 Transaction.

345. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of RFC's failure to provide Mortgage Loan files, the Interim Certification, Servicing Notes, and financial information and its breach of the representations and warranties contained in Section

2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant Residential Funding Company, LLC, with respect to (1), (2), and (4) through (15) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (12), (14), and (15) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (12), (14), and (15) below and the following relief:

(1) A declaration that, pursuant to RFC's obligations under the I&I Agreement, RFC solely and/or Ally Financial, ResCap, and RFC must jointly and severally reimburse and indemnify FGIC for all sums arising out of the 2007-EMX1 Transaction for which FGIC has or will become liable, or, alternatively, for all losses resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the respective Operative Documents, or alternatively, in an amount to be determined at trial, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal rescissory, equitable, and punitive damages, to be proven at trial, for RFC's fraudulent inducement of FGIC to enter into the 2007-EMX1 Transaction and to issue the Policy;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's aiding and abetting of RFC's fraudulent inducement of FGIC to enter into the 2007-EMX1 Transaction and to issue the Policy;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for RFC's material breaches of the 2007-EMX1 Transaction;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for RFC's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that RFC must repurchase all Mortgage Loans that are in breach of RFC's representations and warranties in the 2007-EMX1 Transaction, and an order giving effect to that declaration;

(7) Further or alternatively, a declaration that RFC must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2007-EMX1 Transaction, and an order giving effect to that declaration;

(8) Further or alternatively, a declaration that RFC must allow FGIC to inspect the books and records of RFC, to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants, and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that RFC must cause servicing notes to be provided for the 2007-EMX1 Transaction when requested by FGIC, and an order giving effect to that declaration;

(10) Further or alternatively, a declaration that RFC must cause to be provided the custodial Interim Certification when requested by FGIC for the 2007-EMX1 Transaction stating that all mortgage files were complete and were properly transferred into the trusts, or noting any exceptions, and an order giving effect to that declaration;

(11) Further or alternatively, an award of legal and equitable damages, to be proven at trial, for RFC's purported amendment of the PSA without FGIC's consent;

(12) Further or alternatively, a declaration that Ally Financial, ResCap, and RFC are alter egos of each other and are jointly and severally liable for each other's liabilities;

(13) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(14) An award of prejudgment interest at the statutory rate; and

(15) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: March 5, 2012

JONES DAY

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Michael J. Dailey
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 23

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

-against-

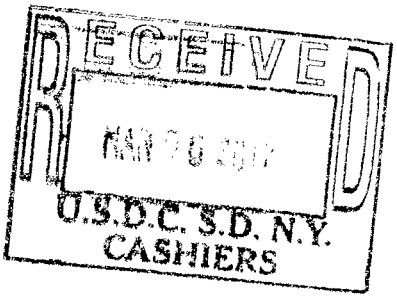
ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; ALLY BANK F/K/A GMAC BANK; GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION,

Defendants.

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Civil Action No. 12 CV 1658

COMPLAINT



Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"), Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"), Ally Bank, formerly known as GMAC Bank ("Ally Bank"), and GMAC Mortgage, LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with a financial guaranty insurance policy (the "2006-HE3 Policy" or the "Policy") issued by FGIC in relation to a GMACM-sponsored transaction (the "2006-HE3 Transaction" or the "Transaction"), in which GMACM Home Equity Loan Trust 2006-HE3 (the "2006-HE3 Trust" or the "Trust") issued and sold to investors over $1.14 billion aggregate principal amount of insured residential mortgage-

backed securities (the "2006-HE3 Notes"). As the sponsor of the 2006-HE3 Transaction, GMACM procured the Policy from FGIC in order to enhance the ratings and marketability of the 2006-HE3 Notes. GMACM fraudulently induced FGIC's agreement to provide this insurance through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices and the credit quality and characteristics of the tens of thousands of mortgage loans (individually the "Mortgage Loans," and collectively the "Loan Pool") that provided the collateral for the 2006-HE3 Notes. In short, the Mortgage Loans were different—and demonstrably worse—than GMACM had represented them to be. FGIC's issuance of the Policy enabled the 2006-HE3 Notes to receive a triple-A rating from the rating agencies, which in turn made the 2006-HE3 Transaction viable, and enabled GMACM and its affiliates to earn millions of dollars in transaction fees.

2. Since the closing of the 2006-HE3 Transaction, GMACM has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the 2006-HE3 Transaction, GMACM has violated the essential terms of its agreement with FGIC. GMACM has also breached the essential terms of the other operative documents incorporated therein.

3. To induce FGIC to enter into the Transaction, GMACM made material representations and warranties to FGIC about the manner in which the Mortgage Loans were selected and evaluated and the characteristics of the Loan Pool generally. Among the numerous misrepresentations and omissions made by GMACM regarding the characteristics of the Loan Pool was the representation that, of the Mortgage Loans transferred to the 2006-HE3 Trust at the time of the closing of the Transaction (the "Initial Mortgage Loans"), no more than 7.61% of the aggregate principal amount of those loans would be balloon mortgage

loans. As explained more fully below, the credit risk inherent in a balloon mortgage loan is typically much higher than that of a non-balloon mortgage loan. Accordingly, the representations and warranties GMACM made in respect of the balloon mortgage loans were a crucial component in assessing the true credit risk of the Transaction. In this Transaction, while GMACM represented and warranted in several instances that no more than 7.61% of the aggregate principal amount of the Initial Mortgage Loans would be balloon mortgage loans, in fact more than 26% of the aggregate principal amount of those loans consisted of these substantially higher-risk mortgages. Indeed, the Loan Pool as measured at closing (the "Initial Loan Pool") contained over 3,000 more balloon mortgage loans than GMACM's representations indicated it would contain.

4. The wholesale misrepresentation by GMACM regarding the balloon mortgage loans in the offering and operative documents governing the Transaction, and the gross over-inclusion of thousands more such mortgage loans in the Initial Loan Pool, provide the most obvious and egregious—but by no means the only—examples of the myriad ways in which GMACM (i) fraudulently induced FGIC to issue the Policy and (ii) materially breached its contractual obligations to FGIC.

5. The wrongdoing committed by GMACM, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through its wholly-owned subsidiary, ResCap. Ally Financial is the ultimate parent of ResCap, which owns GMACM. Ally Financial, as the ultimate parent of ResCap and GMACM, has the practical ability, which it has repeatedly exercised, to direct and control the activities of these (and other) subsidiaries. In many instances—including in this Transaction—Ally Financial's direction and control was effected by using ResCap as an intermediary instrument to achieve its goals. For example,

many of the material contractual breaches committed by GMACM, concerning, primarily, FGIC's right to access information in GMACM's possession and GMACM's failure to repurchase or cure certain of the Mortgage Loans backing the 2006-HE3 Notes that FGIC sought to have repurchased, were carried out by ResCap at the direction and control of Ally Financial.

6. GMACM was also substantially assisted in fraudulently inducing FGIC to issue the Policy by another Ally Financial subsidiary, Ally Bank, then doing business as GMAC Bank. Ally Bank and GMACM were the two principal originators of loans that became the collateral for the 2006-HE3 Transaction, and as such had intimate knowledge of the quality of the Loan Pool. In total, Ally Bank sold over $750 million in loans—accounting for approximately 88% of the Initial Loan Pool—that it had originated or acquired to GMACM to be securitized in the 2006-HE3 Transaction. Further, Ally Bank agreed to serve as custodian of the 2006-HE3 Transaction (the "Custodian")—one of the critical parties charged with certain oversight and maintenance duties with respect to the 2006-HE3 Trust—and received certain key operative documents with respect to the Transaction. With knowledge of GMACM's material misrepresentations and omissions regarding the Mortgage Loans, Ally Bank separately made representations and warranties regarding those loans for the purpose of aiding GMACM's inducement of FGIC to issue the Policy. By assisting GMACM in inducing FGIC to issue the Policy, Ally Bank was able to collect substantial fees as custodian and perpetuate its lucrative loan origination business.

7. Ally Bank has materially breached its own separate contractual agreement regarding its duties as Custodian, in particular by failing to ensure that essential documents

were included in the loan file and failing to notify FGIC of breaches of representations and warranties by GMACM of which Ally Bank was aware.

8. The 2006-HE3 Transaction is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among GMACM and several other parties whereby tens of thousands of home equity loans were pooled together and transferred to the 2006-HE3 Trust, which then issued to investors securities (*i.e.*, the 2006-HE3 Notes) collateralized by those loans.

9. In August 2006, FGIC and several other parties entered into the 2006-HE3 Transaction. The 2006-HE3 Transaction was sponsored by GMACM. To facilitate the Transaction, GMACM pooled together over sixteen thousand Mortgage Loans to provide collateral for the 2006-HE3 Notes. All of the Mortgage Loans were either originated or acquired by GMACM or Ally Bank.

10. After pooling the Mortgage Loans originated or acquired by GMACM and Ally Bank, GMACM transferred the Mortgage Loans directly or indirectly to another Ally Financial subsidiary, Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then deposited the Mortgage Loans it received from GMACM into the 2006-HE3 Trust. The 2006-HE3 Trust, in turn, issued the 2006-HE3 Notes to investors. The 2006-HE3 Trust was a legal entity created by GMACM solely for the purposes of the 2006-HE3 Transaction to hold the Mortgage Loans and to issue the 2006-HE3 Notes to investors in a registered public offering.

11. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the Trust are used to pay, among other things, principal and interest due on the 2006-HE3 Notes, and the fees and expenses of GMACM and other participants in the Transaction.

12. GMACM also acted as servicer of the 2006-HE3 Transaction (the "Servicer"). As Servicer, GMACM supervised the collection of borrower payments and performed other duties related to servicing the Mortgage Loans. As discussed in more detail below, all of GMACM's servicing operations have since been integrated into ResCap. Yet another Ally Financial subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was co-manager of the 2006-HE3 Transaction. In addition, JPMorgan Chase Bank, N.A ("JPMorgan") agreed to act as indenture trustee of the Trust (the "Indenture Trustee").

13. GMACM, directed and controlled by Ally Financial, is, therefore, the hub of the 2006-HE3 Transaction: it is the sponsor of the securitization, the originator and seller of many of the Mortgage Loans, and has acted as servicer of all the loans that collateralize the 2006-HE3 Notes. The primary victim of the 2006-HE3 Transaction—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by GMACM—is FGIC, which has already paid out tens of millions of dollars in losses under the Policy, with further material losses still to come.

14. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed notes ("RMBS Notes"). At the time of the 2006-HE3 Transaction, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Notes typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of principal losses allocated to the RMBS

Notes. FGIC's insurance policies thus enhanced the credit quality, and marketability, of the insured securities.

15. To enhance the ratings and marketability of the 2006-HE3 Notes, and to increase the profit that GMACM would derive from the 2006-HE3 Transaction, GMACM sought to have FGIC issue the Policy to JPMorgan, as Indenture Trustee for the 2006-HE3 Notes for the benefit of the holders of the 2006-HE3 Notes.

16. As noted, to induce FGIC to issue the Policy, GMACM, *inter alia*, offered certain material representations and warranties to FGIC regarding the Transaction. These representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2006-HE3 Transaction. Additionally, those representations and warranties were false when they were restated by GMACM (for example, when GMACM added new loans to the mortgage pool). As a result, FGIC was fraudulently induced to enter the Transaction, and the credit risk assumed by FGIC in connection with the Transaction was far greater than it would have been had GMACM's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

17. GMACM received substantial assistance from Ally Bank in fraudulently inducing FGIC to issue the Policy. Ally Bank was aware of the material misrepresentations GMACM had made to FGIC, and further represented to FGIC that it would undertake duties to monitor and certify the accuracy and completeness of certain material aspects of the Mortgage Loan files, as well as inform FGIC of certain failures by GMACM to comply with its obligations under the 2006-HE3 Transaction documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would

not comply—with its representations and warranties to FGIC. As such, Ally Bank actively aided and abetted GMACM's fraudulent inducement of FGIC to issue the Policy.

18. Moreover, both GMACM and Ally Bank received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policy. Ally Financial took actions and made statements to boost investor confidence in, and otherwise finance and support, its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations GMACM and Ally Bank had made to FGIC. As a result of its dominance over ResCap, Ally Bank, and GMACM, Ally Financial knew that the representations and warranties GMACM and Ally Bank made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted GMACM's and Ally Bank's fraudulent inducement of FGIC to issue the Policy.

19. The increased credit risk inherent in the Mortgage Loans—as a result, in part, of the high percentage of the aggregate principal amount of the Initial Loan Pool that was comprised of balloon and other high-risk Mortgage Loans—has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policy in reliance on the (presumed) accuracy and truthfulness of GMACM's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and the resulting amount of claims presented to FGIC have been overwhelming. Had FGIC been told the truth about the nature of GMACM's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the

Policy, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of GMACM's misconduct.

20. Certain of the material contractual breaches committed by GMACM and Ally Bank—including, but not limited to, its refusal to honor FGIC's right to access information in GMACM's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

21. Through this Complaint, FGIC seeks relief against GMACM, Ally Bank, ResCap, and Ally Financial for GMACM's fraudulent inducement of FGIC, and for GMACM's material breaches of its insurance agreement with, and contractual obligations owed to, FGIC in connection with the 2006-HE3 Transaction.

22. Further, FGIC seeks relief against Ally Financial and Ally Bank for aiding and abetting GMACM's fraudulent inducement, as well as for Ally Bank's material breaches of its contractual obligations to FGIC.

23. FGIC also seeks a declaration from the Court that Ally Financial, ResCap and GMACM were and continue to be alter egos of each other.

THE PARTIES

24. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

25. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial is the parent company of ResCap, GMACM, and all GMACM-affiliated entities relevant to this action.

26. Defendant GMACM is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. In the period relevant to this action,

GMACM originated, acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

27. Since 2005, GMACM has been an indirect wholly-owned subsidiary of ResCap; prior to that time, GMACM was an indirect, wholly-owned subsidiary of Ally Financial.

28. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of GMACM and its business includes originating, acquiring, selling, and servicing mortgage loans.

29. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

30. Defendant Ally Bank (f/k/a GMAC Bank), an indirect, wholly-owned subsidiary of Ally Financial, was at all times relevant to this Complaint a loan originator. To facilitate the 2006-HE3 Transaction, Ally Bank sold to GMACM over $750 million in mortgage loans that it had originated or acquired to be securitized in the Transaction. These loans comprised nearly 88% of the initial Mortgage Loans. GMAC Bank was renamed Ally Bank in May 2009. Ally Bank is an online bank chartered under Utah law.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

32. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred within this judicial district. Moreover, at

least one of the defendants in this action, GMACM, has agreed to submit to the jurisdiction of this Court, and has agreed not to challenge venue in this Court.

RELEVANT NON-PARTIES

33. RAMP, a special purpose vehicle, is an indirect, wholly owned subsidiary of Ally Financial and a Delaware corporation with its principal place of business in Minnesota. To facilitate the 2006-HE3 Transaction, RAMP purchased mortgage loans from GMACM and Walnut Grove Mortgage Loan Trust 2003-A ("Walnut Grove") and deposited those loans into the 2006-HE3 Trust. The trust then issued the 2006-HE3 Notes to the underwriters, including Ally Securities (then doing business as GMAC RFC Securities), to be sold to investors.

34. Ally Securities, an entity incorporated in Delaware, is an affiliate of GMACM and RAMP and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the 2006-HE3 Notes and, on information and belief, participated in the preparation of certain of the key offering documents for the 2006-HE3 Transaction.

35. Walnut Grove is a Delaware statutory trust established by an affiliate of GMACM. Beginning in 2003, GMACM sold to Walnut Grove second-lien mortgage loans that it had originated or acquired. To facilitate the 2006-HE3 Transaction, Walnut Grove sold certain of the Mortgage Loans to RAMP.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

36. In the period relevant to this action, GMACM originated, acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of

those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Notes.

37. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including those of GMACM, Ally Bank, and ResCap, led Ally Financial to seek a bailout by the federal government in 2008.

(1) GMACM, GMAC-RFC, and RFC

38. GMACM is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

39. Residential Funding Corporation, LLC ("RFC") is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate GMACM, RFC engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

40. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

41. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in

January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

42. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with GMACM. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

43. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

44. Ally Financial's business model depended on securitizations, which were conducted by its business units, including GMACM. Pooling mortgage loans and selling them into securitizations enabled GMACM to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

45. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, GMACM generally acted as servicer of its own securitizations. GMACM thereby earned servicing fees that normally amounted to 0.50% per annum of the aggregate principal balance of the mortgage loans, as well as collected fees in the range of approximately 20%-35% of any subsequent recoveries from charged-off loans.

46. GMACM also enriched Ally Financial and its other subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the 2006-HE3 Transaction:

- Ally Bank gained fees for originating nearly 88% of the loans initially comprising the 2006-HE3 Trust, and proceeds from selling those loans to GMACM; Ally Bank also gained fees as custodian of the 2006-HE3 Trust for holding certain documents;
- Walnut Grove received the proceeds from selling certain of the Mortgage Loans to RAMP (after purchasing over 28% of the loans from GMACM);
- RAMP received payments for serving as the depositor of the Mortgage Loans to the 2006-HE3 Trust; and
- Ally Securities received fees for underwriting the 2006-HE3 Notes.

(3) Ally Financial, GMACM, and RFC Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

47. GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection

with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

48. Additionally, on September 2, 2011, the Federal Housing Finance Authority ("FHFA"), as conservator for Freddie Mac, filed suit in the Supreme Court of the State of New York, New York County against Ally Financial and several of its subsidiaries for claims arising in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in certificates issued through twenty-one transactions similar to the transaction at issue here. Among other claims, FHFA brought suit for common law fraud against various Ally Financial subsidiaries and aiding and abetting fraud against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates.

49. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA also alleges aiding and abetting fraud against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs. In October 2011, Ally Financial and its co-

defendants removed the FHFA action to the U.S. District Court for the Southern District of New York.

50. In addition, GMACM is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that in connection with three transactions similar to the one at issue here, GMACM affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of more than $4 billion, as a means of unfairly shifting to investors and MBIA risks that GMACM should have borne itself. On December 15, 2010, the New York Supreme Court issued a ruling denying GMACM's motion to dismiss, which allowed both the breach of representations and warranties and fraud claims, among others, to proceed to trial.

51. GMACM's sister company, RFC, is also currently facing a lawsuit brought by MBIA in New York Supreme Court for, among other things, fraud and breach of representations and warranties in connection with RMBS transactions. In December 2009, the New York Supreme Court rejected RFC's motion to dismiss certain of the claims brought against it, allowing both the breach of contract and fraud claims, among others, to proceed.

52. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two suits in various jurisdictions pending against Ally Financial's mortgage-related business units and subsidiaries arising from numerous mortgage-backed securities offerings. The plaintiffs in those suits have alleged, among other things, that Ally Financial's various mortgage subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4,

2011). Further, in its 2011 annual report, Ally Financial stated that it expects additional similar claims to be brought against Ally Financial and/or its subsidiaries in the future. *See* Ally Fin. Inc., Annual Report (Form 10-K), at 20 (Feb. 28, 2011).

53. Since the filing of its November 2011 quarterly report, moreover, Ally Financial and its subsidiaries have been sued by additional plaintiffs, including HSH Nordbank AG, which have alleged, *inter alia*, material misrepresentations and omissions about the loans backing RMBS securities issued by Ally Financial's affiliates.

54. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. During 2011, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. Ally Financial evidently clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own Securities and Exchange Commission ("SEC") filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Annual Report (Form 10-K), at 98 (Feb. 28, 2012).

55. Indeed, according to Ally Financial's 2011 annual report, Ally Financial, GMACM's parent, also believes that "[t]he total exposure . . . to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions implemented in 2008 and forward." Ally

Fin. Inc., Annual Report (Form 10-K), at 224 (Feb. 28,, 2012). The 2006-HE3 Transaction is, as its name implies, of the 2006 vintage.

56. Additionally, Ally Financial also disclosed that the SEC served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *See* Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

(4) The Mortgage Loan Servicing Misconduct of Ally Financial and GMACM Has Come Under Scrutiny and Resulted in Severe Sanctions

57. On February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, and several other mortgage loan servicers would be required to pay $766.5 million in monetary sanctions for "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Federal Reserve Board (February 9, 2011). On February 12, 2012, the Federal Reserve Board imposed well over $200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an Assessment Order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See* Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, FRB Docket No. 12-006-CMP-HC (February 12, 2012) (the "Assessment Order"). According to the Federal Reserve Board, the sanction "takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the

institutions' misconduct, and the comparative sizes of the institutions' foreclosure activities." *See* Press Release, Federal Reserve Board (February 9, 2011).

58. Further, also on February 9, 2012, the U.S. Attorney General announced that Ally Financial will take part in a $25 billion settlement to resolve claims brought by the government in response to the "reckless and abusive mortgage practices" of Ally Financial and four similarly situated bank holding companies. *See* Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple state attorneys general, *see id.*; National Mortgage Settlement Website, Settlement Documents > Servicing Standard Highlights, *available at* http://www.nationalmortgagesettlement.com/ (last visited Feb. 12, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper origination, securitization, and servicing practices, *see id.*, About the Settlement, *available at* http://www.nationalmortgagesettlement.com/about (last visited Feb. 12, 2012).

59. According to the U.S. Attorney General, the $25 billion settlement and $766.5 million sanction are just "the latest step forward" in holding Ally Financial and others accountable for "egregious mortgage loan servicing abuses." *See* Attorney General Holder, Remarks at the Mortgage Servicers Settlement Press Conference.

60. Similarly, the New York Attorney General recently announced a $136 million settlement with the nation's five largest mortgage servicers—including GMAC/Ally Financial. *See* Office of the New York Attorney General Press Release, *Schneiderman Secures Major Settlement That Allows Sweeping Mortgage Investigations To Proceed*, *available at* http://www.ag.ny.gov/media_center/2012/feb/feb9b_12.htm. As the New York

Attorney General noted, the settlement principally addressed "foreclosure abuses" by GMAC/Ally Financial and other banks, and "[i]n addition to penalties for past abuses, the settlement includes direct relief to victims of wrongful foreclosure conduct" and "imposes strong national standards for mortgage servicing" that had previously been lacking. *Id.* Additionally, the New York Attorney General's office will lead the new Residential Mortgage-Backed Securities Working Group, a component of the interagency Financial Fraud Enforcement Task Force led by the DOJ, which "brings together the Department of Justice, several state law enforcement officials, and other federal agencies to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities." *Id.*

61. In addition to these recent settlements and Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the "FDIC") previously ordered Ally Financial, GMACM, and several other Ally Financial subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

62. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries, including GMACM, have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

63. Furthermore, under the Consent Order, Ally Financial must direct GMACM and its other mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

64. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure processes of GMACM to request an independent review of their files. *See* Press Release, Federal Reserve Board (November 1, 2011). This independent review will determine whether errors and misrepresentations in GMACM's foreclosure processes indeed caused financial harm to the borrower. *See id.* If the foreclosure process is found to have caused financial injury to the borrower, GMACM will then be required to provide full compensation. *See id.*

65. As a result of servicing misconduct, Ally Financial and other bank holding companies will now be required to adhere to new, heightened servicing standards. *See* Press Release, Federal Reserve Board (February 9, 2011). The Federal Reserve Board has ordered Ally Financial to remedy its servicing practices by, *inter alia*, "strengthen[ing] the coordination of communications with borrowers by providing borrowers the name of the person at the service who is their primary point of contact, establish[ing] limits on foreclosures where loan modifications have been approved, establish[ing] robust third party vendor controls, strengthen[ing] compliance programs, and provid[ing] appropriate

remediation to borrowers who suffered financial injury as a result of errors by the servicers." *See id.*

66. Moreover, the servicing and foreclosure improprieties of Ally Financial and its subsidiaries is a matter of public record. According to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep. *Federal National Mortgage Association v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Dist. Nine, Div. N. Cumberland) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

67. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.* at 51:15-23. Stephan further testified that when he signed an affidavit affirming that the foreclosure was proper, all he knew was the borrower's name and whether he had signing authority for the GMAC entity foreclosing on the property. *Id.* at 62:23-25,

63:2-6. Stephan testified that the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required by GMACM. *Id.* at 64:8-14.

68. Additionally, in October 2010, the Ohio Attorney General filed suit against GMACM and Ally Financial, alleging, *inter alia*, that employees of GMACM had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). Although some of the claims brought by the Ohio Attorney General's suit have been resolved by the $25 billion multi-party settlement, many additional claims not encompassed by the settlement, including those relating to the improper assignment of mortgage notes, have survived. As of February 2012, the action remains pending in Ohio.

69. Similarly, in December 2011, the Massachusetts Attorney General filed suit against GMACM for, among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston). Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial and GMACM for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Boston Globe, *Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices*, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the

> federal government can take to ensure that Ally [Financial] adheres to the law.

Id.

70. While the $25 billion settlement ultimately resolved certain claims brought by the Massachusetts Attorney General in this action, several claims relating to improper foreclosure practices and abuse of certain state recordation systems have survived and will continue to be prosecuted. *See* Press Release, Office of the Attorney General of Massachusetts, *Massachusetts Homeowners to Receive $318 Million in Relief as Part of State-Federal Agreement Over Unlawful Foreclosures and Loan Servicing*, Feb. 9, 2012.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and GMACM

71. Since at least as far back as November 2011, Ally Financial has been considering filing for bankruptcy protection for ResCap, its wholly-owned subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports. GMACM is a wholly-owned, indirect subsidiary of ResCap.

72. Around that time, the financial industry was "betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering." Bloomberg News, *Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance*," November 14, 2011.

73. As the article notes, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy. *See id.*

74. Indeed, Ally Financial warned in its 2011 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 19 (Feb. 28, 2012).

75. That risk ultimately came to pass as Ally Financial recently disclosed that the penalties assessed by the federal government and numerous state attorneys general regarding the foreclosure practices of Ally Financial and its subsidiaries "resulted in our Mortgage operations recording a $230 million charge in the fourth quarter of 2011." *Id.* at 31. As Ally Financial detailed in its previous public filing, the "[t]he majority of [the charge] was recorded at Residential Capital, LLC ('ResCap') . . . [which] resulted in a covenant breach in certain of ResCap's credit facilities." Ally Financial, Current Report (Form 8-K) (January 31, 2012). Indeed, as Ally Financial more recently explained, "ResCap is required to maintain consolidated net worth . . . of $250 million at the end of each month under the terms of certain of its credit facilities. . . [and] as a result of the fourth quarter charge, ResCap's consolidated net worth was $92 million at December 31, 2011." Ally Fin. Inc., Annual Report (Form 10-K), at 31-32 (Feb. 28, 2012). ResCap's substantial shortfall, however, was "immediately remediated by Ally through a capital contribution of $197 million, which was provided through forgiveness of intercompany debt during January 2012." *Id.*

76. Moreover, in February 2012, it was reported that Ally Financial had contacted buyout firms such as Fortress Investment Group LLC and Cerberus Capital Management LP regarding a potential sale of ResCap through a pre-packaged bankruptcy to be effectuated by the end of March as ResCap faces financing and liquidity deadlines. *See* Bloomberg Businessweek, *Ally's ResCap Said to Seek Buyers for Prearranged Bankruptcy*, Feb. 8, 2012.

77. According to the report, "[p]otential bidders are being told that a pre-packaged bankruptcy filing would allow the buyer to leave behind liabilities such as [RMBS] securitizations that have been the subject of litigation." *Id.* To that end, Ally Financial's CEO, Michael Carpenter, has stated that he will not pursue the aforementioned initial public

offering for Ally Financial "until [these] legacy mortgage issues are resolved." *Id.* Nevertheless, a bondholder group representing holders of approximately $800 million in ResCap debt has expressed its desire to "fight [Ally Financial] tooth and nail" to oppose the bankruptcy, based in part on the belief that "Ally [Financial] can't legally separate itself from ResCap because it has stripped assets from the unit." Bloomberg News, *Paulson, Tepper Said Among Investors Urging Ally to Back ResCap*, Jan. 10, 2012.

78. Indeed, as Ally Financial has pointedly noted in its most recent annual report: "In light of ResCap's liquidity and capital needs combined with volatile conditions in the marketplace, there is substantial doubt about ResCap's ability to continue as a going concern." Ally Fin. Inc., Annual Report (Form 10-K), at 18 (Feb. 28, 2012).

B. GMACM's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

79. To improve the marketability and ratings of the RMBS Notes issued as part of its securitizations, GMACM from time to time sought credit enhancement for the RMBS Notes from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the one FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Notes that, if there is a shortfall in cash available to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

80. For a trust that issues RMBS Notes, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the

RMBS Notes. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the Loan Pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS investors. Such shortfalls result in claims on FGIC's policies.

(2) Securitization Sponsor's Disclosures and Representations and Warranties

81. The risk FGIC assumes when it agrees to issue a policy for RMBS Notes depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originators and the characteristics of the loans. If, for instance, GMACM and other loan originators employ substandard underwriting practices or include a significant number of balloon mortgage loans in a particular transaction, the underlying mortgage loan pool as a whole would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

82. Accordingly, FGIC generally required securitization sponsors, like GMACM, to provide substantial representations and warranties about the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance to the value of the mortgaged property at origination—plus, in the case of a junior lien mortgage loan, the principal balance of the senior mortgage loan on the related mortgaged property—("LTV ratio"), and the borrower's credit score ("FICO score"). Even where GMACM did not originate a particular loan, it nonetheless is typically required to make representations about that loan, thereby assuming the risk that those representations might not be accurate. GMACM's representations and warranties, including representations about the standards and procedures used to underwrite

the loans, were intended to allow FGIC to assess the credit risk inherent in the mortgage loan pool before deciding to commit to the transaction.

83. GMACM's representations and warranties in its RMBS transactions regarding the characteristics of the loans included in the mortgage loan portfolios, and the underwriting standards used to evaluate those mortgage loans, are particularly vital because each loan pool comprised thousands of mortgage loans, each of which was in itself a complex legal transaction. Each loan file typically contains (or at least is supposed to contain) a mortgage application, a credit report, income and employment verifications, an appraisal, the lender's internal documentation and a wide variety of other documentation necessary to support proper loan underwriting decisions. Moreover, in seeking financial guaranty insurance from FGIC for the 2006-HE3 Transaction, GMACM demanded that FGIC commit to the pricing and other material terms within a very limited time frame. Both GMACM and FGIC understood and intended that FGIC would rely on the information supplied by GMACM as sponsor, as well as GMACM's representations and warranties concerning that information, in assessing the credit risk of the mortgage loan pool.

84. Further, on information and belief, for each of its securitizations, GMACM as sponsor supplied the same data it provided to FGIC to one or several rating agencies in order for those agencies to create expected loan level default and loss estimates. The loan level default and loss estimates were then used by the rating agencies to create cash flow projections and potential loss estimates for the entire transaction. Finally, the rating agencies delivered to the sponsor and to FGIC a private credit assessment for the transaction (sometimes referred to as a "shadow rating") without considering the effect of FGIC's policy. The shadow rating provided an overall evaluation of the likelihood of default on the securities

FGIC would be insuring in the securitization. As sponsor, GMACM arranged for the shadow rating to be provided to FGIC knowing that it was an essential condition to FGIC's willingness to issue a financial guaranty insurance policy.

C. The GMACM 2006-HE3 Transaction

85. On August 30, 2006, GMACM pooled together and deposited many thousands of fixed rate Home Equity Loans ("HELs") into the 2006-HE3 Trust. The 2006-HE3 Trust served as the Issuer of $1,142,334,000 aggregate principal amount of 2006-HE3 Notes. Home equity loans are essentially second-lien mortgage loans, which are generally funded entirely at the closing of the loan.

86. The initial conveyance to the 2006-HE3 Trust by RAMP (acting as Depositor) contained over 16,500 HELs with an aggregate principal balance of approximately $862 million. Investors in the GMACM-sponsored 2006-HE3 Transaction were issued five classes of securities (*i.e.*, the 2006-HE3 Notes)—Class A-1 Notes, Class A-2 Notes, Class A-3 Notes, Class A-4 Notes, and Class A-5 Notes (formally termed the GMACM Home Equity Loan-Backed Term Notes, Series 2006-HE3)—which were collateralized by the Mortgage Loans transferred to and held by the 2006-HE3 Trust. In addition, approximately $287 million was deposited into a pre-funding account at closing, which was used to acquire additional Mortgage Loans in the 90 days following the closing.

87. To enhance the ratings and marketability of the 2006-HE3 Notes, GMACM sought a financial guaranty insurance policy from FGIC for the purpose of insuring the transaction for the benefit of the certificate holders. On August 30, 2006, GMACM and FGIC executed an Insurance and Indemnity Agreement (the "I&I Agreement"), under which FGIC agreed to and did issue Policy number 06030099 to insure the 2006-HE3 Notes. The I&I Agreement was signed by FGIC (as the "Insurer" of the Transaction); GMACM (as the

"Servicer" and a "Seller" for the Transaction); RAMP (as the "Depositor" for the Transaction); Walnut Grove (as a "Seller" for the Transaction); and JPMorgan (as the "Indenture Trustee" for the Transaction). The Bank of New York Trust Company, N.A., later became the successor in interest to JPMorgan as Indenture Trustee.

88. Also on August 30, 2006, Ally Bank (using its then-current name, GMAC Bank) entered into a Custodial Agreement whereby it agreed to serve as Custodian of the underlying mortgage loan notes on behalf of the 2006-HE3 Trust. FGIC is an express third party beneficiary of that agreement. *See* Custodial Agreement § 5.6.

89. The I&I Agreement provides that FGIC (the Insurer) is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." I&I Agreement § 2.02(k). "Operative Documents" are defined to include, among other documents: (i) the 2006- HE3 Notes; (ii) the Mortgage Loan Purchase Agreement dated as of August 30, 2006 among GMACM, RAMP, Walnut Grove and JPMorgan (the "MLPA"); (iii) the Servicing Agreement dated as of August 30, 2006 among GMACM, the 2006-HE3 Trust and JPMorgan; (iv) the Indenture dated as of August 30, 2006 between the 2006-HE3 Trust and JPMorgan; and (v) the Custodial Agreement dated as of August 30, 2006 among GMACM, JPMorgan, and Ally Bank. *See* I&I Agreement § 1.01. FGIC is referred to as the "Enhancer" under certain of the Operative Documents.

90. Pursuant to the I&I Agreement, FGIC insured $1,142,334,000 aggregate principal amount of the 2006-HE3 Notes. The Policy improved the marketability of the 2006-HE3 Notes by mitigating risk for potential investors and making the 2006-HE3 Notes eligible to receive a credit rating of triple-A by the rating agencies at closing.

91. GMACM and the Depositor offered the 2006-HE3 Notes for sale pursuant to a prospectus, dated August 9, 2006 (the "Prospectus"), and a prospectus supplement, dated August 28, 2006 (the "Prospectus Supplement"), which touted the Policy and the "triple-A" initial rating of the 2006-HE3 Notes, which was made possible by the Policy. The Prospectus and Prospectus Supplement, together with certain preliminary offering documents, each as further supplemented by any subsequent amendment or supplement thereto, and any other offering document that makes reference to the Policy, are referred to collectively as the "Offering Documents."

92. On August 30, 2006, an Ally Financial subsidiary, Ally Securities, sold the 2006-HE3 Notes to investors, and FGIC issued the Policy in accordance with the terms of the I&I Agreement.

D. GMACM Fraudulently Induces FGIC to Insure the 2006-HE3 Notes with Substantial Assistance from Ally Financial and Ally Bank

(1) GMACM's Fraudulent Inducement of FGIC

93. FGIC's participation in the 2006-HE3 Transaction was an essential component of the 2006-HE3 Transaction and enhanced GMACM's ability to market the securitization effectively. The Policy allowed GMACM to sell the 2006-HE3 Notes with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

94. In order to induce FGIC to write financial guaranty insurance for the 2006-HE3 Transaction, GMACM represented to FGIC, among other things, that the percentage of the aggregate principal amount of the Initial Loan Pool that was composed of balloon mortgage loans did not exceed 7.61%; that the weighted average original term to scheduled maturity of the Initial Loan Pool was 272 months; and that the weighted average remaining term to scheduled maturity of the Initial Loan Pool was 270 months. Those representations,

among others, were formally stated in the Offering Documents, restated in the Operative Documents, and further reflected in the loan tape and other information that GMACM provided to FGIC, directly or indirectly.

95. Additionally, GMACM provided further material information, on which FGIC relied in determining whether and on what terms to issue the Policy.

96. *First*, GMACM provided to FGIC initial and final Prospectus Supplements, which summarized, among other material information, the credit quality and characteristics of the Mortgage Loans, and GMACM's loan underwriting guidelines and loan origination criteria.

97. *Second*, GMACM provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the 2006-HE3 Transaction, together with representations regarding material statistics about the Initial Loan Pool as a whole.

98. *Third*, GMACM provided to FGIC credit ratings for the 2006-HE3 Notes determined on the basis of information concerning the characteristics of the Mortgage Loans supplied to the rating agencies by GMACM, but without considering the effect of the Policy. These ratings, which GMACM procured from the credit rating agencies, are known as "shadow ratings."

99. *Fourth*, as discussed in detail in Section E below, GMACM provided to FGIC representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreement regarding the Mortgage Loans specifically and the Loan Pool generally.

100. ***Balloon Mortgage Loans***. Included in the Prospectus Supplement and the MLPA was the representation—on which FGIC relied in deciding to issue the Policy on the

agreed terms—that, as at closing, "[a]pproximately 7.61%" of the Mortgage Loans "are not fully amortizing over their terms to maturity and, thus, will require substantial principal payments, sometimes called a balloon amount, at their stated maturity." Prospectus Supplement at S-17; *see also* MLPA § 3.1(b)(xxii).

101. In a balloon mortgage, the amount of the monthly payments to be made by the borrower are generally based on the same amortization schedule as applies to non-balloon mortgages—*e.g.*, a 30-year term—but the maturity date of the mortgage loan is fixed for some date before the expiration of the term used to set the payment schedule. The balloon mortgage loans at issue had maturity dates of approximately 15 years from the due date of the first monthly payment, while having their monthly payment amounts determined according to a 30-year amortization schedule. Since the monthly payments are based on a 30-year schedule, but the maturity date occurs some time in advance of 30 years, a balloon mortgage loan will not have fully amortized by the maturity date, leaving a significant portion of the principal outstanding at that date. The outstanding principal amount, which can be orders of magnitude larger than the borrower's usual monthly payment, must nevertheless be paid by the borrower at maturity. Thus, as the Prospectus Supplement pointedly concedes: "Mortgage loans which require payment of a balloon amount involve a greater degree of risk because the ability of a mortgagor to pay a balloon amount typically will depend upon the mortgagor's ability either to timely refinance the loan or to sell the related mortgaged property." Prospectus Supplement at S-17.

102. GMACM also represented that the weighted average remaining term to scheduled maturity for the Initial Loan Pool—including the balloon mortgage loans—would

be 270 months, and that the weighted average original term to scheduled maturity of the Initial Loan Pool would be 272 months. *See id.* at S-9; *see also* MLPA § 3.1(b)(xxii).

103. Additionally the mortgage loan tape provided to FGIC by GMACM included a "Balloon Indicators" column, which purported to flag as "N" all regularly amortizing loans (*i.e.*, all non-balloon mortgage loans), and the aggregate principal balance of balloon mortgage loans flagged as such in the Balloon Indicators column roughly corresponded with the percentage of the aggregate principal amount of the Initial Loan Pool warranted to be comprised of balloon mortgages by GMACM in the Prospectus Supplement and MLPA (*i.e.*, 7.61%).

104. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the 2006-HE3 Notes, FGIC relied in part upon representations and warranties regarding GMACM's loan underwriting standards made by GMACM in the Prospectus and Prospectus Supplement. The Prospectus, as supplemented by the Prospectus Supplement, was filed with the SEC and became effective on August 30, 2006. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about August 23, 2006, in an email sent by Marty Howard, on behalf of GMACM. The Final Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about August 29, 2006, in an email sent by Jeffrey Wittenberg on GMACM's behalf.

105. In the Offering Documents, GMACM represented that, based on the data provided in the borrower's application and certain other applicable verifications, "a determination will have been generally made by the original lender that the borrower's monthly income, if required to be stated, would be sufficient to enable the borrower to meet

its monthly obligations on the loan and other expenses related to the property." Prospectus at 23. Further, in the Prospectus Supplement, GMACM also represented to FGIC that:

> The mortgage loans were selected for inclusion in the mortgage pool from among mortgage loans originated or purchased in connection with [GMACM's] Underwriting Standards . . . based on [GMACM's] assessment of investor preferences and rating agency criteria.

Prospectus Supplement at S-29.

106. The Prospectus Supplement expressly states that GMACM's "underwriting standards with respect to the mortgage loans generally will conform to those published in the GMAC Mortgage Corporation underwriting guidelines, including the provisions of the GMAC Mortgage Corporation underwriting guidelines applicable to the GMAC Mortgage Home Equity Program." Prospectus Supplement at S-31.

107. GMACM publishes its loan underwriting standards in a document referred to in the Prospectus Supplement as "the GMAC Mortgage Corporation underwriting guidelines" (and referred to herein as the "Underwriting Guidelines"). *Id.* In general, the Underwriting Guidelines specify documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan. Depending upon the particular type of loan, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories and/or evidence of closing funds, among other things. The substantive criteria for eligibility address material characteristics of the proposed loan, such as DTI ratios, Combined Loan-to-Value ("CLTV") ratios (a ratio comparing the aggregate principal balance of first and second mortgages on a covered property to the value of the property), and occupancy status.

108. The Prospectus Supplement sets forth, among other information, the following important characteristics of the Initial Loan Pool: the ranges of and weighted average FICO

scores, the ranges of and weighted average CLTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (*i.e.*, whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). *See* Prospectus Supplement at A-I-1 - A-I-7.

109. In particular, GMACM represented in the Prospectus Supplement that the loans had generally been originated with a maximum DTI ratio of 45% and a maximum CLTV ratio of 100%. *See* Prospectus Supplement at S-33. GMACM also represented that for each Mortgage Loan it had made a determination based upon all applicable employment, credit and property information regarding whether the prospective borrower had sufficient monthly income available to meet the borrower's monthly obligations. *See* Prospectus at 23 and Prospectus Supplement at S-34.

110. GMACM also represented in the Offering Documents that, with respect to occupancy status, 98.68% of the Mortgage Loans would be secured by the borrower's primary residence. *See* Prospectus Supplement at A-1-4.

111. Further, as discussed, the Prospectus Supplement contained material representations in respect of the balloon mortgage loans and the maturity characteristics of the Initial Loan Pool.

112. ***Loan Tapes.*** The loan tapes provided by GMACM set forth, for each loan in the Initial Loan Pool, key characteristics such as the borrower's FICO score, DTI ratio and the CLTV ratio for the loan. GMACM also disclosed in the Prospectus Supplement—with respect to the Loan Pool as a whole—aggregate characteristics also relevant to the assessment of the credit risk of the pool, including weighted averages of FICO scores, DTI ratios and

CLTV ratios. The loan tape also contained certain key maturity date characteristics of the Initial Loan Pool, as well as information pertaining to the number of balloon mortgage loans among the Initial Mortgage Loans. The loan tape was provided to FGIC prior to the closing of the Transaction on August 11, 2006.

113. ***Shadow Rating Letters***. GMACM, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. As requested by GMACM, Moody's and S&P provided the shadow ratings to FGIC on the closing date of the Transaction. In its letter to FGIC describing the shadow rating for the 2006-HE3 Transaction, Moody's noted that it reviewed the documentation provided by GMACM and that the rating "is based primarily on the credit quality of the loans backing the transaction." Similarly, in its letter to FGIC, S&P noted that it too relied on the information provided to it by GMACM and that the shadow rating "relies on the issuer . . . for the accuracy and completeness of the information submitted in connection with the private credit assessment." Based on the information supplied by GMACM, Moody's assessed the credit quality of the Initial Loan Pool and assigned a shadow rating of Baa2 to the 2006-HE3 Notes, while S&P assigned the 2006-HE3 Notes a shadow rating of BBB-.

114. These shadow ratings, which were based, in part, on GMACM's representations in respect of the balloon mortgage loans and the maturity characteristics of the Initial Loan Pool, met FGIC's minimum requirements and were required by FGIC as an essential condition to its willingness to participate in the 2006-HE3 Transaction and issue the Policy.

(2) GMACM's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Bank

115. Ally Bank provided substantial assistance to GMACM in fraudulently procuring the Policy from FGIC. As it originated or acquired nearly 88% of the Mortgage Loans, Ally Bank was well aware of the true characteristics of the majority of the Loan Pool.

116. Additionally, on August 29, 2006, prior to the closing of the 2006-HE3 Transaction, several representatives of Ally Bank—including Michael Hebling, Donna Harkness, Dave Chiodo, Eleanor Whittall, Linda Rogers, Lauren Coffman, and Tiffany Toale—received an e-mail sent from Jeffrey Wittenberg on behalf of GMACM that attached a true and correct copy of the MLPA.

117. As a result of its affiliate status with GMACM, its role as Custodian for the 2006-HE3 Transaction—for which it received substantial fees— and having directly received the MLPA prior to closing, Ally Bank was aware of the representations and warranties GMACM made to FGIC regarding the nature of GMACM's business practices and the characteristics of the Mortgage Loans (including the many thousands of Mortgages Loans that were originated by Ally Bank).

118. With full knowledge that GMACM had not complied—and would not comply—with the representations and warranties it made to FGIC, and direct knowledge of the many thousands of loans it had originated and sold to GMACM, which formed a substantial part of the collateral for the 2006-HE3 Transaction, Ally Bank represented to FGIC that, as Custodian, it would inform FGIC if it discovered any non-compliant Mortgage Loans or non-compliance with GMACM's obligations under the Operative Documents. By offering FGIC this false comfort, despite knowing that GMACM was fraudulently inducing

FGIC to provide financial guaranty insurance for the 2006-HE3 Transaction, Ally Bank provided material assistance to GMACM's fraud.

(3) GMACM's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

119. Ally Financial provided substantial assistance to its subsidiaries GMACM and Ally Bank in fraudulently inducing FGIC to participate in the 2006-HE3 Transaction and, ultimately, issue the Policy. Ally Financial knew that the Mortgage Loans underlying the 2006-HE3 Transaction were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap, Ally Bank, and its other subsidiaries, Ally Financial knew that the representations and warranties GMACM made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

120. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to engender investor confidence in, and otherwise finance and support, its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

121. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

122. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries."

123. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

124. Ally Financial's corporate restructuring also allowed GMACM to explicitly represent and warrant to FGIC in the I&I Agreement that GMACM "is solvent, and will not be rendered insolvent by the Transaction. . . . [GMACM] shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." I&I Agreement § 2.01(m). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary GMACM.

125. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the 2006-HE3 Transaction—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in

many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

126. Moreover, as a result of its domination and control over ResCap, GMACM, and Ally Bank, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of GMACM's representations and warranties to FGIC—and that they were untrue when stated—as well as the substantial assistance Ally Bank was rendering GMACM in aid of its fraudulent inducement of FGIC. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including GMACM, shared numerous directors and senior management as well. Similarly, William F. Muir, Ally Financial's President, has served in that capacity since at least 2004 (first at GMAC and then at Ally Financial) while also serving as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

127. David C. Walker is another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including GMACM and RAMP. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. Walker has also served as a director at ResCap,

GMACM, RFC, and RAMP, among other ResCap subsidiaries. In the 2006-HE3 Transaction, acting as a director of RAMP, Walker was a signatory to RAMP's December 20, 2005 "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which was included among the closing documents of the 2006-HE3 Transaction.

128. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, Ally Bank, and GMACM, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by GMACM was shared among and between GMACM and its parent ResCap, ResCap and its parent Ally Financial, and Ally Bank and its parent and affiliates. Indeed, at least one Ally Financial employee who was involved in the 2006-HE3 Transaction appeared on the Transaction's working group list and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

129. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to GMACM in fraudulently inducing FGIC to participate in the Transaction and issue the Policy. Further, the issuance of the Policy, which made the 2006-HE3 Transaction possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. GMACM's Representations, Warranties and Affirmative Covenants

130. In connection with the 2006-HE3 Transaction, GMACM, at the direction of Ally Financial, either directly or indirectly through ResCap, gave numerous representations,

warranties and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way GMACM conducted its loan origination, selection and evaluation process, the characteristics of the Mortgage Loans and the Initial and complete Loan Pool, the percentage of the aggregate principal amount of the Initial Loan Pool to be made up of balloon mortgage loans, and the accuracy and completeness of the information supplied to FGIC. These and other characteristics of the Mortgage Loans included in the Initial Loan Pool were detailed in a schedule attached to the Servicing Agreement and provided to FGIC by GMACM in the form of the loan tape (the "Mortgage Loan Schedule"). Moreover, these same representations and warranties were restated by GMACM when it transferred additional Mortgage Loans to the 2006-HE3 Trust after the closing of the Transaction (as was permitted for a short period following closing).

131. GMACM further promised to provide FGIC with a variety of information, including access to GMACM's books and records and to GMACM's Chief Financial Officer and its independent accountants.

132. GMACM's representations and warranties, and particularly GMACM's representation that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the 2006-HE3 Transaction and to issue the Policy on the agreed terms. Further, the I&I Agreement's incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that GMACM made in connection with the 2006-HE3 Transaction.

133. FGIC, for its part, reasonably relied on the information available to it regarding the underlying Mortgage Loans and the representations and warranties provided by GMACM.

Since FGIC had neither the right under the Operative Documents, nor the practical ability, to review the thousands of underlying Mortgage Loan files, GMACM knew that FGIC had no choice but to rely on GMACM's representations regarding the underlying loans in determining whether to issue the Policy. Further, FGIC had no reason to believe that those representations were not true and accurate.

134. Indeed, GMACM included more than 16,500 individual Mortgage Loans in the 2006-HE3 Transaction at closing, and several thousand more Mortgage Loans post-closing. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation and other forms of documentation necessary to support each underwriting decision. Unlike GMACM, FGIC was under no contractual duty whatsoever to review the more than 16,500 Initial Mortgage Loans or the thousands of Mortgage Loans subsequently transferred after closing. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by GMACM regarding its loan origination, selection, and evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on GMACM to conduct its underwriting processes according to the promised standards, and FGIC had no basis to conclude that GMACM's representations and warranties were false. Thus, FGIC reasonably believed that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

135. Based on the information received by FGIC and the representations and warranties given by GMACM, FGIC entered into the I&I Agreement and agreed to issue the Policy to the Indenture Trustee for the benefit of the holders of the 2006-HE3 Notes. In return

for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the 2006-HE3 Notes. Specifically, FGIC received 0.12% per annum of the aggregate balance of the 2006-HE3 Notes for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by GMACM.

136. As discussed below, GMACM's information, representations and warranties were materially false when disclosed and/or provided by GMACM. GMACM knew that this information, and its representations and warranties, were materially false when made. GMACM also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policy. Indeed, GMACM intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and issue the Policy. The issuance by FGIC of the Policy—induced by GMACM's fraudulent misrepresentations and substantial assistance by Ally Financial—made the 2006-HE3 Notes eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Breaches of Representations and Warranties Regarding Balloon Mortgage Loans

137. As the Transaction began to perform poorly, FGIC conducted a review of the Mortgage Loans and discovered that thousands of Mortgage Loans in the Initial Loan Pool that were in fact balloon mortgages were not characterized as such by GMACM. Instead, the "Balloon Indicators" column in the Mortgage Loan Schedule provided at closing falsely flagged those thousands of Initial Mortgage Loans as "N"—indicating to FGIC they were regularly amortizing loans and not balloon loans.

138. Despite conceding the higher degree of credit risk inherent in balloon mortgage loans, and affirmatively representing that only 7.61% of the aggregate principal amount of the Initial Loan Pool (corresponding to approximately 1,292 Mortgage Loans with an approximate aggregate principal balance of $65 million) would be comprised of balloon mortgages, in fact over 26% of the aggregate principal amount of the Initial Mortgage Loans (corresponding to approximately 4,300 Mortgage Loans with an aggregate principal balance of more than $226 million) were balloon mortgages. Each of these balloon mortgage loans had been originated or acquired and transferred to the 2006-HE3 Trust, by GMACM, , or one of its affiliates.

139. In sum, the 2006-HE3 Trust contained at least 3,013 more high-risk balloon mortgage loans—accounting for at least $160 million in aggregate principal amount—than FGIC could have reasonably expected in reliance on the percentages regarding this type of loan that GMACM represented and warranted in the Offering Documents and the MLPA, thus constituting a material breach of the I&I Agreement.

140. Additionally, the mischaracterization and omissions regarding the undisclosed balloon mortgage loans on the Mortgage Loan Schedule and/or the loan tape represent further material breaches of the I&I Agreement by GMACM.

141. Moreover, FGIC has determined that, the weighted average remaining term to scheduled maturity and the weighted average original term to scheduled maturity of the Initial Loan Pool—taking into account the previously undisclosed and misidentified balloon mortgage loans—differ materially from the figures represented to FGIC by GMACM. The true weighted average remaining term to scheduled maturity of the Initial Loan Pool was in fact approximately 236 months, and not 270 months, as stated in the Offering Documents and

the MLPA. Additionally, the true weighted average original term to scheduled maturity for the Initial Loan Pool was in fact approximately 238 months, and not 272 months, as represented in the Offering Documents. These misrepresentations by GMACM, separately and apart from the misrepresentation of the balloon loan status of the Mortgage Loans, are material breaches of the I&I Agreement.

142. Further, FGIC has determined that the rate of Mortgage Loan non-performance (*i.e.*, loans that were delinquent for more than 60 days, in foreclosure, charged-off, or liquidated) in the 2006-HE3 Transaction for the over 3,000 undisclosed and mis-flagged balloon mortgage loans was almost 50% greater than the non-performance rate of the non-balloon mortgage loans in the 2006-HE3 Transaction.

(2) Other Representations, Warranties and Affirmative Covenants Relating to the Operative and Offering Documents

143. Under Section 2.01 of the I&I Agreement, GMACM made the following representations and warranties, among others (emphasis added in each case):

- *Accuracy of Information.* **Neither the Operative Documents to which it is a party nor other information relating to the Mortgage Loans**, the operations of GMACM. . . or the financial condition of GMACM . . . furnished to [FGIC] . . . by GMACM . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made** . . . . GMACM . . . has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change with respect to GMACM . . . Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to GMACM . . . that would render any of the Documents untrue or misleading in any material respect.

- *Compliance with Securities Laws.* The offering and sale of the Securities complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state material fact necessary to make the statements made therein,**

in light of the circumstances under which they were made, not misleading . . . .

- *Operative Documents.* **Each of the representations and warranties of GMACM . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** [and] GMACM . . . hereby makes each such representation and warranty to, and for the benefit of, [FGIC] as if the same were set forth in full herein.

- *Solvency; Fraudulent Conveyance.* GMACM . . . is solvent and will not be rendered insolvent by the Transaction and . . . **GMACM . . . shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**, and . . . GMACM . . . does not intend to incur, or believe that it has incurred, debts beyond its ability to pay as they mature. . . . GMACM . . . is not transferring the Mortgage Loans . . . with any intent to hinder, delay or defraud . . . creditors.

144. *First*, in the I&I Agreement, GMACM represented and warranted to FGIC that "[n]either the Operative Documents to which it is a party nor other information relating to the Mortgage Loans. . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreement § 2.01(j). Through these Operative and Offering Documents, GMACM communicated several material facts about the characteristics of the mortgage loans sold to the 2006-HE3 Trust.

145. *Second*, in the I&I Agreement, GMACM represented and warranted that "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading." *Id.* § 2.01(k).

146. As discussed above, in the Prospectus Supplement, GMACM represented that all of the mortgage loans sold to the 2006-HE3 Trust had been underwritten generally in

accordance with GMACM's underwriting standards, including the GMAC Mortgage Home Equity Program. Prospectus Supplement at S-31.

147. Additionally, as discussed above, GMACM also made express representations that only 7.61% of the aggregate principal amount of the Initial Mortgage Loans would be balloon mortgages, and that the Initial Loan Pool in the aggregate had a weighted average remaining term to scheduled maturity of 270 months and a weighted average original term to scheduled maturity of 272 months. *See* Prospectus Supplement at S-9; *see also* MLPA § 3.1(b)(xxii).

148. *Third*, the I&I Agreement incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the "Operative Documents," as that term was defined in the I&I Agreement: "[e]ach of the representations and warranties . . . contained in the applicable Operative Documents . . . is true and correct in all material respects[.]" *See* I&I Agreement §§ 1.01, 2.01(l). The incorporation by reference of the Operative Documents into the I&I Agreement was intended to allow FGIC to rely on any representation and warranty that GMACM made to other entities, such as investors or the Indenture Trustee, in connection with the 2006-HE3 Transaction. Indeed, the I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. *See* I&I Agreement § 2.02(k).

149. *Fourth*, GMACM also provided information to FGIC concerning the Mortgage Loans in the Loan Pool for the 2006-HE3 Transaction. *See* I&I Agreement § 2.02(c)(iii). This information included loan tapes that set forth statistics about the Loan Pool. The loan tapes purported to describe key characteristics relevant to the assessment of risk, including DTI ratios, CLTV ratios, occupancy status and FICO scores, and an identification of whether

a particular Mortgage Loan was a balloon mortgage loan. *See* MLPA § 2.1(d). On information and belief, the loan tape FGIC received at closing contains the same information as is contained in the Mortgage Loan Schedule referred to in the MLPA.

150. In turn, in the MLPA, GMACM represented that all the information in that Mortgage Loan Schedule "is true and correct in all material respects as of the date or dates respecting which such information is furnished." MLPA § 3.1(b)(i).

151. As a result of incorporating into the I&I Agreement the representations and warranties in the related Operative Documents, GMACM incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in the 2006-HE3 Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that the Mortgage Loans had been underwritten in compliance with GMACM's underwriting guidelines. *See* MLPA § 3.1(b)(xxxvi).

152. In particular, in the MLPA, GMACM represents and warrants that:

- The information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respects as of the date or dates respecting which such information is initially furnished;
- As of the Cut-Off Date or related Subsequent Cut-Off Date, no Mortgage Loan was 30 days or more delinquent in payment of principal or interest;
- With respect to the GMACM Initial Mortgage Loans or, as applicable, any Subsequent Mortgage Loans sold by GMACM, the related Mortgage File contains or will contain, in accordance with the definition of "Mortgage File" in Appendix A to the Indenture, each of the documents and instruments specified to be included therein;
- As of the Cut-Off Date or Subsequent Cut-Off Date, the CLTV for each Mortgage Loan was not in excess of 100.00%;

- GMACM used no selection procedures that identified the Mortgage Loans as being less desirable or valuable than other comparable mortgage loans originated or acquired by GMACM under the GMACM Home Equity Program;

- Only 7.61% of the aggregate principal amount of the Initial Loan Pool would be comprised of balloon mortgage loans; and

- The weighted average remaining term to scheduled maturity of the Initial Mortgage Loans was 270 months.

153. Moreover, in the I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—GMACM specifically covenants that it will "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreement § 2.02(a).

(3) Representations, Warranties, and Affirmative Covenants Regarding Servicing and Access to Information

154. The I&I Agreement also incorporates the representations and warranties that GMACM made in the Servicing Agreement in its capacity as Servicer. *See* I&I Agreement § 2.02(l). Under the I&I Agreement, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [Servicing Agreement]." I&I Agreement § 2.02(l). In the Servicing Agreement, GMACM covenanted, represented, and warranted that, so long as it acted as Servicer, it would service the Mortgage Loans in the 2006-HE3 Transaction in a manner consistent with its own servicing guidelines. *See* Servicing Agreement § 3.01(a).

155. Additionally, the Servicing Agreement entered into by GMACM as the original Servicer of the Transaction provides that, "documents contained in the Mortgage File . . . shall be held by the Servicer in trust as agent for the Indenture Trustee on behalf of the Noteholders." Servicing Agreement § 3.01(c). As such, and as the Servicing Agreement

makes plain, the information and documents regarding the Mortgage Loans are not the property of or otherwise owned by GMACM, but rather such files are to be held by the servicer of the Transaction—whether that party be GMACM or a third party. Moreover, through the Servicing Agreement, GMACM expressly covenanted that, in the event GMACM's servicing duties are terminated and transferred to another party, GMACM "agrees to cooperate with the Issuer, the Enhancer [*i.e.*, FGIC] and Indenture Trustee, as the case may be, in effecting the termination of the responsibilities and rights of the Servicer." *Id.* at § 7.01(a). FGIC is an express third-party beneficiary of the Servicing Agreement. *See id.* at § 8.05.

156. The I&I Agreement affords FGIC the express right to "inspect the books and records of GMACM . . . [and to] discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and with GMACM's consent, which consent shall not be unreasonably, withheld or delayed, to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants." I&I Agreement § 2.02(e)(i)-(iii).

157. The I&I Agreement further provides that GMACM shall furnish to FGIC, promptly upon request, such data as FGIC may reasonably request. *See* I&I Agreement § 2.02(c)(v).

F. GMACM's Breaches of Its Representations, Warranties and Affirmative Covenants

158. As discussed above, FGIC relied on material representations and warranties made by GMACM regarding the manner in which the Mortgage Loans were originated, selected, and evaluated, the characteristics of those loans, and the accuracy and completeness of information GMACM supplied to FGIC, including in respect of the balloon mortgage loans. Based on those representations and warranties, FGIC agreed to issue the Policy. In

fact, as demonstrated by the extreme levels of delinquencies and losses detailed below, the risk that FGIC assumed when it issued the Policy was many times greater than the risk disclosed by GMACM's representations and warranties. GMACM breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

159. The 2006-HE3 Transaction has performed poorly, and delinquencies and defaults for Mortgage Loans in the 2006-HE3 Transaction have been substantial. As of December 2011, a staggering 2,600 mortgage loans, had been liquidated or were delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policy, which covers, *inter alia*, shortfalls in amounts paid to noteholders arising from liquidated Mortgage Loans, GMACM assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with GMACM's own representations and warranties.

160. The poor performance of the Mortgage Loans has reduced the cash flow to the 2006-HE3 Trust, which has caused, and will continue to cause, substantial claims to be presented to FGIC under the Policy to cover these shortfalls. As of February 2012, more than $82.9. million in claims had been presented to FGIC in connection with the 2006-HE3 Transaction. FGIC expects tens of millions of dollars more in claims to be presented to it under the 2006-HE3 Transaction in the future.

161. As an increasingly high percentage of the 2006-HE3 Mortgage Loans enter delinquency and default, FGIC has uncovered a wealth of material breaches of GMACM's representations and warranties regarding the characteristics of the loans and the standards to which they were underwritten.

(1) Breaches Identified Through Initial Review

162. When FGIC became concerned about the high delinquencies and default rates in the 2006-HE3 Transaction, FGIC requested that GMACM provide it with certain Mortgage Loan files underlying the 2006-HE3 Transaction.

163. FGIC selected for review a number of non-performing (*i.e.*, non-current or charged-off) loans that had resulted in a loss to the 2006-HE3 Trust. To perform this review, FGIC hired an independent outside consultant with particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

164. That review revealed that GMACM had breached one or more material representations and warranties with respect to approximately 97% of the loans reviewed.

(2) Breaches Identified Through Additional Review

165. In 2010, as the 2006-HE3 Transaction continued to perform poorly, FGIC again retained a professional mortgage loan review team to identify, review, and evaluate a statistically significant sample of mortgage loans in the 2006-HE3 Transaction.

166. FGIC's independent loan consultant reviewed 120 loan files received by FGIC. That review revealed that GMACM had breached one or more material representations, including those concerning balloon mortgages, with respect to 117, or an astounding 97.5%, of these loans.

(3) GMACM's Pervasive and Material Breaches of Its Representations and Warranties and Affirmative Covenants

167. FGIC ultimately obtained access to 164 Mortgage Loan files, which FGIC's independent consultant reviewed to evaluate and re-underwrite the Mortgage Loans. These reviews revealed that GMACM breached one or more material representations with respect to 160—or a shocking 97.6%—of the Mortgage Loans reviewed.

168. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 8656112510: due to an income misrepresentation, the loan closed with a DTI of 301.92%. In order for this mortgage loan to have been eligible for inclusion in the 2006-HE3 pool, the relevant guidelines for the particular type of loan underwritten permit a maximum DTI ratio of 50%.

- Loan Number 89646124: the loan was appraised using a comparable property that was sold 9 months prior to the closing date. Further, the loan was not disclosed in the Mortgage Loan Schedule as being a balloon mortgage loan. The Mortgage Loan Schedule reported the term and maturity date for the loan as 360 months and July 1, 2036, however the mortgage note states a term of 180 months and a maturity date of July 1, 2021, indicating a balloon mortgage loan.

- Loan Number 8253572070: the loan was refinanced as an owner occupied property, however the borrower's credit report did not list the property address as their current or previous address. In order for this mortgage loan to have been eligible for inclusion in the 2006-HE3 pool, the relevant guidelines for the particular type of loan underwritten require that the property is owner-occupied.

169. These examples of underwriting violations are but a small smattering of the extensive defects among the Mortgage Loans, and evidence significant breaches of the MLPA. *See* MLPA § 3.1. And it is reasonable to conclude—based on what is now known by FGIC—that a substantial majority of the Mortgage Loans that were ultimately transferred to the 2006-HE3 Trust evidence similar breaches of GMACM's representations and warranties.

170. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicate clear breaches of GMACM's contractual representations, warranties and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans and the Initial and final Loan Pool, including the guidelines to which the Mortgage Loans were underwritten and key statements regarding the balloon mortgage loans included in the 2006-HE3 Trust.

171. Specifically, with respect to the 2006-HE3 Transaction, GMACM made—and breached—representations and warranties stating, as of the closing date, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (*i.e.* the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of GMACM in the Operative Documents (including each representation and warranty in the MLPA) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- no Mortgage Loan was 30 days or more delinquent as of August 1, 2006 (or the date the loan was transferred to the 2006-HE3 Trust);
- each Mortgage File contains all required documents and instruments;
- the CLTV of each Mortgage Loan did not exceed 100%;
- GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program);
- only 7.61% of the aggregate principal amount of the Initial Loan Pool would be comprised of balloon mortgage loans;
- the weighted average remaining term to scheduled maturity of the Initial Mortgage Loans was 270 months; and
- the weighted average original term to scheduled maturity of the Initial Mortgage Loans was 272 months.

172. Many of these representations were repeated in connection with the subsequent transfer of additional Mortgage Loans, and were also breached with respect to those additional Mortgage Loans.

(4) Breaches for GMACM's Refusals to Repurchase, Substitute, or Cure Improper or Non-conforming Mortgage Loans

173. Following the discovery of high defect rates among the Mortgage Loans and the 3,013 additional balloon mortgage loans improperly transferred to the 2006-HE3 Trust, FGIC, demanded that GMACM repurchase the non-compliant Mortgage Loans—including the thousands of undisclosed and mis-flagged balloon mortgage loans—pursuant to the I&I Agreement and the MLPA.

174. Of the 160 (non-balloon) loans that FGIC requested be repurchased by GMACM, only 15 (or 9%) of the non-conforming Mortgage Loans were repurchased—in clear contravention of the I&I Agreement and the Operative Documents incorporated therein.

175. Additionally, FGIC initiated a stream of correspondence with GMACM and ResCap after FGIC discovered the massive excess of high-risk balloon mortgages in the Initial Loan Pool. FGIC wrote to GMACM, as Sponsor, as well as the ResCap Repurchase Operations Department, in order to raise the issue of the balloon mortgages and demand their repurchase pursuant to FGIC's rights under the I&I Agreement and MLPA.

176. In response, GMACM and ResCap—acting for the first time through shared counsel—did not reject or deny FGIC's assertions regarding the illegitimate inclusion of thousands of excess balloon mortgage loans, and yet expressly refused to repurchase the relevant loans.

177. Indeed, GMACM and ResCap, through counsel, refused to even attempt to ascertain whether *any* of the more than 3,000 unaccounted-for balloon mortgage loans specifically identified by FGIC were improperly included in the 2006-HE3 Trust. Rather, GMACM and ResCap sought to shift the burden on to FGIC to explain why the inclusion of

these Mortgage Loans was problematic before GMACM and ResCap would agree to begin to address this glaring breach of the Operative Documents (which they continue to refuse to do).

178. The bad faith and recalcitrance of GMACM in particular in this regard is all the more egregious in light of the fact that GMACM knew, or should have known, of the over-inclusion of thousands of previously undisclosed and misidentified balloon mortgage loans in the 2006-HE3 Transaction at least as early as November 2009. Around that time, servicing duties for the 2006-HE3 Transaction were transferred from GMACM to a third party. During that process, GMACM provided spreadsheets and other information to the new servicer regarding, *inter alia*, the Mortgage Loans and the Loan Pool. The information GMACM provided to the new servicer correctly detailed the true number of balloon mortgage loans among the Initial Loan Pool. As such, at least as early as November 2009, GMACM had (or should have) discovered its breach of several representations and warranties in respect of the balloon mortgage loans and the characteristics of the Initial Loan Pool. And yet, GMACM did nothing to notify FGIC of the error or attempt to rectify it, as is required under the Operative Documents.

179. Moreover, on information and belief, GMACM is and has been aware that many of the Mortgage Loans, whether acquired at the closing or thereafter, were nonconforming for reasons unrelated to being balloon mortgage loans and, thus, failed to comply with its own representations and warranties. Despite this knowledge, GMACM has failed to repurchase the nonconforming loans or substitute them with conforming loans, as is required under the Operative Documents.

(5) GMACM's Denial of FGIC's Access To Books and Records, GMACM's CFO, and GMACM's Independent Accountants

180. On December 8, 2011, in accordance with its express rights under Sections 2.02(e)(i)-(iii) of the I&I Agreement, FGIC requested to (i) inspect the books and records of GMACM; (ii) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

181. To date, GMACM has failed to respond to this request, in violation of the I&I Agreement.

(6) GMACM's Frustration of FGIC's Right to Access Information Regarding the Mortgage Loans

182. As discussed, in or around November 2009, servicing duties for the 2006-HE3 Transaction were transferred from GMACM to a third party servicer. As FGIC became aware of increasing numbers of material defects among the Mortgage Loans, as well as the gross over-inclusion in the Transaction of thousands of unidentified and mis-flagged balloon mortgage loans, FGIC sought information regarding the Mortgage Loan files from the successor (and current) servicer of the Transaction.

183. FGIC has been made aware that the current servicer of the Transaction is unable to provide the information FGIC has sought due to GMACM's repeated refusals to provide its successor with certain Mortgage Loan files and other crucial information. GMACM's refusal to turn over information in its possession to, and otherwise cooperate with, its successor servicer is a clear violation of the Servicing Agreement that GMACM entered into as the then-Servicer of the 2006-HE3 Transaction and to which FGIC is a third-party beneficiary, as well as a breach by GMACM of its obligations under the I&I Agreement to

comply with the terms of the Operative Documents. *See* Servicing Agreement §§ 3.01(c), 7.01(a), 8.05; I&I Agreement 2.02.

184. Additionally, GMACM has an independent obligation under the I&I Agreement to provide FGIC such information as FGIC may reasonably request. *See* I&I Agreement § 2.02(c)(v). As such, through its obstinate refusal to provide either FGIC or the successor servicer with material information—admittedly within its possession—regarding the Mortgage Loans, GMACM has further breached its obligations to FGIC.

185. Moreover, on information and belief, the Mortgage Loan information that GMACM refuses to provide either to FGIC or the successor servicer will evidence further material breaches of representations and warranties made by GMACM. Accordingly, FGIC reserves its rights to assert additional causes of action regarding GMACM's breaches of its representations and warranties.

G. Ally Bank's Breaches of The Custodial Agreement

186. Under the Custodial Agreement, to which FGIC is an express third party beneficiary, *see* Custodial Agreement § 5.6, and through which Ally Bank received substantial fees, Ally Bank undertook several obligations to FGIC concerning the manner in which Ally Bank would ensure that the Mortgage Loans contained complete and accurate information and that GMACM was in compliance with its representations and warranties regarding the origination, selection, and characteristics of those loans.

187. Ally Bank agreed that it would "hold the Mortgage Notes and any Loan Agreement relating to any Subsequent Mortgage Loan," and that it would review the Mortgage Notes and deliver to FGIC a certification of "the completeness of the receipt of the Mortgage Notes." *Id.* §§ 2.1, 2.2.

188. Ally Bank further agreed to notify FGIC of breaches of the MLPA by GMACM, by providing that: "Upon discovery by the Custodian of a breach of any representation or warranty made by [GMACM] in the Purchase Agreement . . .with respect to a Mortgage Loan . . . the Custodian shall give prompt written notice to [FGIC]." *Id.* § 2.3.

189. Additionally, as discussed, Ally Bank was provided with a copy of the MLPA by GMACM prior to closing.

190. An initial review of a small percentage of defective Mortgage Loans has revealed that in many instances the Mortgage Note was not included in the loan file. The lack of a Mortgage Note within a particular file constitutes a breach of the representations and warranties given by GMACM in the MLPA. Ally Bank should have been aware of the fact that Mortgage Notes were missing from certain Mortgage Loan files, and that this was a breach of the MLPA representations and warranties. Consequently, it should have notified FGIC pursuant to its own obligations under the Custodial Agreement. *See id.* §§ 2.1-2.3. Ally Bank has, however, failed to provide FGIC with any notices regarding defects in any Mortgage Loan file, and has further provided inaccurate and/or incomplete certifications regarding the Mortgage Loans, thereby breaching the Custodial Agreement to which FGIC is an express third party beneficiary.

191. Moreover, Ally Bank had an obligation to notify FGIC of any breach by GMACM of the MLPA representations and warranties that it discovered, not just those pertaining to the Mortgage Note. Since Ally Bank originated nearly 88% of the Mortgage Loans in the 2006-HE3 Transaction—which have suffered astounding defect rates—it must have been keenly aware of the breadth and scope of the underwriting failures with respect to those loans. Ally Bank, which had received the MLPA, thus, must have known that GMACM

was in breach of the representations and warranties in the MLPA. As such, its failure to so notify FGIC was a further breach of the Custodial Agreement.

H. GMACM's Fraud

192. The material breaches of GMACM's representations and warranties, including the extensive underwriting failures by GMACM, and the poor credit quality of almost all of the Mortgage Loans—including, but not limited to the balloon mortgage loans—demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants GMACM made to FGIC to induce its participation in the Transaction. The extraordinarily high defect and default rate among the Mortgage Loans and the inclusion of thousands more high-risk balloon mortgage loans than had been represented demonstrates not merely that GMACM breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the Policy, it (GMACM) would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true.

193. All of the Mortgage Loans underlying the 2006-HE3 Transaction were originated or acquired by GMACM and its affiliate Ally Bank. As such, GMACM had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with the applicable GMACM underwriting guidelines and if the loans breached other representations and warranties made by GMACM, including those in respect of the balloon mortgage loans to be included in the 2006-HE3 Trust, as well as the weighted average remaining term to scheduled maturity and weighted average original term to scheduled maturity of the Initial Loan Pool.

194. To induce FGIC to enter into the 2006-HE3 Transaction, GMACM provided FGIC with a loan tape, which contained false and misleading information regarding, among other things, the CLTV and DTI ratios, occupancy status, and FICO scores of the borrowers, as well as an indication of the number of balloon mortgage loans contained in the Initial Loan Pool.

195. In addition, GMACM made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2006-HE3 Trust. GMACM was well aware that FGIC would not agree to insure the 2006-HE3 Notes unless GMACM obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, GMACM provided Moody's and S&P with the same false information regarding the credit quality of the underlying Mortgage Loans that it also provided to FGIC—including material information in regard to balloon mortgage loans and the maturity characteristics of the Initial Loan Pool. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2006-HE3 Notes that met FGIC's minimum requirements—Baa2 and BBB-, respectively. In this way, GMACM made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that GMACM would pass on to FGIC, and second, by causing shadow ratings of the 2006-HE3 Notes to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

196. GMACM was well aware that FGIC would rely on the shadow ratings—prepared with information supplied by GMACM—as the I&I Agreement specifically contemplated as a condition to issuance of the Policy that FGIC "shall have received

confirmation that the Notes insured by the Policy are rated" by S&P and Moody's at a specified minimum level "without regard to the Policy." I&I Agreement § 3.01(k).

197. As noted, the issuance of the Policy enabled the Notes to receive a triple-A rating from the rating agencies. Moreover, the receipt of a triple-A rating for the Notes, which depended on the issuance of the Policy, which in turn depended on the shadow ratings formulated using (inaccurate) information supplied by GMACM, was a critical component of the Transaction. As GMACM expressly noted in the Prospectus Supplement: "It is a condition to the issuance of the notes that they be rated 'Aaa' by Moody's . . . and 'AAA' by Standard & Poor's." Prospectus Supplement at S-98.

198. Had the information provided to the ratings agencies by GMACM been accurate and truthful, Moody's and S&P would almost certainly have assigned very different (and lower) shadow ratings to the 2006-HE3 Transaction, and FGIC, in turn, would not have issued the Policy on the agreed terms, or would have refused to issue the Policy altogether.

199. GMACM also made material misrepresentations to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the guidelines and standards to which the Mortgage Loans were underwritten, the percentage of the aggregate principal amount of the Initial Mortgage Loans that would consist of balloon mortgages, and the weighted average remaining term to scheduled maturity and weighted average original term to scheduled maturity of the Initial Loan Pool.

200. For example, in the Prospectus Supplement (and in the I&I Agreement by incorporation) GMACM assured FGIC that the Mortgage Loans "were originated generally in accordance with the underwriting standards of GMAC Mortgage Corporation." Prospectus

Supplement at S-29. GMACM provided FGIC with GMACM's Underwriting Guidelines themselves, which contained extensive underwriting standards and requirements.

201. In fact, as confirmed by the overwhelming defect rates described above regarding the Loan Pool, all of which are due to Mortgage Loans that are inconsistent with GMACM's own underwriting guidelines, GMACM was well aware at the closing of the 2006-HE3 Transaction that those representations were false. In other words, at the time of the closing of the 2006-HE3 Transaction, GMACM either (1) knew or should have known that its representations were materially false because GMACM had not, among other things, determined if the Mortgage Loans were originated "generally in accordance" with its own underwriting guidelines, or (2) had reviewed whether the Mortgage Loans were originated "generally in accordance" with the its underwriting guidelines, had determined that they were not, but nonetheless materially misrepresented to FGIC that the Mortgage Loans were originated "generally in accordance" with those guidelines.

202. Moreover, GMACM represented to FGIC that, in the case of each loan within the Loan Pool, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information. In fact, GMACM was not verifying the ability of borrowers to repay their loans in compliance with its own underwriting guidelines accurately or at all. As a result, GMACM misrepresented facts that were uniquely within its knowledge.

203. Additionally, the Prospectus Supplement and MLPA provided to FGIC by GMACM represented that, at closing, only a relatively small percentage (7.61%) of the aggregate principal amount of the Initial Loan Pool would be composed of balloon mortgages, when in fact more than 26% of the aggregate principal amount of the Initial Loan Pool was

comprised of these much higher risk mortgage loans. Indeed, despite providing representations in the MLPA and the Offering Documents to investors, ratings agencies, and FGIC that indicated that the Initial Loan Pool would contain approximately 1,292 balloon mortgage loans, GMACM and its affiliates transferred to the 2006-HE3 Trust more than three times that number of balloon mortgage loans. As FGIC would later discover as the 2006-HE3 Transaction began to perform poorly, at least 4,309 of the 16,558 Initial Mortgage Loans were balloon mortgage loans—accounting for more than $226 million of the $862 million aggregate principal amount of the Initial Loan Pool.

204. GMACM also misrepresented to FGIC that the weighted average remaining term to scheduled maturity of the Initial Mortgage Loans at closing was 270 months, when in fact, GMACM was well aware that the true number was closer to 236 months. Similarly, despite representing to FGIC that the weighted average original term to scheduled maturity of the Initial Mortgage Loans was 272 months, GMACM was aware that the actual number was approximately 238 months.

205. Moreover, the MLPA (and the I&I Agreement by incorporation) contained other false and misleading representations about the Mortgage Loans. In particular, GMACM misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule is true and correct in all material respects; (ii) no Mortgage Loan was 30 days or more delinquent as of August 1, 2006; (iii) each Mortgage File contains all required documents and instruments; (iv) the CLTV of each Mortgage Loan did not exceed 100%; and (v) GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program). The true information regarding these loans—as known by GMACM—simply could not substantiate GMACM's assurances. In short, no amount of

GMACM promising that the loans met certain standards, despite knowing otherwise, actually made those promises true.

206. GMACM knew that its representations were materially false and that these false representations were essential to FGIC's decision to issue the Policy on the terms to which FGIC agreed. GMACM intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreement and to issue the Policy.

207. GMACM knew when making the representations and warranties regarding the Mortgage Loans to FGIC prior to FGIC agreeing to issue the Policy that GMACM never intended to honor those representations and warranties, as is evidenced, *inter alia*, by the extraordinary breadth and depth of the problems FGIC has uncovered with respect to the underwriting and characteristics of those loans, the overwhelming number of undisclosed and mis-flagged balloon mortgage loans, and the poor performance of the 2006-HE3 Trust. In short, in order to induce FGIC to issue the Policy, GMACM represented to FGIC that, if FGIC issued the Policy, GMACM would comply with its contractual representations and warranties, despite knowing that it had not complied—and would not comply—with those very same obligations.

208. GMACM's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC, including the receipt of a subpoena served in connection with GMACM's suspected fraudulent origination and underwriting practices, as well as to a multitude of suits and the potential for more litigation to come.

209. Consistent with this pattern of behavior, GMACM defrauded FGIC into issuing the Policy, through its knowing misrepresentations.

I. Ally Bank Aids and Abets GMACM's Fraud

210. Ally Bank provided substantial assistance to GMACM in fraudulently inducing FGIC to issue the Policy. In its role as Custodian—for which it received substantial fees—Ally Bank undertook to provide "prompt written notice" to FGIC of any breaches of the representations and warranties in the MLPA that it discovered.

211. The MLPA, *see supra* at ¶ 152, contained several representations and warranties regarding the characteristics of the underlying Mortgage Loans as well as loans subsequently transferred to the 2006-HE3 Trust. And, as noted, prior to the closing of the 2006-HE3 Transaction, several representatives of Ally Bank received a copy of the MLPA from GMACM.

212. Furthermore, as an originator of nearly 88% of the Mortgage Loans, Ally Bank was well aware of the true nature of the Loan Pool. As a result of being a key part of the 2006-HE3 Transaction, its affiliate status with GMACM, and receipt by several of its employees of the MLPA, Ally Bank surely must have been aware of the representations and warranties GMACM routinely made to financial guaranty insurers—and did make here to FGIC—regarding the nature of GMACM's business practices and the quality of the mortgage loans that collateralized its many RMBS transactions, including the 2006-HE3 Transaction.

213. Against this backdrop, Ally Bank represented to FGIC that, if the 2006-HE3 Transaction was consummated, it (Ally Bank) would hold and monitor certain key information and documentation regarding the Mortgage Loans, and would provide notice to FGIC of any breaches by GMACM of which it was aware with respect to GMACM's representations and warranties to FGIC. As must have been known to Ally Bank, those representations and warranties made by GMACM directly concerned the Mortgage Loans, including the 88% of them that Ally Bank itself had originated or acquired. Ally Bank made

these representations to FGIC with full knowledge that GMACM had not complied—and would not comply—with its relevant representations and warranties, and, accordingly, that they were false. By representing to FGIC that it would (a) hold and certify the accuracy of certain key information and documentation regarding the Mortgage Loans, the majority of which it had originated itself, and (b) inform FGIC of any failure by GMACM to comply with its obligations, Ally Bank materially aided GMACM's fraudulent inducement of FGIC to issue the Policy. The issuance of the Policy, which made the 2006-HE3 Transaction possible, inured to the significant financial benefit of Ally Bank, given that it collected substantial fees as Custodian and also perpetuated the market for its loan origination and sales business.

J. Ally Financial Aids and Abets GMACM's Fraud

214. Ally Financial provided substantial assistance to GMACM in fraudulently inducing FGIC to issue the Policy. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties GMACM made regarding the nature of GMACM's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

K. GMACM's Breach of Obligations as Servicer

215. When acting in its capacity as Servicer, GMACM failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for the 2006-HE3 Transaction, including, but not limited to, its obligations to follow proper servicing procedures.

216. GMACM had responsibility for the servicing of the Mortgage Loans and thereby undertook certain related contractual obligations under the I&I Agreement and the Servicing Agreement with respect to the 2006-HE3 Transaction. Under the I&I Agreement, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the [Servicing Agreement]." I&I Agreement § 2.02(l). Under the Servicing Agreement, GMACM is liable to FGIC for the servicing and administering of the Mortgage Loans, and in doing so is required to "follow such collection procedures as shall be normal and usual in its general mortgage servicing activities and consistent with the procedures the Servicer employs in servicing all other Mortgage Loans in the servicing portfolio with characteristics similar to those of the Mortgage Loans." Servicing Agreement § 3.02(a).

217. During 2007, the servicing operations of GMACM were integrated into ResCap. Following the integration, on information and belief, GMACM breached these obligations by, among other things, being deficient in its borrower contact, collections, and loss mitigation standards, and by failing to honor FGIC's contractual rights to information. In particular, an onsite review of the Ally Financial servicing arm's headquarters, including those of GMACM, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed inter alia: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when GMACM does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry,

GMACM, as servicer, also had an obligation to notify FGIC of any material breaches of representations and warranties, and to cause GMACM, as seller, to repurchase the affected Mortgage Loans.

218. On information and belief, GMACM has failed to remedy any of its deficient servicing practices.

219. In addition, GMACM disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a servicing protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

220. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. GMACM disclosed to FGIC that all of the mortgage loans in FGIC-insured, GMACM-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the 2006-HE3 Transaction, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second- lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, GMACM clearly knew that such Mortgage Loans, by their very nature, required particularized servicing before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally

received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by GMACM to ensure that the Mortgage Loans were serviced and administered in accordance with "procedures as shall be normal and usual in its general mortgage servicing activities" constitutes a breach of the Servicing Agreement and the I&I Agreement. *See* Servicing Agreement § 3.02(a); I&I Agreement § 2.02(l).

221. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, GMACM has failed to provide such information in breach of Section 2.02(c)(v) of the I&I Agreement.

L. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

222. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns GMACM and RFC. Ally Financial—as the ultimate parent of ResCap, GMACM, Ally Bank, and RFC—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC.

223. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC. Ally Financial exercised its direction and control in connection with the 2006-HE3 Transaction. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

224. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its

direct and indirect subsidiaries." *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

225. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of GMACM Directly and Indirectly Through its Control of ResCap

226. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

227. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

228. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

229. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its

subsidiaries." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

230. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

231. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

232. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[1] Since incorporation, the ownership of ResCap has not changed—

[1] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the SEC on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

233. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the 2005 Operating Agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "require[s] that [ResCap's] board of directors include at least two independent directors, to be selected by GMAC." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (emphasis added).

234. Moreover, on April 26, 2007, "ResCap Investor Relations" announced the release of Ally Financial's 2007 first quarter financial results to investors in an email bearing the ResCap logo. That announcement stated that Ally Financial's financial results were found on both Ally Financial's and ResCap's websites.

235. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RAMP, among other Ally Financial subsidiaries.

236. Similarly, as noted above, William F. Muir, Ally Financial's President, has also served as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

237. Ally Financial's domination and control of its subsidiaries, and in particular its use of ResCap to effectuate that control, is further evidenced by John Ruckdaschel, who, according to publicly available information, has served as in-house counsel at Ally Financial since October 2006. According to an e-mail sent from ResCap to FGIC, Ruckdaschel has served as "internal legal counsel for all [] securitizations" since at least May 2008. Although purportedly an Ally Financial employee, Ruckdaschel also sent and received e-mail using a ResCap e-mail address. Further, an employee of ResCap specifically instructed FGIC that all "official letters" regarding several Ally Financial subsidiaries—including GMACM, RFC, RAMP, and others—should be sent not to the relevant (and supposedly independent) subsidiary, but rather to Ruckdaschel, Ally Financial's internal counsel. Additionally, Ruckdaschel—using his Ally Financial e-mail address—received correspondence relating to the Operative Documents at issue in this Transaction.

238. In this Transaction, Ruckdaschel was included by GMACM's counsel on key correspondence regarding the repurchase of the undisclosed and misidentified balloon mortgage loans.

239. As further evidence of Ally Financial's domination over ResCap, the 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

240. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and

against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

241. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

242. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citibank, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept.

19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

243. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

244. Additionally, Annual Reports prepared by Ally Financial further note its pursuit of strategic alternatives with ResCap, and highlight the extent to which Ally Financial manipulated its control over its subsidiaries to enhance its own financial health. According to Ally Financial: "On December 31, 2009, we announced that due to our ongoing strategic review of how to best deploy GMAC's current and future liquidity, we decided to pursue strategic alternatives with respect to ResCap and committed to a plan . . . related to management's intent to sell certain ResCap related assets and businesses. . . . In order to maximize value, we will consider a variety of options including one or more sales, spin-offs, or other potential transactions . . . [that we believe] should minimize the impact of any significant future losses related to ResCap's legacy mortgage business . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3-4 (Feb. 26, 2010).

245. There is also substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. See TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

246. Further, Ally Financial has established a "Mortgage Repurchase Reserve" to account for the potentially significant liabilities stemming from repurchase demands made on

its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was $825 million as of the fourth quarter of 2011. *See* Ally Financial's Q4 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of $44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

247. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable mortgage loan repurchases as belonging to Ally Financial, when he stated: "Our mortgage repurchase reserve is [as it then stood] $829 million . . . . Our loss experience improved during the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011) (emphases added). On the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8 (emphasis added).

248. Additionally, as discussed above, Ally Financial recorded a $230 million charge in the fourth quarter of 2011, $212 million of which was recorded at its controlled subsidiary, ResCap. As a result of the penalties assessed against ResCap by government regulators, and the fact that ResCap failed to maintain sufficient tangible net worth to comply with the requirements of the terms of certain credit facilities, Ally Financial propped up its

subsidiary ResCap with a $197 million capital contribution in the form of intercompany debt forgiveness. *See* Ally Fin. Inc., Form 10-K, at 31-32 (Feb. 28, 2012).

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

249. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

250. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured, including this Transaction. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

251. The origination and securitization of mortgage loans by ResCap and its subsidiaries have long been integral parts of Ally Financial's core business. In its 2006 Annual Report, Ally Financial (then reporting as GMAC LLC) stated that "[w]e are a leading real estate finance company focused primarily on the residential real estate market. Our

business activities include the origination, purchase, servicing, sale and securitization of residential mortgage loans." GMAC LLC, Annual Report (Form 10-K), at 3 (Mar. 13, 2007) (emphasis added). Ally Financial further stated that "we utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy." *Id.* at 5 (emphasis added).

252. Ally Financial continued to publicly report on its own business and that of its subsidiaries in later filings on an integrated basis: "We engage in the origination, purchase, servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products. Mortgage operations include the Residential Capital, LLC (ResCap) legal entity, [and] the mortgage operations of Ally Bank . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3 (Feb. 26, 2010). More recently, continuing to discuss its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United States and we provide collateralized lines of credit to other mortgage originators." Ally Fin. Inc., Annual Report (Form 10-K), at 4 (Feb. 28, 2012)..

253. Moreover, as discussed above, Ally Financial—at least in the view of certain of ResCap's bondholders—is believed to have stripped assets from its subsidiary.

254. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed GMACM and RFC as part of its own business. For example, in its investor presentation from 2007, ResCap declares that GMACM and RFC "are owned and *operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above,

Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial was not directly controlling GMACM and RFC, it was using ResCap as an instrument to do so.

255. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

256. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one GMACM has with respect to the 2006-HE3 Transaction as Servicer.

257. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as

Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

258. In another example, Larry Hipp, a member of ResCap's Risk Analyst/Investor Repurchase Department, communicated with FGIC regarding rescission requests using an Ally Financial email address, but in those very same emails, lists his ResCap contact information, including a ResCap email address. In addition, Ally Financial/ResCap used to send FGIC secure communications bearing a "GMAC ResCap" header, but those secure communications now have an Ally Financial header.

259. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

Q: Could you please state your name for the record.
A: My name is Jeffrey Stephan.
Q: Okay. And who do you work for?
A: GMAC, LLC [Ally Financial].
Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
Q: Okay.
A: It's GMCA [sic] Mortgage Corporation.
Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?

A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

M. FGIC's Contractual Remedies Under The I&I Agreement

260. The I&I Agreement provides FGIC with broad remedies for GMACM's breaches of its representations and warranties. The breadth of these remedies provided further material inducement for FGIC to issue the Policy. Specifically, Section 5.02(b) of the I&I Agreement provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Indenture, or existing at law or in equity.

261. Moreover, the I&I Agreement provides that, upon an "Event of Default"—which is defined to include when "[a]ny representation or warranty" made by GMACM in the I&I Agreement or the Operative Documents is materially untrue or incomplete—FGIC can "take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts, if any, then due under [the I&I Agreement] or any other Operative Document or to enforce performance and observance of any obligation, agreement or covenant of [GMACM]." I&I Agreement §§ 5.01(a), 5.02(a)(vi).

262. In addition, GMACM agreed:

> to pay, and to protect, indemnify and save harmless [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach

> by GMACM . . . of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the transactions contemplated by the Operative Documents . . . .

I&I Agreement § 3.04(a).

263. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, GMACM agreed to repurchase or substitute Mortgage Loans that did not conform to GMACM's representations and warranties, and to indemnify FGIC for claims and losses arising from GMACM's breach of any representation or warranty. *See* I&I Agreement § 3.03(b), 3.04(a).

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Declaratory Relief Regarding GMACM's Indemnification Obligations)

264. FGIC re-alleges and incorporates by reference paragraphs 1 through 263 of this Complaint.

265. The I&I Agreement is a valid and binding agreement between the parties.

266. FGIC has performed its obligations under the I&I Agreement.

267. GMACM's representations and warranties were material to FGIC's decision to insure the 2006-HE3 Notes and to issue the 2006-HE3 Policy.

268. GMACM's pervasive and material breaches of its representations and warranties, from the very inception of the Transaction and in the years since, constitute a material breach of the I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

269. Pursuant to Section 3.04(a) of the I&I Agreement, GMACM must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by GMACM of any of the representations or

warranties contained in Section 2.01 of the I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by GMACM of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

270. As explained above, GMACM has breached numerous representations, warranties, and covenants in the 2006-HE3 Offering and Operative Documents. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

271. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

272. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM must jointly and severally indemnify and reimburse FGIC for all sums arising out of the 2006-HE3 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2006-HE3 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2006-HE3 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

273. In addition, FGIC seeks a declaration that GMACM must indemnify FGIC for all sums arising out of the 2006-HE3 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2006-HE3 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2006-HE3 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Fraudulent Inducement — I&I Agreement)

274. FGIC re-alleges and incorporates by reference paragraphs 1 through 273 of this Complaint.

275. GMACM induced FGIC to enter into the I&I Agreement and to issue the Policy by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

276. As explained above, GMACM knowingly made materially false statements to FGIC and/or omitted material facts from its statements to FGIC, with the intent to induce reliance by FGIC.

277. GMACM intended for FGIC to rely on GMACM's material false statements and/or omissions. FGIC had no reason to believe that GMACM's representations were false, and reasonably and justifiably relied on GMACM's material false statements and/or omissions

regarding information uniquely in the possession of GMACM when it decided to enter into the I&I Agreement and to issue the Policy for the 2006-HE3 Notes.

278. As a result of GMACM's material false statements and omissions, FGIC entered into the I&I Agreement, issued the Policy, and thereby agreed to insure Notes backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that GMACM represented would collateralize the 2006-HE3 Transaction.

279. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

280. As a result of GMACM's material false statements and material omissions from its statements, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

281. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

282. Alternatively, GMACM is liable for such damages.

THIRD CAUSE OF ACTION

(As Against Ally Financial and Ally Bank: Aiding and Abetting Fraudulent Inducement — I&I Agreement)

283. FGIC re-alleges and incorporates by reference paragraphs 1 through 282 of this Complaint.

284. As explained above, Ally Financial provided substantial assistance to its subsidiary GMACM in fraudulently inducing FGIC to enter the I&I Agreement and issue the Policy.

285. GMACM could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

286. Ally Financial knew that GMACM fraudulently induced FGIC to issue the Policy for the 2006-HE3 Transaction.

287. Ally Financial's statements materially aided GMACM's fraudulent inducement.

288. As a result of Ally Financial's aiding and abetting GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

289. Moreover, as explained above, Ally Bank provided substantial assistance to its affiliate GMACM in fraudulently inducing FGIC to issue the Policy.

290. Ally Bank originated nearly 88% of the Mortgage Loans (amounting to over $500 million in loans), which form a substantial part of the collateral for the 2006-HE3 Transaction. Ally Bank was therefore aware of the characteristics of the Loan Pool. Ally Bank was also an affiliate of GMACM, received a copy of the MLPA, and served as Custodian of the 2006-HE3 Transaction, for which it received substantial fees. As such, Ally Bank was aware of the material misrepresentations GMACM had made to FGIC to fraudulently induce FGIC to issue the Policy. Ally Bank further represented to FGIC that it would undertake duties to monitor and certify the accuracy and completeness of the Mortgage Loan files, as well as inform FGIC of failures by GMACM to comply with its obligations under the Operative Documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would not comply—with its representations and warranties.

291. Ally Bank's representations to FGIC materially aided GMACM's fraudulent inducement of FGIC to issue the Policy.

292. As a result of Ally Bank's aiding and abetting of GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract—Representations, Warranties, and Affirmative Covenants)

293. FGIC re-alleges and incorporates by reference paragraphs 1 through 292 of this Complaint.

294. The I&I Agreement is a valid and binding agreement between the parties.

295. FGIC has performed its obligations under the I&I Agreement.

296. As explained above, GMACM has materially breached its representations and warranties and affirmative covenants under Sections 2.01 and 2.02 of the I&I Agreement.

297. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

298. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

299. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

300. Alternatively, GMACM is liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Bank: Breach of Custodial Agreement)

301. FGIC re-alleges and incorporates by reference paragraphs 1 through 300 of this Complaint.

302. The Custodial Agreement is a valid and binding agreement between the parties thereto.

303. FGIC is an express third party beneficiary of the Custodial Agreement.

304. As explained above, Ally Bank has materially breached its obligations under Sections 2.1, 2.2, and 2.3 of the Custodial Agreement.

305. Ally Financial, acting directly and/or indirectly through ResCap, directed Ally Bank's actions as set forth in this cause of action.

306. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Repurchase Obligation)

307. FGIC re-alleges and incorporates by reference paragraphs 1 through 306 of this Complaint.

308. The I&I Agreement is a valid and binding agreement between the parties.

309. FGIC has performed its obligations under the I&I Agreement.

310. Pursuant to the terms of the I&I Agreement, and the provisions of the MLPA incorporated therein, FGIC has demanded that GMACM repurchase non-complying Mortgage Loans, including the more than 3,000 illegitimately included and undisclosed balloon mortgage loans. GMACM has refused to repurchase numerous non-conforming Mortgage Loans and all of the excess balloon mortgage loans.

311. GMACM has breached the I&I Agreement, and the provisions of the MLPA incorporated therein, by failing to repurchase any and all Mortgage Loans that violated GMACM's representations and warranties.

312. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

313. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

314. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

315. Alternatively, GMACM is liable for such damages.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract – Declaratory Relief Regarding Access to Information)

316. FGIC re-alleges and incorporates by reference paragraphs 1 through 315 of this Complaint.

317. The I&I Agreement is a valid and binding agreement between the parties.

318. FGIC has performed its obligations under the I&I Agreement.

319. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreement, GMACM agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of GMACM; (ii) discuss the affairs, finances and accounts of GMACM with GMACM's Chief Financial Officer; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

320. On December 8, 2011, FGIC made a reasonable written request that GMACM permit FGIC or its authorized agent to conduct an inspection of the books and records of GMACM, as well as permit FGIC to (i) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and (ii) with GMACM's consent, which consent shall not be unreasonably withheld or delayed, discuss the affairs, finances, and accounts of GMACM with GMACM's independent accountants.

321. GMACM has failed to make available such persons or to produce such information.

322. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreement, Section 2.02(e)(i)-(iii).

323. Pursuant to Section 2.02(c)(v) of the I&I Agreement, GMACM agreed to furnish to FGIC, promptly upon request, such data as FGIC may reasonably request. Further, pursuant to Section 7.01(a) of the Servicing Agreement, to which FGIC is an express third-party beneficiary and the provisions of which are incorporated by reference into the I&I Agreement, GMACM agreed to provide information regarding the Mortgage Loans to, and otherwise cooperate with, the successor servicer of the 2006-HE3 Transaction.

324. GMACM has failed to comply with its contractual obligations and breached the I&I Agreement and Servicing Agreement by failing to make available to FGIC and/or the successor servicer the Mortgage Loan files and other related material information.

325. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

326. Accordingly, FGIC seeks a declaration that GMACM has failed to comply with Sections 2.02(e)(i)-(iii) and 2.02(c)(v) of the I&I Agreement and Section 7.01(a) of the Servicing Agreement, and an order requiring GMACM to promptly remedy those breaches and therefore comply with FGIC's and/or the successor servicer's requests and notices to GMACM pursuant to the relevant provisions, as detailed above.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Servicer Obligations)

327. FGIC re-alleges and incorporates by reference paragraphs 1 through 326 of this Complaint.

328. The I&I Agreement is a valid and binding agreement between the parties.

329. FGIC has performed its obligations under the I&I Agreement.

330. Moreover, as explained above, GMACM has breached its affirmative covenant under the I&I Agreement to have serviced all Mortgage Loans in all material respects in compliance with the Servicing Agreement.

331. GMACM's breaches of the I&I Agreement has caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

332. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

333. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

334. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

335. Alternatively, GMACM is liable for such damages.

NINTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Declaratory Relief)

336. FGIC re-alleges and incorporates by reference paragraphs 1 through 335 of this Complaint.

337. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this complaint.

338. For the reasons set forth in paragraphs 222 through 259, among others, Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other.

339. FGIC has been damaged as a result of the actions Ally Financial, ResCap and GMACM.

340. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other, and therefore are jointly and severely liable for each other's liabilities.

TENTH CAUSE OF ACTION

(As Against GMACM: Attorneys' Fees and Costs)

341. FGIC re-alleges and incorporates by reference paragraphs 1 through 340 of this Complaint.

342. The I&I Agreement is a valid and binding agreement between the parties.

343. FGIC has performed its obligations under the I&I Agreement.

344. Pursuant to Section 3.03(c) of the I&I Agreement, GMACM agreed to reimburse FGIC for any and all costs or expenses "including reasonable attorneys' . . . fees and expenses" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreement, GMACM agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the I&I Agreement or arising out of or relating to the 2006-HE3 Transaction.

345. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of GMACM's failure to provide Mortgage Loan files, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreement and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant GMAC Mortgage Company, LLC, with respect to (1), (2), (4) through (6), and (8) through (12) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (6), (9), (11), and (12) below, and in its favor and against Ally Bank, with respect to (3), (7), and (12) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (6), (9), (11), and (12) below, and the following relief:

(1) A declaration that, pursuant to GMACM's obligations under the I&I Agreement, GMACM must solely and/or Ally Financial, ResCap, and GMACM must jointly and severally reimburse and indemnify FGIC for all sums arising out of the 2006-HE3 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement: (i) for all sums it has paid to date under the Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policy as and when such sums fall due or such claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and (iv) an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal, rescissory, equitable and punitive damages, to be proven at trial, for GMACM's fraudulent inducement of FGIC to enter into the 2006-HE3 Transaction and to issue the Policy;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's and Ally

Bank's aiding and abetting of GMACM's fraudulent inducement of FGIC to enter into the 2006-HE3 Transaction and to issue the Policy;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for GMACM's material breaches of the 2006-HE3 Transaction;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for GMACM's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreement and frustration of the parties' bargain, including, but not limited to, those in respect of the more than 3,000 misidentified and undisclosed balloon mortgage loans;

(6) Further or alternatively, a declaration that GMACM must repurchase all Mortgage Loans that are in breach of GMACM's representations and warranties in the 2006-HE3 Transaction, including, but not limited to, the more than 3,000 misidentified and undisclosed balloon mortgage loans, and an order giving effect to that declaration;

(7) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for Ally Bank's material breaches of its obligations under the Custodial Agreement;

(8) Further or alternatively, a declaration that GMACM must allow FGIC to inspect the books and records of GMACM, to discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants; and that GMACM must comply with its obligations to provide FGIC and/or the successor servicer information pertaining to the Mortgage Loan files; and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that Ally Financial, ResCap, and GMACM are alter egos of each other;

(10) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreement and other Operative Documents, as defined in the I&I Agreement;

(11) An award of prejudgment interest at the statutory rate; and

(12) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: March 6, 2012

JONES DAY

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Patrick J. Smith
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,

Plaintiff,

-against-

ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; ALLY BANK F/K/A GMAC BANK; GMAC MORTGAGE, LLC F/K/A GMAC MORTGAGE CORPORATION

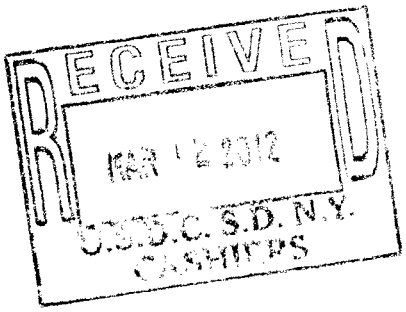
Defendants.

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12 CV 1818

Civil Action No._____

COMPLAINT



Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"), Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"), Ally Bank, formerly known as GMAC Bank ("Ally Bank"), and GMAC Mortgage, LLC, formerly known as GMAC Mortgage Corporation ("GMACM"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with two financial guaranty insurance policies (each the "Policy" and collectively the "Policies") issued by FGIC in relation to two GMACM-sponsored transactions (each a "Transaction" and collectively the "HE Transactions" or the "Transactions") in which GMACM Home Equity Loan Trust 2006-HE2 (the "2006-HE2 Trust") and GMACM Home Equity Loan Trust 2007-HE2 (the "2007-HE2 Trust" and together with the

2006-HE2 Trust, the "HE Trusts") issued and sold to investors a combined $1.87 billion aggregate principal amount of insured residential mortgage-backed securities (the "HE Notes"). As the sponsor of the HE Transactions, GMACM procured the Policies from FGIC in order to enhance the ratings and marketability of the HE Notes. GMACM fraudulently induced FGIC's agreement to provide insurance for the HE Transactions through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices and the credit quality and characteristics of the thousands of home equity loans (individually the "Mortgage Loans," and collectively with respect to each of the Transactions the "Mortgage Loan Pool" or "Loan Pool") that provided the collateral for the HE Notes. In short, the Mortgage Loans were different—and demonstrably worse—than GMACM had represented them to be. FGIC's issuance of the Policies enabled the HE Notes to receive a triple-A rating from the rating agencies, which in turn made the HE Transactions viable, and enabled GMACM and its affiliates to earn millions of dollars in transaction fees.

2. Since the closing of the HE Transactions, GMACM has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of the HE Transactions, GMACM has violated the essential terms of its agreements with FGIC. GMACM has also breached the essential terms of the other operative documents incorporated therein.

3. The wrongdoing committed by GMACM, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through its wholly-owned subsidiary, ResCap. Ally Financial is the ultimate parent of ResCap, which owns GMACM. Ally Financial, as the ultimate parent of ResCap and GMACM, has the practical ability, which it has repeatedly exercised, to direct and control the activities of these (and other) subsidiaries. In many instances,

including in these Transactions, Ally Financial's direction and control was effected by using ResCap as an intermediary instrument to achieve its goals. For example, many of the material contractual breaches committed by GMACM, concerning, primarily, FGIC's right to access information in GMACM's possession and GMACM's failure to repurchase or cure certain of the Mortgage Loans backing the HE Notes that FGIC sought to have repurchased, were carried out by ResCap, at the direction and control of Ally Financial.

4. GMACM was also substantially assisted in fraudulently inducing FGIC to issue the Policies by another Ally Financial subsidiary, Ally Bank, then doing business as GMAC Bank. Ally Bank and GMACM were the two principal originators of loans that became the collateral for the HE Transactions, and as such had intimate knowledge of the quality of the Mortgage Loans. In total, Ally Bank sold nearly $1.1 billion in loans that it had originated or acquired to GMACM to be securitized in the HE Transactions. Further, Ally Bank agreed to serve as custodian (the "Custodian") of the HE Transactions—one of the critical parties charged with certain oversight and maintenance duties with respect to the HE Trusts—and received certain key operative documents with respect to the Transactions. With knowledge of GMACM's material misrepresentations and omissions regarding the Mortgage Loans that collateralized the HE Transactions, Ally Bank separately made representations and warranties regarding those loans for the purpose of aiding GMACM's inducement of FGIC to issue the Policies. By assisting GMACM in inducing FGIC to issue the Policies, Ally Bank was able to collect substantial fees as Custodian and perpetuate its lucrative loan origination business.

5. Ally Bank has materially breached its own separate contractual agreements regarding its duties as Custodian, in particular by failing to ensure that essential documents were

included in the loan file and failing to notify FGIC of breaches of representations and warranties by GMACM of which Ally Bank was aware.

6. The HE Transactions are mortgage loan securitizations: complex arrangements comprising multiple interdependent agreements among GMACM and several other parties whereby tens of thousands of home equity loans were pooled together and transferred to the HE Trusts, which then issued to investors securities (*i.e.*, the HE Notes) collateralized by those loans.

7. In June 2006, FGIC and several other parties entered into the 2006-HE2 Transaction. In June 2007, FGIC and several other parties entered into the 2007-HE2 Transaction. The HE Transactions were sponsored by GMACM. To facilitate the Transactions, GMACM pooled together tens of thousands of Mortgage Loans to provide collateral for the HE Notes. All of the Mortgage Loans were either originated or acquired by GMACM or Ally Bank.

8. After pooling the Mortgage Loans originated or acquired by GMACM and Ally Bank, GMACM transferred the Mortgage Loans directly or indirectly to another Ally Financial subsidiary, Residential Asset Mortgage Products, Inc. ("RAMP"). RAMP then deposited the Mortgage Loans it received from GMACM into the HE Trusts. The HE Trusts, in turn, issued the HE Notes to investors. The HE Trusts were legal entities created by GMACM solely for the purposes of the HE Transactions to hold the Mortgage Loans and to issue the HE Notes to investors in registered public offerings.

9. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the HE Trusts are used to pay, among other things, principal and interest due on the HE Notes, and the fees and expenses of GMACM and other participants in the Transactions.

10. GMACM is also the servicer of the 2006-HE2 Transaction (the "2006-HE2 Servicer") and, until March 2012, was the servicer of the 2007-HE2 Transaction (the "2007-HE2

Servicer"). The servicer of the Transactions supervises the collection of borrower payments and performs other duties related to servicing the Mortgage Loans. Yet another Ally Financial subsidiary, Ally Securities, LLC ("Ally Securities" f/k/a GMAC RFC Securities), was a co-manager of the HE Transactions. In addition, JPMorgan Chase Bank, N.A. ("JPMorgan") agreed to act as Indenture Trustee of the 2006-HE2 Trust, while The Bank of New York Trust Company, N.A. ("BNY") agreed to act as Indenture Trustee of the 2007-HE2 Trust. BNY later succeeded JPMorgan as Indenture Trustee of the 2006-HE2 Trust, as well.

11. GMACM, directed and controlled by Ally Financial, is, therefore, the hub of the HE Transactions: it is the sponsor of each securitization, the originator and seller of many of the Mortgage Loans, and the original servicer of all of the loans that collateralize the HE Notes. The primary victim of the HE Transactions—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by GMACM—is FGIC, which has already paid out tens of millions of dollars in losses under the Policies, with further material losses still to come.

12. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed notes ("RMBS Notes"). At the time of the HE Transactions, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Notes typically guaranteed the timely payment of the principal and interest due on the insured securities.

including the amount, if any, of principal losses allocated to the RMBS Notes. FGIC's insurance policies thus enhanced the credit quality, and marketability, of the insured securities.

13. To enhance the ratings and marketability of the HE Notes, and to increase the profit that GMACM would derive from the 2006-HE2 and 2007-HE2 Transactions, GMACM sought to have FGIC issue the Policies to JPMorgan and BNY, respectively, each in its capacity as Indenture Trustee.

14. To induce FGIC to issue the Policies, GMACM, *inter alia*, offered certain material representations and warranties to FGIC regarding the Transactions. These representations and warranties were false when stated, and FGIC reasonably relied on such warranties, among others, when deciding to enter into the HE Transactions. As a result, FGIC was fraudulently induced to enter the Transactions, and the credit risk assumed by FGIC in connection with the Transactions was far greater than it would have been had GMACM's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

15. GMACM received substantial assistance from Ally Bank in fraudulently inducing FGIC to issue the Policies. Ally Bank was aware of the material misrepresentations GMACM had made to FGIC, and further represented to FGIC that it would undertake duties to monitor and certify the accuracy and completeness of certain material aspects of the Mortgage Loan files, as well as inform FGIC of certain failures by GMACM to comply with its obligations under the HE Transaction documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would not comply—with its representations and warranties to FGIC. As such, Ally Bank actively aided and abetted GMACM's fraudulent inducement of FGIC to issue the Policies.

16. Moreover, both GMACM and Ally Bank received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue the Policies. Ally Financial took actions and made statements to boost investor confidence in, and otherwise finance and support, its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations GMACM and Ally Bank had made to FGIC. As a result of its dominance over ResCap, Ally Bank, and GMACM, Ally Financial knew that the representations and warranties GMACM and Ally Bank made to FGIC, prior to and at the closing, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted GMACM's and Ally Bank's fraudulent inducement of FGIC to issue the Policies.

17. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policies in reliance on the (presumed) accuracy and truthfulness of GMACM's representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and the resulting amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of GMACM's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policies, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of GMACM's misconduct.

18. In order to evaluate the extent of GMACM's breaches, FGIC has requested copies of the mortgage loan files and servicing notes for the Mortgage Loans. GMACM is obligated, under its agreements with FGIC, to provide those documents to FGIC. GMACM has refused to provide FGIC with the requested documentation, which, on information and belief, will further

evidence material breaches by GMACM. This refusal to provide information in itself constitutes a material breach of GMACM's insurance agreements with FGIC.

19. Certain of the material contractual breaches committed by GMACM and Ally Bank—including, but not limited to, its refusal to honor FGIC's right to access information in GMACM's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

20. Through this Complaint, FGIC seeks relief against GMACM, Ally Bank, ResCap, and Ally Financial for GMACM's fraudulent inducement of FGIC, and for GMACM's material breaches of its insurance agreements with, and contractual obligations owed to, FGIC in connection with the HE Transactions.

21. Further, FGIC seeks relief against Ally Financial and Ally Bank for aiding and abetting GMACM's fraudulent inducement, as well as for Ally Bank's material breaches of its contractual obligations to FGIC.

22. FGIC also seeks a declaration from the Court that Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other.

THE PARTIES

23. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

24. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial is the parent company of ResCap, GMACM, and all GMACM-affiliated entities relevant to this action.

25. Defendant GMACM is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. In the period relevant to this action,

GMACM originated, acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

26. Since 2005, GMACM has been an indirect wholly-owned subsidiary of ResCap; prior to that time, GMACM was an indirect, wholly-owned subsidiary of Ally Financial.

27. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of GMACM and its business includes originating, acquiring, selling, and servicing mortgage loans.

28. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

29. Defendant Ally Bank (f/k/a GMAC Bank), an indirect, wholly-owned subsidiary of Ally Financial, was at all times relevant to this Complaint a loan originator. To facilitate the HE Transactions, Ally Bank sold to GMACM nearly $1.1 billion in mortgage loans that it had originated or acquired to be securitized in the Transactions. These loans comprised more than 75% of the initial Mortgage Loans. GMAC Bank was renamed Ally Bank in May 2009. Ally Bank is an online bank chartered under Utah law.

JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

31. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred within this judicial district. Moreover, at least one of the defendants in this action, GMACM, has agreed to submit to the jurisdiction of this Court, and has agreed not to challenge venue in this Court.

RELEVANT NON-PARTIES

32. RAMP, a special purpose vehicle, is an indirect, wholly-owned subsidiary of Ally Financial and a Delaware corporation with its principal place of business in Minnesota. To facilitate the HE Transactions, RAMP purchased mortgage loans from GMACM and another affiliate, Walnut Grove Mortgage Loan Trust 2003-A ("Walnut Grove"), and deposited those loans into the HE Trusts. The Trusts then issued the HE Notes to the underwriters, including Ally Securities (then doing business as GMAC RFC Securities), to be sold to investors.

33. Ally Securities, an entity incorporated in Delaware, is an affiliate of GMACM and RAMP and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as an underwriter of the HE Notes and, on information and belief, participated in the preparation of certain of the key offering documents for the HE Transactions.

34. Walnut Grove is a Delaware statutory trust established by an affiliate of GMACM. Beginning in 2003, GMACM sold to Walnut Grove second-lien mortgage loans that it had originated or acquired. To facilitate the HE Transactions, Walnut Grove sold certain of the Mortgage Loans to RAMP.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

35. In the period relevant to this action, GMACM originated, acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Notes.

36. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including those of GMACM, Ally Bank, and ResCap, led Ally Financial to seek a bailout by the federal government in 2008.

(1) GMACM, GMAC-RFC, and RFC

37. GMACM is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

38. Residential Funding Corporation, LLC ("RFC") is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate GMACM, RFC engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

39. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See* 2011 Mortgage Market Statistical Annual: Volume II at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

40. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

41. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and

evaluation—a truth FGIC would come to learn specifically in its dealings with GMACM. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

42. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

43. Ally Financial's business model depended on securitizations, which were conducted by its business units, including GMACM. Pooling mortgage loans and selling them into securitizations enabled GMACM to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

44. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining whether a mortgage loan is in default based on the transaction documents, GMACM generally acted as servicer of its own securitizations. GMACM thereby earned servicing fees that

normally amounted to 0.50% per annum of the aggregate principal balance of the mortgage loans, as well as collected fees in the range of approximately 20%-35% of any subsequent recoveries from charged-off loans.

45. GMACM also enriched Ally Financial and its other subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the HE Transactions:

- Ally Bank gained fees for originating more than 75% of the loans initially comprising the HE Trusts, and proceeds from selling those loans to GMACM; Ally Bank also gained fees as Custodian of the HE Trusts for holding certain documents;

- Walnut Grove received the proceeds from selling certain of the Mortgage Loans to RAMP (after purchasing approximately 38% of the 2006-HE2 Mortgage Loans and 44% of 2007-HE2 Mortgage Loans from GMACM);

- RAMP received payments for serving as the depositor of the Mortgage Loans to the HE Trusts; and

- Ally Securities received fees for underwriting the HE Notes.

(3) Ally Financial, GMACM, and RFC Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

46. GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

47. Additionally, on September 2, 2011, the Federal Housing Finance Authority ("FHFA"), as conservator for Freddie Mac, filed suit in the Supreme Court of the State of New York, New York County against Ally Financial and several of its subsidiaries for claims arising in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in certificates issued through twenty-one transactions similar to the transactions at issue here. Among other claims, FHFA brought suit for common law fraud against various Ally Financial subsidiaries and aiding and abetting fraud against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates.

48. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries stemming from false and misleading statements contained in publicly-filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, the FHFA alleges aiding and abetting fraud against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs. In October 2011, Ally Financial and its co-defendants removed the FHFA action to the U.S. District Court for the Southern District of New York.

49. In addition, GMACM is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that, in connection with three transactions similar to the one at issue here, GMACM affirmatively misrepresented

the credit quality of tens of thousands of mortgage loans, with a total original principal balance of more than $4 billion, as a means of unfairly shifting to investors and MBIA risks that GMACM should have borne itself. On December 15, 2010, the New York Supreme Court issued a ruling denying GMACM's motion to dismiss, which allowed both the breach of representations and warranties and fraud claims, among others, to proceed to trial.

50. GMACM's sister company, RFC, is also currently facing a lawsuit brought by MBIA in New York Supreme Court for, among other things, fraud and breach of representations and warranties in connection with RMBS transactions. In December 2009, the New York Supreme Court rejected RFC's motion to dismiss certain of the claims brought against it, allowing both the breach of contract and fraud claims, among others, to proceed.

51. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two suits in various jurisdictions pending against Ally Financial's mortgage-related business units and subsidiaries, arising from numerous mortgage-backed securities offerings. The plaintiffs in those suits have alleged, among other things, that Ally Financial's various mortgage subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011). Further, in its 2011 annual report, Ally Financial stated that it expects additional similar claims to be brought against Ally Financial and/or its subsidiaries in the future. *See* Ally Fin. Inc., Annual Report (Form 10-K), at 20 (Feb. 28, 2011).

52. Since the filing of its November 2011 quarterly report, moreover, Ally Financial and its subsidiaries have been sued by additional plaintiffs, including HSH Nordbank AG, which

have alleged, *inter alia*, material misrepresentations and omissions about the loans backing RMBS securities issued by Ally Financial's affiliates.

53. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. During 2011, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. Ally Financial clearly recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own Securities and Exchange Commission ("SEC") filings, Ally Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Annual Report (Form 10-K), at 98 (Feb. 28, 2012).

54. Indeed, according to Ally Financial's 2011 annual report, Ally Financial, GMACM's parent, also believes that "[t]he total exposure . . . to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions implemented in 2008 and forward." Ally Fin. Inc., Annual Report (Form 10-K), at 224 (Feb. 28, 2012). The 2006-HE2 and 2007-HE2 Transactions are, as their names imply, of the 2006 and 2007 vintages.

55. Additionally, Ally Financial also disclosed that the SEC served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *See* Ally Fin. Inc., Amendment No.

3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

(4) The Mortgage Loan Servicing Misconduct of Ally Financial and GMACM Has Come Under Scrutiny and Resulted in Severe Sanctions

56. On February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, and several other mortgage loan servicers would be required to pay $766.5 million in monetary sanctions for "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2011). On February 12, 2012, the Federal Reserve Board imposed well over $200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an assessment order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See In re Ally Fin. Inc.*, FRB Docket Nos. 12-006-CMP-HC & 12-006-CMP-DEO (Feb. 10, 2012) (the "Assessment Order"). According to the Federal Reserve Board, the sanction "takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the institutions' misconduct, and the comparative sizes of the institutions' foreclosure activities." *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2011).

57. Further, also on February 9, 2012, the U.S. Attorney General announced that Ally Financial will take part in a $25 billion settlement to resolve claims brought by the government in response to the "reckless and abusive mortgage practices" of Ally Financial and four similarly situated bank holding companies. *See* Eric Holder, U.S. Attorney General, Remarks at the

Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple state attorneys general, *see id.*; National Mortgage Settlement, Servicing Standard Highlights, *available at* http://www.nationalmortgagesettlement.com (last visited Mar. 10, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper origination, securitization, and servicing practices, *see* National Mortgage Settlement, About the Settlement, http://www.nationalmortgagesettlement.com/about (last visited Mar. 10, 2012).

58. According to the U.S. Attorney General, the $25 billion settlement and $766.5 million sanction are just "the latest step forward" in holding Ally Financial and others accountable for "egregious mortgage loan servicing abuses." *See* Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012).

59. Similarly, the New York Attorney General recently announced a $136 million settlement with the nation's five largest mortgage servicers—including GMAC/Ally Financial. *See* Press Release, Office of the New York Attorney General, Schneiderman Secures Major Settlement that Allows Sweeping Mortgage Investigations to Proceed (Feb. 9, 2012). As the New York Attorney General noted, the settlement principally addressed "foreclosure abuses" by GMAC/Ally Financial and other banks, and "[i]n addition to penalties for past abuses, the settlement includes direct relief to victims of wrongful foreclosure conduct" and "imposes strong national standards for mortgage servicing" that had previously been lacking. *Id.* Additionally, the New York Attorney General will lead the new Residential Mortgage-Backed Securities Working Group, a component of the interagency Financial Fraud Enforcement Task Force led by the DOJ, which "brings together the Department of Justice (DOJ), several state law enforcement

officials, and other federal agencies to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities." *Id.*

60. In addition to these recent settlements and Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the "FDIC") previously ordered Ally Financial, GMACM, and several other Ally Financial subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO, FDIC-11-123b (April 13, 2011) (the "Consent Order").

61. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries, including GMACM, have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

62. Furthermore, under the Consent Order, Ally Financial must direct GMACM and its other mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id.* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations." *Id.* at 8.

63. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the foreclosure processes of GMACM to request an independent review of their files. *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces that Borrowers from Four Mortgage Servicers Can Request an Independent Review and Potentially Receive Compensation (Nov. 1, 2011). This independent review will determine whether errors and misrepresentations in GMACM's foreclosure processes indeed caused financial harm to the borrower. *See id.* If the foreclosure process is found to have caused financial injury to the borrower, GMACM will then be required to provide full compensation. *See id.*

64. As a result of servicing misconduct, Ally Financial and other bank holding companies will now be required to adhere to new, heightened servicing standards. *See* Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2011). The Federal Reserve Board has ordered Ally Financial to remedy its servicing practices by, *inter alia*, "strengthen[ing] the coordination of communications with borrowers by providing borrowers the name of the person at the service who is their primary point of contact, establish[ing] limits on foreclosures where loan modifications have been approved, establish[ing] robust third party vendor controls, strengthen[ing] compliance programs, and provid[ing] appropriate remediation to borrowers who suffered financial injury as a result of errors by the servicers." *See id.*

65. Moreover, the servicing and foreclosure improprieties of Ally Financial and its subsidiaries is a matter of public record. According to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan

Dep. *Fed. Nat'l Mortgage Ass'n v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Dist. Nine, Div. N. Cumberland) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner," Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

66. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.* at 51:15-23. Stephan further testified that when he signed an affidavit affirming that the foreclosure was proper, all he knew was the borrower's name and whether he had signing authority for the GMAC entity foreclosing on the property. *Id.* at 62:23-25, 63:2-6. Stephan testified that the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required by GMACM. *Id.* at 64:8-14.

67. Additionally, in October 2010, the Ohio Attorney General filed suit against GMACM and Ally Financial, alleging, *inter alia*, that employees of GMACM had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See Ohio v. GMAC Mortgage, LLC*, CI0201006984, Ct. C.P. Lucas Cnty. Although some of the claims brought by the Ohio Attorney General's suit have been resolved by the $25 billion multi-party

settlement, many additional claims not encompassed by the settlement, including those relating to the improper assignment of mortgage notes, have survived. As of February 2012, the action remains pending in Ohio.

68. Similarly, in December 2011, the Massachusetts Attorney General filed suit against GMACM for, among other things, engaging in unfair and deceptive foreclosure practices. *See Massachusetts v. Bank of Am., N.A.*, 11-4363, Suffolk Cnty. Super. Ct. Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States Hous Committee on Financial Services asking that the federal government investigate Ally Financial and GMACM for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Boston Globe, *Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices*, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

Id.

69. While the $25 billion settlement ultimately resolved certain claims brought by the Massachusetts Attorney General in this action, several claims relating to improper foreclosure practices and abuse of certain state recordation systems have survived and will continue to be prosecuted. *See* Press Release, Office of the Attorney General of Massachusetts, *Massachusetts Homeowners to Receive $318 Million in Relief as Part of State-Federal Agreement Over Unlawful Foreclosures and Loan Servicing*, Feb. 9, 2012.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and GMACM

70. Since at least as far back as November 2011, Ally Financial has been considering filing for bankruptcy protection for ResCap, its wholly-owned subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports. GMACM is a wholly-owned, indirect subsidiary of ResCap.

71. Around that time, the financial industry was "betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering." Bloomberg News, *Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance*," Nov. 14, 2011.

72. As the article notes, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy. *See id.*

73. Indeed, Ally Financial warned in its 2011 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 19 (Feb. 28, 2012).

74. That risk ultimately came to pass as Ally Financial recently disclosed that the penalties assessed by the federal government and numerous state attorneys general regarding the foreclosure practices of Ally Financial and its subsidiaries "resulted in our Mortgage operations recording a $230 million charge in the fourth quarter of 2011." *Id.* at 31. As Ally Financial detailed in its previous public filing, the "[t]he majority of [the charge] was recorded at Residential Capital, LLC ('ResCap') . . . [which] resulted in a covenant breach in certain of ResCap's credit facilities." Ally Fin. Inc., Current Report (Form 8-K) (Jan. 31, 2012). Indeed, as Ally Financial more recently explained, "ResCap is required to maintain consolidated net

worth . . . of $250 million at the end of each month under the terms of certain of its credit facilities. . . [and] as a result of the fourth quarter charge, ResCap's consolidated net worth was $92 million at December 31, 2011." Ally Fin. Inc., Annual Report (Form 10-K), at 31-32 (Feb. 28, 2012). ResCap's substantial shortfall, however, was "immediately remediated by Ally through a capital contribution of $197 million, which was provided through forgiveness of intercompany debt during January 2012." *Id.*

75. Moreover, in February 2012, it was reported that Ally Financial had contacted buyout firms such as Fortress Investment Group LLC and Cerberus Capital Management LP regarding a potential sale of ResCap through a pre-packaged bankruptcy to be effectuated by the end of March as ResCap faces financing and liquidity deadlines. *See* Bloomberg News, *Ally's ResCap Said to Seek Buyers for Prearranged Bankruptcy*, Feb. 8, 2012.

76. According to the report, "[p]otential bidders are being told that a pre-packaged bankruptcy filing would allow the buyer to leave behind liabilities such as [RMBS] securitizations that have been the subject of litigation." *Id.* To that end, Ally Financial's CEO, Michael Carpenter, has stated that he will not pursue the aforementioned initial public offering for Ally Financial "until [these] legacy mortgage issues are resolved." *Id.* Nevertheless, a bondholder group representing holders of approximately $800 million in ResCap debt has expressed its desire to "fight [Ally Financial] tooth and nail" to oppose the bankruptcy, based in part on the belief that "Ally [Financial] can't legally separate itself from ResCap because it has stripped assets from the unit." Bloomberg News, *Paulson, Tepper Said Among Investors Urging Ally to Back ResCap*, Jan. 10, 2012.

77. Indeed, as Ally Financial has pointedly noted in its most recent annual report: "In light of ResCap's liquidity and capital needs combined with volatile conditions in the

marketplace, there is substantial doubt about ResCap's ability to continue as a going concern." Ally Fin. Inc., Annual Report (Form 10-K), at 18 (Feb. 28, 2012).

B. GMACM's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

78. To improve the marketability and ratings of the RMBS Notes issued as part of its securitizations, GMACM from time to time sought credit enhancement for the RMBS Notes from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the ones FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Notes that, if there is a shortfall in cash available to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

79. For a trust that issues RMBS Notes, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Notes. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the loan pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS investors. Such shortfalls result in claims on FGIC's policies.

(2) Securitization Sponsor's Disclosures and Representations and Warranties

80. The risk FGIC assumes when it agrees to issue a policy for RMBS Notes depends upon the credit quality of the underlying mortgage loans, which in turn depends on the

underwriting practices of the loan originators and the characteristics of the loans. If, for instance, GMACM and other loan originators employ substandard underwriting practices, the underlying mortgage loan pool as a whole would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage portfolio as a whole, would be materially increased.

81. Accordingly, FGIC generally required securitization sponsors, like GMACM, to provide substantial representations and warranties about the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance to the value of the mortgaged property at origination—plus, in the case of a junior lien mortgage loan, the principal balance of the senior mortgage loan on the related mortgaged property—("LTV ratio"), and the borrower's credit score ("FICO score"). Even where GMACM did not originate a particular loan, it nonetheless is typically required to make representations about that loan, thereby assuming the risk that those representations might not be accurate. GMACM's representations and warranties, including representations about the standards and procedures used to underwrite the loans, were intended to allow FGIC to assess the credit risk inherent in the mortgage loan pool before deciding to commit to the transaction.

82. GMACM's representations and warranties in its RMBS transactions regarding the characteristics of the loans included in the mortgage loan portfolios, and the underwriting standards used to evaluate those mortgage loans, are particularly vital because each loan pool is comprised of thousands of mortgage loans, each of which was in itself a complex legal transaction. Each loan file typically contains (or at least is supposed to contain) a mortgage application, a credit report, income and employment verifications, an appraisal, the lender's internal documentation and a wide variety of other documentation necessary to support proper

loan underwriting decisions. Moreover, in seeking financial guaranty insurance from FGIC for the HE Transactions, GMACM demanded that FGIC commit to the pricing and other material terms within a very limited time frame. Both GMACM and FGIC understood and intended that FGIC would rely on the information supplied by GMACM as sponsor, as well as GMACM's representations and warranties concerning that information, in assessing the credit risk of the mortgage loan pool.

83. Further, on information and belief, for each of its securitizations, GMACM as sponsor supplied the same data it provided to FGIC to one or several rating agencies in order for those agencies to create expected loan level default and loss estimates. The loan level default and loss estimates were then used by the rating agencies to create cash flow projections and potential loss estimates for the entire transaction. Finally, the rating agencies delivered to the sponsor and to FGIC a private credit assessment for the transaction (sometimes referred to as a "shadow rating") without considering the effect of FGIC's policy. The shadow rating provided an overall evaluation of the likelihood of default on the securities FGIC would be insuring in the securitization. As sponsor, GMACM arranged for the shadow rating to be provided to FGIC knowing that it was an essential condition to FGIC's willingness to issue a financial guaranty insurance policy.

C. The HE Transactions

(1) The GMACM 2006-HE2 Transaction

84. On June 29, 2006, GMACM pooled together and deposited many thousands of fixed rate Home Equity Loans ("HELs") into the 2006-HE2 Trust. The 2006-HE2 Trust served as the Issuer of $626,240,000 aggregate principal amount of 2006-HE2 Notes. Home equity loans are essentially second-lien mortgage loans, which are generally funded entirely at the closing of the loan.

85. The initial conveyance to the 2006-HE2 Trust by RAMP (acting as Depositor) contained over 9,500 HELs with an aggregate principal balance of approximately $480 million. Investors in the GMACM-sponsored 2006-HE2 Transaction were issued four classes of securities (*i.e.*, the 2006-HE2 Notes)—Class A-1 Notes, Class A-2 Notes, Class A-3 Notes, and Class A-4 Notes (formally termed the GMACM Home Equity Loan-Backed Term Notes, Series 2006-HE2)—which were collateralized by the Mortgage Loans transferred to and held by the 2006-HE2 Trust. In addition, approximately $160 million was deposited into a pre-funding account at closing, which was used to acquire approximately 3,500 additional HELs in the 90 days following the closing.

(2) The GMACM 2007-HE2 Transaction

86. Similarly, on June 28, 2007, GMACM pooled together and deposited many thousands of fixed rate HELs into the 2007-HE2 Trust. The 2007-HE2 Trust served as the Issuer of $1,240,884,000 aggregate principal amount of 2007-HE2 Notes.

87. The initial conveyance to the 2007-HE2 Trust by RAMP (acting as Depositor) contained over 17,800 HELs with an aggregate principal balance of approximately $960 million. Investors in the GMACM-sponsored 2007-HE2 Transaction were issued six classes of securities (*i.e.*, the 2007-HE2 Notes)—Class A-1, Class A-2, Class A-3, Class A-4, Class A-5 and Class A-6 (formally termed the GMACM Home Equity Loan-Backed Term Notes, Series 2007-HE2)—which were collateralized by the Mortgage Loans transferred to and held by the 2007-HE2 Trust. In addition, approximately $320 million was deposited into a pre-funding account at the closing, which was used to acquire approximately 5,800 additional HELs in the 90 days following the closing.

(3) The HE Transactions Generally

88. To enhance the ratings and marketability of the HE Notes, GMACM sought financial guaranty insurance policies from FGIC for the purpose of insuring the Transactions for the benefit of the certificate holders. For each of the HE Transactions, FGIC and GMACM executed an Insurance and Indemnity Agreement (respectively, the "2006-HE2 I&I Agreement" and the "2007-HE2 I&I Agreement," and collectively the "I&I Agreements"),[1] under which FGIC agreed to and did issue financial guaranty insurance policies—Policy number 06030080 and Policy number 07030046, respectively—to insure the 2006-HE2 and 2007-HE2 Notes. Each I&I Agreement was signed by FGIC (as the "Insurer" of each Transaction); GMACM (as the "Servicer" and a "Seller" for each Transaction), RAMP (as the "Depositor" for each Transaction); Walnut Grove (a "Seller" for each Transaction); and the respective Indenture Trustee for each Transaction.[2]

89. In each Transaction, Ally Bank (using its then-current name, GMAC Bank) also entered into a Custodial Agreement whereby it agreed to serve as Custodian of the underlying mortgage loan notes on behalf of the respective Trusts (the "2006-HE2 Custodial Agreement" and "2007-HE2 Custodial Agreement," and, together the "Custodial Agreements"). FGIC is an express third party beneficiary of the Custodial Agreements. *See* Custodial Agreements § 5.6.

90. Each I&I Agreement provides that FGIC (the Insurer) is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." I&I Agreements § 2.02(k). With respect to the 2006-HE2 and 2007-HE2 Transactions, the "Operative

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[1] JPMorgan initially served as the Indenture Trustee for the 2006-HE2 Transaction, but was succeeded by The Bank of New York Trust Company, N.A. The Bank of New York Trust Company, N.A., also served as the Indenture Trustee for the 2007-HE2 Transaction.

[2] The 2006-HE2 I&I Agreement was executed on June 29, 2006 and the 2007-HE2 I&I Agreement was executed on June 28, 2007.

Documents" are defined to include, among other documents: (i) the relevant HE Notes; (ii) the Mortgage Loan Purchase Agreement, among GMACM, RAMP, Walnut Grove, the relevant HE2 Trust, and the relevant Indenture Trustee (respectively, the "2006-HE2 MLPA" and the "2007-HE2 MLPA," and collectively the "MLPAs"); (iii) the Servicing Agreement among GMACM, the relevant HE2 Trust, and the relevant Indenture Trustee (respectively, the "2006-HE2 Servicing Agreement" and the "2007-HE2 Servicing Agreement," and collectively the "Servicing Agreements"); (iv) the Indenture between the relevant Trust and Indenture Trustee; and (v) the Custodial Agreement among GMACM, the relevant Indenture Trustee, and Ally Bank (then doing business as GMAC Bank).[3] *See* I&I Agreements § 1.01. FGIC is referred to as the "Enhancer" under certain of the Operative Documents.

91. Pursuant to the I&I Agreements, FGIC insured $1,867,124,000 aggregate principal amount of the HE Notes. The Policies improved the marketability of the HE Notes by mitigating risk for potential investors and making the HE Notes eligible to receive a credit rating of triple-A by the rating agencies at closing.

92. GMACM and the Depositor offered the HE Notes for sale pursuant to a prospectus (a "Prospectus," and for each Transaction respectively, the "2006-HE2 Prospectus," and the "2007-HE2 Prospectus"), and a prospectus supplement (a "Prospectus Supplement," and for each Transaction respectively, the "2006-HE2 Prospectus Supplement" and the "2007-HE2 Prospectus Supplement"), each touting the respective Policies and the triple-A initial rating of

[3] The MLPA, Servicing Agreement, Indenture and Custodial Agreement for the 2006-HE2 Transaction were each executed on June 29, 2006. The MLPA, Servicing Agreement, Indenture and Custodial Agreement for the 2007-HE2 Transaction were each executed on June 28, 2007.

the HE Notes, which was made possible by those Policies.[4] The Prospectus and Prospectus Supplement, together with certain preliminary offering documents, each as further supplemented by any subsequent amendment or supplement thereto, and any other offering document that make reference to the Policies, are referred to collectively as the "Offering Documents."

93. Upon the closing of each HE2 Transaction, Ally Securities, an Ally Financial subsidiary, acted as a co- manager and joint-lead manager, respectively, for a syndicate of underwriters that purchased from the respective HE Trust and sold to investors the related HE Notes, and FGIC, for its part, issued the related Policy in accordance with the terms of each I&I Agreement.

D. GMACM Fraudulently Induces FGIC to Insure the HE Notes with Substantial Assistance from Ally Financial and Ally Bank

(1) GMACM's Fraudulent Inducement of FGIC

94. FGIC's participation in the HE Transactions was an essential component of the HE Transactions and enhanced GMACM's ability to market the securitizations effectively. The Policies allowed GMACM to sell the HE Notes with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

95. In order to induce FGIC to write financial guaranty insurance for the HE Transactions, GMACM provided to FGIC, directly or indirectly, a variety of information, and promised to—and did—provide FGIC with a variety of representations, warranties, and covenants.

96. *First*, GMACM provided to FGIC initial and final 2006-HE2 and 2007-HE2 Prospectus Supplements (collectively, the "Prospectus Supplements") which summarized, among

[4] The 2006-HE2 Prospectus is dated as of April 7, 2006; the 2007-HE2 Prospectus is dated as of April 17, 2007. The 2007-HE2 Prospectus Supplement is dated as of June 27, 2006; the 2007-HE2 Prospectus Supplement is dated as of June 28, 2007.

other material information, the credit quality and characteristics of the Mortgage Loans, and GMACM's loan underwriting guidelines and loan origination criteria.

97. *Second*, FGIC received a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in the HE Transactions, together with representations regarding material statistics about the initial Loan Pool as a whole.

98. *Third*, GMACM provided to FGIC credit ratings for the HE Notes determined on the basis of information concerning the characteristics of the Mortgage Loans supplied to the rating agencies by GMACM, but without considering the effect of the Policies. These ratings, which GMACM procured from the credit rating agencies, are known as "shadow ratings."

99. *Fourth*, as discussed in detail in Section E below, GMACM provided to FGIC representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreements regarding the Mortgage Loans specifically and the Loan Pool generally.

100. ***Prospectus Supplement and Other Offering Documents.*** In determining whether to insure the HE Notes, FGIC relied in part upon representations and warranties regarding GMACM's loan underwriting standards made by GMACM in the Prospectuses and Prospectus Supplements. The 2006-HE2 Prospectus, as supplemented by the 2006-HE2 Prospectus Supplement, was filed with the SEC and became effective on June 29, 2006. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about June 21, 2006, in an email sent by Jeffrey Wittenberg, on behalf of GMACM. The Final 2006-HE2 Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about June 28, 2006, in an email sent by Jeffrey Wittenberg, on behalf of GMACM.

101. The 2007-HE2 Prospectus, as supplemented by the 2007-HE2 Prospectus Supplement, was filed with the SEC and became effective on June 28, 2007. A Preliminary Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about June 25, 2007, in an email sent by Dennis Bent on behalf of GMACM. The Final 2007-HE2 Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about June 28, 2007, in an email sent by Duane Beasley, on behalf of GMACM.

102. In the 2006-HE2 and 2007-HE2 Offering Documents, GMACM represented that, based on the data provided in the borrower's application and certain other applicable verifications, "a determination will have been generally made by the original lender that the borrower's monthly income, if required to be stated, would be sufficient to enable the borrower to meet its monthly obligations on the loan and other expenses related to the property." 2006-HE2 Prospectus at 23; 2007-HE2 Prospectus at 30.

103. Further, in the Prospectus Supplements, GMACM also represented to FGIC that "[a]ll of the mortgage loans were underwritten generally in accordance with [GMACM's] underwriting standards." 2006-HE2 Prospectus Supplement at S-30; 2007-HE2 Prospectus Supplement at S-33.

104. The Prospectus Supplements expressly state that GMACM's "underwriting standards with respect to the mortgage loans generally will conform to those published in the [GMACM] underwriting guidelines, including the provisions of the [GMACM] underwriting guidelines applicable to the GMAC Mortgage Home Equity Program." 2006-HE2 Prospectus Supplement at S-30; 2007-HE2 Prospectus Supplement at S-33.

105. GMACM publishes its loan underwriting standards in a document referred to in the Prospectus Supplements as "the GMAC Mortgage Corporation underwriting guidelines" or

the "GMAC Mortgage, LLC underwriting guidelines" (and referred to herein as the "Underwriting Guidelines"). 2006-HE2 Prospectus Supplement at S-30; 2007-HE2 Prospectus Supplement at S-33. In general, the Underwriting Guidelines specify documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan. Depending upon the particular type of loan, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories and/or evidence of closing funds, among other things. The substantive criteria for eligibility address material characteristics of the proposed loan, such as DTI ratios, Combined Loan-to-Value ("CLTV") ratios (a ratio comparing the aggregate principal balance of first and second mortgages on a covered property to the value of the property), and occupancy status.

106. The Prospectus Supplements set forth, among other information, the following important characteristics of the initial Loan Pools: the ranges of and weighted average FICO scores, the ranges of and weighted average CLTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (*i.e.*, whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property). *See* 2006-HE2 Prospectus Supplement at A-I-1 to A-I-7; 2007-HE2 Prospectus Supplement at A-I-1 to A-I-7.

107. In particular, GMACM represented in the 2006-HE2 and 2007-HE2 Prospectus Supplements that the loans had been originated with a maximum DTI ratio of 80%—with less than 1% of the Mortgage Loans originated with a DTI ratio over 60%—and a maximum CLTV ratio of 100%. *See* 2006-HE2 Prospectus Supplement at A-I-3, A-I-6; 2007-HE2 Prospectus

Supplement at A-I-3, A-I-6. GMACM also represented that for each Mortgage Loan it had generally made a determination based upon all applicable employment, credit and property information regarding whether the prospective borrower had sufficient monthly income available to meet the borrower's monthly obligations. *See* 2006-HE2 Prospectus at 23; 2007 HE2 Prospectus at 30.

108. GMACM also represented in the 2006-HE2 Offering Documents that, with respect to occupancy status, 98.79% of the Mortgage Loans would be secured by the borrower's primary residence. 2006-HE2 Prospectus Supplement at A-I-4. GMACM further represented in the 2007-HE2 Offering Documents that, with respect to occupancy status, 95.41% of the Mortgage Loans would be secured by the borrower's primary residence. 2007-HE2 Prospectus Supplement at A-I-4.

109. ***Loan Tapes.*** The loan tapes set forth, for each Mortgage Loan in the initial Loan Pool, key characteristics such as the borrower's FICO score, DTI ratio, and the CLTV ratio for the loan. GMACM also disclosed in the 2006-HE2 and 2007-HE2 Prospectus Supplements—with respect to each Loan Pool as a whole—aggregate characteristics also relevant to the assessment of the credit risk of the pool, including weighted averages of FICO scores, DTI ratios and CLTV ratios.

110. ***Shadow Rating Letters***. GMACM, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tapes that were provided to FGIC. As requested by GMACM, Moody's and S&P provided the shadow ratings on the respective closing dates of the HE Transactions. In its letters to FGIC describing the shadow ratings for each of the HE Transactions, Moody's noted that it reviewed the documentation provided by GMACM and that the rating was "based primarily on the credit quality of the loans backing the transaction."

Similarly, in its letters to FGIC, S&P noted that it too relied on the information provided to it by GMACM and that each shadow rating "relies on the issuer . . . for the accuracy and completeness of the information submitted in connection with the [shadow rating]."

111. Based on the information supplied by GMACM, Moody's assessed the credit quality of the initial 2006-HE2 and 2007-HE2 Loan Pools and assigned shadow ratings of Baa1 and Baa2, respectively, to the 2006-HE2 and 2007-HE2 Notes. S&P assigned the 2006-HE2 and 2007-HE2 Notes shadow ratings of BBB- and BBB, respectively.

112. These shadow ratings, which were based, in part, on GMACM's representations in respect of the characteristics of the Loan Pools, met FGIC's minimum requirements and were required by FGIC as an essential condition to its willingness to participate in HE Transactions and issue the Policies.

(2) GMACM's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Bank

113. Ally Bank provided substantial assistance to its affiliate GMACM in fraudulently procuring the Policies from FGIC. As it originated or acquired approximately 75% of the initial Mortgage Loans, Ally Bank was well aware of the true characteristics of the majority of the Loan Pool. Moreover, as a result of its affiliate status with GMACM, and its role as Custodian for the HE Transactions—for which it received substantial fees—Ally Bank was aware of the representations and warranties GMACM made to FGIC regarding the nature of GMACM's business practices and the characteristics of the Mortgage Loans (including the many thousands of Mortgages Loans that were originated by Ally Bank).

114. With full knowledge that GMACM had not complied—and would not comply—with the representations and warranties it made to FGIC, and direct knowledge of the many thousands of loans it had originated and sold to GMACM, which formed a substantial part of the

collateral for the HE Transactions, Ally Bank represented to FGIC that, as Custodian, it would inform FGIC if it discovered any non-compliant Mortgage Loans or non-compliance with GMACM's obligations under the Operative Documents. By offering FGIC this false comfort, despite knowing that GMACM was fraudulently inducing FGIC to provide financial guaranty insurance for the HE Transactions, Ally Bank provided material assistance to GMACM's fraud.

(3) GMACM's Fraudulent Inducement of FGIC is Carried Out with Substantial Assistance from Ally Financial

115. Ally Financial provided substantial assistance to its subsidiaries GMACM and Ally Bank in fraudulently inducing FGIC to participate in the HE Transactions and, ultimately, issue the Policies. Ally Financial knew that the Mortgage Loans underlying the HE Transactions were of a substantially poorer quality than was represented to FGIC and other participants in the Transaction, including investors. Ally Financial further knew that the Mortgage Loans were not underwritten to the standards represented in the Offering Documents and warranted in the Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap, Ally Bank, and its other subsidiaries, Ally Financial knew that the representations and warranties GMACM made to FGIC prior to and at the closing, upon which FGIC reasonably relied, were false.

116. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to engender investor confidence in, and otherwise finance and support, its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

117. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

118. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries."

119. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

120. Ally Financial's corporate restructuring also allowed GMACM to explicitly represent and warrant to FGIC in the I&I Agreements that GMACM "is solvent and will not be rendered insolvent by the Transaction. . . . [GMACM] shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business . . . ." I&I Agreements § 2.01(m). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary GMACM.

121. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the HE Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the

acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

122. Moreover, as a result of its domination and control over ResCap, GMACM, and Ally Bank, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of GMACM's representations and warranties to FGIC—and that they were untrue when stated—as well as the substantial assistance Ally Bank was rendering GMACM in aid of its fraudulent inducement of FGIC. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the mortgage operations of both companies. ResCap and its own subsidiaries, including GMACM, shared numerous directors and senior management as well. Similarly, William F. Muir, Ally Financial's President, has served in that capacity since at least 2004 (first at GMAC and then at Ally Financial) while also serving as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

123. David C. Walker is another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, including GMACM and RAMP. Walker joined Ally Financial in 1985 and has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. Walker has also served as a director at ResCap, GMACM, RFC, and RAMP, among other ResCap subsidiaries. In the 2006-HE2 Transaction, acting as a director of

RAMP, Walker was a signatory to RAMP's December 20, 2005 "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which was included among the closing documents of the 2006-HE2 Transaction.

124. Similarly, as of April 13, 2006, David Applegate served as Director, President and CEO of GMAC Mortgage LLC, while David M. Bricker served as Director, Senior Vice President and CFO of GMAC Mortgage, LLC. In the 2007-HE2 Transaction, acting as directors of RAMP, both Bricker and Applegate were signatories to RAMP's January 25, 2007, "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which was included among the closing documents of the 2007-HE2 Transaction.

125. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, Ally Bank, and GMACM, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by GMACM was shared among and between GMACM and its parent ResCap, ResCap and its parent Ally Financial, and Ally Bank and its parent and affiliates. Indeed, at least one Ally Financial employee who was involved in the 2006-HE2 Transaction appeared on the Transactions' working group list and received all distributions that were sent to the group, including all drafts, final versions, and communications concerning the Operative and Offering Documents.

126. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to GMACM in fraudulently inducing FGIC to

participate in the Transactions and issue the Policies. Further, the issuance of the Policies, which made the HE Transactions possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. GMACM's Representations, Warranties and Affirmative Covenants

127. In connection with the HE Transactions, GMACM, at the direction of Ally Financial, either directly or indirectly through ResCap, gave numerous representations, warranties and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way GMACM conducted its loan origination, selection and evaluation processes, the characteristics of the Mortgage Loans and of the initial and complete Loan Pools, and the accuracy and completeness of the information supplied to FGIC. These and other characteristics of the Mortgage Loans included in each of the initial Loan Pools were detailed in schedules attached to the applicable Servicing Agreement, and provided to FGIC by GMACM in the form of loan tapes (collectively, for each Transaction, the "Mortgage Loan Schedules.") Moreover, these same representations and warranties were restated by GMACM when it transferred additional Mortgage Loans to the HE Trusts after the closing of each Transaction (as was permitted for a short time following closing).

128. GMACM further promised to provide FGIC with a variety of information, including access to GMACM's books and records and to GMACM's Chief Financial Officer and its independent accountants.

129. GMACM's representations and warranties, and particularly GMACM's representation that the information supplied to FGIC was not materially inaccurate or misleading, induced FGIC to enter into the HE Transactions and to issue the Policies on the agreed terms. Further, the I&I Agreements' incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and

every one of the representations and warranties that GMACM made in connection with the HE Transactions.

130. FGIC, for its part, reasonably relied on the information available to it regarding the underlying Mortgage Loans and the representations and warranties provided by GMACM. Since FGIC had neither the right under the applicable Operative Documents, nor the practical ability, to review the tens of thousands of underlying Mortgage Loan files in the days available to it prior to the closing of the HE Transactions, GMACM knew that FGIC had no choice but to rely on GMACM's representations regarding the underlying loans in determining whether to issue the Policies. Further, FGIC had no reason to believe that those representations were not true and accurate.

131. Indeed, GMACM included more than 27,000 individual Mortgage Loans in the HE Transactions at their closing dates, and additional Mortgage Loans post-closing. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation and other forms of documentation necessary to support each underwriting decision. Unlike GMACM, FGIC was under no contractual duty whatsoever to review the tens of thousands of initial Mortgage Loans or the Mortgage Loans subsequently transferred after closing. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by GMACM regarding its loan origination, selection, and evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on GMACM to conduct its underwriting processes according to the promised standards and FGIC had no basis to conclude that GMACM's representations and warranties were false. Thus, FGIC reasonably believed that truthful and accurate information had been provided and that it would not face

additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

132. Based on the information received by FGIC and the representations and warranties given by GMACM, FGIC entered into the I&I Agreements and agreed to issue the Policies to the respective Indenture Trustees for the benefit of the holders of the HE Notes. In return for doing so, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the HE Notes. Specifically, FGIC received .13% and .125% per annum of the aggregate balance of the 2006-HE2 Notes and 2007-HE2 Notes, respectively, for serving as insurer, figures commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties and affirmative covenants provided by GMACM.

133. As discussed below, GMACM's information, representations and warranties were materially false when disclosed and/or provided by GMACM. GMACM knew that this information, and its representations and warranties, were materially false when made. GMACM also knew that this information and the representations and warranties were essential to FGIC's decision to issue the Policies. Indeed, GMACM intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreements and issue the Policies. The issuance by FGIC of the Policies—induced by GMACM's fraudulent misrepresentations and substantial assistance by Ally Financial—made the HE Notes eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Representations, Warranties and Affirmative Covenants Relating to the Operative and Offering Documents

134. Under Section 2.01 of the I&I Agreements, GMACM made the following representations and warranties, among others (emphasis added in each case):

♦ *Accuracy of Information.* **Neither the Operative Documents to which it is a party nor other information relating to the Mortgage Loans**, the operations of GMACM. . . or the financial condition of GMACM . . . furnished to [FGIC] . . . by GMACM . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made** . . . GMACM . . . has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change with respect to GMACM . . . Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to GMACM . . . that would render any of the Documents untrue or misleading in any material respect.

♦ *Compliance with Securities Laws.* The offering and sale of the Securities complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading** . . . .

♦ *Operative Documents.* **Each of the representations and warranties of GMACM . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects** [and] GMACM . . . hereby makes each such representation and warranty to, and for the benefit of, [FGIC] as if the same were set forth in full herein . . . .

♦ *Solvency; Fraudulent Conveyance.* [GMACM] . . . is solvent and will not be rendered insolvent by the Transaction and . . . **GMACM . . . shall not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**, and . . . GMACM . . . does not intend to incur, or believe that it has incurred, debts beyond its ability to pay as they mature . . . GMACM . . . is not transferring the Mortgage Loans . . . with any intent to hinder, delay or defraud . . . creditors.

135. *First*, in the I&I Agreements, GMACM represented and warranted to FGIC that "[n]either the Operative Documents to which it is a party nor other information relating to the Mortgage Loans. . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." I&I Agreements § 2.01(j). Through these Operative and Offering Documents, GMACM communicated several material facts about the characteristics of the mortgage loans sold to the HE Trusts.

136. *Second*, in the I&I Agreements, GMACM represented and warranted that "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading . . . ." *Id.* § 2.01(k). As discussed above, in the Prospectus Supplements, GMACM represented that all of the mortgage loans sold to the HE Trusts had been underwritten generally in accordance with GMACM's underwriting standards, including the GMAC Mortgage Home Equity Program. 2006-HE2 Prospectus Supplement at S-30; 2007-HE2 Prospectus Supplement at S-33.

137. *Third*, the I&I Agreements incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the "Operative Documents," as that term was defined in the I&I Agreements: "[e]ach of the representations and warranties . . . contained in the applicable Operative Documents . . . is true and correct in all material respects[.]" *See* I&I Agreements §§ 1.01, 2.01(l). The incorporation by reference of the Operative Documents into the I&I Agreements was intended to allow FGIC to rely on any representation and warranty that GMACM made to other entities, such as investors or the respective Indenture Trustees, in connection with the HE Transactions. Indeed, the I&I Agreements expressly identify FGIC as a third-party beneficiary with respect to the related Operative Documents. I&I Agreements § 2.02(k).

138. *Fourth*, GMACM also provided information to FGIC concerning Mortgage Loans in the HE Transactions. *See* I&I Agreements § 2.02(c)(iii). This information included loan tapes that set forth statistics about the respective Loan Pools. The loan tapes purported to describe key characteristics relevant to the assessment of risk, including DTI ratios, CLTV ratios, occupancy status, and FICO scores. *See* MLPAs § 2.1(d),(e). On information and belief, the loan tapes

FGIC received at closing of each of the Transactions contain the same information as is contained in the Mortgage Loan Schedules referred to in the related MLPAs.

139. In turn, in the MLPAs, GMACM represented that all the information in those Mortgage Loan Schedules "is true and correct in all material respects as of the date or dates respecting which such information is furnished." MLPAs § 3.1(b)(i).

140. As a result of incorporating into the I&I Agreements the representations and warranties in the related Operative Documents, GMACM incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in the HE Transactions. These representations and warranties set forth the standards governing each Mortgage Loan, including the representation that the Mortgage Loans had been underwritten in compliance with GMACM's underwriting guidelines. *See* MLPAs § 3.1(b)(xxxvi).

141. In particular, in the MLPAs, GMACM represents and warrants, as to each Mortgage Loan that:

- The information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respects as of the date or dates respecting which such information is initially furnished;

- As of the respective Cut-Off Dates (June 1, 2006, for the 2006-HE2 Transaction, and June 1, 2007, for the 2007-HE2 Transaction) or any Subsequent Cut-Off Date (the date specified in the agreement by which any Subsequent Mortgage Loan was transferred to the respective Trust), no Mortgage Loan was 30 days or more delinquent in payment of principal or interest. Additionally, with respect to the 2007-HE2 Transaction, no more than 1.00% of the Subsequent Mortgage Loans had been 30 or more days delinquent in the twelve months preceding the sale of the Subsequent Mortgage Loans to 2007-HE2 Trust;

- With respect to the GMACM Initial Mortgage Loans or, as applicable, any Subsequent Mortgage Loans sold by GMACM, the related Mortgage File contains or will contain, in accordance with the definition of "Mortgage File" in Appendix A to the related Indenture, each of the documents and instruments specified to be included therein;

- As of the Cut-Off Date or Subsequent Cut-Off Date, the CLTV for each Mortgage Loan was not in excess of 100.00%;

- GMACM used no selection procedures that identified the Mortgage Loans as being less desirable or valuable than other comparable mortgage loans originated or acquired by GMACM under the GMACM Home Equity Program.

142. Additionally, the 2007-HE2 MLPA further represents and warrants that "[n]o fraud or misrepresentation of a material fact with respect to the origination of a Mortgage Loan has taken place on the part of GMACM and to the best of GMACM's knowledge, no fraud or misrepresentation of a material fact with respect to the origination of a Mortgage Loan has taken place on the part of any third party, including without limitation the related mortgagor, connected with the origination of a Mortgage Loan." 2007-HE2 MLPA § 3.1(xxxvii).

143. Moreover, in the I&I Agreements—which expressly identify FGIC as a third-party beneficiary with respect to the related Operative Documents—GMACM specifically covenants that it will "comply in all material respects with the terms and conditions of and perform its obligations under the Operative Documents to which it is a party . . . ." I&I Agreements § 2.02(a).

(2) Representations, Warranties and Affirmative Covenants Regarding Access to Information and Servicing

144. The I&I Agreements also incorporate the representations and warranties that GMACM made in the Servicing Agreements in its capacity as Servicer. *See* I&I Agreements § 2.02(l). Under the I&I Agreements, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the Servicing Agreement." I&I Agreements § 2.02(l). In the Servicing Agreements GMACM covenanted, represented, and warranted that it would service the Mortgage Loans in the HE Transactions in a manner consistent with its own servicing guidelines. *See* Servicing Agreements § 3.01(a).

145. Additionally, the Servicing Agreements provide that, "documents contained in the Mortgage File . . . shall be held by the Servicer in trust as agent for the Indenture Trustee on behalf of the Noteholders." Servicing Agreements § 3.01(c). As such, the information and documents regarding the Mortgage Loans are not the property of or otherwise owned by GMACM, but rather such files are to be held by the servicer of the Transactions—whether that party be GMACM or a third party. Moreover, through the Servicing Agreements, GMACM expressly covenanted that, in the event GMACM's servicing duties are terminated and transferred to another party, GMACM "agrees to cooperate with the Issuer, the Enhancer [*i.e.*, FGIC] and Indenture Trustee, as the case may be, in effecting the termination of the responsibilities and rights of the Servicer . . . ." *Id.* at § 7.01(a). FGIC is an express third-party beneficiary of the Servicing Agreements. *See id.* at § 8.05.

146. The I&I Agreements further afford FGIC the express right "to conduct an ongoing review of GMACM's practices as Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices." I&I Agreements § 2.02(p). FGIC also has the express right to "inspect the books and records of GMACM . . . [and to] discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and . . . with GMACM's consent, which consent shall not be unreasonably withheld or delayed, to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants[.]" I&I Agreements § 2.02(e)(i)-(iii).

147. The I&I Agreements further provide that GMACM shall furnish to FGIC, promptly upon request, "such data as FGIC may reasonably request." I&I Agreements § 2.02(c)(v).

F. GMACM's Breaches of Its Representations, Warranties and Affirmative Covenants

148. As discussed above, FGIC relied on material representations and warranties made by GMACM regarding the manner in which the Mortgage Loans were originated, selected, and evaluated, the characteristics of those loans, and the accuracy and completeness of information GMACM supplied to FGIC. Based on those representations and warranties, FGIC agreed to issue the Policies. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed below, the risk that FGIC assumed when it issued the Policies was many times greater than the risk disclosed by GMACM's representations and warranties. GMACM breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

149. The HE Transactions have performed poorly, and delinquencies and defaults for Mortgage Loans in the HE Transactions have been substantial. For the 2006-HE2 Transaction, as of January 31, 2012, approximately 20% of the balance of the entire Loan Pool had been liquidated, modified, or was severely delinquent. And for the 2007-HE2 Transaction, as of January 31, 2012, approximately 26% of the balance of the entire Loan Pool had been liquidated, modified or was severely delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue the Policies, which cover, *inter alia*, shortfalls in amounts paid to noteholders arising from liquidated mortgage loans, GMACM assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with GMACM's representations and warranties.

150. The poor performance of the Mortgage Loans has reduced the cash flow to the HE Trusts, which has caused, and will continue to cause, substantial claims to be presented to FGIC under the Policies to cover these shortfalls. As of February 2012, more than $47 million and

$121 million in claims had been presented to FGIC in connection with the 2006-HE2 and 2007-HE2 Transactions, respectively. FGIC expects tens of millions of dollars more in claims to be presented to it under the HE Transactions in the future.

151. As an increasingly high percentage of the Mortgage Loans enter delinquency and default, FGIC has uncovered a wealth of material breaches of GMACM's representations and warranties regarding the characteristics of the loans and the standards to which they were underwritten.

(1) Breaches Identified Through Initial Review

152. When FGIC became concerned about the high delinquencies and default rates in the HE Transactions, FGIC requested that GMACM provide it with certain Mortgage Loan files underlying the HE Transactions.

153. FGIC selected for review a number of non-performing (*i.e.*, non-current or charged-off) loans that had resulted in losses to the 2006-HE2 and 2007-HE2 Trusts. To perform this review, FGIC hired an independent outside consultant with particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

154. That review revealed that GMACM had breached one or more material representations and warranties with respect to approximately 72% of the 2006-HE2 Mortgage Loans reviewed, and approximately 82% of the 2007-HE2 Mortgage Loans reviewed.

(2) Breaches Identified Through Additional Review

155. In 2010, as the HE Transactions continued to perform poorly, FGIC again retained a professional mortgage loan review team to identify, review, and evaluate a statistically significant sample of mortgage loans in each of the HE Transactions.

156. With respect to 2006-HE2, FGIC's independent loan consultant reviewed 100 loan files received by FGIC. That review revealed that GMACM had breached one or more material representations and warranties with respect to 97, or an astounding 97%, of these loans.

157. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 8253462462: the Mortgage Loan Schedule reported a DTI ratio of 32.4%. However, the borrowers had several outstanding mortgages that were not accounted for, resulting in an actual DTI ratio of 115%. In addition, the loan file was missing the required verbal verifications of employment, the hazard insurance policy, the preliminary and final title options, and the first lien mortgage note.

- Loan Number 8655918345: the Mortgage Loan Schedule reported a CLTV ratio of 88.4% based on an appraised value of $165,000. However, because the borrowers had owned the subject property for less than twelve months, the purchase price of $124,000 should have been used instead of the appraised value. The use of the correct value results in an actual CLTV ratio of 119.2%, higher than allowed by any program guidelines. In addition, the loan file was missing required verification of mortgage and the preliminary and final title options.

- Loan Number 8656035576: the Mortgage Loan Schedule reported a CLTV ratio of 94.90% based on an appraised value of $200,000. However, because the borrower had owned the subject property for less than twelve months, the purchase price of $174,000 should have been used instead of the appraised value. The use of the correct value results in an actual CLTV ratio of 108.60%, higher than allowed by any program guidelines. In addition, the loan file was missing required preliminary and final title options and the first lien note.

158. Similarly, with respect to the 2007-HE2 Transaction, FGIC's independent loan consultant reviewed 154 loan files received by FGIC. That review revealed that GMACM had breached one or more material representations with respect to 139, or approximately 90%, of these loans.

159. A small sample of these material breaches and underwriting violations are listed below:

- Loan Number 7306296823: the Mortgage Loan Schedule represented that the subject loan was for a first mortgage debt consolidation refinance of an owner occupied

property with a CLTV ratio of 9.93%; however, the Hud-1 Settlement Statements contained in the loan file indicated the borrower has a first ($216,000) and second ($27,000.00) mortgage loan on the subject property which appraised for $272,000, raising the actual CLTV ratio to 89.34%, which exceeds the maximum CLTV ratio allowed under the GMAC Underwriting Guidelines applicable to the particular type of loan. In addition, the Mortgage Loan File did not contain a verification of the mortgage or a credit report supplement indicating the mortgage payment was made on time.

- Loan Number 8255124946: the loan approval stipulated that a verbal verification of employment be obtained; in fact, the borrower was not employed at the time the subject loan was made. If the required verbal verification of employment had been completed prior to the loan closing, the subject loan would not have been approved.

- Loan Number 8656670831: the Mortgage Loan Schedule indicated the appraised value as $123,000; however, the purchase price of $65,000 should have been used since the borrower had not owned the property for twelve months. Based on the correct loan application information, the actual CLTV ratio should have been 141.0% rather than 74.5% as listed, which exceeds the maximum CLTV ratio allowed under the program guidelines.

160. These examples of underwriting violations are but a small smattering of the extensive defects among the Mortgage Loans and evidence significant breaches of the MLPAs. *See* MLPAs § 3.1. And it is reasonable to conclude—based on what is now known by FGIC and as a result of what is being wrongly withheld from FGIC—that a substantial majority of the approximately 36,790 Mortgage Loans (27,400 initial Mortgage Loans and 9,390 Subsequent Mortgage Loans, with a combined principal balance as of their respective Cut-Off Dates of over $1.94 billion) held by the HE Trusts evidence similar breaches of GMACM's representations and warranties.

161. Moreover, with respect to the 2007-HE2 Transaction, FGIC has discovered that a portion of the underlying Mortgage Loans were procured through borrower fraud at the time of origination. For example, a review of the Mortgage Loans has revealed that, in certain instances, borrowers claimed to have been employed in different positions and/or earning significantly more income than was in fact the case. Nevertheless, in spite of numerous such red flags in Loan

Files indicating that certain borrowers' income representations were fraudulent, the loans closed, resulting in, among other things, actual DTI ratios that were higher than reported. Given the frequency with which Mortgage Loans contained red flags and/or were missing critical documentation, GMACM must have been—or at least now is—aware that at least some of the Mortgage Loans were procured through fraud. Accordingly, GMACM has breached the representation and warranty in the 2007-HE2 MLPA that, to the best of GMACM's knowledge, no fraud or misrepresentation of material fact with respect to the origination of a Mortgage Loan had taken place.

162. Additionally, since, as noted, GMACM continues to wrongfully withhold material Mortgage Loan information from FGIC, FGIC is unable to determine whether more examples of such fraud in the origination have taken place, and thus FGIC reserves its right to bring further claims with respect to this breach.

163. Following the discovery of these high defect rates and pursuant to the respective I&I Agreements and the MLPAs, FGIC demanded that GMACM repurchase the non-compliant Mortgage Loans discovered during its repurchase review. GMACM has expressly refused to repurchase a substantial number of non-conforming Mortgage Loans. This failure constitutes a material breach of the I&I Agreements and Operative Documents incorporated therein.

164. Moreover, on information and belief, GMACM is and has been aware that many of the Mortgage Loans, whether acquired at the closing or thereafter, were nonconforming and, thus, in breach of its own representations and warranties. Despite this knowledge, GMACM has failed to repurchase the nonconforming loans with conforming loans, as is required under the Operative Documents.

165. With respect to the 2006-HE2 Transaction, FGIC ultimately obtained access to 168 mortgage loan files (68 files FGIC obtained in 2009, as well as 100 files received from GMACM in 2011), which FGIC's independent consultant reviewed to evaluate and re-underwrite the mortgage loans. These reviews revealed that GMACM breached one or more material representations with respect to 146—approximately 87%—of the Mortgage Loans reviewed.

166. Moreover, despite its express obligations under the 2006-HE2 MLPA and the 2006-HE2 I&I Agreement, GMACM continues to refuse to repurchase or cure certain of the non-compliant and defective loans that FGIC has asked GMACM to repurchase.

167. With respect to the 2007-HE2 Transaction, FGIC ultimately obtained access to 509 mortgage loan files (357 files FGIC obtained in 2009, as well as 152 files received from GMACM in 2011), which FGIC's independent consultant reviewed to evaluate and re-underwrite the mortgage loans. These reviews revealed that GMACM breached one or more material representations with respect to 430 of 509—approximately 84%—of the Mortgage Loans reviewed.

168. Moreover, despite its express obligations under the 2007-HE2 MLPA and the 2007-HE2 I&I Agreement, GMACM continues to refuse to repurchase or cure certain of the non-compliant and defective loans that FGIC has asked GMACM to repurchase.

(3) Breaches Uncovered Using Loan Pool Data

169. FGIC also commissioned its independent loan consultant to test the accuracy of GMACM's representations and warranties relating to the Mortgage Loans in the 2007-HE2 Transaction regarding occupancy status and CLTV ratios. The consultant extracted information and data relating to over 11,000 Mortgage Loans.

a. Breaches of Owner-Occupancy Representation and Warranty

170. GMACM represented in the 2007-HE2 Offering Documents that 95.41% of the aggregate principal amount of the Mortgage Loans in the 2007-HE2 Transaction would be secured by the borrower's primary residence. *See* 2007-HE2 Prospectus Supplement at A-I-4.

171. Based on the information provided, FGIC determined that only 91.7% of the aggregate principal amount of the Mortgage Loans were secured by the owner's primary residence.

172. The Prospectus Supplement therefore materially overstated the percentage of Mortgage Loans in their respective pools that were owner-occupied as a primary residence. As such, GMACM breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

173. Moreover, FGIC has determined that, as of February 2012, fully 26.8%, by aggregate principal amount, of the 2007-HE2 Mortgage Loans that were *not* secured by the owner's primary residence, were non-performing (*i.e.*, were delinquent for more than 60 days, in foreclosure, liquidated, or have posted a loss). This non-performance rate was significantly greater than the non-performance rate of Mortgage Loans that were secured by the owner's primary residence.

b. Breaches of CLTV Ratio Representation and Warranty

174. The 2007-HE2 Prospectus Supplement also provided information relating to the CLTV ratios of the underlying Mortgage Loans in the 2007-HE2 Transaction.

175. The 2007-HE2 Prospectus Supplement provided that the Mortgage Loans had been originated with a maximum CLTV ratio of 100%. *See* 2007-HE2 Prospectus Supplement at A-I-3. CLTV information provided in the Prospectus Supplement included (1) the number and aggregate value of the Mortgage Loans with CLTV ratios in a given percentage band (*e.g.*, the

number of Mortgage Loans with CLTV ratios of between 80% and 85%, between 85% and 90%, and so on), and (2) the average weighted CLTV ratio for the entire Loan Pool. *Id.* The Prospectus Supplement reported that *none* of Mortgage Loans had a CLTV ratio over 100 percent. *Id.*

176. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, FGIC determined that 12.1% of the aggregate principal amount of the Mortgage Loans—as opposed to *none* of the loans, as reported in the 2007-HE2 Prospectus Supplement—had an original CLTV ratio above 100%, and 29.8% of the aggregate principal amount of the Mortgage Loans—as opposed to fewer than 21.9%, as reported in the 2007-HE2 Prospectus Supplement—had an original CLTV ratio above 95%.

177. In addition, GMACM represented in the 2007-HE2 Prospectus Supplement that for the entire Loan Pool, the weighted average CLTV ratio of the Mortgage Loans at origination was 80.52%. FGIC determined that the actual weighted average CLTV ratio of the Mortgage Loans at origination was approximately 84.06%. Thus, GMACM breached its representation and warranty that the information in the Prospectus Supplement did not contain any untrue statements of material fact.

178. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (*i.e.*, loans that, as of February 2012, were delinquent for more than 60 days, in foreclosure, liquidated, or have posted a loss) in the 2007-HE2 Transaction for loans for which the automated valuation model indicated a CLTV ratio greater than 100% was over 22.3% of the aggregate principal amount of such loans.

179. The pervasive and overwhelming defects in the Mortgage Loan files reviewed to date indicate clear breaches of GMACM's contractual representations, warranties and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans and the initial and final Loan Pool, including the guidelines to which the Mortgage Loans were underwritten. Specifically, GMACM breached representations and warranties stating, as of the respective closing dates for the HE Transactions, that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (*i.e.* the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of GMACM in the Operative Documents (including each representation and warranty in the MLPAs) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- no Mortgage Loan was 30 days or more delinquent as of the date the loan was transferred to the HE Trusts;
- each Mortgage File contains all required documents and instruments;
- the CLTV of each Mortgage Loan did not exceed 100%; and
- GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program).
- with respect to the 2007-HE2 Transaction, that no fraud or misrepresentation of a material fact with respect to the origination of a Mortgage Loan had taken place on the part of GMACM, or, to the best of GMACM's knowledge, any third party.

180. Many of these representations were repeated in connection with the subsequent transfer of additional Mortgage Loans, and were also breached with respect to those additional Mortgage Loans.

181. Moreover, the true scope of the material underwriting failures is unknown given GMACM's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of GMACM's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

(4) GMACM's Denial of Loan File Requests

182. As the HE Transactions continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blaschko, a GMACM/ResCap employee, via e-mail demanding that GMACM provide additional Mortgage Loan files to FGIC, including origination files, servicing notes, and custodian files, for a random sample of 143 2006-HE2 and 280 2007-HE2 Mortgage Loans. Having received no response from GMACM to its earlier requests, FGIC sent a follow-up e-mail on February 3, 2011, regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, the request required authorization from officers at Ally Financial, and GMACM/ResCap's response was directed by officers at Ally Financial.

183. On February 14, 2011, FGIC sent further follow-up letters requesting loan files.

184. In finally responding to FGIC's request for information, GMACM refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans"). Instead, it only provided FGIC with a small sampling (254 of 423) of the requested loan files, consisting largely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

185. Pursuant to the Servicing Agreements and the I&I Agreements, FGIC is entitled to reasonable access to the documentation regarding all of the Mortgage Loans. Section 2.02(p)

of the I&I Agreements provides that FGIC "shall have the right, so long as any of the [HE] Notes remains outstanding, to conduct an ongoing review of GMACM's practices as Servicer through reviews of the Mortgage Loans . . . ." Notably, there is no limitation in the I&I Agreements as to the nature of the Mortgage Loans files that are subject to review. Further, Section 2.02(c)(v)(B) of the I&I Agreements states that "promptly upon request," GMACM must provide to FGIC "such other data as [FGIC] may reasonably request. . . ."

186. On April 26, 2011, having still received none of the remaining performing Mortgage Loan files it requested, FGIC sent a further letter requesting the remaining loan files. To date, GMACM has not responded.

187. By producing only non-performing Mortgage Loan files, in contravention of the I&I Agreements, GMACM has arbitrarily and unreasonably imposed limitations on FGIC's contractual rights to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(5) GMACM's Denial of Servicing Notes

188. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(v) of the I&I Agreements, that GMACM furnish or cause to furnish the servicing notes for the Mortgage Loans.

189. GMACM, without justification or explanation, and in breach of its obligations in the I&I Agreements, has failed to respond to requests for servicing notes.

(6) GMACM's Denial of FGIC's Access To Books and Records, Chief Financial Officer, and GMACM's Independent Accountants

190. On January 19, 2012 (with respect to the 2007-HE2 Transaction) and January 20, 2012 (with respect to the 2006-HE2 Transaction), in accordance with its express rights under Sections 2.02(e)(i)-(iii) of the I&I Agreements, FGIC requested to (i) inspect the books and

records of GMACM; (ii) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

191. To date, GMACM has failed to respond to these requests, in violation of the I&I Agreements.

(7) GMACM's Continued Frustration of FGIC's Right to Access Information Regarding the 2007-HE2 Mortgage Loans

192. On March 1, 2012, servicing duties for the 2007-HE2 Transaction were transferred from GMACM to a third-party servicer. Following the transfer, FGIC again sought information regarding the Mortgage Loan files, this time from the successor (and current) servicer of the 2007-HE2 Transaction.

193. FGIC has been made aware that the current servicer of the Transaction is unable to provide the information FGIC has sought due to GMACM's refusal to provide its successor with certain Mortgage Loan files and other crucial information. GMACM's refusal to turn over information in its possession to, and otherwise cooperate with, its successor servicer is a clear violation of the Servicing Agreement that GMACM entered into as the then-Servicer of the 2007-HE2 Transaction and to which FGIC is a third-party beneficiary, as well as a breach by GMACM of its obligations under the 2007-HE2 I&I Agreement to comply with the terms of the Operative Documents. *See* 2007-HE2 Servicing Agreement §§ 3.01(c), 7.01(a), 8.05; 2007-HE2 I&I Agreement § 2.02.

194. Additionally, GMACM has an independent obligation under the 2007-HE2 I&I Agreement to provide FGIC such information as FGIC may reasonably request. *See* 2007-HE2 I&I Agreement § 2.02(c)(v). As such, through its obstinate refusal to provide either FGIC or the

successor servicer with material information—admittedly within its possession—regarding the Mortgage Loans, GMACM has further breached its obligations to FGIC.

195. Moreover, on information and belief, the Mortgage Loan information that GMACM refuses to provide either to FGIC or the successor servicer will evidence further material breaches of representations and warranties made by GMACM. Accordingly, FGIC reserves its rights to assert additional causes of action regarding GMACM's breaches of its representations and warranties.

G. Ally Bank's Breaches of The Custodial Agreement

196. Under the Custodial Agreements, to which FGIC is an express third party beneficiary, *see* Custodial Agreements § 5.6, and through which Ally Bank received substantial fees, Ally Bank undertook several obligations to FGIC concerning the manner in which Ally Bank would ensure that the Mortgage Loans contained complete and accurate information and that GMACM was in compliance with its representations and warranties regarding the origination, selection, and characteristics of those loans.

197. Ally Bank agreed that it would hold the Mortgage Notes relating to the Initial Mortgage Loans and any Subsequent Mortgage Loans, and that it would review the Mortgage Notes and deliver to FGIC a certification of "the completeness of the receipt of the Mortgage Notes." *Id.* §§ 2.1, 2.2.

198. Ally Bank further agreed to notify FGIC of breaches of the MLPAs by GMACM, by providing that: "Upon discovery by the Custodian of a breach of any representation or warranty made by [GMACM] in the Purchase Agreement . . .with respect to a Mortgage Loan . . . the Custodian shall give prompt written notice to [FGIC]." Custodial Agreements § 2.3.

199. On information and belief, in some instances the Mortgage Note was not included in the loan file. The lack of a Mortgage Note within a particular file constitutes a breach of the

representations and warranties given by GMACM in the MLPAs. Ally Bank should have been aware of the fact that Mortgage Notes were missing from certain Mortgage Loan files, and that this was a breach of the MLPAs' representations and warranties. Consequently, it should have notified FGIC pursuant to its own obligations under the Custodial Agreements. *See id.* §§ 2.1-2.3. Ally Bank has, however, failed to provide FGIC with any notices regarding defects in any Mortgage Loan file, and has further provided inaccurate and/or incomplete certifications regarding the Mortgage Loans, thereby breaching the Custodial Agreements to which FGIC is an express third party beneficiary.

200. Moreover, Ally Bank had an obligation to notify FGIC of any breach by GMACM of the MLPAs' representations and warranties that it discovered, not just those pertaining to the Mortgage Note. Since Ally Bank originated or acquired approximately 75% of the Mortgage Loans in the HE Transactions—which have suffered astounding defect rates—it must have been keenly aware of the breadth and scope of the underwriting failures with respect to those loans. Ally Bank, thus, must have known that GMACM was in breach of the representations and warranties in the MLPAs, and its failure to so notify FGIC was a further breach of the Custodial Agreements.

H. GMACM's Fraud

201. The material breaches of GMACM's representations and warranties, including the extensive underwriting failures by GMACM, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants GMACM made to FGIC to induce its participation in the Transactions. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that GMACM breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite

representing to FGIC that, if FGIC issued the Policies, it (GMACM) would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because GMACM refuses to provide all of the requested Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

202. All of the Mortgage Loans underlying the HE Transactions were originated or acquired by GMACM and its affiliate Ally Bank. As such, GMACM had the access and ability to evaluate the Mortgage Loan files and to determine if the loans were in substantial compliance with the applicable GMACM underwriting guidelines and if the loans breached other representations and warranties made by GMACM.

203. To induce FGIC to enter into the HE Transactions, GMACM provided FGIC with a loan tape for each of the Transactions, which contained false and misleading information regarding, among other things, the CLTV and DTI ratios, occupancy status, and FICO scores of the borrowers.

204. In addition, GMACM made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the HE Trusts. GMACM was well aware that FGIC would not agree to insure the HE Notes unless the shadow ratings assigned satisfied FGIC's minimum requirements. To this end, upon information and belief, GMACM provided Moody's and S&P with the same false information regarding the credit quality of the underlying Mortgage Loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2006-HE2 and 2007-HE2 Notes that met FGIC's minimum requirements—Baa1 and BBB-, respectively, for the 2006-HE2 Notes, and Baa2 and BBB, respectively, for the 2007-HE2 Notes.

In this way, GMACM made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that GMACM would pass on to FGIC, and second, by causing shadow ratings of the HE Notes to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

205. GMACM was well aware that FGIC would rely on the shadow ratings—prepared with information supplied by GMACM—as the I&I Agreements specifically contemplated as a condition to issuance of the Policies that FGIC "shall have received confirmation that the Notes insured by the Policy are rated" by S&P and Moody's at a specified minimum level "without regard to the Policy." I&I Agreements § 3.01(k).

206. As noted, the issuance of the Policies enabled the HE Notes to receive triple-A ratings from the rating agencies. Moreover, the receipt of a triple-A ratings for the HE Notes, which depended on the issuance of the Policies, which in turn depended on the shadow ratings formulated using (inaccurate) information supplied by GMACM, was a critical component of each of the HE Transactions. As GMACM expressly noted in the Prospectus Supplements: "It is a condition to the issuance of the notes that they be rated 'Aaa' by Moody's . . . and 'AAA' by Standard & Poor's[.]" 2006-HE2 Prospectus Supplement at S-90; 2007-HE2 Prospectus Supplement at S-104.

207. Had the information provided to the ratings agencies by GMACM been accurate and truthful, Moody's and S&P would almost certainly have assigned very different (and lower) shadow ratings to the HE Transactions, and FGIC in turn would not have issued the Policies on the agreed terms, or would have refused to issue the Policies altogether.

208. GMACM also made material misrepresentations to FGIC, on which FGIC relied, about the characteristics of the Mortgage Loans, including the guidelines under and standards to which the Mortgage Loans were underwritten.

209. For example, in the 2006-HE2 Prospectus Supplement (and in the I&I Agreements by incorporation) GMACM assured FGIC that the Mortgage Loans "were originated generally in accordance with the underwriting standards of GMAC Mortgage Corporation." 2006-HE2 Prospectus Supplement at S-30. Similarly, in the 2007-HE2 Prospectus Supplement (and in the I&I Agreements by incorporation), GMACM also represented to FGIC that "[t]he mortgage loans were selected for inclusion in the mortgage pool from among mortgage loans originated or purchased in connection with [GMACM's] Underwriting Standards . . . based on [GMACM's] assessment of investor preferences and rating agency criteria." 2007 HE2 Prospectus Supplement at S-30. GMACM provided FGIC with GMACM's Underwriting Guidelines themselves, which contained extensive underwriting standards and requirements.

210. In fact, as confirmed by the overwhelming defect rates described above regarding the Loan Pools, all of which are due to Mortgage Loans that are inconsistent with GMACM's own underwriting guidelines, GMACM was well aware at the closing of the HE Transactions that those representations were false. In other words, at the time of the closing of the HE Transactions, GMACM either (1) knew or should have known that its representations were materially false because GMACM had not, among other things, determined if the Mortgage Loans were originated "generally in accordance" with its own underwriting guidelines, or (2) had reviewed whether the Mortgage Loans were originated "generally in accordance" with the its underwriting guidelines, had determined that they were not, but nonetheless materially

misrepresented to FGIC that the Mortgage Loans were originated "generally in accordance" with those guidelines.

211. Moreover, GMACM represented to FGIC that, in the case of each loan within the Loan Pools, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information. In fact, GMACM was not verifying the ability of borrowers to repay their loans in compliance with its own underwriting guidelines accurately or at all. As a result, GMACM misrepresented facts that were uniquely within its knowledge.

212. Moreover, the MLPAs (and the I&I Agreements by incorporation) contained other false and misleading representations about the Mortgage Loans. In particular, GMACM misrepresented that, as of the closing: (i) the information set forth in the Mortgage Loan Schedule is true and correct in all material respects; (ii) no Mortgage Loan was 30 days or more delinquent as of the applicable Cut-Off Date; (iii) each Mortgage File contains all required documents and instruments; (iv) the CLTV of each Mortgage Loan did not exceed 100%; and (v) GMACM selected the Mortgage Loans in accordance with its underwriting guidelines (*i.e.* the Home Equity Loan Program). The true information regarding these loans—as known by GMACM—simply could not substantiate GMACM's assurances. In short, no amount of GMACM promising that the loans met certain standards, despite knowing otherwise, actually made those promises true.

213. GMACM knew that its representations were materially false and that these false representations were essential to FGIC's decision to issue the Policies on the terms to which FGIC agreed. GMACM intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreements and to issue the Policies.

214. GMACM knew when making the representations and warranties regarding the Mortgage Loans to FGIC prior to FGIC agreeing to issue the Policies that GMACM never intended to honor those representations and warranties, as is evidenced, *inter alia*, by the extraordinary breadth and depth of the problems FGIC has uncovered with respect to the underwriting and characteristics of those loans, and the poor performance of the HE Trusts. In short, in order to induce FGIC to issue the Policies, GMACM represented to FGIC that, if FGIC issued the Policies, GMACM would comply with its contractual representations and warranties, despite knowing that it had not complied—and would not comply—with those very same obligations.

215. GMACM's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC, including the receipt of a subpoena served in connection with GMACM's suspected fraudulent origination and underwriting practices, as well as to a multitude of suits and the potential for more litigation to come.

216. Consistent with this pattern of behavior, GMACM defrauded FGIC into issuing the Policies, through its knowing misrepresentations.

I. Ally Bank Aids and Abets GMACM's Fraud

217. Ally Bank provided substantial assistance to GMACM in fraudulently inducing FGIC to issue the Policies. In its role as Custodian—for which it received substantial fees—Ally Bank undertook to provide "prompt written notice" to FGIC of any breaches of the representations and warranties in the MLPAs that it discovered. The MLPAs, *see supra* at ¶ 141, contained several representations and warranties regarding the characteristics of the underlying Mortgage Loans as well as loans subsequently transferred to the HE Trusts.

218. Furthermore, as an originator or acquirer of approximately 75% of the Mortgage Loans, Ally Bank was well aware of the true nature of the Loan Pool. As a result of being a key

part of the HE Transactions and its affiliate status with GMACM, Ally Bank surely must have been aware of the representations and warranties GMACM routinely made to financial guaranty insurers—and did make here to FGIC—regarding the nature of GMACM's business practices and the quality of the mortgage loans that collateralized its many RMBS transactions, including the HE Transactions.

219. Against this backdrop, Ally Bank represented to FGIC that, if the HE Transactions were consummated, it (Ally Bank) would hold and monitor certain key information and documentation regarding the Mortgage Loans, and would provide notice to FGIC of any breaches by GMACM of which it was aware with respect to GMACM's representations and warranties to FGIC. As must have been known to Ally Bank, those representations and warranties made by GMACM directly concerned the Mortgage Loans, including the 75% of them that Ally Bank itself had originated or acquired. Ally Bank made these representations to FGIC with full knowledge that GMACM had not complied—and would not comply—with its relevant representations and warranties, and, accordingly, that they were false. By representing to FGIC that it would (a) hold and certify the accuracy of certain key information and documentation regarding the Mortgage Loans, the majority of which it had originated or acquired itself, and (b) inform FGIC of any failure by GMACM to comply with its obligations, Ally Bank materially aided GMACM's fraudulent inducement of FGIC to issue the Policies. The issuance of the Policies, which made the HE Transactions possible, inured to the significant financial benefit of Ally Bank, given that it collected substantial fees as Custodian and also perpetuated the market for its loan origination and sales business.

J. Ally Financial Aids and Abets GMACM's Fraud

220. Ally Financial provided substantial assistance to GMACM in fraudulently inducing FGIC to issue the Policies. As the ultimate parent of an intertwined corporate

enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties GMACM made regarding the nature of GMACM's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

K. GMACM's Breach of Obligations as Servicer

221. GMACM, as Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for the HE Transactions, including, but not limited to, its obligations to follow proper servicing procedures.

222. GMACM had responsibility for the servicing of the Mortgage Loans and thereby undertook certain related contractual obligations under the I&I Agreements and the Servicing Agreements with respect to the HE Transactions. Under the I&I Agreements, GMACM covenanted that "[a]ll Mortgage Loans will be serviced in all material respects in compliance with the Servicing Agreement." I&I Agreements § 2.02(l). Under the Servicing Agreements, GMACM is liable to FGIC for the servicing and administering of the Mortgage Loans, and in doing so is required to "follow such collection procedures as shall be normal and usual in its general mortgage servicing activities and consistent with the procedures the Servicer employs in servicing all other Mortgage Loans in the servicing portfolio with characteristics similar to those of the Mortgage Loans." Servicing Agreements §§ 3.02(a), 6.01.

223. During 2007, the servicing operations of GMACM were integrated into ResCap. Following the integration, on information and belief, GMACM breached these obligations by, among other things, being deficient in its borrower contact, collections, and loss mitigation standards, and by failing to honor FGIC's contractual rights to information. In particular, an

onsite review of the Ally Financial servicing arm's headquarters, including those of GMACM, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis, revealed *inter alia*: (i) inadequate call center staffing—staffing unable to handle increased incoming and outgoing call volumes; (ii) call center staffing turnovers as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when GMACM does not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; and (v) severely infrequent use of alternative loss mitigation strategies as compared to the industry. GMACM, as servicer, also had an obligation to notify FGIC of any material breaches of representations and warranties, and to cause GMACM, as seller, to repurchase the affected Mortgage Loans.

224. On information and belief, GMACM has failed to remedy any of its deficient servicing practices.

225. In addition, GMACM disclosed to FGIC for the first time in March 2009 that it classified loans into one of three categories or "Risk Tiers" under a servicing protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

226. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. GMACM disclosed to FGIC that all of the mortgage loans in FGIC-insured, GMACM-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the HE

Transactions, were placed in the lowest category of risk. For such mortgage loans, regardless whether they were (i) first- or second- lien, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities—all of which are factors that require more attentive servicing—delinquent borrowers were called at a later stage of delinquency and less frequently than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, GMACM clearly knew that such Mortgage Loans, by their very nature, required particularized servicing before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by GMACM to ensure that the Mortgage Loans were serviced and administered in accordance with "procedures as shall be normal and usual in its general mortgage servicing activities" constitutes a breach of the Servicing Agreements and the I&I Agreements. *See* Servicing Agreements § 3.02(a); I&I Agreements § 2.02(l).

227. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being harmed as a result of being placed in the lower risk tier. To date, GMACM has failed to provide such information in breach of Section 2.02(c)(v) of the I&I Agreement.

L. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

228. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns GMACM and RFC. Ally Financial—as the ultimate parent of ResCap, GMACM, Ally Bank, and RFC—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC.

229. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, GMACM, Ally Bank, and RFC. Ally Financial exercised its direction and control in connection with the HE Transactions. At times, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

230. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries." *See In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO, FDIC-11-123b (April 13, 2011) (emphasis added).

231. As further discussed below, Ally Financial's public statements and actions at or around the time of the Transactions' close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of GMACM Directly and Indirectly Through its Control of ResCap

232. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

233. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-

owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

234. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

235. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

236. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

237. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling

parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

238. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[5] Since incorporation, the ownership of ResCap has not changed—Ally Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

239. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the 2005 Operating Agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (emphasis added).

240. Moreover, on April 26, 2007, "ResCap Investor Relations" announced the release of Ally Financial's 2007 first quarter financial results to investors in an email bearing the

[5] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the SEC on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

ResCap logo. That announcement stated that Ally Financial's financial results were found on both Ally Financial's and ResCap's websites.

241. Moreover, David C. Walker, as discussed above, has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, and RAMP, among other Ally Financial subsidiaries.

242. Similarly, as noted above, William F. Muir, Ally Financial's President, has also served as President and Chairman of the Board of IB Finance Holding Company, LLC—the direct parent of Ally Bank—and as a director of Ally Bank.

243. Ally Financial's domination and control of its subsidiaries, and in particular its use of ResCap to effectuate that control, is further evidenced by John Ruckdaschel, who, according to publicly available information, has served as in-house counsel at Ally Financial since October 2006. According to an e-mail sent from ResCap to FGIC, Ruckdaschel has served as "internal legal counsel for all [] securitizations" since at least May 2008. Although purportedly an Ally Financial employee, Ruckdaschel also sent and received e-mail using a ResCap e-mail address. Further, an employee of ResCap specifically instructed FGIC that all "official letters" regarding several Ally Financial subsidiaries—including GMACM, RFC, RAMP and others—should be sent not to the relevant (and supposedly independent) subsidiary, but rather to Ruckdaschel, Ally Financial's internal counsel. Additionally, Ruckdaschel—using his Ally Financial e-mail address—received correspondence relating to the Operative Documents at issue in the HE Transactions.

244. As further evidence of Ally Financial's domination over ResCap, the 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's

ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

245. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

246. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

247. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap

even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citibank, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

248. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

249. Additionally, Annual Reports prepared by Ally Financial further note its pursuit of strategic alternatives with ResCap, and highlight the extent to which Ally Financial manipulated its control over its subsidiaries to enhance its own financial health. According to Ally Financial: "On December 31, 2009, we announced that due to our ongoing strategic review of how to best deploy GMAC's current and future liquidity, we decided to pursue strategic alternatives with respect to ResCap and committed to a plan . . . related to management's intent to sell certain ResCap related assets and businesses. . . . In order to maximize value, we will consider a variety of options including one or more sales, spin-offs, or other potential transactions . . . [that we believe] should minimize the impact of any significant future losses related to ResCap's legacy mortgage business . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3-4 (Feb. 26, 2010).

250. There is also substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. See TARP Report dated March

10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

251. Further, Ally Financial has established a "Mortgage Repurchase Reserve" to account for the potentially significant liabilities stemming from repurchase demands made on its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was $825 million as of the fourth quarter of 2011. *See* Ally Financial's 4Q 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of $44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

252. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable mortgage loan repurchases as belonging to Ally Financial, when he stated: "Our mortgage repurchase reserve is [as it then stood] $829 million . . . . Our loss experience improved during the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011) (emphases added). On the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8 (emphasis added).

253. Additionally, as discussed above, Ally Financial recorded a $230 million charge in the fourth quarter of 2011, $212 million of which was recorded at its controlled subsidiary,

ResCap. As a result of the penalties assessed against ResCap by government regulators, and the fact that ResCap failed to maintain sufficient tangible net worth to comply with the requirements of the terms of certain credit facilities, Ally Financial propped up its subsidiary ResCap with a $197 million capital contribution in the form of intercompany debt forgiveness. See Ally Fin. Inc., Form 10-K, at 31-32 (Feb. 28, 2012).

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

254. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 9, 2011).

255. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. For example, at least one individual, who was identified at various times as being a GM and/or Ally Financial employee, was on the working group list for transactions involving ResCap subsidiaries that FGIC insured, including these Transactions. He was included on communications surrounding the deal document drafting processes from commencement to close. Such communications sent to him concerned both the negotiation of the various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

256. The origination and securitization of mortgage loans by ResCap and its subsidiaries have long been integral parts of Ally Financial's core business. In its 2006 Annual Report, Ally Financial (then reporting as GMAC LLC) stated that "[w]e are a leading real estate finance company focused primarily on the residential real estate market. Our business activities include the origination, purchase, servicing, sale and securitization of residential mortgage loans." GMAC LLC, Annual Report (Form 10-K), at 3 (Mar. 13, 2007) (emphasis added). Ally Financial further stated that "we utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy." *Id.* at 5 (emphasis added).

257. Ally Financial continued to publicly report on its own business and that of its subsidiaries in later filings on an integrated basis: "We engage in the origination, purchase, servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products. Mortgage operations include the Residential Capital, LLC (ResCap) legal entity, [and] the mortgage operations of Ally Bank . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3 (Feb. 26, 2010). More recently, continuing to discuss its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United States and we provide collateralized lines of credit to other mortgage originators." Ally Fin. Inc., Annual Report (Form 10-K), at 4 (Feb. 28, 2012).

258. Moreover, as discussed above, Ally Financial—at least in the view of certain of ResCap's bondholders—is believed to have stripped assets from its subsidiary.

259. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed GMACM and RFC as part of its own business. For example, in its

investor presentation from 2007, ResCap declares that GMACM and RFC "are owned and *operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial was not directly controlling GMACM and RFC, it was using ResCap as an instrument to do so.

260. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

261. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one GMACM has with respect to the HE Transactions as Servicer.

262. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

263. In another example, Larry Hipp, a member of ResCap's Risk Analyst/Investor Repurchase Department, communicated with FGIC regarding rescission requests using an Ally Financial email address, but in those very same emails, lists his ResCap contact information, including a ResCap email address. In addition, Ally Financial/ResCap used to send FGIC secure communications bearing a "GMAC ResCap" header, but those secure communications now have an Ally Financial header.

264. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

> Q: Could you please state your name for the record.
> A: My name is Jeffrey Stephan.
> Q: Okay. And who do you work for?
> A: GMAC, LLC [Ally Financial].
> Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
> A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
> Q: Okay.
> A: It's GMCA [sic] Mortgage Corporation.

Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

M. FGIC's Contractual Remedies Under The I&I Agreements

265. The I&I Agreements provide FGIC with broad remedies for GMACM's breaches of its representations and warranties. The breadth of these remedies provided further material inducement for FGIC to issue the Policies. Specifically, Section 5.02(b) of the I&I Agreements provides:

> Unless otherwise expressly provided, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Insurance Agreement, the Indenture or existing at law or in equity.

266. Moreover, the I&I Agreements provide that, upon an "Event of Default"—which is defined to include when "[a]ny representation or warranty" made by GMACM in the I&I Agreements or the Operative Documents is materially untrue or incomplete—FGIC can "take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts, if any, then due under this [I&I Agreement] or any other Operative Document or to enforce performance and observance of any obligation, agreement or covenant of GMACM[.]" I&I Agreements §§ 5.01(a), 5.02(a)(vi).

267. In addition, GMACM agreed:

> to pay, and to protect, indemnify and save harmless [FGIC] . . . from and against, any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages costs or expenses (including reasonable fees and expenses of attorneys . . .) of any nature arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 [of the I&I Agreement] or arising out of or relating to the Transaction contemplated by the Operative Documents . . . .

I&I Agreements § 3.04(a).

268. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, GMACM agreed to repurchase or substitute Mortgage Loans that did not conform to GMACM's representations and warranties, and to indemnify FGIC for claims and losses arising from GMACM's breach of any representation or warranty. *See* I&I Agreements § 3.03(b), 3.04(a).

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Material Breach of the 2006-HE2 I&I Agreement – Declaratory Relief Regarding GMACM's Indemnification Obligations)

269. FGIC re-alleges and incorporates by reference paragraphs 1 through 268 of this Complaint.

270. The 2006-HE2 I&I Agreement is a valid and binding agreement between the parties.

271. FGIC has performed its obligations under the 2006-HE2 I&I Agreement.

272. GMACM's representations and warranties were material to FGIC's decision to insure the 2006-HE2 Notes and to issue the 2006-HE2 Policy.

273. GMACM's pervasive and material breaches of its representations and warranties, from the very inception of the Transaction and in the years since, constitute a material breach of the 2006-HE2 I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

274. Pursuant to Section 3.04(a) of the 2006-HE2 I&I Agreement, GMACM must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the 2006-HE2 I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by GMACM of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

275. As explained above, GMACM has breached numerous representations, warranties, and covenants in the 2006-HE2 Offering and Operative Documents. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

276. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

277. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM must jointly and severally indemnify and reimburse FGIC for all sums arising out of the 2006-HE2 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2006-HE2 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2006-HE2 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the 2006-HE2 I&I Agreement or any of the related Operative Documents; or,

alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

278. In addition, FGIC seeks a declaration that GMACM must indemnify FGIC for all sums arising out of the 2006-HE2 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2006-HE2 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2006-HE2 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the 2006-HE2 I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Material Breach of the 2007-HE2 I&I Agreement – Declaratory Relief Regarding GMACM's Indemnification Obligations)

279. FGIC re-alleges and incorporates by reference paragraphs 1 through 278 of this Complaint.

280. The 2007-HE2 I&I Agreement is a valid and binding agreement between the parties.

281. FGIC has performed its obligations under the 2007-HE2 I&I Agreement.

282. GMACM's representations and warranties were material to FGIC's decision to insure the 2007-HE2 Notes and to issue the 2007-HE2 Policy.

283. GMACM's pervasive and material breaches of its representations and warranties, from the very inception of the Transaction and in the years since, constitute a material breach of the 2007-HE2 I&I Agreement that has deprived FGIC of the purpose of the parties' bargain.

284. Pursuant to Section 3.04(a) of the 2007-HE2 I&I Agreement, GMACM must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the 2007-HE2 I&I Agreement or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things: (i) the breach by GMACM of any representation, warranty, or covenant under any of the related Operative Documents; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the related Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

285. As explained above, GMACM has breached numerous representations, warranties, and covenants in the 2007-HE2 Offering and Operative Documents. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

286. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

287. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM must jointly and severally indemnify and reimburse FGIC for all sums arising out of the 2007-HE2 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2007-HE2 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2007-HE2 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the 2007-HE2 I&I Agreement or any of the related Operative Documents; or,

alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

288. In addition, FGIC seeks a declaration that GMACM must indemnify FGIC for all sums arising out of the 2007-HE2 Transaction for which FGIC has or will become liable, and that FGIC is entitled to immediate indemnity: (i) for all sums it has paid to date under the 2007-HE2 Policy and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the 2007-HE2 Policy as and when such sums fall due or claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the 2007-HE2 I&I Agreement or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and an order giving effect to such indemnification.

THIRD CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Fraudulent Inducement — 2006-HE2 I&I Agreement)

289. FGIC re-alleges and incorporates by reference paragraphs 1 through 288 of this Complaint.

290. GMACM induced FGIC to enter into the 2006-HE2 I&I Agreement and to issue the 2006-HE2 Policy by making false representations and warranties about its business practices and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

291. As explained above, GMACM knowingly made materially false statements to FGIC, and/or omitted material facts from its statements to FGIC, with the intent to induce reliance by FGIC.

292. GMACM intended for FGIC to rely on GMACM's material false statements and/or omissions. FGIC had no reason to believe that GMACM's representations were false, and reasonably and justifiably relied on GMACM's material false statements and/or omissions regarding information uniquely in the possession of GMACM when it decided to enter into the 2006-HE2 I&I Agreement and to issue the Policy for the 2006-HE2 Notes.

293. As a result of GMACM's material false statements and omissions, FGIC entered into the 2006-HE2 I&I Agreement, issued the 2006-HE2 Policy, and thereby agreed to insure Notes backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that GMACM represented would collateralize the 2006-HE2 Transaction.

294. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

295. As a result of GMACM's material false statements and material omissions from its statements, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

296. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

297. Alternatively, GMACM is liable for such damages.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, GMACM: Fraudulent Inducement— 2007-HE2 I&I Agreement)

298. FGIC re-alleges and incorporates by reference paragraphs 1 through 297 of this Complaint.

299. GMACM induced FGIC to enter into the 2007-HE2 I&I Agreement and to issue the 2007-HE2 Policy by making false representations and warranties about its business practices

and the Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

300. As explained above, GMACM knowingly made materially false statements to FGIC, and/or omitted material facts from its statements to FGIC, with the intent to induce reliance by FGIC.

301. GMACM intended for FGIC to rely on GMACM's material false statements and/or omissions. FGIC had no reason to believe that GMACM's representations were false, and reasonably and justifiably relied on GMACM's material false statements and/or omissions regarding information uniquely in the possession of GMACM when it decided to enter into the 2007-HE2 I&I Agreement and to issue the Policy for the 2007-HE2 Notes.

302. As a result of GMACM's material false statements and omissions, FGIC entered into the 2007-HE2 I&I Agreement, issued the 2007-HE2 Policy, and thereby agreed to insure Notes backed by a pool of Mortgage Loans that was, in actuality, materially different from the Loan Pool that GMACM represented would collateralize the 2007-HE2 Transaction.

303. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

304. As a result of GMACM's material false statements and material omissions from its statements, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

305. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

306. Alternatively, GMACM is liable for such damages.

FIFTH CAUSE OF ACTION

**(As Against Ally Financial and Ally Bank:
Aiding and Abetting Fraudulent Inducement — 2006-HE2 I&I Agreement)**

307. FGIC re-alleges and incorporates by reference paragraphs 1 through 306 of this Complaint.

308. As explained above, Ally Financial provided substantial assistance to its subsidiary GMACM in fraudulently inducing FGIC to enter the 2006-HE2 I&I Agreement and issue the 2006-HE2 Policy.

309. GMACM could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

310. Ally Financial knew that GMACM fraudulently induced FGIC to issue the Policy for the 2006-HE2 Transaction.

311. Ally Financial's statements materially aided GMACM's fraudulent inducement.

312. As a result of Ally Financial's aiding and abetting GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

313. Moreover, as explained above, Ally Bank provided substantial assistance to its affiliate GMACM in fraudulently inducing FGIC to issue the 2006-HE2 Policy.

314. Ally Bank originated or acquired nearly 85% of the Mortgage Loans (amounting to over $406 million in loans), which form a substantial part of the collateral for the 2006-HE2 Transaction. Ally Bank was therefore aware of the characteristics of the Loan Pool. Ally Bank was also an affiliate of GMACM, received a copy of the 2006-HE2 MLPA, and served as Custodian of the 2006-HE2 Transaction, for which it received substantial fees. As such, Ally Bank was aware of the material misrepresentations GMACM had made to FGIC to fraudulently induce FGIC to issue the 2006-HE2 Policy. Ally Bank further represented to FGIC that it would

undertake duties to monitor and certify the accuracy and completeness of the Mortgage Loan files, as well as inform FGIC of failures by GMACM to comply with its obligations under the 2006-HE2 Operative Documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would not comply—with its representations and warranties.

315. Ally Bank's representations to FGIC materially aided GMACM's fraudulent inducement of FGIC to issue the 2006-HE2 Policy.

316. As a result of Ally Bank's aiding and abetting of GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

**(As Against Ally Financial and Ally Bank:
Aiding and Abetting Fraudulent Inducement — 2007-HE2 I&I Agreement)**

317. FGIC re-alleges and incorporates by reference paragraphs 1 through 316 of this Complaint.

318. As explained above, Ally Financial provided substantial assistance to its subsidiary GMACM in fraudulently inducing FGIC to enter the 2007-HE2 I&I Agreement and issue the 2007-HE2 Policy.

319. GMACM could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

320. Ally Financial knew that GMACM fraudulently induced FGIC to issue the Policy for the 2007-HE2 Transaction.

321. Ally Financial's statements materially aided GMACM's fraudulent inducement.

322. As a result of Ally Financial's aiding and abetting GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

323. Moreover, as explained above, Ally Bank provided substantial assistance to its affiliate GMACM in fraudulently inducing FGIC to issue the 2007-HE2 Policy.

324. Ally Bank originated or acquired approximately 71% of the Mortgage Loans (amounting to over $686 million in loans), which form a substantial part of the collateral for the 2007-HE2 Transaction. Ally Bank was therefore aware of the characteristics of the Loan Pool. Ally Bank was also an affiliate of GMACM, received a copy of the 2007-HE2 MLPA, and served as Custodian of the 2007-HE2 Transaction, for which it received substantial fees. As such, Ally Bank was aware of the material misrepresentations GMACM had made to FGIC to fraudulently induce FGIC to issue the 2007-HE2 Policy. Ally Bank further represented to FGIC that it would undertake duties to monitor and certify the accuracy and completeness of the Mortgage Loan files, as well as inform FGIC of failures by GMACM to comply with its obligations under the 2007-HE2 Operative Documents. Ally Bank made these representations to FGIC despite its knowledge that GMACM had not complied—and would not comply—with its representations and warranties.

325. Ally Bank's representations to FGIC materially aided GMACM's fraudulent inducement of FGIC to issue the 2007-HE2 Policy.

326. As a result of Ally Bank's aiding and abetting of GMACM's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract 2006-HE2 Transaction—Representations, Warranties, and Affirmative Covenants)

327. FGIC re-alleges and incorporates by reference paragraphs 1 through 326 of this Complaint.

328. The 2006-HE2 I&I Agreement is a valid and binding agreement between the parties.

329. FGIC has performed its obligations under the 2006-HE2 I&I Agreement.

330. As explained above, GMACM has materially breached its representations and warranties and affirmative covenants under Sections 2.01 and 2.02 of the 2006-HE2 I&I Agreement.

331. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

332. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

333. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

334. Alternatively, GMACM is liable for such damages.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract 2007-HE2 Transaction—Representations, Warranties, and Affirmative Covenants)

335. FGIC re-alleges and incorporates by reference paragraphs 1 through 334 of this Complaint.

336. The 2007-HE2 I&I Agreement is a valid and binding agreement between the parties.

337. FGIC has performed its obligations under the 2007-HE2 I&I Agreement.

338. As explained above, GMACM has materially breached its representations and warranties and affirmative covenants under Sections 2.01 and 2.02 of the 2007-HE2 I&I Agreement.

339. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

340. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

341. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

342. Alternatively, GMACM is liable for such damages.

NINTH CAUSE OF ACTION

(As Against Ally Bank: Breach of the 2006-HE2 Custodial Agreement)

343. FGIC re-alleges and incorporates by reference paragraphs 1 through 342 of this Complaint.

344. The 2006-HE2 Custodial Agreement is a valid and binding agreement between the parties thereto.

345. FGIC is an express third party beneficiary of the 2006-HE2 Custodial Agreement.

346. As explained above, Ally Bank has materially breached its obligations under Sections 2.1, 2.2, and 2.3 of the 2006-HE2 Custodial Agreement.

347. Ally Financial, acting directly and/or indirectly through ResCap, directed Ally Bank's actions as set forth in this cause of action.

348. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

TENTH CAUSE OF ACTION

(As Against Ally Bank: Breach of the 2007-HE2 Custodial Agreement)

349. FGIC re-alleges and incorporates by reference paragraphs 1 through 348 of this Complaint.

350. The 2007-HE2 Custodial Agreement is a valid and binding agreement between the parties thereto.

351. FGIC is an express third party beneficiary of the 2007-HE2 Custodial Agreement.

352. As explained above, Ally Bank has materially breached its obligations under Sections 2.1, 2.2, and 2.3 of the 2007-HE2 Custodial Agreement.

353. Ally Financial, acting directly and/or indirectly through ResCap, directed Ally Bank's actions as set forth in this cause of action.

354. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Repurchase Obligation)

355. FGIC re-alleges and incorporates by reference paragraphs 1 through 354 of this Complaint.

356. The I&I Agreements are valid and binding agreements between the parties.

357. FGIC has performed its obligations under the I&I Agreements.

358. Pursuant to the terms of the I&I Agreements, and the provisions of the MLPAs incorporated therein, FGIC has demanded that GMACM repurchase non-complying Mortgage Loans. GMACM has refused to repurchase numerous such Mortgage Loans.

359. GMACM has breached the I&I Agreements, and the provisions of the MLPAs incorporated therein, by failing to repurchase any and all Mortgage Loans that violated GMACM's representations and warranties that FGIC has noticed to GMACM.

360. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

361. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

362. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

363. Alternatively, GMACM is liable for such damages.

TWELFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Contract – Declaratory Relief Regarding Access to Information)

364. FGIC re-alleges and incorporates by reference paragraphs 1 through 363 of this Complaint.

365. The I&I Agreements are valid and binding agreement between the parties.

366. FGIC has performed its obligations under the I&I Agreements.

367. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreements, GMACM agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information. Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the HE Transactions. FGIC further has the right to conduct reviews of GMACM's practices as Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(p) of the I&I Agreements.

368. As discussed above, pursuant to the I&I Agreements, FGIC made numerous reasonable written requests that GMACM furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by GMACM, and others, concerning the Mortgage Loans.

369. GMACM has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

370. GMACM has failed to comply with its contractual obligations and breached the I&I Agreements by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

371. Pursuant to Sections 2.02(e)(i)-(iii) of the I&I Agreements, GMACM agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of GMACM; (ii) discuss the affairs, finances and accounts of GMACM with GMACM's Chief Financial Officer; and (iii) discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants.

372. On January 20, 2012, FGIC made a reasonable written request that GMACM permit FGIC or its authorized agent to conduct an inspection of the books and records of GMACM, as well as permit FGIC to (i) discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and (ii) with GMACM's consent, which consent shall not be unreasonably withheld or delayed, discuss the affairs, finances, and accounts of GMACM with GMACM's independent accountants.

373. GMACM has failed to make available such persons or to produce such information.

374. GMACM has failed to comply with its contractual obligations and breached the I&I Agreements by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreements, Sections 2.02(e)(i)-(iii).

375. Pursuant to Section 2.02(c)(v) of the I&I Agreements, GMACM agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the Servicing Agreement[.]"

376. FGIC made a reasonable request for servicing notes on December 9, 2010.

377. GMACM has failed to comply with its contractual obligations and breached the I&I Agreements by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

378. Further, pursuant to Section 7.01(a) of the 2007-HE2 Servicing Agreement, to which FGIC is an express third-party beneficiary and the provisions of which are incorporated by reference into the 2007-HE2 I&I Agreement, GMACM agreed to provide information regarding the Mortgage Loans to, and otherwise cooperate with, the successor servicer of the 2007-HE2 Transaction.

379. GMACM has failed to comply with its contractual obligations and breached the 2007-HE2 I&I Agreement and 2007-HE2 Servicing Agreement by failing to make available to FGIC and/or the successor servicer Mortgage Loan files and other related material information.

380. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

381. Accordingly, FGIC seeks a declaration that GMACM must comply with Sections 2.02(c)(v), 2.02(e)(i)-(iii), and 2.02(p) of the I&I Agreements, and Section 7.01(a) of the 2007-HE2 Servicing Agreement, and an order requiring GMACM to promptly remedy those breaches and therefore comply with FGIC's and/or the successor servicer's requests and notices to GMACM pursuant to the relevant provisions, as detailed above.

THIRTEENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Breach of Servicer Obligations)

382. FGIC re-alleges and incorporates by reference paragraphs 1 through 381 of this Complaint.

383. The I&I Agreements are valid and binding agreements between the parties.

384. FGIC has performed its obligations under the I&I Agreements.

385. Moreover, as explained above, GMACM has breached its affirmative covenant under the I&I Agreements to service all Mortgage Loans in all material respects in compliance with the Servicing Agreements.

386. GMACM's breaches of the I&I Agreements have caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

387. Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this cause of action.

388. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

389. GMACM, ResCap and Ally Financial are jointly and severally liable for such damages.

390. Alternatively, GMACM is liable for such damages.

FOURTEENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and GMACM: Declaratory Relief)

391. FGIC re-alleges and incorporates by reference paragraphs 1 through 390 of this Complaint.

392. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed GMACM's actions as set forth in this complaint.

393. For the reasons set forth in paragraphs 228 through 264, among others, Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other.

394. FGIC has been damaged as a result of the actions of Ally Financial, ResCap, and GMACM.

395. FGIC therefore seeks a declaration that Ally Financial, ResCap, and GMACM were and continue to be alter egos of each other, and therefore are jointly and severally liable for each other's liabilities.

FIFTEENTH CAUSE OF ACTION

(As Against GMACM: Attorneys' Fees and Costs)

396. FGIC re-alleges and incorporates by reference paragraphs 1 through 395 of this Complaint.

397. The I&I Agreements are valid and binding agreement between the parties.

398. FGIC has performed its obligations under the I&I Agreements.

399. Pursuant to Section 3.03(c) of the I&I Agreements, GMACM agreed to reimburse FGIC for any and all costs or expenses "including reasonable attorneys' . . . fees and expenses" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to Section 3.04(a) of the I&I Agreements, GMACM agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by GMACM of any of the representations or warranties contained in Section 2.01 of the I&I Agreements or arising out of or relating to the HE Transactions.

400. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of GMACM's failure to provide Mortgage Loan files, Servicing Reports, and financial information and its breach of the representations and warranties contained in Section 2.01 of the I&I Agreements and other representations, warranties, and its covenants within the Operative Documents, such as Section 2.02 of the I&I Agreements.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant GMAC Mortgage Company, LLC, with respect to (1), (2), and (4) through (14) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (11), (13) and (14), below, and in its favor and against Ally Bank, with respect to (3), (7), (13), and (14) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (11), (13) and (14) below and the following relief:

(1) A declaration that, pursuant to GMACM's obligations under the I&I Agreements, GMACM must solely and/or Ally Financial, ResCap, and GMACM must jointly and severally reimburse and indemnify FGIC for all sums arising out of the HE Transactions for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement: (i) for all sums it has paid to date under the Policies and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policies as and when such sums fall due or such claims are presented; or, alternatively, (ii) for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreements or any of the related Operative Documents; or, alternatively, (iii) in an amount to be determined at trial; and (iv) an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal, rescissory, equitable and punitive damages, to be proven at trial, for GMACM's fraudulent inducement of FGIC to enter into the HE Transactions and to issue the Policies;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's and Ally Bank's aiding and abetting of GMACM's fraudulent inducement of FGIC to enter into the HE Transactions and to issue the Policies;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial, for GMACM's material breaches of the HE Transactions;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for GMACM's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreements and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that GMACM must repurchase all Mortgage Loans that are in breach of GMACM's representations and warranties in the HE Transactions, and an order giving effect to that declaration;

(7) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for Ally Bank's material breaches of its obligations under the Custodial Agreements;

(8) Further or alternatively, a declaration that GMACM must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the HE Transactions, and that GMACM must comply with its obligations to provide FGIC and/or the successor servicer information pertaining to the Mortgage Loan files in the 2007-HE2 Transaction; and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that GMACM must allow FGIC to inspect the books and records of GMACM, to discuss the affairs, finances and accounts of GMACM with the Chief Financial Officer of GMACM, and to discuss the affairs, finances and accounts of GMACM with GMACM's independent accountants, and an order giving effect to that declaration;

(10) Further or alternatively, a declaration that GMACM must cause to be provided servicing notes for the HE Transaction when requested by FGIC;

(11) Further or alternatively, a declaration that Ally Financial, ResCap, and GMACM are alter egos of each other;

(12) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreements and other Operative Documents, as defined in the I&I Agreements;

(13) An award of prejudgment interest at the statutory rate; and

(14) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: March 12, 2012

JONES DAY

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
222 East 41st Street
New York, New York 10017
(212) 326-3939

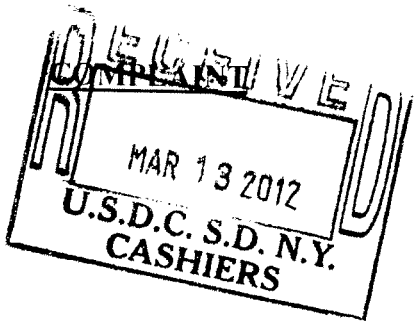
Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 25

12 CIV 1860

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FINANCIAL GUARANTY INSURANCE COMPANY,	**Civil Action No. _____**
Plaintiff,	
-against-	
ALLY FINANCIAL, INC. F/K/A GMAC, LLC; RESIDENTIAL CAPITAL, LLC F/K/A RESIDENTIAL CAPITAL CORPORATION; RESIDENTIAL FUNDING COMPANY, LLC F/K/A RESIDENTIAL FUNDING CORPORATION,	
Defendants.	



Plaintiff Financial Guaranty Insurance Company ("FGIC"), by and through its attorneys, Jones Day, for its Complaint against defendants, Ally Financial, Inc., formerly known as GMAC, LLC ("Ally Financial"); Residential Capital, LLC, formerly known as Residential Capital Corporation ("ResCap"); and Residential Funding Company, LLC, formerly known as Residential Funding Corporation ("RFC"), alleges as follows:

NATURE OF THE ACTION

1. This action arises in connection with five financial guaranty insurance policies (each a "Policy" and collectively the "Policies") issued by FGIC in relation to five RFC-sponsored transactions (each a "Transaction" and collectively the "HI Transactions" or the "Transactions") in which RFMSII Home Loan Trust 2006-HI2 (the "2006-HI2 Trust"), RFMSII

Home Loan Trust 2006-HI3 (the "2006-HI3 Trust"), RFMSII Home Loan Trust 2006-HI4 (the "2006-HI4 Trust"), RFMSII Home Loan Trust 2006-HI5 (the "2006-HI5 Trust"), and RFMSII Home Loan Trust 2007-HI1 (the "2007-HI1 Trust" and together with the 2006-HI2, 2006-HI3, 2006-HI4, and 2006-HI5 Trusts, the "HI Trusts"), issued and sold to investors a combined $1,235,667,000 aggregate principal amount of insured Home Loan-Backed Notes (collectively, the "HI Notes"). As the sponsor of the HI Transactions, RFC procured the Policies from FGIC in order to enhance the ratings and marketability of the HI Notes. RFC fraudulently induced FGIC's agreement to provide insurance for the 2006-HI4, 2006-HI5, and 2007-HI1 Notes through willful and material misrepresentations and omissions concerning, among other things, the nature of its business practices, and the credit quality and characteristics of the thousands of mortgage loans that provided the collateral for the 2006-HI4, 2006-HI5, and 2007-HI1 Notes. In short, the mortgage loans were different—and demonstrably worse—than RFC had represented them to be. FGIC's issuance of the Policies enabled the HI Notes to receive a triple-A rating from the rating agencies, which in turn made each of the HI Transactions viable, and enabled RFC, its affiliates, and its parent Ally Financial to earn millions of dollars in transaction fees.

2. Since the closing of the HI Transactions, RFC has compounded its misconduct by repeatedly and materially breaching its contractual obligations to FGIC. From the very inception of each of the HI Transactions, RFC has violated the essential terms of its agreements with FGIC. RFC has also breached the essential terms of the other operative documents incorporated therein.

3. The wrongdoing committed by RFC, as detailed more fully below, was directed by Ally Financial, acting directly or indirectly through its wholly-owned subsidiary, ResCap. Ally Financial is the ultimate parent of ResCap, which owns RFC. Ally Financial, as the

ultimate parent of ResCap and RFC, has the practical ability, which it has repeatedly exercised, to direct and control the activities of these (and other) subsidiaries. In many instances—including in the Transactions—Ally Financial's direction and control was effected by using ResCap as an intermediary instrument to achieve its goals. For example, many of the material contractual breaches committed by RFC, concerning, primarily, FGIC's right to access information in RFC's possession and RFC's failure to repurchase or cure certain of the Mortgage Loans backing the HI Notes that FGIC sought to have repurchased, were carried out by ResCap, at the direction and control of Ally Financial.

4. Each of the HI Transactions is a mortgage loan securitization: a complex arrangement comprising multiple interdependent agreements among RFC and several other parties. To facilitate each Transaction, RFC pooled together thousands of mortgages (respectively, the "2006-HI2 Mortgage Loans," the "2006-HI3 Mortgage Loans," the "2006-HI4 Mortgage Loans," the "2006-HI5 Mortgage Loans," and the "2007-HI1 Mortgage Loans," and collectively the "Mortgage Loans"). Prior to the closing of each of the HI Transactions, RFC purchased many of the Mortgage Loans from other Ally Financial affiliates—namely, GMAC Mortgage LLC ("GMACM") and/or HomeComings Financial, LLC ("HomeComings")—which is wholly owned by RFC.

5. In each of the five Transactions, following its acquisition of the Mortgage Loans, RFC transferred the Mortgage Loans to another Ally Financial affiliate, Residential Funding Mortgage Securities II, Inc. ("RFMSII"). RFMSII then deposited the Mortgage Loans it received from RFC into the HI Trust designated for the transaction. Each of the HI Trusts, in turn, issued to investors notes collateralized by these loans. Each of the HI Trusts is a legal

entity created by RFC solely for the purposes of the applicable HI Transaction to hold the related Mortgage Loans and to issue the related HI Notes to investors in a registered public offering.

6. The periodic mortgage payments made by the borrowers under the Mortgage Loans held by the HI Trusts are used to pay, among other things, principal and interest due on the HI Notes, and the fees and expenses of RFC, GMACM, and HomeComings, as well as other participants in the Transactions.

7. RFC also acted as master servicer of the HI Transactions ("Master Servicer"), in which capacity it would supervise the subservicers, including overseeing the collection of borrower payments and performing other servicing duties related to the Mortgage Loans. For each of the Transactions, RFC's wholly-owned, direct subsidiary HomeComings and/or RFC's affiliate GMACM acted as subservicers of the loans. As discussed in more detail below, all of the servicing operations of HomeComings, GMACM, and RFC have since been integrated into ResCap. Ally Securities, LLC ("Ally Securities"), yet another Ally Financial affiliate, acted as the joint lead manager of the underwriters of each of the HI Transactions. J.P. Morgan Chase Bank, N. A. ("J.P. Morgan") agreed to act as indenture trustee of the 2006-HI2 Trust, the 2006-HI3 Trust, and the 2006-HI4 Trust, U.S. Bank, N.A. ("U.S. Bank") agreed to act as the indenture trustee of the 2006-HI5 Trust, and LaSalle Bank, N.A. ("LaSalle Bank") agreed to act as the indenture trustee of the 2007-HI1 Trust (each an "Indenture Trustee" and collectively the "Indenture Trustees"). The Bank of New York Trust Company, N.A. later became the successor in interest to J.P. Morgan as Indenture Trustee, and U.S. Bank later became successor in interest to LaSalle Bank as Indenture Trustee.

8. RFC, directed and controlled by Ally Financial, is, therefore, the hub of the HI Transactions: it is the sponsor of the securitizations, an acquirer and seller of the Mortgage

Loans, and the Master Servicer of each of the Transactions. The primary victim of the HI Transactions—which turned out to be backed by inferior loans that did not meet the underwriting standards or loan characteristics warranted by RFC—is FGIC, which has already been presented with over $82 million in claims under the Policies, with substantial further claims still to come.

9. FGIC, a monoline financial guaranty insurance company, was in the business of writing financial guaranty insurance policies with respect to asset-backed and debt securities, including residential mortgage-backed notes ("RMBS Notes"). At the time of the HI Transactions, FGIC's financial strength was rated triple-A by Moody's Investors Services, Inc. ("Moody's"), Standard and Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P"), and Fitch, Inc., which enabled securities that were insured by FGIC to be rated triple-A as well. FGIC's financial guaranty insurance policies for RMBS Notes typically guaranteed the timely payment of the principal and interest due on the insured securities, including the amount, if any, of principal losses allocated to the RMBS Notes. FGIC's insurance policies thus enhanced the credit quality and marketability of the insured securities.

10. To enhance the ratings and marketability of the HI Notes, and to increase the profit that Ally Financial and RFC would derive from the HI Transactions, RFC sought to have FGIC issue the Policies to the Indenture Trustees for the benefit of the holders of the HI Notes.

11. To induce FGIC to enter into the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, RFC made material representations and warranties to FGIC about the manner in which the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans were selected and evaluated and their characteristics. Those representations and warranties were false when stated. FGIC reasonably relied on such warranties, among others, when deciding to enter into the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions. RFC represented, among other things, that the "seller's

underwriting standards relating to the home loans generally will conform to those published in [RFC's] client guide, and the provisions of the guide applicable to the home equity 125 loan program." 2006-HI4 Prospectus Supplement at S-34; 2006-HI5 Prospectus Supplement at S-34; 2007-HI1 Prospectus Supplement at S-33.

12. FGIC reasonably relied on such warranties, among others, and was thus fraudulently induced to enter into the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions. As a result, the credit risk assumed by FGIC in connection with these Transactions was far greater than it would have been had RFC's representations and warranties been true, as demonstrated by the overwhelming number of claims that have been subsequently presented to FGIC.

13. RFC received substantial assistance from Ally Financial in fraudulently inducing FGIC to issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions. Ally Financial took actions and made statements to finance, support, and boost investor confidence in its mortgage loan securitization business, which was carried out by its subsidiaries. Ally Financial was aware of the material misrepresentations RFC had made to FGIC. As a result of its dominance over ResCap and RFC, Ally Financial knew that the representations and warranties RFC made to FGIC, prior to and at the closing of the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, upon which FGIC reasonably relied, were false. As such, Ally Financial actively aided and abetted RFC's fraudulent inducement of FGIC to issue the Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions.

14. The increased credit risk inherent in the Mortgage Loans has resulted in extremely high levels of delinquencies, defaults, and losses on the Mortgage Loans, and the resultant claims presented to FGIC have been far in excess of what FGIC reasonably expected when it decided to issue the Policies in reliance on the (presumed) accuracy and truthfulness of RFC's

representations and warranties and affirmative covenants. In fact, the levels of defaults and losses, and the resulting amount of claims presented to FGIC, have been overwhelming. Had FGIC been told the truth about the nature of RFC's underwriting and business practices and/or the true characteristics of the Mortgage Loans, it would never have agreed to issue the Policies, and would thereby have avoided the significant losses and liabilities it has incurred, and will incur, as a result of RFC's misconduct.

15. In order to evaluate the extent of RFC's breaches, FGIC has requested copies of the mortgage loan files for the 2006-HI2, 2006-HI5, and 2007-HI1 Mortgage Loans. RFC is obligated, under its agreements with FGIC, to provide those documents to FGIC. RFC has refused to provide FGIC with the requested documentation, which, on information and belief, will further evidence material breaches by RFC. This refusal to provide information in itself constitutes a material breach of RFC's insurance agreements with FGIC.

16. Certain of the material contractual breaches committed by RFC—including, but not limited to, its refusal to honor FGIC's right to access information in RFC's possession—were directed by Ally Financial, acting directly or indirectly through ResCap.

17. Through this Complaint, FGIC seeks relief against RFC, ResCap, and Ally Financial for RFC's fraudulent inducement of FGIC in connection with the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions.

18. FGIC also seeks relief against RFC, ResCap, and Ally Financial for RFC's material breaches of its insurance agreements with, and contractual obligations owed to, FGIC in connection with the HI Transactions.

19. Further, FGIC seeks relief against Ally Financial for aiding and abetting RFC's fraudulent inducement of FGIC.

20. FGIC also seeks a declaration from the Court that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

THE PARTIES

21. Plaintiff FGIC is a New York stock insurance corporation with its principal place of business at 125 Park Avenue, New York, New York 10017.

22. Defendant Ally Financial is a Delaware corporation with its principal place of business in Detroit, Michigan. Ally Financial is the parent company of ResCap, RFC, and all RFC-affiliated entities relevant to this action.

23. Defendant RFC is a Delaware limited liability company with its principal place of business in Minneapolis, Minnesota. In the period relevant to this action, RFC acquired, and serviced residential mortgage loans, and sponsored securitizations of mortgage loans.

24. Since 2005, RFC has been an indirect wholly owned subsidiary of ResCap; prior to that time, RFC was an indirect, wholly owned subsidiary of Ally Financial.

25. Defendant ResCap is a Delaware limited liability corporation and an indirect wholly-owned subsidiary of Ally Financial. ResCap is the indirect corporate parent of RFC and its business includes originating, acquiring, selling and servicing mortgage loans.

26. In September 2008, ResCap announced that it was closing much of its mortgage loan acquisition business.

JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over this suit pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs. Additionally, in agreements at

issue in this case, at least one of the defendants irrevocably submitted to the jurisdiction of this Court.

28. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim occurred within this judicial district, and, in agreements at issue in this case, at least one of the defendants agreed not to challenge venue in this Court.

RELEVANT NON-PARTIES

29. GMACM (f/k/a GMAC Mortgage Corporation) is a Delaware limited liability company with its principal place of business in Fort Washington, Pennsylvania. GMACM is an indirect, wholly-owned subsidiary of ResCap, which in turn is a wholly-owned subsidiary of Ally Financial. Many of the Mortgage Loans in each of the Transactions were originated and sold to RFC by GMACM, which also acted as the subservicer, along with HomeComings, of each of the HI Transactions. GMACM originated 26.6% of the 2006-HI3 Mortgage Loans, 38.9% of the 2006-HI4 Mortgage Loans, 15.6% of the 2006-HI5 Mortgage Loans, and 14.3% of the 2007-HI1 Mortgage Loans.

30. RFMSII, a special purpose vehicle, is an indirect, wholly-owned subsidiary of Ally Financial and a Delaware corporation with its principal place of business in Minneapolis, Minnesota. To facilitate the HI Transactions, RFMSII purchased the Mortgage Loans from RFC and deposited them into the each of the HI Trusts. The trusts then issued the HI Notes to underwriters, including Ally Securities, to be sold to investors.

31. Ally Securities (f/k/a GMAC RFC Securities), an entity incorporated in Delaware, is an affiliate of RFC and RFMSII and a registered broker-dealer under the Securities Exchange Act of 1934, and is registered to do business in New York. Prior to 2007, Ally Securities was known as Residential Funding Securities Corporation, and was doing business as GMAC RFC Securities. Ally Securities served as the joint lead manager of the underwriters of the HI Notes

and, on information and belief, participated in the preparation of the Prospectuses and Prospectus Supplements for the HI Transactions.

32. HomeComings (f/k/a HomeComings Financial Network, Inc.), a Delaware limited liability corporation, is the direct, wholly-owned subsidiary of RFC. Many of the Mortgage Loans in each of the Transactions were originated and sold to RFC by HomeComings, which also acted as the subservicer of each of the HI Transactions. Homecomings originated 5.9% of the 2006-HI2 Mortgage Loans, 3.5% of the 2006-HI3 Mortgage Loans, 4.6% of the 2006-HI4 Mortgage Loans, 5.7% of the 2006-HI5 Mortgage Loans, and 4.5% of the 2007-HI1 Mortgage Loans.

FACTUAL ALLEGATIONS

A. Ally Financial and its Subsidiaries

33. In the period relevant to this action, RFC acquired, sold, and serviced residential mortgage loans and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of RMBS Notes.

34. The Mortgage Loans have suffered extremely high rates of delinquencies, defaults, and losses, and it is a matter of public knowledge that the business practices of Ally Financial's subsidiaries, including those of RFC and ResCap, led Ally Financial to seek a bailout by the federal government in 2008.

(1) RFC, GMACM, and GMAC-RFC

35. RFC is a subsidiary of GMAC-RFC Holding Company, LLC ("GMAC-RFC") which in turn is a subsidiary of ResCap, which in turn is a subsidiary of the ultimate parent, Ally Financial.

36. GMACM is also a subsidiary of GMAC-RFC and ResCap. Like its affiliate RFC, GMACM engaged in the business of originating, acquiring, servicing, and securitizing mortgage loans during the period relevant to this action.

37. GMAC-RFC companies issued $42.34 billion of non-agency mortgage-backed securities in 2004, $56.93 billion in 2005, $66.19 billion in 2006, and $32.43 billion in 2007, according to Inside Mortgage Finance Publications, Inc. *See 2011 Mortgage Market Statistical Annual: Volume II* at 38-41. GMAC-RFC was the fifth largest issuer of non-agency mortgage-backed securities in 2005, the fourth largest in 2006, and the eighth largest in 2007. *Id.*

38. GMAC-RFC was the largest issuer of private mortgage-backed securities in 2002, when it issued $11.5 billion of private mortgage-backed securities, according to the *Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011. *See* FCIC Report at 462. GMAC-RFC was also the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See id.* at 504.

39. The FCIC Report pointedly notes the widespread failure among the mortgage-backed security industry generally to adhere to basic standards in loan origination, selection, and evaluation—a truth FGIC would come to learn specifically in its dealings with RFC. The FCIC Report concludes that:

> [F]irms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-related securities. These problems appear to have been significant.

Id. at 187.

40. The FCIC Report further notes that, in light of Ally Financial and its subsidiaries' systemic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMAC/Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans. *Id.*

(2) Ally Financial's Securitization Business

41. Ally Financial's business model depended on securitizations, which were conducted by its business units, including RFC. Pooling mortgage loans and selling them into securitizations enabled RFC to fund its ongoing mortgage loan originations and acquisitions, earned it significant fees from the resulting transactions, and reduced the credit risk it retained with respect to those loans.

42. RFC, in addition to securitizing mortgage loans originated by itself or other Ally Financial subsidiaries, also earned fees by securitizing mortgage loans it acquired from third parties. RFC would typically acquire such mortgage loans and then deposit them into a securitization trust (usually through an affiliate). RFC would then procure underwriters, trustees, and (in the case of insured securities) financial guaranty insurers, and cause the securitization trust to sell securities collateralized by the relevant mortgage loans. In many instances, RFC profited from the difference between the cost it incurred to acquire mortgage loans and the price at which it sold them for deposit into the securitizations.

43. In order to gain additional fees for performing certain administrative duties under the various transaction agreements, including collecting mortgage payments and determining

whether a mortgage loan is in default based on the transaction documents, RFC typically also sought (as it did here) to be appointed as the master servicer, appointing the mortgage loan originator or an affiliate to act as subservicer. For acting as Master Servicer to the HI Transactions, RFC gained substantial additional compensation.

44. RFC also enriched Ally Financial and its other subsidiaries through its sponsorship of securitizations. Ally Financial entities typically participated in each of the key steps in the securitization process, and recorded gains and earned fees at each of those steps. For example, in the HI Transactions:

- Homecomings and GMACM gained fees for originating certain of the Mortgage Loans and proceeds from selling those loans to RFC;
- RFMSII, which established the HI Trusts and acted as depositor of the Mortgage Loans, charged fees to cover its operating expenses; and
- Ally Securities received fees for underwriting the HI Notes.

(3) Ally Financial, RFC, and GMACM Face Numerous Investigations and Lawsuits Relating to Their RMBS Securitizations

45. On September 2, 2011, the Federal Housing Finance Authority (the "FHFA"), as conservator for Freddie Mac, filed suit in the New York Supreme Court against Ally Financial and several of its subsidiaries for claims arising in connection with its role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in certificates issued through twenty-one RFC-sponsored transactions similar to the HI Transactions. Among other claims, FHFA brought suit for common law fraud against various Ally Financial subsidiaries and aiding abetting fraud against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates.

46. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries, including RFC, stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, the FHFA also alleges aiding and abetting fraud Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs. In October 2011, Ally Financial and its co-defendants removed the FHFA action to the U.S. District Court for the Southern District of New York.

47. In addition, RFC is currently facing a lawsuit brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that in connection with five transactions similar to the HI Transactions, RFC affirmative misrepresented the credit quality of tens of thousands of mortgage loans, with a total principal balance of approximately $3.4 billion, as a means of unfairly shifting to investors and MBIA risks that RFC should have borne itself. On December 22, 2009, the New York Supreme Court issued a ruling denying RFC's motion to dismiss, which allowed both the breach of contract and the fraud claims, among others, to proceed to trial.

48. RFC is also currently facing a lawsuit brought by MBIA in New York Supreme Court for, among other things, fraud and breach of representations and warranties in connection with other types of RMBS transactions. In December 2009, the New York Supreme Court rejected RFC's motion to dismiss certain of the claims brought against it, allowing both the breach of contract and fraud claims, among others, to proceed.

49. Additionally, according to Ally Financial's quarterly report for the third quarter of 2011, as of November 4, 2011, there were twenty-two pending suits in various jurisdictions pending against Ally Financial's mortgage-related business units and subsidiaries arising from numerous mortgage-backed securities offerings. The plaintiffs in those suits have alleged, among other things, that Ally Financial's various mortgage subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to RMBS offerings. The alleged misstatements typically concern underwriting standards. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011). Further, in its 2011 annual report, Ally Financial stated that it expects additional similar claims to be brought against Ally Financial and/or its subsidiaries in the future. *See* Ally Fin. Inc., Annual Report (Form 10-K), at 20 (Feb. 28, 2011).

50. Since the filing of its November 2011 quarterly report, moreover, Ally Financial and its subsidiaries have been sued by additional plaintiffs, including HSH Nordbank AG, which have alleged, among other things, material misrepresentations and omissions about the loans backing RMBS securities issued by Ally Financial's affiliates.

51. Moreover, Ally Financial has disclosed that it expects additional RMBS lawsuits from monoline insurers like FGIC given that Ally Financial and its subsidiaries sold $42.7 billion of loans into monoline-wrapped securitizations from 2004 to 2007. During 2011, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. Ally Financial evidently recognizes its exposure because, according to Ally Financial's CEO, Michael Carpenter, ResCap has already reserved $829 million for representations and warranties claims and, according to its own Securities and Exchange Commission ("SEC") filings, Ally

Financial confirms that "litigation with . . . monolines is likely." Ally Fin. Inc., Annual Report (Form 10-K), at 98 (Feb. 28, 2012).

52. Indeed, according to Ally Financial's 2011 annual report, Ally Financial, GMACM's parent, also believes that "[t]he total exposure . . . to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions implemented in 2008 and forward." Ally Fin. Inc., Annual Report (Form 10-K), at 224 (Feb. 28,, 2012). The Transactions at issue here are of the 2006 and 2007 vintages.

53. Additionally, Ally Financial also disclosed that the SEC served a subpoena on Ally Financial in June 2011, requesting documentation regarding certain "bulk settlements" relating to securitized mortgage loans as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *See* Ally Fin. Inc., Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

54. Furthermore, RFC's sister company GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that the DOJ had served GMACM with a subpoena in June 2011, which "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." *Id.* (emphasis added).

(4) The Mortgage Loan Servicing Misconduct of Ally Financial and GMACM Has Come Under Scrutiny and Resulted in Severe Sanctions

55. On February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, and several other mortgage loan servicers would be required to pay $766.5 million in monetary sanctions for "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Federal Reserve Board (February 9, 2011). On February 12, 2012, the Federal Reserve Board imposed well over $200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an Assessment Order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See* Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, FRB Docket No. 12-006-CMP-HC (February 12, 2012) (the "Assessment Order"). According to the Federal Reserve Board, the sanction "takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the institutions' misconduct, and the comparative sizes of the institutions' foreclosure activities." *See* Press Release, Federal Reserve Board (February 9, 2011).

56. Further, also on February 9, 2012, the U.S. Attorney General announced that Ally Financial will take part in a $25 billion settlement to resolve claims brought by the government in response to the "reckless and abusive mortgage practices" of Ally Financial and four similarly situated bank holding companies. *See* Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple

state attorneys general, *see id.*; National Mortgage Settlement Website, Settlement Documents > Servicing Standard Highlights, *available at* http://www.nationalmortgagesettlement.com/ (last visited Feb. 12, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper origination, securitization, and servicing practices, *see id.*, About the Settlement, *available at* http://www.nationalmortgagesettlement.com/about (last visited Feb. 12, 2012).

57. According to the U.S. Attorney General, the $25 billion settlement and $766.5 million sanction are just "the latest step forward" in holding Ally Financial and others accountable for "egregious mortgage loan servicing abuses." *See* Attorney General Holder, Remarks at the Mortgage Servicers Settlement Press Conference.

58. Similarly, the New York Attorney General recently announced a $136 million settlement with the nation's five largest mortgage servicers—including GMAC/Ally Financial. *See* Office of the New York Attorney General Press Release, *Schneiderman Secures Major Settlement That Allows Sweeping Mortgage Investigations To Proceed*, *available at* http://www.ag.ny.gov/media_center/2012/feb/feb9b_12.htm. As the New York Attorney General noted, the settlement principally addressed "foreclosure abuses" by GMAC/Ally Financial and other banks, and "[i]n addition to penalties for past abuses, the settlement includes direct relief to victims of wrongful foreclosure conduct" and "imposes strong national standards for mortgage servicing" that had previously been lacking. *Id.* Additionally, the New York Attorney General's office will lead the new Residential Mortgage-Backed Securities Working Group, a component of the interagency Financial Fraud Enforcement Task Force led by the DOJ, which "brings together the Department of Justice, several state law enforcement officials, and

other federal agencies to investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities." *Id.*

59. In addition to these recent settlements and Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the "FDIC") previously ordered Ally Financial and several its subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See* Consent Order, FRB Docket No. 11020-B-HC (April 13, 2011) (the "Consent Order").

60. The Consent Order notes that Ally Financial's mortgage servicing subsidiaries have been accused, *inter alia*, of (1) failing to properly increase financial, staffing, and managerial resources in order to meet an increasing number of foreclosures; (2) failing to properly put in place "adequate internal controls, policies and procedures, compliance risk management, internal audit, training, and oversight of the foreclosure process"; (3) filing false affidavits in foreclosure actions; and (4) litigating foreclosure proceedings without "confirming that the promissory note and mortgage document were properly endorsed or assigned." *Id.* at 3-4.

61. Furthermore, under the Consent Order, Ally Financial must direct its mortgage servicing subsidiaries to take certain remedial action to ensure that they operate in a "safe and sound manner" in the future. *Id* at 4. Specifically, among other things, the Consent Order requires Ally Financial to take "steps to improve the information and reports that will be regularly reviewed by [Ally Financial's] board of directors. . . [to assess the performance of] residential mortgage loan servicing, Loss Mitigation, and foreclosure activities and operations . . . ." *Id.* at 8.

62. In connection with the enforcement of the Consent Order, as of November 2011, the Federal Reserve Board is permitting mortgage borrowers who were financially harmed by the

foreclosure processes of GMACM to request an independent review of their files. *See* Press Release, Federal Reserve Board (Nov. 1, 2011). This independent review will determine whether errors and misrepresentations in GMACM's foreclosure processes indeed caused financial harm to the borrower. *See id.* If the foreclosure process is found to have caused financial injury to the borrower, GMACM will then be required to provide full compensation. *See id.*

63. As a result of servicing misconduct, Ally Financial and other bank holding companies will now be required to adhere to new, heightened servicing standards. *See* Press Release, Federal Reserve Board (Feb. 9, 2011). The Federal Reserve Board has ordered Ally Financial to remedy its servicing practices by "strengthen[ing] the coordination of communications with borrowers by providing borrowers the name of the person at the service who is their primary point of contact, establish[ing] limits on foreclosures where loan modifications have been approved, establish[ing] robust third party vendor controls, strengthen[ing] compliance programs, and provid[ing] appropriate remediation to borrowers who suffered financial injury as a result of errors by the servicers." *See id.*

64. Moreover, the servicing and foreclosure improprieties of Ally Financial and its subsidiaries is a matter of public record. According to the sworn testimony of an Ally Financial/GMACM employee, Ally Financial's mortgage servicing subsidiaries have routinely filed false affidavits in thousands of foreclosure actions across the country. *See* Jeffrey Stephan Dep. *Federal National Mortgage Association v. Bradbury*, BRI-RE-09-65 (Me. Dist. Ct., Dist. Nine, Div. N. Cumberland) (June 7, 2010). Indeed, according to the FCIC Report:

> [L]enders have relied on "robo-signers" who substituted speed for accuracy by signing, and sometimes backdating, hundreds of affidavits claiming personal knowledge of facts about mortgages that they did not actually know to be true. One such "robosigner,"

> Jeffrey Stephan of GMAC, said that he signed 10,000 affidavits in a month—roughly 1 per minute, in a 40-hour workweek—making it highly unlikely that he verified payment histories in each individual case of foreclosure.

FCIC Report at 407.

65. Stephan also testified that, when executing summary judgment affidavits to be used in judicial foreclosure actions, he was acting in accordance with policies and procedures, and never in fact inspected any of the exhibits to the affidavits or even ensured that the exhibits were attached, despite swearing that he had done so in the affidavits themselves. Stephan Dep. Tr. at 54:12-25. Such exhibits would generally include (or at least should have included), among other things, the mortgage note and documents relating to the assignment of the mortgage. *See id.* at 51:15-23. Stephan further testified that when he signed an affidavit affirming that the foreclosure was proper, all he knew was the borrower's name and whether he had signing authority to foreclose on the property. *Id.* at 62:23-25, 63:2-6. Stephan testified that the process he followed in signing summary judgment affidavits was in accordance with the policies and procedures required by Ally Financial subsidiaries. *Id.* at 64:8-14.

66. Additionally, in October 2010, the Ohio Attorney General filed suit against GMACM and Ally Financial, alleging, among other things, that employees of GMACM had executed thousands of false affidavits in connection with foreclosures on properties in that state. *See State of Ohio v. GMAC Mortgage LLC*, CI0201006984, Court of Common Pleas, Lucas County, Ohio (Toledo). Although some of the claims brought by the Ohio Attorney General's suit have been resolved by the $25 billion multi-party settlement, many additional claims not encompassed by the settlement, including those relating to the improper assignment of mortgage notes, have survived. As of February 2012, the action remains pending in Ohio.

67. Similarly, in December 2011, the Massachusetts Attorney General filed suit against GMACM for, among other things, engaging in unfair and deceptive foreclosure practices. *See Commonwealth of Massachusetts v. Bank of America NA*, 11-4363, Suffolk County Superior Court (Boston). Days after filing suit, the Massachusetts Attorney General sent a letter to the United States Senate Committee on Banking, Housing and Urban Affairs, and the United States House Committee on Financial Services asking that the federal government investigate Ally Financial and GMACM for allegedly carrying out illegal foreclosures and submitting false documents related to property seizures. *See* Boston Globe, *Attorney General Martha Coakley Urges Congress to Investigate Ally Financial's GMAC Over Foreclosure Practices*, Dec. 6, 2011. Specifically, the Massachusetts Attorney General's letter to the Senate and House Committees stated:

> In light of Ally [Financial]'s alleged deceptive and illegal actions against homeowners in Massachusetts and across the country, I respectfully request that your committees investigate Ally [Financial]'s serious misconduct and consider what actions the federal government can take to ensure that Ally [Financial] adheres to the law.

Id.

68. While the $25 billion settlement ultimately resolved certain claims brought by the Massachusetts Attorney General in this action, several claims relating to improper foreclosure practices and abuse of certain state recordation systems have survived and will continue to be prosecuted. *See* Press Release, Office of the Attorney General of Massachusetts, *Massachusetts Homeowners to Receive $318 Million in Relief as Part of State-Federal Agreement Over Unlawful Foreclosures and Loan Servicing*, Feb. 9, 2012.

(5) Significant Possibility of Ally Financial Seeking Bankruptcy Protection for ResCap, GMAC-RFC, and RFC

69. Since at least as far back as November 2011, Ally Financial has been considering filing for bankruptcy protection for ResCap, its wholly-owned subsidiary, which has reportedly lost $555 million since 2009, according to multiple published reports. RFC is a wholly-owned, indirect subsidiary of ResCap.

70. Around that time, the financial industry was "betting that Ally [Financial] will place its Residential Capital LLC [ResCap] mortgage unit into bankruptcy instead of supporting the business as the bank prepares for an initial public offering." Bloomberg News, *Ally May Put ResCap in Bankruptcy to Ease IPO: Corporate Finance*," Nov. 14, 2011.

71. As the article notes, Ally Financial has the power to decide whether its "mortgage unit," ResCap, should file for bankruptcy. *See id.*

72. Indeed, Ally Financial warned in its 2011 annual report that "[t]here is a significant risk that ResCap will not be able to meet its debt service obligations and other funding obligations in the near term." Ally Fin. Inc., Annual Report (Form 10-K), at 19 (Feb. 28, 2012).

73. That risk ultimately came to pass as Ally Financial recently disclosed that the penalties assessed by the federal government and numerous state attorneys general regarding the foreclosure practices of Ally Financial and its subsidiaries "resulted in our Mortgage operations recording a $230 million charge in the fourth quarter of 2011." *Id.* at 31. As Ally Financial detailed in its previous public filing, the "[t]he majority of [the charge] was recorded at Residential Capital, LLC ('ResCap') . . . [which] resulted in a covenant breach in certain of ResCap's credit facilities." Ally Financial, Current Report (Form 8-K) (Jan. 31, 2012). Indeed, as Ally Financial more recently explained, "ResCap is required to maintain consolidated net

worth . . . of $250 million at the end of each month under the terms of certain of its credit facilities. . . [and] as a result of the fourth quarter charge, ResCap's consolidated net worth was $92 million at December 31, 2011." Ally Fin. Inc., Annual Report (Form 10-K), at 31-32 (Feb. 28, 2012). ResCap's substantial shortfall, however, was "immediately remediated by Ally through a capital contribution of $197 million, which was provided through forgiveness of intercompany debt during January 2012." *Id.* This capital contribution followed a previous grant of $58 million in intercompany debt forgiveness by Ally Financial in 2011 on a $1.6 billion line of credit Ally Financial had extended its controlled subsidiary ResCap. *Id.* at 129.

74. Moreover, in February 2012, it was reported that Ally Financial had contacted buyout firms such as Fortress Investment Group LLC and Cerberus Capital Management LP regarding a potential sale of ResCap through a pre-packaged bankruptcy to be effectuated by the end of March as ResCap faces financing and liquidity deadlines. *See* Bloomberg Businessweek, *Ally's ResCap Said to Seek Buyers for Prearranged Bankruptcy*, Feb. 8, 2012.

75. According to the report, "[p]otential bidders are being told that a pre-packaged bankruptcy filing would allow the buyer to leave behind liabilities such as [RMBS] securitizations that have been the subject of litigation." *Id.* To that end, Ally Financial's CEO, Michael Carpenter, has stated that he will not pursue the aforementioned initial public offering for Ally Financial "until [these] legacy mortgage issues are resolved." *Id.* Nevertheless, a bondholder group representing holders of approximately $800 million in ResCap debt has expressed its desire to "fight [Ally Financial] tooth and nail" to oppose the bankruptcy, based in part on the belief that "Ally [Financial] can't legally separate itself from ResCap because it has stripped assets from the unit." Bloomberg News, *Paulson, Tepper Said Among Investors Urging Ally to Back ResCap*, Jan. 10, 2012.

76. Indeed, as Ally Financial has pointedly noted in its most recent annual report: "In light of ResCap's liquidity and capital needs combined with volatile conditions in the marketplace, there is substantial doubt about ResCap's ability to continue as a going concern." Ally Fin. Inc., Annual Report (Form 10-K), at 18 (Feb. 28, 2012)

B. RFC's Securitizations and Financial Guaranty Insurance Generally

(1) Financial Guaranty Insurance Policies

77. To improve the marketability and ratings of the RMBS Notes issued as part of its securitizations, RFC from time to time sought credit enhancement for the RMBS Notes from FGIC, a financial guaranty insurer, in the form of financial guaranty insurance policies. Under the terms of a financial guaranty insurance policy like the ones FGIC issued here, the insurer unconditionally and irrevocably guarantees to the trustee for the benefit of the holders of the insured RMBS Notes that, if there is a shortfall in cash available to it to make required payments on the insured securities, the financial guaranty insurer will pay the amount of the shortfall to the trustee for the benefit of the holders of the insured securities.

78. For a trust that issues RMBS Notes, the primary source of funds is the remittance of payments on the underlying residential mortgage loans. Delinquencies by borrowers in making their mortgage loan payments will, by definition, reduce cash flows to the trust, which will directly impair the ability of the trust to make required payments on the RMBS Notes. Delinquencies, if not cured, will eventually result in losses on the mortgage loans, which reduce the aggregate principal amount of the loan pool held by the trust. In this manner, high levels of mortgage loan delinquencies and defaults can lead to shortfalls in cash available to pay RMBS investors. Such shortfalls result in claims on FGIC's policies.

(2) Securitization Sponsor's Disclosures and Representations and Warranties

79. The risk FGIC assumes when it agrees to issue a policy for RMBS Notes depends upon the credit quality of the underlying mortgage loans, which in turn depends on the underwriting practices of the loan originators and the characteristics of the loans. If, for instance, a loan originator employs substandard underwriting practices, the underlying mortgage loans would be of inferior credit quality. Consequently, the credit risk—the risk of delinquency or default—of the underlying mortgages, and of the mortgage loan portfolio as a whole, would be materially increased.

80. Accordingly, FGIC generally required securitization sponsors, like RFC, to provide substantial representations and warranties about the underlying mortgage loans, such as the ratio of the borrower's monthly debt payments to monthly income ("DTI ratio"), the ratio of the mortgage loan principal balance or credit limit, as applicable, to the value of the mortgaged property at origination ("LTV ratio"), the ratio of the combined outstanding principal balances of the mortgage loan and all senior or subordinate mortgage loans secured by the mortgaged property to the value of the mortgaged property at origination ("CLTV ratio"), the borrower's credit score ("FICO score"), and the borrower's residual income, representing the borrower's gross monthly income less the borrower's monthly mortgage payment and other specified monthly debt payments ("Residual Income"). Even where, as here, RFC did not originate a particular loan, it nonetheless is typically required to make representations about that loan, thereby assuming the risk that those representations might not be accurate. RFC's representations and warranties, including representations about the standards and procedures used to underwrite the loans and the characteristics of the underlying mortgage loans, were

intended to allow FGIC to assess the credit risk inherent in the mortgage loan pool before deciding to commit to the transaction.

81. RFC's representations and warranties in its RMBS transactions regarding the characteristics of the loans included in the mortgage loan portfolios, and the underwriting standards used to evaluate those mortgage loans, are particularly vital because each loan pool comprised of thousands of mortgage loans, each of which was in itself a complex legal transaction. Each loan file typically contains (or at least is supposed to contain) a mortgage application, a credit report, income and employment verifications, an appraisal, the lender's internal documentation and a wide variety of other documentation necessary to support proper loan underwriting decisions. Moreover, in seeking financial guaranty insurance from FGIC for the HI Transactions, RFC demanded that FGIC commit to the pricing and other material terms within a very limited time frame. Both RFC and FGIC understood and intended that FGIC would rely on the information supplied by RFC as sponsor, as well as RFC 's representations and warranties concerning that information, in assessing the credit risk of the mortgage loan pool.

82. Further, on information and belief, for each of its securitizations, RFC as sponsor supplied the same data it provided to FGIC to one or several rating agencies in order for those agencies to create expected loan level default and loss estimates. The loan level default and loss estimates were then used by the rating agencies to create cash flow projections and potential loss estimates for the entire transaction. Finally, the rating agencies delivered to the sponsor and to FGIC a private credit assessment for the transaction (sometimes referred to as a "shadow rating") without considering the effect of FGIC's policy. The shadow rating provided an overall evaluation of the likelihood of default on the securities FGIC would be insuring in the securitization. As sponsor, RFC arranged for the shadow rating to be provided to FGIC knowing

that it was an essential condition to FGIC's willingness to issue a financial guaranty insurance policy.

C. The HI Transactions

(1) The 2006-HI2 Transaction

83. On May 25, 2006, RFC purchased thousands of residential mortgage loans originated by either its wholly-owned subsidiary HomeComings or an unaffiliated originator, pooled those loans, and deposited them in the 2006-HI2 Trust (via RFMSII). The trust then issued approximately $237 million aggregate principal amount of Home Loan-Backed Notes, Series 2006-HI2 (the "2006-HI2 Notes"). The 2006-HI2 Notes consisted of four tranches of Class A notes, all of which would be insured by FGIC. The 2006-HI2 Mortgage Loans consisted of 5,038 fixed rate home loans with an aggregate principal balance of approximately $237,844,495.

(2) The 2006-HI3 Transaction

84. On July 21, 2006, RFC purchased thousands of residential mortgage loans originated by either its wholly-owned subsidiary HomeComings, its affiliate GMACM, or an unaffiliated originator, pooled those loans, and deposited them in the 2006-HI3 Trust (via RFMSII). The trust then issued approximately $223 million aggregate principal amount of Home Loan-Backed Notes, Series 2006-HI3 (the "2006-HI3 Notes"). The 2006-HI3 Notes consisted of four tranches of Class A notes, all of which would be insured by FGIC. The 2006-HI3 Mortgage Loans consisted of approximately 4,425 fixed rate home loans with an aggregate principal balance of approximately $226,901,669.

(3) The 2006-HI4 Transaction

85. On September 28, 2006, RFC purchased thousands of residential mortgage loans originated by either its wholly-owned subsidiary HomeComings, its affiliate GMACM, or an

unaffiliated originator, pooled those loans, and deposited them in the 2006-HI4 Trust (via RFMSII). The trust then issued approximately $273 million aggregate principal amount of Home Loan-Backed Notes, Series 2006-HI4 (the "2006-HI4 Notes"). The 2006-HI4 Notes consisted of four tranches of Class A notes, all of which would be insured by FGIC. The 2006-HI4 Mortgage Loans consisted of 5,513 fixed rate home loans with an aggregate principal balance of approximately $273,513,055.

(4) The 2006-HI5 Transaction

86. On December 28, 2006, RFC purchased thousands of residential mortgage loans originated by either its wholly-owned subsidiary HomeComings, its affiliate GMACM, or an unaffiliated originator, pooled those loans, and deposited them in the 2006-HI5 Trust (via RFMSII). The trust then issued approximately $247 million aggregate principal amount of Home Loan-Backed Notes, Series 2006-HI5 (the "2006-HI5 Notes"). The 2006-HI5 Notes consisted of four tranches of Class A notes, all of which would be insured by FGIC. The 2006-HI5 Mortgage Loans consisted of 5,071 fixed rate home loans with an aggregate principal balance of approximately $250,095,045.

(5) The 2007-HI1 Transaction

87. On March 30, 2007, RFC purchased thousands of residential mortgage loans originated by either its wholly-owned subsidiary HomeComings, its affiliate GMACM, or an unaffiliated originator, pooled those loans, and deposited them in the 2007-HI1 Trust (via RFMSII). The trust then issued approximately $255 million aggregate principal amount of Home Loan-Backed Notes, Series 2007-HI1 (the "2007-HI1 Notes"). The 2007-HI1 Notes consisted of four tranches of Class A notes, all of which would be insured by FGIC. The 2007-

HI1 Mortgage Loans consisted of 5,171 fixed rate home loans with an aggregate principal balance of approximately $257,532,198.

(6) The HI Transactions Generally

88. To enhance the ratings and marketability of the HI Notes, RFC sought financial guaranty insurance policies from FGIC for the purpose of insuring the HI Transactions for the benefit of the note holders. For each of the Transactions, FGIC and RFC executed an Insurance and Indemnity Agreement (respectively, the "2006-HI2 I&I Agreement," the "2006-HI3 I&I Agreement," the "2006-HI4 I&I Agreement," the "2006-HI5 I&I Agreement," and the "2007-HI1 I&I Agreement," and collectively the "I&I Agreements"), under which FGIC agreed to and did issue a financial guaranty insurance policy to insure the HI Notes.[1] Each I&I Agreement was signed by FGIC (the "Insurer" for each Transaction); RFC (the "Seller" and "Master Servicer" of each Transaction); RFMSII (the "Depositor" for each Transaction); and the Indenture Trustee for each Transaction.[2]

89. Each I&I Agreement provides that FGIC is a third-party beneficiary of, and shall have all of the rights provided for in, the "Operative Documents." For each of the HI Transactions, the "Operative Documents" are defined to include, among other documents: (i) the relevant HI Notes; (ii) an Indenture, between the relevant Indenture Trustee and the relevant HI Trust (respectively, the "2006-HI2 Indenture," the "2006-HI3 Indenture," the "2006-HI4 Indenture," the "2006-HI5 Indenture," and the "2007-HI1 Indenture"); (iii) a Servicing

[1] FGIC issued financial guaranty insurance policies with policy number 06030063 for the 2006-HI2 Transaction; policy number 06030087 for the 2006-HI3 Transaction; policy number 06030113 for the 2006-HI4 Transaction; policy number 06030135 for the 2006-HI5 Transaction; and policy number 07030014 for the 2007-HI1 Transaction.

[2] The 2006-HI2 I&I Agreement was executed on May 25, 2006; the 2006-HI3 I&I Agreement was executed on July 21, 2006; the 2006-HI4 I&I Agreement was executed on September 28, 2006; the 2006-HI5 I&I Agreement was executed on December 28, 2006; and the 2007-HI1 I&I Agreement was executed on March 30, 2007.

Agreement, among the relevant HI Trust, RFC, and the relevant Indenture Trustee (respectively, the "2006-HI2 Servicing Agreement," the "2006-HI3 Servicing Agreement," the "2006-HI4 Servicing Agreement," the "2006-HI5 Servicing Agreement," and the "2007-HI1 Servicing Agreement," and together, the "Servicing Agreements"); and (iv) a Home Loan Purchase Agreement, between RFC and RFMSII (respectively, the "2006-HI2 HLPA," the "2006-HI3 HLPA," the "2006-HI4 HLPA," the "2006-HI5 HLPA," and the "2007-HI1 HLPA" and collectively the "Purchase Agreements").[3] The Servicing Agreements also provide that FGIC, as Credit Enhancer, is an express third-party beneficiary thereof.

90. The Policies improved the marketability of the HI Notes by mitigating risk for potential investors and making the HI Notes eligible to receive an initial credit rating of triple-A by the rating agencies at the closing of each HI Transaction.

91. RFC and RFMSII offered the HI Notes for sale pursuant to a prospectus, (each a "Prospectus," and for each Transaction respectively, the "2006-HI2 Prospectus," the "2006-HI3 Prospectus," the "2006-HI4 Prospectus," the "2006-HI5 Prospectus," and the "2007-HI1 Prospectus"), and a prospectus supplement (each a "Prospectus Supplement," and for each transaction respectively, the "2006-HI2 Prospectus Supplement," the "2006-HI3 Prospectus Supplement," the "2006-HI4 Prospectus Supplement," the "2006-HI5 Prospectus Supplement," and the "2007-HI1 Prospectus Supplement"), each touting the respective Policies and the triple-

[3] The Indenture and the Servicing Agreement for the 2006-HI2 Transaction were each executed on May 25, 2006; the HLPA was executed on May 1, 2006. The Indenture and the Servicing Agreement for the 2006-HI3 Transaction were each executed on July 21, 2006; the HLPA was executed on July 1, 2006. The Indenture and the Servicing Agreement for the 2006-HI4 Transaction were each executed on September 28, 2006; the HLPA was executed on September 1, 2006. The Indenture and the Servicing Agreement for the 2006-HI5 Transaction were each executed on December 28, 2006; the HLPA was executed on December 1, 2006. The Indenture and the Servicing Agreement for the 2007-HI1 Transaction were each executed on March 30, 2007; the HLPA was executed on March 1, 2007.

A initial rating of the respective HI Notes made possible by those Policies.[4] The "Offering Documents" for each transaction consist of the related Prospectus and Prospectus Supplement, together with any related preliminary Offering Documents, as further supplemented by any subsequent amendment or supplement thereto, and any other related Offering Documents that make reference to a Policy.

92. Upon the closing of each HI Transaction, Ally Securities—an Ally Financial subsidiary—in its capacity as an underwriter of each of the HI Transactions, sold to investors the related HI Notes, and FGIC, for its part, issued the related Policy in accordance with the terms of the related I&I Agreement.

D. RFC Fraudulently Induces FGIC to Insure the 2006-HI4, 2006-HI5, and 2007-HI1 Notes with Substantial Assistance from Ally Financial

(1) RFC's Fraudulent Inducement of FGIC

93. FGIC's participation in the HI Transactions was an essential component of the HI Transactions and enhanced RFC's ability to market the securitizations effectively. The Policies allowed RFC to sell the HI Notes with an initial triple-A credit rating, making them more attractive to a broader pool of potential investors.

94. In order to induce FGIC to write financial guaranty insurance for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, RFC provided to FGIC, directly or indirectly, a variety of information.

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[4] The 2006-HI2 Prospectus is dated as of May 17, 2006; the 2006-HI3 Prospectus is dated as of July 19, 2006; the 2006-HI4 Prospectus is dated as of September 25, 2006; the 2006-HI5 Prospectus is dated as of December 20, 2006; and the 2007-HI1 Prospectus is dated as of March 27, 2007. The 2006-HI2 Prospectus Supplement is dated as of May 24, 2006; the 2006-HI3 Prospectus Supplement is dated as of July 20, 2006; the 2006-HI4 Prospectus Supplement is dated as of September 26, 2006; the 2006-HI5 Prospectus Supplement is dated as of December 15, 2006; and the 2007-HI1 Prospectus Supplement is dated as of March 21, 2007.

95. First and foremost, RFC provided to FGIC initial and final Prospectus Supplements, which summarized, among other material information, the credit quality and characteristics of the Mortgage Loans, and RFC's loan underwriting guidelines.

96. Second, RFC provided a document (generally referred to as a "loan tape" or "magnetic tape") detailing material characteristics of individual borrowers and loans expected to be included in each HI Transaction, together with representations regarding material statistics about the loan pool as a whole.

97. Third, for each Transaction, RFC provided to FGIC credit ratings for the HI Notes determined without considering the effect of the relevant Policy. These ratings, which RFC procured from the credit rating agencies, are known as "shadow ratings."

98. Fourth, as discussed in detail below, RFC provided representations, warranties, and affirmative covenants in the Operative Documents and the I&I Agreements for each Transaction regarding the related Mortgage Loans specifically and the related loan pool generally.

99. ***Prospectus Supplement and Other Operative Documents.*** In determining whether to insure the HI Notes, FGIC relied in part upon representations and warranties regarding RFC's loan underwriting standards made by RFC in the respective Prospectuses and Prospectus Supplements. For the 2006-HI4 Transaction, a Preliminary 2006-HI4 Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about September 22, 2006 in an email sent by Jacob Sheehan on behalf of RFC. The 2006-HI4 Prospectus, as supplemented by the 2006-HI4 Prospectus Supplement, was filed with the SEC and became effective on September 28, 2006. The Final 2006-HI4 Prospectus Supplement was transmitted to,

among others, Dana Skelton of FGIC, on or about September 27, 2006, in an email sent by Jacob Sheehan on behalf of RFC.

100. For the 2006-HI5 Transaction, a Preliminary 2006-HI5 Prospectus Supplement was transmitted to, among others, Monica Selden of FGIC, on or about December 15, 2006 in an email sent by Andrew D. Hollenbeck on behalf of RFC. The 2006-HI5 Prospectus, as supplemented by the 2006-HI5 Prospectus Supplement, was filed with the SEC and became effective on December 20, 2006. The Final 2006-HI5 Prospectus Supplement was transmitted to, among others, Monica Selden of FGIC, on or about December 20, 2006, in an email sent by Andrew D. Hollenbeck on behalf of RFC.

101. For the 2007-HI1 Transaction, a Preliminary 2007-HI1 Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about March 22, 2007 in an email sent by Andy D. Hollenbeck on behalf of RFC. The 2007-HI1 Prospectus, as supplemented by the 2007-HI1 Prospectus Supplement, was filed with the SEC and became effective on March 30, 2007. The Final 2007-HI1 Prospectus Supplement was transmitted to, among others, Dana Skelton of FGIC, on or about March 28, 2007, in an email sent by Susannah L. Schmid on behalf of RFC.

102. Each Prospectus Supplement sets forth generally, and among other information, the following important characteristics of the Mortgage Loan pool: the ranges of and weighted average FICO scores, the ranges of and weighted average CLTV ratios, the ranges of and weighted average outstanding principal balances of the loans, the DTI ratios of the borrowers, the geographic distribution of the loans, and the occupancy status of the borrowers (i.e., whether the property securing a mortgage is: (i) the borrower's primary residence; (ii) a second home; or

(iii) an investment property). 2006-HI4 Prospectus Supplement at II-1–II-9; 2006-HI5 Prospectus Supplement at II-1–II-9; 2007-HI1 Prospectus Supplement at II-1–II-9.

103. Each Prospectus Supplement expressly states: "[The] underwriting standards relating to the home loans generally will conform to those published in [RFC's] client guide, and the provisions of the guide applicable to the home equity 125 loan program." 2006-HI4 Prospectus Supplement at S-34; 2006-HI5 Prospectus Supplement at S-34; 2007-HI1 Prospectus Supplement at S-33.

104. RFC publishes its loan underwriting standards in a document the Prospectuses refer to as "Residential Funding Company, LLC's Client Guide," which is modified from time to time (the "Client Guide"). In general, the Client Guide specifies documentation requirements, and substantive criteria for key credit-related characteristics, that borrowers must satisfy in order to qualify for a particular mortgage loan or line of credit. Depending upon the particular type of loan or line of credit, these requirements and criteria may include asset verification, income verification, employment verification, bank statements, payment histories, and/or evidence of closing funds, among other things. The Client Guide also includes substantive criteria for eligibility, addressing material characteristics of a proposed loan, such as DTI ratios, LTV and CLTV ratios, occupancy status, and the borrower's Residual Income.

105. RFC represented that, in all instances, the Mortgage Loans had been originated pursuant to maximum monthly DTI and CLTV ratios, which typically did not exceed 55% and 125% respectively. *See* 2006-HI4 Prospectus Supplement at II-2, II-7; 2006-HI5 Prospectus Supplement at II-2, II-7; 2007-HI1 Prospectus Supplement at II-2, II-7.

106. RFC also represented that, with respect to occupancy status, 99.96% of the aggregate principal balance of the 2006-HI2 Mortgage Loans, 99.98% of the 2006-HI3 Mortgage

Loans, 98.77% of the 2006-HI4 Mortgage Loans, 99.67% of the 2006-HI5 Mortgage Loans, and 99.40% of the 2007-HI1 Mortgage Loans would be secured by the borrower's primary residence. *See* 2006-HI2 Prospectus Supplement at II-11; 2006-HI3 Prospectus Supplement at II-11; 2006-HI4 Prospectus Supplement at II-9; 2006-HI5 Prospectus Supplement at II-9; 2007-HI1 Prospectus Supplement at II-9.

107. ***Loan Tapes.*** RFC sent via email loan tapes to FGIC for each of the Transactions. The 2006-HI4 Transaction preliminary loan tape was sent by RFC to FGIC on or about September 13, 2006. The 2006-HI5 Transaction preliminary loan tape was sent by RFC to FGIC on or about December 5, 2006. The 2007-HI1 Transaction preliminary loan tape was sent by RFC to FGIC on or about March 13, 2007. These loan tapes set forth, for each loan in the related pool, key characteristics such as the borrower's FICO score, Residual Income, DTI ratio, and the LTV and CLTV ratios for the loan. RFC also disclosed in the Prospectus Supplement, with respect to the related pool as a whole, aggregate characteristics relevant to the assessment of the credit risk of the pool, including FICO scores, Residual Income, DTI ratios, and LTV and CLTV ratios.

108. ***Shadow Rating Letters.*** RFC, on information and belief, provided Moody's and S&P with, at a minimum, the same mortgage loan tape that it also provided to FGIC. As requested by RFC, Moody's—and, upon information and belief, S&P—provided the shadow ratings to FGIC on or about the closing date of each Transaction. In its letter to FGIC describing the shadow rating for each HI Transaction, Moody's noted that it reviewed the documentation provided by RFC and that the relevant rating was "based primarily on the credit quality of the loans backing the transaction." Similarly, upon information and belief, in its letters to FGIC, S&P noted that it too relied on the information provided to it by RFC and that the shadow ratings

relied on the issuer for the accuracy and completeness of the information submitted in connection with S&P's private credit assessment. Based on the information supplied by RFC, Moody's and S&P assessed the credit quality of the loan pool and assigned shadow ratings to the 2006-HI4, 2006-HI5, and 2007-HI1 Notes as set forth in the table below.

	Moody's	S&P
2006-HI4 Notes	Baa3	BBB-
2006-HI5 Notes	Baa2	BBB
2007-HI1 Notes	Baa2	BBB

109. These shadow ratings met FGIC's minimum requirements. FGIC required these shadow ratings as an essential condition to its willingness to participate in and issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions.

(2) RFC's Fraudulent Inducement of FGIC Is Carried Out with Substantial Assistance from Ally Financial

110. Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to participate in the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions and, ultimately, issue Policies for these three Transactions. Ally Financial knew that the Mortgage Loans underlying the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions were of a substantially poorer quality than was represented to FGIC and other participants in the these three Transactions, including investors. Ally Financial further knew that the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans were not underwritten to the standards represented in each Transaction's Offering Documents and warranted in each Transaction's Operative Documents. Moreover, on information and belief, as a result of its dominance over ResCap and its other

subsidiaries. Ally Financial knew that the representations and warranties RFC made to FGIC prior to and at the closing the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, upon which FGIC reasonably relied, were false.

111. Ally Financial, at the direction of its board of directors, took a number of actions in 2005 to finance, support, and engender investor confidence in its mortgage securitization business, which was carried out by its subsidiaries. Ally Financial substantially restructured its subsidiaries in 2005. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

112. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

113. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries."

114. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries were undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

115. Ally Financial's corporate restructuring also allowed RFC to explicitly represent and warrant to FGIC in the I&I Agreements that RFC "is solvent, and will not be rendered insolvent by the Transaction [. . .] [a]fter giving effect to the Transaction, it will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business." 2006-HI4 I&I Agreement § 2.01(m) (emphasis added); 2006-HI5 I&I Agreement § 2.01(m) (emphasis added); 2007-HI1 I&I Agreement § 2.01(m) (emphasis added). This statement—on which FGIC materially relied—could not have been made absent Ally Financial's decision to prop up its subsidiary RFC.

116. Additionally, Ally Financial was aware that the true characteristics of the Mortgage Loans in the HI Transactions—and other securitization transactions—were far worse than was represented to FGIC and were not underwritten to the standards that were represented and warranted to FGIC. This is true in that Ally Financial's subsidiaries were, in many cases, the acquirers, sellers, and servicers of those very loans. Indeed, the driving factor in the separation of Ally Financial from General Motors Corporation ("GM") and the creation, in particular, of ResCap, was to create an entity, the sole focus of which was the home mortgage business.

117. Moreover, as a result of its domination and control over ResCap and RFC, as well as the shared officers and directors among and between Ally Financial and its subsidiaries, Ally Financial was aware of RFC's representations and warranties to FGIC—and that they were untrue when stated. For example, Eric A. Feldstein was Ally Financial's CEO and Chairman of its board of directors and also served as Chairman of ResCap's board of directors. Furthermore, Sanjiv Khattri has served as Executive Vice President and CFO of Ally Financial, while also serving as a director and CFO of ResCap. Numerous other individuals served as Directors and Officers of both Ally Financial and ResCap, with many serving in roles directly related to the

mortgage operations of both companies. ResCap and its own subsidiaries, including RFC, shared numerous directors and senior management as well.

118. As a result of the overlapping personnel, intertwined business operations, and the free flow of information among Ally Financial, ResCap, and RFC, it is more than reasonable to conclude that information regarding the representations and warranties being made to FGIC by RFC was shared among and between RFC and its parent ResCap, as well as ResCap and its parent Ally Financial. On information and belief, Ally Financial employees received drafts, final versions, and communications concerning the Operative and Offering Documents.

119. David C. Walker, another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries, joined Ally Financial in 1985 and also served as Vice President of GMAC Group and CFO of GMAC Mortgage Group. Walker has also served as a director at ResCap, GMACM, RFC, HomeComings, and RFMSII, among other ResCap subsidiaries. In the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, Walker, acting as a Director of RFC and RFMSII, was a signatory to both RFC's and RFMSII's "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors," which were included in the closing documents of these three Transactions.

120. Ally Financial, by (1) representing that its mortgage loan practices were sound and that its securitization transactions were supported by mortgage loans that met the criteria to which they were purportedly underwritten, (2) providing financial, managerial, and strategic assistance to its subsidiaries, and (3) modifying its corporate structure to control and direct its subsidiaries, provided substantial assistance to RFC in fraudulently inducing FGIC to participate in the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions and issue Policies for these three Transactions. Further, the issuance of the Policies, which made the 2006-HI4, 2006-HI5, and

2007-HI1 Transactions possible, inured to the significant financial benefit of Ally Financial and its subsidiaries.

E. RFC's Representations, Warranties, and Affirmative Covenants

121. In connection with the HI Transactions, RFC, at the direction of Ally Financial, either directly or indirectly through ResCap, gave numerous representations, warranties, and affirmative covenants to FGIC. These representations and warranties were material and concerned, among other things, the way the loans were selected and evaluated, the characteristics of, and the underwriting standards used for, the Mortgage Loans, and the accuracy of the information supplied to FGIC. RFC also promised to provide timely Mortgage Loan file information and to provide FGIC with a variety of information, including access to RFC's books and records and to discuss the affairs, finances, and accounts of RFC with RFC's Servicing Officer and, under some circumstances, RFC's accountants.

122. RFC's representation that the information supplied to FGIC was not materially inaccurate or misleading, among others, induced FGIC to enter into each HI Transaction and to issue each Policy on the agreed terms. Further, the I&I Agreements' incorporation and restatement of the representations and warranties in the Operative Documents was intended to allow FGIC to rely upon each and every one of the representations and warranties that RFC made in connection with the relevant HI Transaction.

123. FGIC, for its part, reasonably relied on the information available to it regarding the underlying mortgage loans and the representations and warranties provided by RFC. Since FGIC had neither the right nor duty under the Operative Documents, nor the practical ability, to review the thousands of underlying Mortgage Loan files, RFC knew that FGIC had no choice but to rely on RFC's representations regarding the underlying loans in determining whether to issue

the Policies. Further, FGIC had no reason to believe that those representations were not true and accurate.

124. RFC included 25,219 individual Mortgage Loans in the HI Trusts collectively. Typically, each Mortgage Loan has its own voluminous file containing, among other items, mortgage applications, credit reports, income and employment verifications, the lender's internal documentation, and other forms of documentation necessary to support underwriting decisions. Unlike RFC, FGIC was under no contractual duty whatsoever to review the Mortgage Loans. Instead, FGIC, as contemplated by the many representations, warranties, and affirmative covenants by RFC regarding its evaluation practices, and the credit quality of the Mortgage Loans, reasonably relied on the presumed fact that truthful and accurate information had been provided and that it would not face additional, hidden risk by virtue of material omissions or positive misrepresentations having been made.

125. In each instance, based on the information received by FGIC and the representations and warranties given by RFC, FGIC entered into the respective I&I Agreements and agreed to issue the relevant Policy to the Indenture Trustee for the benefit of the holders of the respective HI Notes. In return for doing so, in each case, FGIC received a modest annual premium, based on a small, fixed percentage of the aggregate principal balance of the related HI Notes, commensurate with the risk FGIC thought it was taking. Specifically, FGIC received a small percentage of the aggregate balance of the HI Notes, ranging from 0.28% to 0.30%, for serving as insurer, a figure commensurate with the risk that FGIC believed it was accepting, based on the representations, warranties, and affirmative covenants provided by RFC.

126. In each case, RFC's information, representations, and warranties were materially false when disclosed and/or provided by RFC. RFC knew that this information, and its

representations and warranties, in each instance, were materially false when made. RFC also knew that, with respect to each HI Transaction individually, this information and the representations and warranties were essential to FGIC's decision in each instance to issue the related Policy. Indeed, RFC intentionally made these material misrepresentations to induce FGIC to enter into the I&I Agreements and issue the Policies. The issuance by FGIC of the Policies—induced by RFC's fraudulent misrepresentations and substantial assistance of Ally Financial—made the HI Notes eligible to receive an initial triple-A credit rating, thus greatly improving their marketability to potential investors.

(1) Representations, Warranties, and Affirmative Covenants Relating to the Operative and Offering Documents

127. In each of the HI Transactions, under Section 2.01 of each I&I Agreement, RFC made the following representations and warranties, among others:

- *Accuracy of Information.* "**None of the Operative Documents, nor any other material information relating to the [Mortgage Loans]**, the operations of RFC . . . or the financial condition of RFC . . . furnished to [FGIC] . . . by RFC . . . including the Offering Documents . . . **contains any statement of a material fact which was untrue or misleading in any material respect when made**. [RFC] has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change. Since the furnishing of the Documents, there has been no change nor any development or event involving a prospective change known to RFC . . . that would render any of the Documents untrue or misleading in any material respect."

- *Compliance with Securities Laws.* "The offering and sale of the Notes complies in all material respects with all requirements of law, including the registration requirements of the Securities Act and any other applicable securities laws. **The Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading**."

- *Operative Documents.* "**Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects**."

- *Solvency; Fraudulent Conveyance.* "[RFC] is solvent, and will not be rendered insolvent by the Transaction . . . . **[RFC] will not be left with an unreasonably small amount of capital with which to engage in the ordinary course of its business**. [RFC] does not intend to incur, and does not believe that it has incurred, debts beyond its ability to pay as they mature . . . . [RFC] is not entering into the Operative Documents, or transferring any of its assets in connection with the Transaction, with any intent to hinder, delay or defraud any of its creditors."

I&I Agreements § 2.01 (emphasis added).

128. *First*, in each I&I Agreement, RFC represented and warranted that "[n]one of the Operative Documents, nor any other material information relating to the [Mortgage Loans], the operations of RFC . . . or the financial condition of RFC . . . including the Offering Documents . . . contains any statement of a material fact which was untrue or misleading in any material respect when made." 2006-HI2 I&I Agreement § 2.01(j); 2006-HI3 I&I Agreement § 2.01(j); 2006-HI4 I&I Agreement § 2.01(j); 2006-HI5 I&I Agreement § 2.01(j); 2007-HI1 I&I Agreement § 2.01(j). Through these Operative and Offering Documents, as detailed above, RFC communicated several material facts about the characteristics of the Mortgage Loans.

129. *Second*, in each I&I Agreement, RFC also separately represented and warranted that "[t]he Offering Documents do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading . . . ." 2006-HI2 I&I Agreement § 2.01(k); 2006-HI3 I&I Agreement § 2.01(k); 2006-HI4 I&I Agreement § 2.01(k); 2006-HI5 I&I Agreement § 2.01(k); 2007-HI1 I&I Agreement § 2.01(k). As discussed above, in each Prospectus Supplement, RFC represented that the Mortgage Loans sold to the HI Trusts had been underwritten in conformity with RFC's underwriting standards and, specifically, those of the "home equity 125 loan program." *See* 2006-HI2 Prospectus Supplement at S-31; 2006-HI3

Prospectus Supplement at S-33; 2006-HI4 Prospectus Supplement at S-34; 2006-HI5 Prospectus Supplement at S-34; 2007-HI1 Prospectus Supplement at S-33.

130. *Third*, the I&I Agreements incorporated by reference, for the benefit of FGIC, the representations and warranties contained in the related Operative Documents: "Each of the representations and warranties of RFC . . . contained in the applicable Operative Documents and the Underwriting Agreement is true and correct in all material respects . . . ." 2006-HI2 I&I Agreement § 2.01(l); 2006-HI3 I&I Agreement § 2.01(l); 2006-HI4 I&I Agreement § 2.01(l); 2006-HI5 I&I Agreement § 2.01(l); 2007-HI1 I&I Agreement § 2.01(l). The incorporation by reference of the Operative Documents into each I&I Agreement was intended to allow FGIC to rely on any representation and warranty that RFC made to other entities, such as investors or the Indenture Trustee, in connection with the relevant HI Transaction. Indeed, each I&I Agreement expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents. 2006-HI2 I&I Agreement § 2.02(k); 2006-HI3 I&I Agreement § 2.02(k); 2006-HI4 I&I Agreement § 2.02(k); 2006-HI5 I&I Agreement § 2.02(k); 2007-HI1 I&I Agreement § 2.02(k).

131. *Fourth*, RFC also provided information to FGIC concerning the Mortgage Loans in each of the Transactions. *See* 2006-HI2 I&I Agreement § 2.02(c)(iii); 2006-HI3 I&I Agreement § 2.02(c)(iii); 2006-HI4 I&I Agreement § 2.02(c)(iii); 2006-HI5 I&I Agreement § 2.02(c)(iii); 2007-HI1 I&I Agreement § 2.02(c)(iii). This information included schedules (or "loan tapes") that set forth statistics about the loan pool. The schedules purported to describe key characteristics relevant to the assessment of risk, including DTI and CLTV ratios, occupancy status, and FICO scores. *See* 2006-HI2 Indenture, Appendix A; 2006-HI3 Indenture, Appendix A; 2006-HI4 Indenture, Appendix A; 2006-HI5 Indenture, Appendix A; 2007-HI1 Indenture,

Appendix A. On information and belief, the loan tape FGIC received at the closing of each Transaction contains the same information as is contained in the schedule referenced in the relevant HI Purchase Agreement. In turn, in each HI Purchase Agreement, RFC represented that all the information in those schedules was true and correct in all material respects as of the date on which the information was furnished. 2006-HI2 HLPA § 3.1(b)(i); 2006-HI3 HLPA § 3.1(b)(i); 2006-HI4 HLPA § 3.1(b)(i); 2006-HI5 HLPA § 3.1(b)(i); 2007-HI1 HLPA § 3.1(b)(i).

132. As a result of incorporating into each I&I Agreement the representations and warranties in the relevant Operative Documents, RFC incorporated representations and warranties regarding the underwriting of the Mortgage Loans included in each Transaction. These representations and warranties set forth the standards governing each Mortgage Loan, including, significantly, the representation that each Mortgage Loan had been underwritten in compliance with RFC's underwriting guidelines.

133. In particular, in the HI Purchase Agreements, RFC represents and warrants that:

- **Information in Mortgage Loan Schedule**. "The information set forth in the [Mortgage Loan] Schedule with respect to each [Mortgage Loan] is true and correct in all material respects as of the date or dates respecting which such information is furnished." 2006-HI2 HLPA § 3.1(b)(i); 2006-HI3 HLPA § 3.1(b)(i); 2006-HI4 HLPA § 3.1(b)(i); 2006-HI5 HLPA § 3.1(b)(i); 2007-HI1 HLPA § 3.1(b)(i).

- **No Material Breach or Default**. "There is no material default, breach, violation or event of acceleration existing under the terms of any Mortgage Note or Mortgage and no event which, with notice and expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration under the terms of any Mortgage Note or Mortgage, and no such material default, breach, violation or event acceleration has been waived by [RFC] or by any other entity involved in originating or servicing a [Mortgage Loan]." 2006-HI2 HLPA § 3.1(b)(xxix); 2006-HI3 HLPA § 3.1(b)(xxix); 2006-HI4 HLPA § 3.1(b)(xxix); 2006-HI5 HLPA § 3.1(b)(xxix); 2007-HI1 HLPA § 3.1(b)(xxix).

- **Delinquent Loans**. "As of the Cut-off Date, none of the [Mortgage Loans] were 30 or more days delinquent." 2006-HI2 HLPA § 3.1(b)(viii); 2006-HI3 HLPA §

3.1(b)(viii); 2006-HI4 HLPA § 3.1(b)(viii); 2006-HI5 HLPA § 3.1(b)(viii); 2007-HI1 HLPA § 3.1(b)(viii).

- **CLTV**. "Approximately [96.2% of the 2006-HI2 Mortgage Loans, 97.6% of the 2006-HI3 Mortgage Loans, 86.12% of the 2006-HI4 Mortgage Loans, 86.54% of the 2006-HI5 Mortgage Loans, and 93.2% of the 2007-HI1 Mortgage Loans] by Cut-Off Date Loan Balance, had a Combined Loan-to-Value Ratio in excess of 100%." 2006-HI2 HLPA § 3.1(b)(xiv); 2006-HI3 HLPA § 3.1(b)(xiv); 2006-HI4 HLPA § 3.1(b)(xiv); 2006-HI5 HLPA § 3.1(b)(xiv); 2007-HI1 HLPA § 3.1(b)(xiv).

- **Custodial File**. "For each [Mortgage Loan], the related [Custodial or Mortgage] File contains each of the documents and instruments specified to be included therein." 2006-HI2 HLPA § 3.1(b)(ix); 2006-HI3 HLPA § 3.1(b)(ix); 2006-HI4 HLPA § 3.1(b)(ix); 2006-HI5 HLPA § 3.1(ix); 2007-HI1 HLPA § 3.1(b)(ix).

134. Moreover, in each I&I Agreement—which expressly identifies FGIC as a third-party beneficiary with respect to the related Operative Documents—RFC specifically covenants that it will comply in all material respects with the terms and conditions of and perform its obligations under the relevant Operative Documents. *See* 2006-HI2 I&I Agreement § 2.02(a),(k); 2006-HI3 I&I Agreement § 2.02(a),(k); 2006-HI4 I&I Agreement § 2.02(a),(k); 2006-HI5 I&I Agreement § 2.02(a),(k); 2007-HI1 I&I Agreement § 2.02(a),(k).

(2) Representations, Warranties, and Affirmative Covenants Regarding Access to Information and Servicing

135. The I&I Agreements incorporate the representations and warranties that RFC made in the Servicing Agreement in its capacity as Servicer. *See* 2006-HI2 I&I Agreement § 2.02(l); 2006-HI3 I&I Agreement § 2.02(l); 2006-HI4 I&I Agreement § 2.02(l); 2006-HI5 I&I Agreement § 2.02(l); 2007-HI1 I&I Agreement § 2.02(l). In the Servicing Agreements, RFC covenanted, represented, and warranted that, so long as it acted as Master Servicer, it would service the Mortgage Loans following such procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities. *See* 2006-HI2 Servicing Agreement § 3.01(a); 2006-HI3 Servicing Agreement § 3.01(a); 2006-

HI4 Servicing Agreement § 3.01(a); 2006-HI5 Servicing Agreement § 3.01(a); 2007-HI1 Servicing Agreement § 3.01(a).

136. The Servicing Agreements provide, under certain circumstances, for the replacement of RFC as Master Servicer with a successor servicer. *See, e.g.*, 2006-HI2 Servicing Agreement § 7.02; 2006-HI3 Servicing Agreement § 7.02; 2006-HI4 Servicing Agreement § 7.02; 2006-HI5 Servicing Agreement § 7.02; 2007-HI1 Servicing Agreement § 7.02. The Servicing Agreements further provide that: "Any successor . . . to the Master Servicer as servicer shall during the term of its service as servicer (i) continue to service and administer the [Mortgage Loans] for the benefit of the Securityholders . . . and (iii) be bound by the terms of the Insurance Agreement." *See* 2006-HI2 Servicing Agreement § 7.02(b); 2006-HI3 Servicing Agreement § 7.02(b); 2006-HI4 Servicing Agreement § 7.02(b); 2006-HI5 Servicing Agreement § 7.02(b); 2007-HI1 Servicing Agreement § 7.02(b).]

137. Thus, according to the plain language of the Servicing Agreements, insofar as RFC is not the permanent Master Servicer of the Transactions but rather can be replaced in that capacity, and the obligations of the Master Servicer are undertaken for the benefit, *inter alia*, of the Securityholders and FGIC, information and documents regarding the Mortgage Loans are not the property of or otherwise owned by RFC. Rather, such files are to be held by the servicer of each Transaction—whether that party be RFC or a third-party successor servicer. FGIC is an express third-party beneficiary of the Servicing Agreements. See 2006-HI2 Servicing Agreement § 8.05; 2006-HI3 Servicing Agreement § 8.05; 2006-HI4 Servicing Agreement § 8.05; 2006-HI5 Servicing Agreement § 8.05; 2007-HI1 Servicing Agreement § 8.05.

138. In addition to RFC's contractual obligation to FGIC to service the Mortgage Loans in compliance with the Servicing Agreements, RFC also agreed to provide FGIC with

access to the underlying Mortgage Loans and servicing notes, and, as Seller, to procure custodial interim certifications stating that all mortgage files were complete and properly transferred into the appropriate HI Trust ("Interim Certification"). Specifically, each of the I&I Agreements provides FGIC, in sum and substance, with the following access to information rights:

- *Other Information.* RFC shall furnish to FGIC, promptly upon request, such data as FGIC may reasonably request relating to the Mortgage Loans, the servicing of the Mortgage Loans, the Transaction, or the ability of RFC to perform its obligations under the Operative Documents. *See* 2006-HI2 I&I Agreement § 2.02(c)(v); 2006-HI3 I&I Agreement § 2.02(c)(v); 2006-HI4 I&I Agreement § 2.02(c)(v); 2006-HI5 I&I Agreement § 2.02(c)(v); 2007-HI1 I&I Agreement § 2.02(c)(v).

- *Access to Records; Discussions with Officers and Accountants.* On an annual basis, or at any time when a Shortfall Event/Materially Adverse Change or an Event of Default shall have occurred and be continuing, upon the reasonable request of FGIC, RFC will permit FGIC or its authorized agents to inspect the books and records of RFC, discuss the affairs, finances and accounts of RFC as they relate to the Mortgage Loans, the Transaction, or the ability of RFC to perform its obligations under the Operative Documents with a Servicing Officer. If FGIC reasonably believes that a Material Adverse Change may have occurred and with RFC's consent, which consent shall not be unreasonably withheld or delayed, FGIC shall have the right to discuss the affairs, finances and accounts of RFC with RFC's independent accountants. In addition, if requested by FGIC, on an annual basis, or otherwise when reasonably requested by FGIC, RFC will cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement, with an exceptions list attached thereto, to enable FGIC to track the progress of recording of Mortgages and Assignments with respect to the Mortgage Loans. *See* 2006-HI2 I&I Agreement § 2.02(e); 2006-HI3 I&I Agreement § 2.02(e); 2006-HI4 I&I Agreement § 2.02(e); 2006-HI5 I&I Agreement § 2.02(e); 2007-HI1 I&I Agreement § 2.02(e).

- *Due Diligence.* If in FGIC's reasonable judgment circumstances so warrant, based on the performance of the Transaction, FGIC shall have the right, so long as the Notes remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans, reappraisals of Mortgaged Properties and reviews of servicing practices, at FGIC's expense and in a reasonable manner convenient to both RFC and FGIC. This due diligence right is in addition to the access provided and the other rights provided for in Section 2.02(e) of this Insurance Agreement. *See* 2006-HI2 I&I Agreement § 2.02(m); 2006-HI3 I&I Agreement § 2.02(m); 2006-HI4 I&I Agreement § 2.02(m); 2006-HI5 I&I Agreement § 2.02(m); 2007-HI1 I&I Agreement § 2.02(m).

- *Servicing of Mortgage Loans.* All Mortgage Loans will be serviced in all material respects in compliance with the Servicing Agreement. *See* 2006-HI2 I&I Agreement § 2.02(l); 2006-HI3 I&I Agreement § 2.02(l); 2006-HI4 I&I Agreement § 2.02(l); 2006-HI5 I&I Agreement § 2.02(l); 2007-HI1 I&I Agreement § 2.02(l).

F. RFC's Breaches of Its Representations, Warranties, and Affirmative Covenants

139. As discussed above, in relation to the HI Transactions, FGIC relied on material representations and warranties made by RFC regarding the manner in which the Mortgage Loans were selected and evaluated, the characteristics of those loans, and the accuracy and completeness of information RFC supplied to FGIC. Based on those representations and warranties, FGIC agreed in each case to issue the related Policy. In fact, as demonstrated by the extreme levels of delinquencies and losses detailed below, the risk that FGIC ultimately assumed when it issued each Policy was many times greater than the risk it could have reasonably anticipated based on the information disclosed by RFC's representations and warranties. RFC breached its representations and warranties to FGIC, and FGIC has been damaged as a result of those breaches.

140. The HI Transactions have performed poorly, and delinquencies and defaults for Mortgage Loans in each Transaction have been substantial. Indeed, as of January 2012 a total of: (i) 1,400 mortgage loans, representing 27.8% of the loans underlying the 2006-HI2 Transaction, had posted a loss or were significantly delinquent; (ii) 1,149 mortgage loans, representing 26.7% of the loans underlying the 2006-HI3 Transaction, had posted a loss or were significantly delinquent; (iii) 1,650 loans, representing 32.5% of the loans underlying the 2006-HI4 Transaction, had posted a loss or were significantly delinquent; (iv) 1,610 loans, representing 32.4% of the loans underlying the 2006-HI5 Transaction, had posted a loss or were significantly delinquent; and (v) 1,744 loans, representing 34.4% of the loans underlying the 2007-HI1

Transaction, had posted a loss or were significantly delinquent. As discussed above, by making these extensive representations and warranties to FGIC, and thereby inducing FGIC to issue each Policy, RFC assumed and allocated to itself all risk associated with the Mortgage Loans failing to comply with RFC's representations and warranties.

141. The poor performance of the Mortgage Loans has reduced the cash flow to each of the HI Trusts, which has caused and will continue to cause claims to be presented to FGIC under all the Policies to cover these shortfalls. Indeed, as of February 2012 a total of more than $82 million in claims had been presented to FGIC in connection with the HI Transactions. FGIC expects tens of millions of dollars more in claims to be presented to it under the HI Transactions in the future.

(1) RFC's Denial of Loan File Requests

142. As the HI Transactions continued to perform poorly, on December 9, 2010, FGIC wrote to Jeff Blaschko, an RFC/ResCap employee, via e-mail demanding that RFC provide FGIC with 180 Mortgage Loan files relating to the 2006-HI5 Transaction and 175 Mortgage Loan files relating to the 2007-HI1 Transaction. Having received no response to this request, FGIC sent a follow-up e-mail on February 3, 2011 regarding the status of its December 9, 2010 request for files. FGIC's demands for information were received by ResCap, which informed FGIC that ResCap could not respond to the requests until the matter was discussed internally at ResCap and a response was authorized by those with decision-making authority. On information and belief, the request required authorization from officers at Ally Financial, and RFC/ResCap's response was directed by officers at Ally Financial.

143. On February 14, 2011, and again on April 28, 2011, FGIC sent further follow-up letters requesting loan files.

144. In finally responding to FGIC's request for information, RFC refused to provide any loan files or other information relating to current or pre-paid loans ("Performing Loans"). Instead, it only provided FGIC with a portion of the requested loan files, consisting solely of non-performing loans, and chose to conceal the Performing Loan files from FGIC.

145. On January 19, 2012, FGIC sent ResCap a letter requesting 500 loan files relating to the 2006-HI2 Transaction.

146. To date, ResCap has not provided any of the loan files relating to the 2006-HI2 Transaction.

147. Pursuant to the I&I Agreements, FGIC is entitled to reasonable access to the documentation regarding the relevant Mortgage Loans. The relevant I&I Agreements provide that FGIC shall have the right, so long as the HI Notes remain outstanding, to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans. *See* 2006-HI2 I&I Agreement § 2.02(m); 2006-HI5 I&I Agreement § 2.02(m); 2007-HI1 I&I Agreement § 2.02(m). Notably, there is no limitation in any of the I&I Agreements as to the nature of the Mortgage Loan files that are subject to review. Further, the relevant I&I Agreements state that promptly upon request, RFC must provide to FGIC such other data as FGIC may reasonably request relating to the Mortgage Loans. *See* 2006-HI2 I&I Agreement § 2.02(c)(v); 2006-HI5 I&I Agreement § 2.02(c)(v); 2007-HI1 I&I Agreement § 2.02(c)(v). By producing only non-performing Mortgage Loan files, in contravention of the relevant I&I Agreements, RFC has arbitrarily and unreasonably imposed limitations on FGIC's contractual right to reasonable access to Mortgage Loan files in contravention of the Operative Documents.

(2) RFC's Denial of Interim Certification Requests

148. On June 21, 2011, FGIC demanded, pursuant to Section 2.02(e) of the I&I Agreements, that RFC promptly cause the Custodians under the 2006-HI3 Transaction, 2006-

HI4 Transaction, the 2006-HI5 Transaction, and the 2007-HI1 Transaction to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreement for the Transaction, with an exceptions list attached thereto. An Interim Certification would enable FGIC to track the progress of the recording of mortgages and assignments with respect to the related Mortgage Loans.

149. Again on September 30, 2011, FGIC sent to RFC a pending event of default notice letter demanding the Interim Certification for the 2006-HI3 Transaction, noting that it had been over three months since FGIC's initial letter and that RFC had failed to respond. On December 8, 2011, FGIC sent a notice of default to RFC, informing RFC of its failure to perform its obligations under the 2006-HI5 I&I Agreement to provide the Interim Certification.

150. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreement, has failed to respond to these requests.

(3) RFC's Denial of Servicing Notes

151. On December 9, 2010, FGIC demanded, pursuant to Section 2.02(c)(iv) of the 2006-HI5 and the 2007-HI1 I&I Agreements, that RFC furnish or cause to furnish the servicing notes for the 2006-HI5 and 2007-HI1 Mortgage Loans. Similarly, on January 19, 2012, FGIC demanded that RFC furnish or cause to furnish the servicing notes for the 2006-HI2 Mortgage Loans.

152. RFC, without justification or explanation, and in breach of its obligations in the I&I Agreements, has failed to respond to these requests for servicing notes.

(4) RFC's Denial Of FGIC's Access To Books and Records, Servicing Officer, and RFC's Independent Accountants

153. On January 24, 2012, in accordance with its express rights under Sections 2.02(e)(i)-(ii) of the I&I Agreements, FGIC requested for the HI Transactions to (i) inspect the

books and records of RFC; and (ii) discuss the affairs, finances, and accounts of RFC with the Servicing Officer of RFC.

154. To date, RFC has failed to respond to these requests, in violation of the I&I Agreements.

155. Further, on or about May 1, 2010, servicing duties for the 2006-HI3 Transaction were transferred from RFC to a third-party servicer. Similarly, on or about July 1, 2010, servicing duties for the 2006-HI4 Transaction were transferred from RFC to a third-party servicer. As FGIC became aware of increasing numbers of material defects among the 2006-HI3 and 2006-HI4 Mortgage Loans, FGIC sought information regarding the Mortgage Loan files from the successor (and current) servicer of the 2006-HI3 and 2006-HI4 Transactions.

156. FGIC has been made aware that the current servicer of the 2006-HI3 and 2006-HI4 Transactions is unable to provide the information FGIC has sought due to RFC's repeated refusals to provide its successor with certain Mortgage Loan files and other crucial information. RFC's refusal to turn over information in its possession to, and otherwise cooperate with, its successor servicer is a violation of the 2006-HI3 and 2006-HI4 Servicing Agreements that RFC entered into as the then-Master Servicer of the 2006-HI3 and 2006-HI4 Transactions and to which FGIC is a third-party beneficiary, as well as a breach by RFC of its obligations under the I&I Agreements to comply with the terms of the Operative Documents.

157. Additionally, RFC has an independent obligation under the I&I Agreements to provide FGIC such information as FGIC may reasonably request. *See* 2006-HI3 I&I Agreement § 2.02(c)(v); 2006-HI4 I&I Agreement § 2.02(c)(v). As such, through its obstinate refusal to provide either FGIC or the successor servicer with material information—admittedly within its possession—regarding the Mortgage Loans, RFC has further breached its obligations to FGIC.

158. Moreover, on information and belief, the Mortgage Loan information that RFC refuses to provide either to FGIC or the successor servicer will evidence further material breaches of representations and warranties made by RFC. Accordingly, FGIC reserves its rights to assert additional causes of action regarding RFC's breaches of its representations and warranties.

(5) Breaches Uncovered In Loan File Reviews

159. When FGIC became concerned about the high delinquencies and default rates in the HI Transactions, FGIC requested that RFC provide it with certain Mortgage Loan files in certain loan pools. FGIC selected for review 146 non-performing (i.e., non-current or charged-off) loans that had resulted in a loss to the 2006-HI5 Trust and 150 non-performing loans that had resulted in a loss to the 2007-HI1 Trust. To perform this review, FGIC hired an independent outside consultant with particular skill, experience, and expertise in the review, evaluation, and re-underwriting of mortgage loans.

160. That review revealed that RFC had breached one or more material representations and warranties in 139 of the 146 2006-HI5 Mortgage Loans, or approximately 95% of the loans initially reviewed in connection with the 2006-HI5 Transaction.

161. A small sample of these material breaches and underwriting violations in the 2006-HI5 Transaction are listed below:

- Loan Number 10762296: among other violations, the loan exceeded the maximum allowable loan amount and cash out amount based on the borrower's credit score. Additionally, a non-owner occupied property was not eligible, neither was the Stated Income Documentation Program. Furthermore, no cash asset reserves were verified as required under the guidelines.

- Loan Number 11079761: the loan was originated for the purchase of a primary residence, but evidence showed that the borrower's primary residence was at another address. The borrower stated monthly earnings of $12,000, but earned only $84,419 in W-2 wages in 2006. As a result, the DTI ratio for the loan was

94.17%, well in excess of the maximum allowable DTI ratio of 50% under the guidelines.

- Loan Number 10725746: the loan application did not include an Automated Valuation Model report, indicating a minimum confidence level of 40% from an approved vendor. The loan file was also missing full income documentation for the borrower, the credit report used at the time of loan origination, documentation from the first mortgage lender indicating the lender escrowed the property taxes, and hazard insurance.

162. Similarly, the review revealed that RFC had breached one or more material representations and warranties in 147 of the 150 2007-HI1 Mortgage Loans, or approximately 98% of the loan initially reviewed for that transaction.

163. A small sample of these material breaches and underwriting violations in the 2007-HI1 Transaction are listed below:

- Loan Number 11087987: the loan file was lacking a number of documents: a loan approval, an appraisal, a first mortgage note, the credit report used at origination, complete income documentation for the borrower's employment and disability income, property taxes, the most recent twelve months housing payment history, a homeowner's insurance declaration page, and a flood determination report. All of the missing documentation was required under the relevant underwriting guidelines.

- Loan Number 10791368: the loan closed with a loan amount of $105,000, but under the underwriting guidelines, the maximum allowable loan amount for the borrower, who had a credit score of 655, was $35,000. Also, the maximum allowable DTI ratio under the guidelines for this borrower was 45%, but the loan closed with a DTI ratio of 58.96%. The data tape reported the CLTV ratio for the loan was 115%, but the actual CLTV ratio was 123.17%, which resulted in a breach of the underwriting guidelines.

- Loan Number 11370813: among other violations, the borrower misrepresented his income and employment, which resulted in a DTI ratio of 221.15%. Under the underwriting guidelines, the maximum allowable DTI ratio was 50%.

164. Following this review of the 2006-HI5 and 2007-HI1 Mortgage Loans, FGIC requested that RFC repurchase the non-conforming Mortgage Loans. To date, RFC has failed to repurchase certain of the affected Mortgage Loans in violation of its contractual obligations.

165. As discussed above, in 2010 FGIC requested additional 2006-HI5 and 2007-HI1 Mortgage Loans from RFC that included a random selection of both non-performing and Performing Loans. When RFC finally responded to FGIC's request, RFC improperly refused to provide FGIC with any Mortgage Loan files for the Performing Loans even though such loans had been demanded on several occasions. Thus, when FGIC requested files for the additional 360 2006-HI5 Mortgage Loans, FGIC received only 49 "non-performing" loans to review.

166. Moreover, when FGIC requested files for the additional 175 2007-HI1 Mortgage Loans, FGIC received only 43 "non-performing" loans to review.

167. After receiving the loan files for those additional non-performing 2006-HI5 and 2007-HI1 Mortgage Loans, FGIC evaluated those non-performing Mortgage Loans to determine whether they contained material breaches of the 2006-HI5 and 2007-HI1 Operative Documents necessitating repurchase under the related Operative Documents. The independent consultant's review revealed substantial breaches of the representations and warranties in the I&I Agreements and further indicated that the defective loans comprised 91.3% and 94.6% of the total balance of the 2006-HI5 Mortgage Loans and 2007-HI1 Mortgage Loans, respectively, reviewed by the outside independent consultant.

168. FGIC has also evaluated 134 2006-HI4 Mortgage Loans to determine whether they contained material breaches of the 2006-HI4 Operative Documents necessitating repurchase under the related Operative Documents. The independent consultant's review revealed that 92.3% of the total balance of the 2006-HI4 Mortgage Loans reviewed by the outside independent consultant was comprised of defective loans.

169. A small sample of these material breaches and underwriting violations in the 2006-HI4 Transaction are listed below:

Loan Number 10798883: the borrower's limited assets and credit level should have raised a red flag for the underwriter. The borrower misrepresented his or her income, which resulted in an increase of DTI from 49.99% to 83.06%, well in excess of the guideline maximum.

- Loan Number 10490306: among other violations, the loan file did not contain sufficient documentation to verify the borrower's employment history under the applicable guidelines. The underwriter also failed to obtain credit reports for the borrower or accurately calculate the borrower's income. Also, the borrower failed to disclose all prior debt obligations. A recalculation of the DTI based on a proper calculation of income and the borrower's undisclosed debt increased the DTI from 48.9% to 93.42%.

- Loan Number 10428398: among other violations, the underwriter failed to verify the borrower's housing history and assets. The underwriter also failed to properly document the borrower's income under the applicable guidelines. Recalculating the DTI based on the borrower's verified income results in an increase from 47% which exceeds the maximum permitted at origination to 62.81%, which exceeds the guidelines maximum. The loan was also approved at 100% CLTV, which exceeds the maximum allowable CLTV of 90% under the applicable guidelines.

170. These examples of underwriting violations—but a small smattering of the extensive defects among the Mortgage Loans—evidence significant breaches of the Purchase Agreements and the I&I Agreements.

171. Moreover, on information and belief, RFC is and has long been aware that many of the Mortgage Loans were non-conforming and breached its own representations and warranties. Despite this knowledge, and as noted above, RFC has failed to take steps to repurchase the non-conforming loans or replace them with conforming loans.

(6) Breaches Uncovered Using Loan Pool Data

172. In addition to the loan-level review discussed above, FGIC commissioned an independent consultant—a leading provider of financial, property and consumer information, such as property valuation services using automated property valuation tools—to test the accuracy of RFC's representations and warranties relating to the Mortgage Loans regarding

occupancy status and CLTV ratios. The consultant extracted information and data relating to 14,885 Mortgage Loans.

a. Breaches of Owner-Occupancy Representation and Warranty

173. In each of the HI Transactions, RFC represented that nearly all of the related Mortgage Loans would be secured by the borrower's primary residence. *See* 2006-HI2 Prospectus Supplement at II-11; 2006-HI3 Prospectus Supplement at II-11; 2006-HI4 Prospectus Supplement at II-9; 2006-HI5 Prospectus Supplement at II-9; 2007-HI1 Prospectus Supplement at II-9. Based on the information provided, however, FGIC determined that a significant number of the Mortgage Loans were not secured by the owner's primary residence. For example, based on the information provided, FGIC determined that only 92.6% of the total balance of the 2006-HI5 Mortgage Loans, and only 92.5% of the total balance of the 2007-HI1 Mortgage Loans, were secured by properties that were owner-occupied as a primary residence.

174. Moreover, FGIC has also determined that such non-owner-occupied Mortgage Loans are poor credit risks. For example, the rate of Mortgage Loan non-performance (i.e., loans that, as of January 2012, were delinquent for more than 60 days, in foreclosure, charged-off, or liquidated) for loans that were determined after review not to be secured by owner-occupied property was approximately 47.3% of the total balance for the 2007-HI1 Transaction. The remaining HI Transactions have also suffered elevated non-performance rates due to owner-occupancy misrepresentations. Based on this factor, among others, RFC has materially misrepresented the nature of the respective loan pools for each of the several HI transactions.

175. The Prospectus Supplements for each of the Transactions understated the percentage of Mortgage Loans in their respective pools that were not secured by the owner's primary residence. Those non-owner-occupied Mortgage Loans have defaulted at shockingly high rates, resulting in substantial losses to the respective Trusts and damages to FGIC. As such,

RFC breached its representation and warranty that the information in the Prospectus Supplements did not contain any untrue statements of material fact.

b. Breaches of CLTV Ratio Representation and Warranty

176. Each of the HI Prospectus Supplements also provided information relating to the CLTV ratios of the underlying Mortgage Loans. CLTV information provided in the HI Prospectus Supplements included, among other things, (1) the average weighted CLTV ratio for the Mortgage Loans, and (2) the number and aggregate value of the Mortgage Loans with CLTV ratios in a given percentage band (e.g., the number of Mortgage Loans with CLTV ratios of between 80% and 85%, between 85% and 90%, and so on). *See* 2006-HI2 Prospectus Supplement at II-3; 2006-HI3 Prospectus Supplement at II-3; 2006-HI4 Prospectus Supplement at II-2; 2006-HI5 Prospectus Supplement at II-2; and 2007-HI1 Prospectus Supplement at II-2.

177. In each of the respective Prospective Supplements, RFC represented that the Mortgage Loans were originated with a maximum CLTV ratio of either 125% or 126%. *See* 2006-HI2 Prospectus Supplement at S-5; 2006-HI3 Prospectus Supplement at S-5; 2006-HI4 Prospectus Supplement at S-5; 2006-HI5 Prospectus Supplement at S-5; 2007-HI1 Prospectus Supplement at S-5.

178. Using an industry standard automated valuation model to calculate the value of the underlying property at the time the Mortgage Loan was originated, however, FGIC determined that high percentages of the Mortgage Loans in the loan pools for each of the Transactions actually exceeded those limits.

179. For example, 22.03% of the 2006-HI2 Mortgage Loans—as opposed to none of the loans, as reported in the 2006-HI2 Prospectus Supplement—had an original CLTV ratio above 125%, and 23.25% of the 2007-HI1 Mortgage Loans—as opposed to none of the loans, as reported in the 2007-HI1 Prospectus Supplement—had an original CLTV ratio above 126%.

180. Moreover, FGIC has determined that the rate of Mortgage Loan non-performance (i.e., loans that were delinquent for more than 60 days, in foreclosure, charged-off, or liquidated) in the Transactions for loans where the automated valuation model indicated a CLTV greater than 125% for the 2006-HI2 Transaction and greater than 126% for the other four transactions was over 44.2%. This non-performance rate was over 24% greater than the non-performance rate of those loans whose automated valuation model indicated a CLTV below 125% for the 2006-HI2 Transaction and below 126% for the other four transactions.

181. In addition, RFC represented in each of the Prospectus Supplements that the weighted average CLTV ratio of the Mortgage Loans in each pool at origination would not exceed a stated level. For example, RFC represented in the Prospectus Supplements for the 2006-HI2 Transaction and the 2007-HI1 Transaction that the weighted average CLTV of the Mortgage Loans in those Transactions was 117.82% and 117.32%, respectively. *See* 2006-HI2 Prospectus Supplement at S-5; 2007-HI1 Prospectus Supplement at S-5.

182. FGIC determined, however, that the actual weighted average CLTV ratios of the Mortgage Loans in each of the HI Transactions exceeded the values stated in the related Prospectus Supplements. For example, the actual weighted CLTV ratio of the 2006-HI2 Mortgage Loans at origination was approximately 122.56%, and the actual weighted average CLTV ratio of the 2007-HI1 Mortgage Loans at origination was approximately 122.74%.

183. By including loans in the Trusts that exceeded the stated limits on CLTV, and by assembling loan pools that exceeded the stated weighted average CLTV ratios, in each case as set forth in the Prospectus Supplements, RFC breached its representation and warranty that the information in each of the respective Prospectus Supplements did not contain any untrue statements of material fact.

184. The pervasive and overwhelming defects regarding the Mortgage Loans indicate the clear breach of RFC's contractual representations, warranties, and affirmative covenants relating to, among other things, the characteristics of the Mortgage Loans, including the guidelines to which the Mortgage Loans were underwritten. Specifically, among the various HI Transactions, RFC has breached representations and warranties stating that:

- neither the Operative Documents nor any information related to the Mortgage Loans contain any untrue or misleading statement of material fact;
- the Offering Documents (i.e. the Prospectus and Prospectus Supplement) contain no untrue or misleading statement of material fact;
- each representation and warranty of RFC in the Operative Documents (including each representation and warranty in the HI Purchase Agreements) is true and correct in all material respects;
- the information set forth in the Mortgage Loan Schedule is true and correct in all material respects;
- each Mortgage File contains all required documents and instruments; and
- the Mortgage Loans were underwritten to conform with the standards in RFC's client guide.

185. It is reasonable to conclude—based on what is known by FGIC and as a result of what is being wrongly withheld from FGIC—that many of the thousands of Mortgage Loans held by the HI Trusts at each closing evidenced similar breaches of RFC's representations and warranties.

186. Indeed, based on the information gathered from FGIC's loan file review and the information extracted by FGIC's consultant relating to CLTV ratios and owner-occupancy rates discussed above, FGIC believes that the defect rate across the HI Transactions is likely to be at least 30%.

187. Moreover, the true scope of the material underwriting failures is unknown given RFC's refusal to provide FGIC with pertinent—and contractually required—information. This refusal in itself constitutes a breach of RFC's affirmative covenant to comply with FGIC's reasonable requests regarding access to information concerning the Mortgage Loans.

G. RFC's Fraud

188. The material breaches of RFC's representations and warranties, and the poor credit quality of almost all of the Mortgage Loans, demonstrate the knowing and wanton disregard of the material representations and warranties and affirmative covenants RFC made to FGIC to induce its participation in the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions. The extraordinarily high defect and default rate among the Mortgage Loans demonstrates not merely that RFC breached its representations and warranties as a contractual matter, but that it did not—and never intended to—comply with them, despite representing to FGIC that, if FGIC issued the relevant Policy, RFC would make the representations and warranties set forth in the Operative Documents, and that those representations and warranties would be true. Because RFC refuses to provide all of the requested 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loan files in violation of its contractual obligation to do so, however, the full extent and scope of the fraud has yet to be revealed.

189. All of the Mortgage Loans underlying the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions were acquired by RFC. As such, RFC had the access and ability to evaluate those Mortgage Loan files and to determine if the loans conformed with standards set forth in RFC's home equity 125 loan program and if the loans breached other representations and warranties made by RFC.

190. To induce FGIC to enter into the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, RFC provided FGIC with loan tapes, which contained false and misleading

information regarding, among other things, the CLTV, LTV and DTI ratios, occupancy status, FICO scores, and Residual Income of the borrowers.

191. In addition, RFC made critical misrepresentations to FGIC with respect to the credit rating agencies' assessment of the loans that were to comprise the 2006-HI4, 2006-HI5, and 2007-HI1 Trusts. RFC was well aware that FGIC would not agree to insure the respective HI Notes unless RFC obtained shadow ratings from the rating agencies that satisfied FGIC's minimum requirements. To this end, upon information and belief, RFC provided Moody's and S&P with the same false information regarding the credit quality of the underlying mortgage loans that it also provided to FGIC. Based on this faulty information, Moody's and S&P assigned shadow ratings regarding the credit quality of the 2006-HI4, 2006-HI5, and 2007-HI1 Notes that met FGIC's minimum requirements. In this way, RFC made both direct and indirect misrepresentations to FGIC—first, by providing faulty information to the rating agencies to provide a risk assessment that RFC would pass on to FGIC, and second, by causing shadow ratings of the 2006-HI4, 2006-HI5, and 2007-HI1 Notes to be delivered to FGIC without disclosing to FGIC that those ratings were based on incomplete and inaccurate loan-level data.

192. RFC was well aware that FGIC would rely on the shadow ratings—prepared with information supplied by RFC—as the 2006-HI4, 2006-HI5, and 2007-HI1 I&I Agreements specifically contemplated as a condition to issuance of the Policies that FGIC "shall have received confirmation that the Notes [insured by the Policy] are rated" by S&P and Moody's at a specified minimum level "without regard to the Policy." *See* 2006-HI4 I&I Agreement § 3.01(j); 2006-HI5 I&I Agreement § 3.01(j); 2007-HI1 I&I Agreement § 3.01(j).

193. As noted, the issuance of the Policies enabled the HI Notes to receive a triple-A rating from the rating agencies. Moreover, the receipt of a triple-A rating for the HI Notes,

which depended on the issuance of the Policies, which in turn depended on the shadow ratings formulated using (inaccurate) information supplied by RFC, was a critical component of the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions. As RFC expressly noted in the 2006-HI4, 2006-HI5, and 2007-HI1 Prospectus Supplements: "It is a condition to issuance of the Class A Notes that the Class A Notes be rated not less than "Aaa" by Moody's . . . and "AAA" by Standard & Poor's." 2006-HI4 Prospectus Supplement S-81; 2006-HI5 Prospectus Supplement S-87; 2007-HI1 Prospectus Supplement S-81.

194. Had the information provided to the ratings agencies by RFC been accurate and truthful, Moody's and S&P would almost certainly have assigned very different shadow ratings to the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, and FGIC in turn would not have issued the Policies on the agreed terms, or would have refused to issue the Policies altogether.

195. RFC also made material representations and warranties and affirmative covenants to FGIC, on which FGIC relied, about the characteristics of the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans, including the standards and specific underwriting guidelines to which those Mortgage Loans were underwritten.

196. For example, in each Prospectus Supplement (and in each I&I Agreement by incorporation) RFC assured FGIC that the "underwriting standards relating to the [Mortgage Loans] generally will conform to those published in [RFC's] client guide, and the provisions of the guide applicable to the home equity 125 loan program." 2006-HI4 Prospectus Supplement at S-34; 2006-HI5 Prospectus Supplement at S-34; and 2007-HI1 Prospectus Supplement at S-33. As such, RFC represented to FGIC that, in the case of each loan within the pool, an underwriter had made an assessment that the borrower had the ability to repay his or her loan, after receiving and reviewing all applicable employment, credit, and property information.

197. In fact, RFC was well aware at the closing of the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions that those representations were false. It was not until years after the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions closed that RFC admitted that the Mortgage Loans were not underwritten to RFC's underwriting guidelines. In 2010, FGIC sent RFC numerous repurchase requests after reviewing certain Mortgage Loans in the 2006-HI5 and 2007-HI1 Transactions. In those requests, FGIC cited material breaches of the relevant I&I Agreement and Operative Documents, including non-conformity to RFC underwriting guidelines, which rendered certain Mortgage Loans ineligible or non-conforming and required RFC to repurchase those loans. RFC responded to many of FGIC's repurchase requests by claiming that the Mortgage Loans *were* conforming because they were underwritten to the less stringent standards of various unaffiliated originators and not RFC's "home equity 125 loan program."

198. For example, on December 3, 2010, FGIC sent RFC repurchase requests for loan number 10783594 because the loan was non-conforming under the applicable "home equity 125 loan program." In response to FGIC's repurchase request for loan 10783594, RFC asserted that repurchase was not necessary because the originator, M & I Bank, had granted a variance for the particular violation of the "home equity 125 loan program" guidelines.

199. Such admissions demonstrate that RFC did not acquire and evaluate the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans under RFC's underwriting guidelines, *i.e.*, under the "home equity 125 loan program," as represented in the Prospectus Supplement. Instead, as RFC implicitly conceded in the rescission letters, these loans were evaluated and acquired under the less demanding underwriting standards of various loan originators. Accordingly, RFC knew that its representations were materially false at the time of the closing or should have known that its representations were materially false because RFC had not, among other things, evaluated and

acquired the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans under RFC's "home equity 125 loan program" guidelines.

200. Moreover, the 2006-HI4, 2006-HI5, and 2007-HI1 Purchase Agreements—and, by incorporation, their corresponding I&I Agreements—also contained false and misleading representations about the Mortgage Loans. In particular, for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, RFC misrepresented that, as of the closing: (i) the information set forth on the Mortgage Loan Schedule with respect to each Mortgage Loan was true and correct in all material respects as of the date which such information was furnished; (ii) there was no material default, breach, violation or event of acceleration existing under the terms of any Mortgage Note or Mortgage; (iii) approximately 86.12% of the 2006-HI4 Mortgage Loans, 86.54% of the 2006-HI5 Mortgage Loans, and 93.2% of the 2007-HI1 Mortgage Loans by Cut-Off Date Loan Balance, had a CLTV in excess of 100%, and (iv) as of the Cut-off Date, none of the Mortgage Loans were 30 or more days delinquent. According to the HI Prospectuses, none of the HI Mortgage Loans had a CLTV in excess of 126%.

201. Therefore, at the time of the closing of the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, RFC either (1) knew or should have known that its representations were materially false because RFC had not, among other things, determined if the Mortgage Loans did in fact conform to the standards of the "home equity 125 loan program" contained in the Client Guide, or (2) had reviewed whether the Mortgage Loans were in conformity with the "home equity 125 loan program," had determined that they were not, but nonetheless materially misrepresented to FGIC that each Mortgage Loan conformed to the "home equity 125 loan program" as set forth in the Client Guide.

202. For the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, these representations were essential to FGIC's decision to issue a Policy. In each instance, these representations and warranties were false when stated. RFC, in each case, intentionally made these material misrepresentations to induce FGIC to enter into the relevant I&I Agreement and to issue the relevant Policies. The true information regarding these loans simply could not substantiate RFC's assurances. In short, no amount of RFC promising that the loans met certain standards actually made those promises true.

203. RFC's repeated fraudulent acts have exposed it to investigations by the DOJ and the SEC as well as to a multitude of suits and the potential for more litigation to come.

204. Consistent with this pattern of behavior, RFC defrauded FGIC into issuing the Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, through its knowing misrepresentations.

H. Ally Financial Aids and Abets RFC's Fraud

205. Ally Financial provided substantial assistance to RFC in fraudulently inducing FGIC to issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions. As the ultimate parent of an intertwined corporate enterprise, the subsidiaries of which were substantially involved in every aspect of Ally Financial's securitization business, Ally Financial was well aware of the true nature of the Mortgage Loans. Moreover, as discussed above, Ally Financial was aware of the representations and warranties RFC made regarding the nature of RFC's business practices and the quality of the Mortgage Loans and that such representations and warranties were false.

I. RFC's Breach of Obligations as Master Servicer

206. RFC, as Master Servicer, failed in numerous material respects to properly perform its duties to service and administer the Mortgage Loans in accordance with the provisions of the relevant Operative Documents for each of the HI Transactions, including, but not limited to, its obligations to follow proper servicing procedures, and to sufficiently monitor and manage the performance of the subservicer with respect to its duties under each Transaction.

207. RFC took responsibility for the servicing of the Mortgage Loans through its wholly-owned subsidiary HomeComings and its affiliate GMACM, and RFC had certain related contractual obligations under the I&I Agreements and the HI Servicing Agreements with respect to the HI Transactions. Under the I&I Agreements, RFC covenanted that "[a]ll [Mortgage Loans] will be serviced in all material respects in compliance with the [relevant HI Servicing Agreement]." 2006-HI2 I&I Agreement § 2.02(l); 2006-HI3 I&I Agreement § 2.02(l); 2006-HI4 I&I Agreement § 2.02(l); 2006-HI5 I&I Agreement § 2.02(l); 2007-HI1 I&I Agreement § 2.02(l). Under the HI Servicing Agreements, RFC "shall service and administer the [Mortgage Loans] . . . following such procedures as it would employ in its good faith business judgment and which are normal and usual in its general mortgage servicing activities . . . [and] shall at all times remain responsible to . . . [FGIC] for the performance of its duties and obligations hereunder . . . ." 2006-HI2 Servicing Agreement § 3.01(a); 2006-HI3 Servicing Agreement § 3.01(a); 2006-HI4 Servicing Agreement § 3.01(a); 2006-HI5 Servicing Agreement § 3.01(a); 2007-HI1 Servicing Agreement § 3.01(a). As such, on each occasion that HomeComings or GMACM failed to service and administer the Mortgage Loans in conformity with generally accepted servicing practices (including RFC's own servicing guidelines), RFC was liable "to the same extent and under the same terms and conditions as if the Master Servicer alone were servicing and administering the [Mortgage Loans]." 2006-HI2 Servicing Agreement § 3.01(a); 2006-HI3

Servicing Agreement § 3.01(a); 2006-HI4 Servicing Agreement § 3.01(a); 2006-HI5 Servicing Agreement § 3.01(a); 2007-HI1 Servicing Agreement § 3.01(a).

208. During 2007, the servicing operations of GMACM, GMAC-RFC, and HomeComings were integrated into ResCap. Since the time of the integration, on information and belief, HomeComings and GMACM have been deficient in their borrower contact, collections, and loss mitigation standards. An onsite review of the Ally Financial servicing arm's headquarters, including those of HomeComings, GMACM, and RFC, on March 25, 2009 by FGIC and a third party firm, and subsequent analysis revealed, among other things: (i) inadequate call center staffing (staff unable to handle increased incoming and outgoing call volumes); (ii) call center staffing turnover as high as 40% in a single year; (iii) a calling campaign that does not attempt to contact borrowers through other means when HomeComings or GMACM do not have a viable number or the borrower is continuously unresponsive to messages left; (iv) a lack of effort to hire personnel to visit the mortgaged property to discuss loss mitigation strategies with borrowers in default; (v) with respect to second lien loans, a policy of extending largely nonrecoverable advances to delinquent borrowers; and (vi) severely infrequent use of alternative loss mitigation strategies as compared to the industry.

209. ResCap and RFC, on information and belief, have failed to remedy any of the deficient practices in which HomeComings or GMACM have engaged as subservicers.

210. In addition, RFC disclosed to FGIC that it classified loans into one of three categories or "Risk Tiers" under a protocol ("Risk Protocol"). Such an approach was, upon information and belief, part of the further cost-cutting measures implemented under the direction of Ally Financial when all of the servicing operations were integrated.

211. FGIC was damaged by the use of the Risk Protocol following the Ally-directed integration. Under the Risk Protocol, the timing and frequency of calls made with respect to a loan are determined in accordance with the loan's assigned category or Risk Tier. RFC disclosed to FGIC that all of the mortgage loans in FGIC-insured, RFC-serviced transactions (over 90,000 mortgage loans), including all of the Mortgage Loans in the Transactions, were placed in the lowest category of risk. For such mortgage loans, regardless of whether they were (i) secured by second-lien mortgages, (ii) underwritten under less stringent guidelines, or (iii) originated by non-GMAC entities (all of which are factors that require more attentive servicing), delinquent borrowers were called at a later stage of delinquency, and less frequently, than loans in higher risk categories. As the purchaser of the Mortgage Loans, however, RFC clearly knew that the Mortgage Loans, by their very nature, required particularized servicing such as that provided by HomeComings or GMACM before the implementation of the Risk Protocol. The Mortgage Loans were therefore knowingly miscategorized and neglected, and intentionally received much less care than if they had been properly categorized and appropriately serviced. Consequently, the failure by RFC to ensure that the Mortgage Loans were serviced and administered in accordance with "good faith" business practices constitutes a breach of the HI Servicing Agreements and the I&I Agreements. *See* 2006-HI2 Servicing Agreement § 3.01(a); 2006-HI3 Servicing Agreement § 3.01(a); 2006-HI4 Servicing Agreement § 3.01(a); 2006-HI5 Servicing Agreement § 3.01(a); 2007-HI1 Servicing Agreement § 3.01(a); 2006-HI2 I&I Agreement § 2.02(l); 2006-HI3 I&I Agreement § 2.02(l); 2006-HI4 I&I Agreement § 2.02(l); 2006-HI5 I&I Agreement § 2.02(l); 2007-HI1 I&I Agreement § 2.02(l).

212. On July 8, 2009, FGIC requested: (1) additional information concerning the various Risk Tiers generally, and (2) documentation in order to assess whether or not FGIC was being

harmed as a result of being placed in the lower risk tier. To date, RFC has failed to provide such information.

213. On information and belief, RFC, as Master Servicer, also knew of material breaches of representations and warranties and did not notify FGIC thereof, or cause the repurchase of the Mortgage Loans affected thereby. Accordingly, FGIC reserves its rights to assert additional causes of action relating to RFC's servicing obligations.

J. Ally Financial's Domination and Control of its Subsidiaries Results in an Integrated, Single Corporate Enterprise

214. As discussed in greater detail below, Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which owns RFC and GMACM. Ally Financial—as the ultimate parent of ResCap, RFC, and GMACM—has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries, including ResCap, RFC, and GMACM.

215. As also discussed below, Ally Financial has exercised such domination and control over its subsidiaries, including ResCap, RFC, GMACM. Upon information and belief, Ally Financial exercised its direction and control in connection with the HI Transactions. At times, upon information and belief, Ally Financial performed such direction and control by using ResCap as an instrument to effect its goals.

216. As mentioned above, Ally Financial has recently admitted to the Federal Reserve Board and the FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . ('ResCap'), and its direct and indirect subsidiaries." *See* Consent Order, *In the Matter of Ally Financial Inc., et al.*, FRB Docket No. 11020-B-HC (Apr. 13, 2011) (emphasis added).

217. As further discussed below, Ally Financial's public statements and actions at or around the time of each Transaction's close until present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

(1) Evidence of Ally Financial's Domination of RFC Directly and Indirectly Through its Control of ResCap

218. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than a subsidiary whose dealings were at arm's length.

219. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage securitization business.

220. Ally Financial, at the direction of its board of directors, also provided ResCap with liquidity and capital.

221. Further, in Ally Financial's 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8, 2005 (hereinafter "2005 Operating Agreement").

222. On information and belief, Ally Financial's restructuring and financial support of its subsidiaries was undertaken at the direction of the Ally Financial board of directors in order to improve and maintain the investment grade rating and profitability of Ally Financial's mortgage securitization business. This restructuring then enabled Ally Financial to present itself to its subsidiaries' securitization transaction partners—including FGIC—as a stable corporate parent supporting and overseeing the business of its subsidiaries, which in turn made those subsidiaries more attractive as counterparties to market participants, such as FGIC.

223. On December 1, 2006, Ally Financial, had its inaugural conference call with investors, at which time Rick Buxton, the then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." GMAC LLC Sale of Controlling Interest in GMAC Investor Conference Call (Dec. 1, 2006). On the same investor call, Eric Feldstein, Ally Financial's then CEO, demonstrated how Ally Financial was going to take initial steps to actively control its subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

224. At all times since Ally Financial caused ResCap to be incorporated, it has owned 100% of ResCap.[5] Since incorporation, the ownership of ResCap has not changed—Ally

[5] GM had created a shell company, GMAC Mortgage Group Inc., which was the direct parent of ResCap. However, there is no indication that this company conducted any business independent from Ally Financial. In fact, Ally Financial's first Annual Report as an independent entity, which was filed with the SEC on March 3, 2007, included a corporate hierarchy chart that evidenced Ally Financial's corporate structure. There was a direct line from Ally Financial to ResCap. *See* Ally Fin. Form 10-K, at 2 (March 3, 2007). In addition, there is no indication that Ally Financial ever discusses ResCap as an "indirect subsidiary." To the contrary, as discussed, below, Ally has publicly stated on numerous occasions that it is the owner of ResCap.

Financial still "owns 100% of ResCap . . . ." Ally Financial Earnings Call dated Nov. 2011, statement by Michael Carpenter, Ally Financial's CEO.

225. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management and employees. For example, Ally Financial shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the 2005 Operating Agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*require[s]* that [ResCap's] board of directors include at least two independent directors, *to be selected by GMAC*." 2005 Operating Agreement (emphasis added).

226. Moreover, on April 26, 2007, "ResCap Investor Relations" announced the release of Ally Financial's 2007 first quarter financial results to investors in an email bearing the ResCap logo. That announcement stated that Ally Financial's financial results were found on both Ally Financial's and ResCap's websites.

227. Another example of the many employees who had overlapping responsibilities at Ally Financial and its subsidiaries is David C. Walker. As discussed above, Walker has served as Vice President of GMAC Group and CFO of GMAC Mortgage Group, and as of September 29, 2005, was a director at ResCap, GMACM, RFC, RFMSII, and HomeComings, among other Ally Financial subsidiaries. In the HI Transactions, acting as a Director for both RFMSII and RFC, Walker was a signatory to the respective "Unanimous Written Consent of Directors in Lieu of Meeting of Board of Directors" for both RFMSII and RFC. Both documents are dated December 20, 2005.

228. Ally Financial's domination and control of its subsidiaries, and in particular its use of ResCap to effectuate that control, is further evidenced by John Ruckdaschel, who, according to publicly available information, has served as in-house counsel at Ally Financial since October 2006. According to an e-mail sent from ResCap to FGIC, Ruckdaschel has served as "internal legal counsel for all [] securitizations" since at least May 2008. Although purportedly an Ally Financial employee, Ruckdaschel also sent and received e-mail using a ResCap e-mail address. Further, an employee of ResCap specifically instructed FGIC that all "official letters" regarding several Ally Financial subsidiaries—including RFC, GMACM, RFMSII, and others—should be sent not to the relevant (and supposedly independent) subsidiary, but rather to Ruckdaschel, Ally Financial's internal counsel.

229. As further evidence of Ally Financial's domination over ResCap, the 2005 Operating Agreement also indicates that Ally Financial has expressly "restrict[ed] ResCap's ability to declare dividends or prepay subordinated indebtedness owed to [Ally Financial] or its other affiliates." *See id.*

230. Conversely, Ally Financial has also agreed to directly pay the losses or expenses of ResCap. In the same 2005 Operating Agreement, Ally Financial stated that it would stand behind ResCap and "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the businesses and liabilities of [Ally Financial] and its subsidiaries." *Id.*

231. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, in May 2007, during an investor earnings call, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take

whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board . . . and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "[a]ll I can assure you [is] that if you look at the strategic plan of GMAC, a strong ResCap with an investment grade rating is a key part of our plan of our value creation." *Id.* (emphasis added). Thus, Ally Financial's senior management assured the market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

232. The financial support Ally Financial gave to ResCap began as far back as May 2005 and has persisted over many years. Upon information and belief, Ally Financial continued to prop up ResCap, an undercapitalized entity, by channeling capital and liquidity into ResCap even as its condition continued to deteriorate as the housing market crashed. In addition to the direct financial support Ally Financial contributed to ResCap, it was also instrumental in obtaining outside investments that flowed directly to its mortgage subsidiaries. In 2008, Ally Financial announced to the market that it renewed a funding facility with Citibank, which provided "funding of up to $13.8 billion." Ally Fin. Inc., Form 8-K (Sept. 19, 2008). A portion of such funding was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." *Id.*

233. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

234. Additionally, Annual Reports prepared by Ally Financial further note its pursuit of strategic alternatives with ResCap, and highlight the extent to which Ally Financial manipulated its control over its subsidiaries to enhance its own financial health. According to Ally Financial: "On December 31, 2009, we announced that due to our ongoing strategic review of how to best deploy GMAC's current and future liquidity, we decided to pursue strategic alternatives with respect to ResCap and committed to a plan . . . related to management's intent to sell certain ResCap related assets and businesses. . . . In order to maximize value, we will consider a variety of options including one or more sales, spin-offs, or other potential transactions . . . [that we believe] should minimize the impact of any significant future losses related to ResCap's legacy mortgage business . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3-4 (Feb. 26, 2010).

235. There is also substantial evidence that billions of dollars of TARP funds meant to stabilize Ally Financial were given to ResCap by Ally Financial. *See* TARP Report dated March 10, 2010, at 41, 44 (hereinafter "TARP Report"). Upon information and belief, the TARP funds were commingled among a variety of entities within Ally Financial's mortgage family, including ResCap.

236. Further, Ally Financial has established a "Mortgage Repurchase Reserve" to account for the potentially significant liabilities stemming from repurchase demands made on its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was $825 million as of the fourth quarter of 2011. *See* Ally Financial's 4Q 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase

expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of $44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

237. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable mortgage loan repurchases as belonging to Ally Financial, when he stated: "Our mortgage repurchase reserve is [as it then stood] $829 million . . . . Our loss experience improved during the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011) (emphases added). On the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8.

238. Additionally, as discussed above, Ally Financial recorded a $230 million charge in the fourth quarter of 2011, $212 million of which was recorded at its controlled subsidiary, ResCap. As a result of the penalties assessed against ResCap by government regulators, and the fact that ResCap failed to maintain sufficient tangible net worth to comply with the requirements of the terms of certain credit facilities, Ally Financial propped up its subsidiary ResCap with a $197 million capital contribution in the form of intercompany debt forgiveness. *See* Ally Fin. Inc., Annual Report (Form 10-K), at 31-32 (Feb. 28, 2012). Additionally, Ally Financial currently provides funding and capital support to ResCap through various secured and unsecured facilities, which includes a $1.6 billion line of credit. As noted, the $197 million capital contribution was in addition to forgiveness by Ally Financial of $58 million of ResCap debt on the $1.6 billion line of credit provided by Ally Financial. *See id.* at 18; 129.

(2) Ally Financial Has Disregarded Corporate Formalities and Treated Its Businesses as a Single Enterprise

239. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial, rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home > About Ally > Investor Relations, *available at* http://www.ally.com/about/investor/ (last visited Dec. 29, 2011).

240. In line with Ally Financial's current classification of its mortgage businesses as "units" of Ally Financial, it has consistently been involved in the day-to-day operations of its subsidiaries. On information and belief, Ally Financial employees received communications concerning various Operative and Offering Documents, as well as the final executed versions of the Operative and Offering Documents, including the fraudulent representations, warranties, and affirmative covenants that are at issue in this action.

241. The origination and securitization of mortgage loans by ResCap and its subsidiaries have long been an integral part of Ally Financial's core business. In its 2006 Annual Report, Ally Financial (then reporting as GMAC LLC) stated that "[w]e are a leading real estate finance company focused primarily on the residential real estate market. Our business activities include the origination, purchase, servicing, sale and securitization of residential mortgage loans." GMAC LLC, Annual Report (Form 10-K), at 3 (Mar. 13, 2007) (emphasis added). Ally Financial further stated that "we utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy." Id. at 5 (emphasis added).

242. Ally Financial continued to publicly report on its own business and that of its subsidiaries in later filings on an integrated basis: "We engage in the origination, purchase,

servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products. Mortgage operations include the Residential Capital, LLC (ResCap) legal entity, [and] the mortgage operations of Ally Bank . . . ." Ally Fin. Inc., Annual Report (Form 10-K), at 3 (Feb. 26, 2010). More recently, continuing to discuss its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United States and we provide collateralized lines of credit to other mortgage originators." Ally Fin. Inc., Annual Report (Form 10-K), at 4 (Feb. 28, 2012).

243. Moreover, as discussed above, Ally Financial—at least in the view of certain of ResCap's bondholders—is believed to have stripped assets from its subsidiary.

244. In addition to the dominance and control Ally Financial exerted over its mortgage units, ResCap also viewed RFC and GMACM as part of its own business. For example, in its investor presentation from 2007, ResCap declares that RFC and GMACM "are owned *and operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies."

245. Ally Financial exerted its dominance and control over ResCap. Upon information and belief, when Ally Financial was not directly controlling RFC and GMACM, it was using ResCap as an instrument to do so.

246. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information

related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the origination business. Instead, it is using its mortgage units as instruments to obtain favorable ratings.

247. Such disregard for the corporate form has persisted over time. For instance, Fitch Ratings in 2007 publicly reported that "operations of [Ally Financial]'s residential mortgage servicing businesses—which include [GMACM, RFC], and HomeComings Financial Network—have been integrated into" ResCap. Moreover, Moody's reported that in 2007, "ResCap combined all servicing operations under one servicing entity . . . under common management [and] common systems . . . ." There is no indication that either RFC or GMACM has ceased operations or been sold to other entities or investors. Thus, upon information and belief, ResCap has conflated various businesses that currently have extensive third-party contractual relationships, such as the one RFC has with respect to the HI Transactions as Master Servicer.

248. Even the employees of Ally Financial's subsidiaries think of themselves as employees of Ally Financial rather than separate entities since there appears to be no difference. For example, Thomas F. Marano, served as an officer of Ally Financial as well as Chairman and CEO of ResCap. His responsibilities include overseeing the mortgage lending and servicing in ResCap. In testimony before the House Financial Services Subcommittee on November 18, 2011, Marano stated that "Ally [Financial]'s mortgage business is conducted through GMAC Mortgage." Upon information and belief, Marano—in his dual role as an officer of Ally Financial as well as Chairman and CEO of ResCap—directed and controlled the actions of GMACM and RFC.

249. In another example, Larry Hipp, a member of ResCap's Risk Analyst/Investor Repurchase Department, communicated with FGIC regarding rescission requests using an Ally

Financial email address, but in those very same emails, lists his ResCap contact information, including a ResCap email address. In addition, Ally Financial/ResCap used to send FGIC secure communications bearing a "GMAC ResCap" header, but those secure communications now have an Ally Financial header.

250. A further example is supplied by Jeffrey Stephan, a loan officer of GMACM who was implicated in the robo-signing issues associated with servicing mortgage loans. He was asked the following questions at his deposition:

Q: Could you please state your name for the record.
A: My name is Jeffrey Stephan.
Q: Okay. And who do you work for?
A: GMAC, LLC [Ally Financial].
Q: And is there a difference between GMAC, LLC and GMAC Mortgage, LLC?
A: GMAC, LLC – I'm trying to think of the word to use – the most recent name.
Q: Okay.
A: It's GMCA [sic] Mortgage Corporation.
Q: Okay.
A: I'm not sure how you would word that.
Q. Okay. So are they -- does GMAC, LLC -- now has that basically taken over these other entities --
A. Yes.
Q. -- that formerly existed?
A. Yes.
Q. So these entities no longer currently exist?
A. Right.
Q. Okay. And how long then have you been employed by GMAC, LLC?
A. Five years.

Jeffrey Stephan Deposition, *GMAC Mortgage, LLC v. Neu*, 4:25-5:22, Dec. 10, 2009, Case No. 50 2008 CA 040805, (15th Cir. Ct., Palm Beach, Fl.).

K. FGIC's Contractual Remedies Under The I&I Agreements

251. The I&I Agreements provide FGIC with broad remedies for RFC's breaches of its representations and warranties. Each of the I&I Agreements state that, unless otherwise expressly provided, no remedy conferred in the relevant I&I Agreement is intended to be

exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the relevant I&I Agreement or any other relevant Operative Document, or existing at law or in equity. *See* 2006-HI2 I&I Agreement § 5.02(b); 2006-HI3 I&I Agreement § 5.02(b); 2006-HI4 I&I Agreement § 5.02(b); 2006-HI5 I&I Agreement § 5.02(b); 2007-HI1 I&I Agreement § 5.02(b).

252. In each of the HI Transactions, RFC also agreed that, any provision in the relevant I&I Agreement or any Operative Document to the contrary notwithstanding, FGIC shall be entitled to full reimbursement from RFC for any payment made under any Policy arising as a result of RFC's failure to substitute for or deposit an amount in respect of any defective Mortgage Loan as required by the relevant HI Purchase Agreement, together with interest on any and all such amounts remaining unreimbursed from the date such amounts became due until paid in full. *See* 2006-HI2 I&I Agreement § 3.03(b); 2006-HI3 I&I Agreement § 3.03(b); 2006-HI4 I&I Agreement § 3.03(b); 2006-HI5 I&I Agreement § 3.03(b); 2007-HI1 I&I Agreement § 3.03(b).

253. Further, in each Transaction, RFC expressly agreed to pay to FGIC any and all reasonable charges, fees, costs and expenses that FGIC may reasonably pay or incur, including reasonable attorneys' and accountants' fees and expenses, in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents, including defending, monitoring or participating in any litigation or proceeding relating to any of the Operative Documents. *See* 2006-HI2 I&I Agreement § 3.03(c); 2006-HI3 I&I Agreement § 3.03(c); 2006-HI4 I&I Agreement § 3.03(c); 2006-HI5 I&I Agreement § 3.03(c); 2007-HI1 I&I Agreement § 3.03(c).

254. In addition, in each of the HI Transactions, RFC agreed to pay, protect, indemnify and save harmless FGIC from and against any and all claims, losses, liabilities (including penalties), actions, suits, judgments, demands, damages, costs or expenses (including reasonable fees and expenses of attorneys) of any nature arising out of or relating to the transactions contemplated by the Operative Documents by reason of the breach by RFC of any representation, warranty or covenant under any of the Operative Documents or the occurrence, in respect of RFC, under any of the Operative Documents, of any event of default. *See* 2006-HI2 I&I Agreement § 3.04(a); 2006-HI3 I&I Agreement § 3.04(a); 2006-HI4 I&I Agreement § 3.04(a); 2006-HI5 I&I Agreement § 3.04(a); 2007-HI1 I&I Agreement § 3.04(a).

255. Moreover, consistent with its obligation to select Mortgage Loans that met its published criteria, RFC agreed to repurchase or substitute Mortgage Loans that did not conform to RFC's representations and warranties, and to indemnify FGIC for claims and losses arising from RFC's breach of any representation or warranty.

FIRST CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief Regarding RFC's Indemnification Obligation)

256. FGIC re-alleges and incorporates by reference paragraphs 1 through 255 of this Complaint.

257. The I&I Agreements are valid and binding agreements between the parties.

258. FGIC has performed its obligations under each of the I&I Agreements.

259. RFC's representations and warranties were material to FGIC's decision to insure the HI Notes and to issue the Policies.

260. RFC's pervasive and material breaches of its representations and warranties constitute a material breach of each of the I&I Agreements that has deprived FGIC of the purpose of the parties' bargain.

261. Pursuant to Section 3.04(a) of the I&I Agreements, RFC must indemnify FGIC for any and all claims, losses, liabilities, demands, damages, costs or expenses of any nature arising out of or relating to the breach by RFC of any of the representations or warranties contained in Section 2.01 of the I&I Agreements or arising out of or related to the transactions contemplated by the related Operative Documents by reason of, among other things, the breach by RFC of any representation, warranty, or covenant under any of the related Operative Documents.

262. As explained above, RFC has breached numerous representations, warranties, and covenants in the Offering and Operative Documents for the HI Transactions. These breaches have caused FGIC to pay claims and to incur losses, costs, and expenses; and it will continue to do so.

263. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

264. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must jointly and severally indemnify and reimburse FGIC for all sums arising out of the HI Transactions for which FGIC has been or will become liable, or alternatively, for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreements or any of the related Operative Documents, or alternatively, in an amount to be determined at trial, and an order giving effect to such indemnification.

265. In addition, FGIC seeks a declaration that RFC must indemnify and reimburse FGIC for all sums arising out of the HI Transactions for which FGIC has or will become liable, or, alternatively, for all loss resulting from any breaches of the representations, warranties, and covenants of the I&I Agreements or any of the related Operative Documents, or alternatively, in an amount to be determined at trial, and an order giving effect to such indemnification.

SECOND CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Fraudulent Inducement—I&I Agreement)

266. FGIC re-alleges and incorporates by reference paragraphs 1 through 265 of this Complaint

267. RFC induced FGIC to enter into the 2006-HI4, 2006-HI5, and 2007-HI1 I&I Agreements and to issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions by making false representations and warranties about its business practices and the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans, and by agreeing to broad remedies (including indemnification) for any breach of those representations and warranties.

268. As explained above, RFC knowingly made materially false statements to FGIC, and/or omitted material facts from its statements to FGIC, with the intent to induce detrimental reliance by FGIC.

269. RFC intended for FGIC to rely on RFC's material false statements and/or omissions. FGIC had no reason to believe that RFC's representations were false, and reasonably and justifiably relied on RFC's material false statements and/or omissions regarding information uniquely in the possession of RFC when it decided to enter into the I&I Agreements and to issue the Policies for the HI Notes.

270. As a result of RFC's material false statements and material omissions from its statements, FGIC entered into the 2006-HI4, 2006-HI5, and 2007-HI1 I&I Agreements, issued

Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions, and thereby agreed to insure notes backed by pools of the 2006-HI4, 2006-HI5, and 2007-HI1 Mortgage Loans that were, in actuality, materially different from the mortgage loan pools that RFC represented would collateralize the 2006-HI4, 2006-HI5, and 2007-HI1 Notes.

271. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

272. As a result of RFC's material false statements and material omissions from its statements, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

273. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

274. Alternatively, RFC is liable for such damages.

THIRD CAUSE OF ACTION

(As Against Ally Financial: Aiding and Abetting Fraudulent Inducement—I&I Agreement)

275. FGIC re-alleges and incorporates by reference paragraphs 1 through 274 of this Complaint.

276. As explained above, Ally Financial provided substantial assistance to its subsidiary RFC in fraudulently inducing FGIC to enter into the 2006-HI4, 2006-HI5, and 2007-HI1 I&I Agreements and issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions.

277. RFC could not have perpetrated its fraudulent scheme against FGIC without the substantial assistance of Ally Financial.

278. Ally Financial knew that RFC fraudulently induced FGIC issue the Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions.

279. Ally Financial's statements and actions materially aided RFC's fraudulent inducement.

280. As a result of Ally Financial's aiding and abetting RFC's fraud, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Representations, Warranties, and Affirmative Covenants)

281. FGIC re-alleges and incorporates by reference paragraphs 1 through 280 of this Complaint.

282. The I&I Agreements are valid and binding agreements between FGIC and RFC.

283. FGIC has performed its obligations under each of the I&I Agreements.

284. As explained above, RFC has materially breached its representations and warranties under the I&I Agreements.

285. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

286. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

287. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

288. Alternatively, RFC is liable for such damages.

FIFTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Repurchase Obligation)

289. FGIC re-alleges and incorporates by reference paragraphs 1 through 288 of this Complaint.

290. The I&I Agreements are valid and binding agreements between the parties.

291. FGIC has performed its obligations under each of the I&I Agreements.

292. Pursuant to the terms of the 2006-HI5 and the 2007-HI1 I&I Agreements, and the provisions of the HI Purchase Agreements incorporated therein, FGIC has demanded that RFC repurchase non-complying 2006-HI5 Mortgage Loans and 2007-HI1 Mortgage Loans. RFC has refused to repurchase numerous such Mortgage Loans.

293. RFC has breached the 2006-HI5 and the 2007-HI1 I&I Agreements, and the provisions of the HI Purchase Agreements incorporated therein, by failing to repurchase those Mortgage Loans that violated RFC's representations and warranties that FGIC has noticed to RFC.

294. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

295. As a result of these breaches of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

296. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

297. Alternatively, RFC is liable for such damages.

SIXTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Contract—Declaratory Relief Regarding Access to Information)

298. FGIC re-alleges and incorporates by reference paragraphs 1 through 298 of this Complaint.

299. The I&I Agreements are valid and binding agreements between FGIC and RFC.

300. FGIC has performed its obligations under each of the I&I Agreements.

301. Pursuant to Section 2.02(c) of the I&I Agreements, RFC agreed to furnish or cause to be furnished to FGIC financial statements, accountants' reports, and other information.

Such other information includes, but is not limited to, data relating to the Mortgage Loans, the servicing of the Mortgage Loans, and the HI Transactions. FGIC further has the right to conduct reviews of RFC's practices as Master Servicer through reviews of the Mortgage Loans pursuant to Section 2.02(m) of the I&I Agreements.

302. As discussed above, pursuant to the I&I Agreements, and with regard to requests for access to Mortgage Loan files pursuant to the 2006-HI2, 2006-HI5, and 2007-HI1 I&I Agreements, FGIC made numerous reasonable written requests that RFC furnish or cause to be furnished data relating to the Mortgage Loans, and the servicing of those loans, in order for FGIC to determine the veracity of representations and warranties made by RFC, and others, concerning the Mortgage Loans.

303. RFC has refused to provide more than a fraction of the data concerning the Mortgage Loans sought by FGIC.

304. RFC has failed to comply with its contractual obligations and breached the 2006-HI2, 2006-HI5, and 2007-HI1 I&I Agreements by failing to provide data relating to the Mortgage Loans after receiving reasonable requests for such data from FGIC.

305. Pursuant to the Section 2.02(e)(i)-(iii) of the I&I Agreements, RFC agreed to permit FGIC, upon its reasonable request, to (i) inspect the books and records of RFC; (ii) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer; and (iii) discuss the affairs, finances and accounts of RFC with RFC's independent accountants.

306. FGIC made a reasonable written request that RFC permit FGIC or its authorized agent to conduct an inspection of the books and records of RFC, as well as permit FGIC to (i) discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and (ii) with

RFC's consent, which consent shall not be unreasonably withheld or delayed, discuss the affairs, finances, and accounts of RFC with RFC's independent accountants in January 24, 2012.

307. RFC has failed to make available such persons or to produce such information.

308. RFC has failed to comply with its contractual obligations and breached the I&I Agreements by failing to make available the persons requested or to provide the information requested pursuant to the I&I Agreements, Section 2.02(e)(i)-(iii).

309. Pursuant to Section 2.02(e) of the I&I Agreements, RFC agreed, on an annual basis or when reasonably requested by FGIC, to cause the Custodian to deliver to FGIC an updated certification, in the form of the "Interim Certification" required under the Custodial Agreements for each of the HI Transactions to enable FGIC to track the progress of the recording of Mortgages and Assignments with respect to the Mortgage Loans.

310. FGIC made a reasonable request for the Interim Certification on June 21, 2011 for the 2006-HI4 Transaction, the 2006-HI5 Transaction, and the 2007-HI1 Transaction. On December 8, 2011, FGIC sent a notice of default to RFC with respect to its failure to cause the Interim Certification to be delivered to FGIC for the 2006-HI5 Transaction.

311. RFC has failed to cause the Interim Certification to be delivered to FGIC as requested.

312. RFC has failed to comply with its contractual obligations and breached the I&I Agreement, Section 2.02(e), by failing to cause the Interim Certification to be delivered to FGIC after receiving reasonable requests from FGIC.

313. Pursuant to Section 2.02(c)(v) of the I&I Agreements, RFC agreed to furnish or cause to furnish to FGIC "all reports provided . . . pursuant to the [HI Servicing Agreements]."

314. FGIC made a reasonable request for servicing notes for the 2006-HI5 and 2007-HI1 Transactions on December 9, 2010, and for the 2006-HI2 Transaction on January 19, 2012.

315. RFC has failed to comply with its contractual obligations and breached the 2006-HI5 and 2007-HI1 I&I Agreements by failing to cause the Servicing Reports to be delivered to FGIC after receiving reasonable requests from FGIC.

316. Pursuant to the Servicing Agreement, to which FGIC is an express third-party beneficiary and the provisions of which are incorporated by reference into the I&I Agreement, RFC is obligated to provide information regarding the Mortgage Loans to, and otherwise cooperate with, the successor servicer of the 2006-HI3 and 2006-HI4 Transactions.

317. RFC has failed to comply with its contractual obligations and breached the I&I Agreements and Servicing Agreements for the 2006-HI3 and 2006-HI4 Transactions by failing to make available to FGIC and/or the successor servicer the 2006-HI3 and 2006-HI4 Mortgage Loan files and other related material information.

318. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

319. Accordingly, FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC must comply with Sections 2.02(c), 2.02(e), and 2.02(m) of the I&I Agreement, and an order requiring RFC to promptly remedy those breaches and therefore comply with FGIC's requests and notices to RFC pursuant to relevant provisions, as detailed above.

SEVENTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Declaratory Relief)

320. FGIC re-alleges and incorporates by reference paragraphs 1 through 319 of this Complaint.

321. This is a claim for declaratory judgment pursuant to CPLR 3001 for the purpose of determining a justiciable controversy between FGIC and Ally Financial, ResCap, and RFC.

322. As discussed above, Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this complaint.

323. For the reasons set forth in paragraphs 214 through 250, among others, Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

324. FGIC has been damaged as a result of the actions Ally Financial, ResCap and RFC.

325. FGIC therefore seeks a declaration that Ally Financial, ResCap, and RFC were and continue to be alter egos of each other.

EIGHTH CAUSE OF ACTION

(As Against Ally Financial, ResCap, and RFC: Breach of Master Servicer Obligations)

326. FGIC re-alleges and incorporates by reference paragraphs 1 through 325 of this Complaint.

327. Each of the I&I Agreements is a valid and binding agreement between FGIC and RFC.

328. FGIC has performed its obligations under each of the I&I Agreements.

329. RFC has breached its affirmative covenants under the I&I Agreements to service all Mortgage Loans in all material respects in compliance with the HI Servicing Agreements.

330. RFC's breaches of the I&I Agreements have caused substantial harm and damages to FGIC, in an amount to be proved at trial, but at a minimum including substantially higher claims on Policies and other losses and expenses.

331. Ally Financial, acting directly and/or indirectly through ResCap, directed RFC's actions as set forth in this cause of action.

332. As a result of this breach of contract, FGIC has been damaged and will continue to be damaged in an amount to be determined at trial.

333. RFC, ResCap and Ally Financial are jointly and severally liable for such damages.

334. Alternatively, RFC is liable for such damages.

NINTH CAUSE OF ACTION

(As Against RFC: Attorneys' Fees and Costs)

335. FGIC re-alleges and incorporates by reference paragraphs 1 through 334 of this Complaint.

336. The I&I Agreements are valid and binding agreements between FGIC and RFC.

337. FGIC has performed its obligations under each of the I&I Agreements.

338. Pursuant to the I&I Agreements, RFC agreed to reimburse FGIC for any and all costs or expenses "including reasonable fees and expenses of attorneys" in connection with the enforcement, defense or preservation of any rights in respect of any of the Operative Documents. Further, pursuant to the I&I Agreements, RFC agreed to pay FGIC any and all costs or expenses "including reasonable fees and expenses of attorneys" arising out of or relating to the breach by RFC of any of the representations or warranties contained in each of the I&I Agreements or arising out of or relating to the HI Transactions.

339. FGIC has incurred and will continue to incur substantial costs and expenses, including but not limited to attorneys' fees in filing and prosecuting this lawsuit, arising out of RFC's failure to provide Mortgage Loan files, the Interim Certification, Servicing Reports, and financial information, and its breach of the representations and warranties contained in the I&I

Agreements and other representations, warranties, and covenants within the Operative Documents.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Financial Guaranty Insurance Company demands judgment in its favor and against defendant Residential Funding Company, LLC, with respect to (1), (2), and (4) through (14) below, and in its favor and against Residential Capital, LLC, with respect to (1), (2), (4) through (11), (13), and (14) below, and in its favor and against Ally Financial, Inc., with respect to (1) through (11), (13), and (14) below and the following relief:

(1) A declaration that, pursuant to RFC's obligations under the I&I Agreements, RFC solely and/or Ally Financial, ResCap, and RFC must jointly and severally reimburse and indemnify FGIC for all sums arising out of the HI Transactions for which FGIC has or will become liable, and that FGIC is entitled to immediate reimbursement of all sums it has paid to date under the Policies and to the payment of all future amounts that may fall due or claims that may be presented for payment by FGIC under the Policies as and when such sums fall due or such claims are presented, and an order giving effect to that declaration;

(2) Further or alternatively, an award of all legal rescissory, equitable, and punitive damages, to be proven at trial, for RFC's fraudulent inducement of FGIC to enter into and issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions;

(3) Further or alternatively, an award of all legal, rescissory, equitable, and punitive damages, to be proven at trial, for Ally Financial's aiding and abetting of RFC's fraudulent inducement of FGIC to enter into and issue Policies for the 2006-HI4, 2006-HI5, and 2007-HI1 Transactions;

(4) Further or alternatively, an award of all legal, rescissory, and equitable damages, to be proven at trial for RFC's material breaches of the HI Transactions;

(5) Further or alternatively, an award of compensatory, consequential and/or equitable damages, and any other damages to be proven at trial, for RFC's pervasive and material breaches of its representations, warranties, and affirmative covenants, which constitute material breaches of the I&I Agreements and frustration of the parties' bargain;

(6) Further or alternatively, a declaration that RFC must repurchase all Mortgage Loans that are in breach of RFC's representations and warranties in the HI Transactions, and an order giving effect to that declaration;

(7) Further or alternatively, a declaration that RFC must provide full access to all Mortgage Loan files requested or that will be requested by FGIC in the 2006-HI2 Transaction, the 2006-HI5 Transaction, and the 2007-HI1 Transaction, and an order giving effect to that declaration;

(8) Further or alternatively, a declaration that RFC must allow FGIC to inspect the books and records of RFC, to discuss the affairs, finances and accounts of RFC with RFC's Servicing Officer, and to discuss the affairs, finances and accounts of RFC with RFC's independent accountants, and an order giving effect to that declaration;

(9) Further or alternatively, a declaration that RFC must cause to be provided servicing notes for the 2006-HI2, 2006-HI5, and 2007-HI1 Transactions when requested by FGIC;

(10) Further or alternatively, a declaration that RFC must cause to be provided the custodial Interim Certification when requested by FGIC for the HI Transactions stating that all mortgage files were complete and were properly transferred into the trusts, or noting any exceptions, and an order giving effect to that declaration;

(11) Further or alternatively, a declaration that Ally Financial, ResCap, and RFC are alter egos of each other;

(12) An award of FGIC's attorneys' fees, and other costs and expenses incurred in enforcing, defending, or preserving its rights under the I&I Agreements and other Operative Documents, as defined in the I&I Agreements;

(13) An award of prejudgment interest at the statutory rate; and

(14) Any other and further relief that the Court deems just and proper.

JURY DEMAND

FGIC demands a trial by jury for all issues so triable as a matter of right.

Dated: March 13, 2012

JONES DAY

/

Jayant W. Tambe
Stephen J. Pearson
Howard F. Sidman
Bart Green
222 East 41st Street
New York, New York 10017
(212) 326-3939

Attorneys for Plaintiff
Financial Guaranty Insurance Company

Exhibit 26

JUDGE OETKEN

12 CIV 3776

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSURED GUARANTY MUNICIPAL CORP., f/k/a FINANCIAL SECURITY ASSURANCE INC.,

Plaintiff,

vs.

GMAC MORTGAGE, LLC, f/k/a GMAC MORTGAGE CORPORATION; RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; ALLY BANK, f/k/a GMAC BANK; RESIDENTIAL FUNDING COMPANY, LLC, f/k/a RESIDENTIAL FUNDING CORPORATION; RESIDENTIAL CAPITAL, LLC, f/k/a RESIDENTIAL CAPITAL CORPORATION; ALLY FINANCIAL, f/k/a GMAC, LLC, and RESIDENTIAL FUNDING MORTGAGE SECURITIES II, INC.,

Defendants.

Case No:

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CASHIERS

COMPLAINT

Assured Guaranty Municipal Corp., f/k/a Financial Security Assurance Inc. ("AGM" or the "Note Insurer"), through its attorneys Susman Godfrey LLP, alleges as follows.

NATURE OF ACTION

1. AGM brings this suit against GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation) ("GMACM"), Residential Asset Mortgage Products, Inc. ("RAMP"), Ally Bank (f/k/a GMAC Bank) ("Ally Bank"), Residential Funding Company, LLC (f/k/a Residential Funding Corporation) ("RFC"), Residential Capital, LLC (f/k/a Residential Capital Corporation) ("ResCap"), Ally Financial (f/k/a GMAC, LLC) ("Ally Financial"),and Residential Funding Mortgage Securities II, Inc. ("RFMS") (collectively, the "GMAC Entities") for breach of contract, reimbursement, and indemnification under New York law, in connection with two

securitizations of residential mortgages. One securitization transaction occurred in 2004; the other in 2006 (together, "the Transactions").

2. The GMAC Entities induced AGM to issue financial guaranty insurance for the Transactions by making numerous representations and warranties concerning (1) the quality and characteristics of the mortgage loans serving as collateral for the Transactions and (2) the conduct of the GMAC Entities with respect to the origination of the mortgage loans, the sale of mortgage loans to the securitization trusts, and the servicing of the mortgage loans in the trusts. AGM's credit support was imperative to the triple-A rating of the securities to be marketed to investors, the viability of the Transactions, and, ultimately, the GMAC Entities' ability to earn millions of dollars in transaction and servicing fees. However, the representations and warranties made by the GMAC Entities were false, the GMAC Entities have not honored their contractual obligations, and AGM has suffered, and will continue to suffer, millions of dollars in losses as a result.

3. The GMAC Entities controlled nearly every aspect of the Transactions. The mortgage loans underlying the securitizations were originated or acquired by GMACM (2004 transaction) and RFC (2006 transaction). GMACM and RFC then sold the mortgage loans to other GMAC Entities, RAMP (2004 transaction) and RFMS (2006 transaction). RAMP and RFMS then deposited these mortgage loans into trusts, which issued notes for the Transactions to investors. Another affiliate, GMAC RFC Securities, helped to underwrite and distribute the notes in both the 2004 and 2006 transactions. The Trust created to hold the mortgage loans and to issue the notes in the 2004 transaction was the GMACM Home Equity Loan Trust 2004-HE3. The Trust created to hold the mortgage loans and to issue the notes in the 2006 transaction was the Home Equity Loan Trust 2006-HSA3.

4. The GMAC Entities also serviced the mortgage loans after the offerings. GMACM, in addition to originating or acquiring the mortgage loans in the 2004-HE3 transaction, was also the servicer. Likewise, RFC was the servicer for the 2006-HSA3 transaction. A servicer's primary role is to supervise the collection of borrower payments related to the mortgage loans. As servicers, GMACM and RFC collected substantial servicing fees.

5. Yet another GMAC Entity, Ally Bank, served as the custodian of the 2004-HE3 transaction and collected fees in that role. As custodian, Ally Bank had certain oversight and maintenance duties with respect to the 2004-HE3 transaction, including receiving and holding certain documents and other instruments delivered by the servicer relating to the underlying mortgage loans.

6. AGM is a leading provider of financial guaranties and credit enhancement products to investors, financial institutions, and other participants in the global capital markets. To make the securities in each of the Transactions attractive to investors, the GMAC Entities requested that AGM provide financial guaranty insurance policies ("Policies") for the Transactions, guaranteeing the payment of principal and interest to investors who would purchase notes issued on the deals. As a result of AGM's participation, the GMAC Entities were able to engage in the Transactions and earn millions of dollars in transaction and servicing fees.

7. To induce AGM to participate in the Transactions, the GMAC Entities made numerous representations and warranties to AGM concerning the mortgage loans underlying the Transactions and the conduct of the GMAC Entities. In reliance on these representations and warranties, AGM issued the Policies. Among other promises, the GMAC Entities represented that there were no material defaults, breaches, or violations as to the underlying mortgage loans, that (as to the 2006-HSA3 transaction) the mortgage loans were originated in accordance with the GMAC Entities' underwriting guidelines, and that the loan files were complete and contained

all documentation needed to verify the quality and characteristics of the mortgage loan, the mortgagor, and the mortgaged property. The GMAC Entities further represented and warranted that there were no material defaults, breaches, or violations in their servicing of the underlying mortgage loans.

8. The GMAC Entities' representations and warranties were essential to AGM's decision to issue the Policies. Mortgage loans with a default at origination, or which do not comply with guidelines or lack required documentation, bear a higher expected default rate, and upon default, bear a higher expected loss. Such mortgage loans thus pose a higher risk to insurers such as AGM. AGM relied on the truth and accuracy of the GMAC Entities' contractual representations and warranties in agreeing to provide insurance. Indeed, AGM's ability to accurately assess the risks of the Transactions depended entirely on the truthfulness of the GMAC Entities' disclosures and representations and warranties about the quality of the mortgage loan pools and the GMAC Entities' underwriting and servicing standards.

9. The GMAC Entities materially breached numerous representations and warranties and other contractual obligations. For instance, AGM has discovered the following: (a) evidence of misrepresentations by borrowers in connection with the origination of mortgage loans (breaching, among other things, the representation that the mortgage loans were not in default, breach, or violation of their relevant loan agreements and mortgages); (b) numerous instances of missing, critical loan documentation; (c) discrepancies between the data provided by the GMAC Entities at the time of the Transactions and the information in the loan files; (d) violations of the GMAC Entities' underwriting guidelines; and (e) failure to provide the required notice to AGM before the sale of hundreds of millions of dollars in subsequent mortgage loans into the securitization trusts, many of which were mortgage loans that were themselves in breach

of the GMAC Entities' representations and warranties, and which have subsequently defaulted at an alarming rate.

10. Based on the widespread defects in the mortgage loan pools underlying the Transactions and the fact that the GMAC Entities and their related brokers and correspondents originated, sold, and serviced the mortgage loans in these pools, the GMAC Entities were aware of the noncompliance of the mortgage loans with the representations and warranties made to AGM and other counterparties. The GMAC Entities breached their contractual obligations by nevertheless subsequently failing to repurchase or substitute these defective mortgage loans as required.

11. The GMAC Entities fundamentally frustrated the parties' bargains through their material and pervasive breaches of their representations and warranties, their contractual loan-level repurchase or substitution obligations, their contractual obligations to provide notices, files, and other documents, other conditions precedent and covenants, and the parties' contracts as a whole. Defendants' breaches have inflicted and continue to inflict tremendous harm on AGM, including AGM's payment of approximately $55.7 million in claims in the Transactions as of the April 25, 2012 distribution date, and potentially tens of millions of dollars more in claims AGM may be required to pay in the future.

12. AGM also seeks reimbursement and indemnity for all of its costs, expenses, and losses resulting and that may in the future result from the GMAC Entities' breaches, including Policy claim payments, related expenses, and attorneys' fees.

THE PARTIES

13. AGM is a New York corporation with its principal place of business at 31 West 52nd Street, New York, New York 10019.

14. GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation) is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 1100 Virginia Drive, Fort Washington, PA 19034.

15. Residential Asset Mortgage Products, Inc. is a Delaware corporation. Its principal place of business is at 8400 Normandale Lake Blvd. Suite 600, Minneapolis, MN 55437.

16. Ally Bank (f/k/a GMAC Bank) is an online bank chartered under Utah law, with its principal place of business at 6985 Union Park Center, Midvale, UT 84047.

17. Residential Funding Company, LLC (f/k/a Residential Funding Corporation) is a limited liability company organized under the laws of the State of Delaware. Its principal place of business is at 8400 Normandale Lake Blvd. Suite 250, Minneapolis, MN 55437.

18. Residential Capital, LLC (f/k/a Residential Capital Corporation) is a Delaware limited liability corporation and a wholly-owned subsidiary of Ally Financial. Its principal place of business is at One Meridian Crossings, Minneapolis, MN 55423. ResCap is the corporate parent of GMACM.

19. Ally Financial (f/k/a GMAC, LLC) is a Delaware corporation with its principal place of business in Detroit. Michigan. Its principal place of business is at 200 Renaissance Center, Detroit, MI 48265. Ally Financial is the parent company of ResCap, GMACM, and all GMACM-affiliated entities relevant to this action.

20. Residential Funding Mortgage Securities II, Inc. is a Delaware corporation. Its principal place of business is at 8400 Normandale Lake Blvd., Suite 600, Minneapolis, MN 55437.

JURISDICTION AND VENUE

21. This Court has jurisdiction pursuant to 28 U.S.C. § 1332. AGM and the Defendants are citizens of different States, and the amount in controversy is well in excess of $75,000.

22. Venue is proper in this District under 28 U.S.C. §§ 1391(a)(2) and 1391(a)(3) and as contractually agreed to by the parties in this action. Moreover, GMACM, RAMP, RFC, and RFMS, parties to this action, have agreed to submit to the jurisdiction of this Court, and have agreed not to challenge venue in this Court.

FACTUAL ALLEGATIONS

23. This case involves over a billion dollars in home equity loan backed securities sponsored by the GMAC Entities in two transactions, one executed in 2004 and one executed in 2006. Through the Policies, AGM guaranteed certain payments of principal and interest on the securities. AGM brings this suit because the GMAC Entities breached their representations, warranties, and obligations under the Transaction Documents, causing AGM significant and continuing injury.

24. In the period relevant to this action, the GMAC Entities originated, acquired, sold, and serviced residential mortgage loans, including the mortgage loans securing the Transactions, and, from time to time, arranged for the securitization of those mortgage loans and the sale of securities collateralized by those mortgage loans to investors, often in the form of notes.

25. The two seller/servicers in the Transactions, GMACM and RFC, are both subsidiaries of GMAC-RFC Holding Company, LLC ("GMAC-RFC"). GMAC-RFC is a subsidiary of ResCap, which in turn is a subsidiary of Ally Financial, which has exercised domination and control over its subsidiaries' actions, including GMACM, Ally Bank, ResCap, and RFC.

26. GMAC-RFC was the fourth largest subprime mortgage lender in 2004, when it loaned $26 billion to subprime borrowers. *See Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (the "FCIC Report"), published in January 2011, at 504.

27. The FCIC Report notes that, in light of Ally Financial and its subsidiaries' systematic failure to ensure the credit quality of the mortgage loans backing its securitizations, repurchase demands against GMACM and Ally Financial have mounted. From 2007 to 2010, the Federal National Mortgage Association ("Fannie Mae") has forced Ally Financial to buy back approximately $838 million worth of mortgage loans that served as collateral in securitizations in which Fannie Mae invested. *Id.* at 225. And in 2009 and 2010, the Federal Home Loan Mortgage Corporation ("Freddie Mac") forced Ally Financial to buy back approximately $453 million worth of mortgage loans that served as collateral in securitizations in which Freddie Mac invested. *Id.*

28. Today, a very high percentage of GMAC-RFC-originated mortgage loans have suffered delinquencies or been charged off, and the mortgage lending practices of Ally Financial's subsidiaries, including the GMAC Entities, have led Ally Financial to the brink of financial ruin. Ally Financial recently announced that it is seeking a buyer for all or parts of ResCap, which has reportedly lost $555 million since 2009.

Investigations and Lawsuits Relating to Mortgage Loan Securitizations by GMAC Entities and Affiliated Companies

29. GMACM is currently being investigated by the U.S. Department of Justice ("DOJ") for fraud related to the origination and underwriting of mortgage loans. On June 29, 2011, Ally Financial disclosed that DOJ had served GMACM with a subpoena that "includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans." Ally Fin. Inc.,

Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).

30. Additionally, on September 2, 2011, the Federal Housing Finance Authority ("FHFA") filed suit in the Supreme Court of the State of New York, New York County, against Ally Financial and several of its subsidiaries—including GMACM, RFC, RAMP—for claims arising in connection with their role in the public filing of offering documents containing false and misleading statements. These claims arise from Freddie Mac's purchase of over $6 billion in certificates issued through twenty-one transactions similar to the transactions at issue here. Among other claims, FHFA asserted a claim for common law fraud against various Ally Financial subsidiaries, including RFC and RAMP, and aiding and abetting claims against Ally Financial for its intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the subject certificates.

31. The FHFA also alleges violations of state and federal securities laws by Ally Financial and several of its subsidiaries stemming from false and misleading statements contained in publicly filed prospectuses, prospectus supplements, registration statements, and other offering documents. Additionally, FHFA has filed aiding and abetting claims against Ally Financial and certain of its affiliates for their intentional and substantial assistance in rendering material misrepresentations to Freddie Mac in connection with the sale of the certificates. The FHFA action seeks relief in the form of rescission and recovery of the $6 billion purchase price of the certificates, including lost principal and interest, as well as punitive damages and attorneys' fees and costs.

32. Ally Financial also disclosed that the U.S. Securities and Exchange Commission (the "SEC") served a subpoena on Ally Financial, requesting documentation regarding certain

"bulk settlements" relating to securitized mortgage loans, as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. *Id.*

33. Defendants GMACM and RFC face numerous pending lawsuits brought by investors and insurers relating to mortgage loan securitizations. For example, GMACM and RFC are each currently facing lawsuits brought by MBIA Insurance Corporation ("MBIA") in New York Supreme Court in which MBIA alleges that the defendants breached their contractual representations and warranties relating to the characteristics of mortgage loans contained in transactions similar to the ones at issue here, that defendants improperly serviced the mortgage loans, and that defendants affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of more than $4 billion, as a means of unfairly shifting to investors and MBIA risks that GMACM and RFC should have borne. Ally Financial and several of its subsidiaries including ResCap, Ally Bank, RFC, and GMACM are also currently facing several lawsuits brought by Financial Guaranty Insurance Company ("FGIC") in which FGIC alleges that in connection with transactions similar to the ones at issue here, the defendants, acting as alter egos of each other, affirmatively misrepresented the credit quality of tens of thousands of mortgage loans, with a total original principal balance of about $1.87 billion, as a means of unfairly shifting to investors and FGIC risks which the defendants should have borne and have breached their contractual obligations.

34. According to Ally Financial's most recent SEC filings, as of April 27, 2012, there are more than 30 pending lawsuits against Ally Financial's mortgage-related subsidiaries, including in many instances GMACM and RFC, as well as Ally Financial itself. *See* Ally Fin. Inc., Quarterly Report (Form 10-Q), at 72 (April 27, 2012); Ally Fin. Inc., Annual Report (Form 10-K), at 229, 230 (Feb. 28, 2012); Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011). The plaintiffs in those suits have alleged, among other things, that Ally Financial's

various subsidiaries made misstatements and omissions in registration statements, prospectuses, prospectus supplements, and other documents related to mortgage loan securitizations. The alleged misstatements and omissions typically concern false representations and warranties that the mortgage loans complied with underwriting standards. Ally Fin. Inc., Quarterly Report (Form 10-Q), at 72 (April 27, 2012); Ally Fin. Inc., Quarterly Report (Form 10-Q), at 159 (Nov. 4, 2011).

35. Moreover, Ally Financial has disclosed that it expects additional lawsuits from financial guaranty or "monoline" insurers, like AGM, given that Ally Financial and its subsidiaries sold $42.7 billion of mortgage loans into securitizations "wrapped" by such insurers from 2004 to 2007. During the year ended December 31, 2011, Ally Financial and its subsidiaries have received repurchase claims from monoline insurers for $265 million worth of mortgages related to securitizations it consummated between 2004 and 2007. In its 2011 Annual Report (Form 10-K), Ally Financial disclosed that it has already reserved $825 million for representations and warranties claims and confirmed that "additional litigation with other monolines is likely." Ally Fin. Inc., Annual Report (Form 10-K), at 98, 225 (Feb. 28, 2012).

36. According to its most recent quarterly report, Ally Financial believes that "the total exposure of the applicable Mortgage Companies to mortgage representation and warranty claims is most significant for loans originated and sold between 2004 through 2008." Ally Fin. Inc., Quarterly Report (Form 10-Q), at 116 (April 27, 2012). This period encompasses the closing dates of both the 2004-HE3 and 2006-HSA3 Transactions, as well as the period during which GMACM sold additional mortgage loans into the 2004-HE3 Trust.

37. In addition to the pending investigations and lawsuits involving their woeful mortgage loan origination and underwriting practices, the GMAC Entities have been punished severely for their misconduct in mortgage loan servicing.

38. For example, on February 9, 2012, the Federal Reserve Board announced that Ally Financial, its subsidiaries, including GMACM, and several other mortgage loan servicers would be required to pay $766.5 million in monetary sanctions for "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2012). And on February 12, 2012, the Federal Reserve Board imposed over $200 million of this fine against Ally Financial, ResCap, and GMACM pursuant to an assessment order, which requires that the sanctions be paid into various borrower assistance programs and nonprofit programs established to help victims of improper servicing and foreclosure practices. *See In re Ally Fin. Inc.*, FRB Docket Nos. 12-006-CMP-HC & 12-006-CMP-DEO (Feb. 10, 2012) (the "Assessment Order"). According to the Federal Reserve Board, the sanction "takes into account the maximum amount prescribed for unsafe and unsound practices under the applicable statutory limits, the comparative severity of the institutions' misconduct, and the comparative sizes of the institutions' foreclosure activities." *See* Press Release. Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2012).

39. Also on February 9, 2012, the United States Attorney General announced that Ally Financial will take part in a $25 billion settlement to resolve claims brought by the government in response to the "**reckless and abusive mortgage practices**" of Ally Financial and four similarly situated bank-holding companies. Eric Holder. U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012). Although the settlement releases Ally Financial from certain civil claims brought by the DOJ and multiple state attorneys general, *see id.*; National Mortgage Settlement, Servicing Standard Highlights,

available at http://www.nationalmortgagesettlement.com (last visited Mar. 23, 2012), the settlement was not designed to resolve any other liabilities that Ally Financial has incurred through its improper origination, securitization, and servicing practices. *See* National Mortgage Settlement, About the Settlement, http://www.nationalmortgagesettlement.com/about (last visited Mar. 23, 2012).

40. According to the Attorney General, the $25 billion settlement and $766.5 million sanctions are just "the latest step forward" in holding Ally Financial and others accountable for "egregious mortgage loan servicing abuses." Eric Holder, U.S. Attorney General, Remarks at the Mortgage Servicers Settlement Press Conference (Feb. 9, 2012).

41. In addition to these recent settlements and the Assessment Order, the Federal Reserve Board and the Federal Deposit Insurance Corporation (the "FDIC") previously ordered Ally Financial, GMACM, and several other Ally Financial subsidiaries to adopt new procedures and practices in relation to mortgage loan servicing. *See In re Ally Fin. Inc.,* FRB Docket Nos. l1020-B-HC & 11020-B-DEO, FDIC-11-123b (April 13, 2011).

The 2004-HE3 Transaction

42. In 2004, AGM entered into a transaction with defendants GMACM and RAMP to guaranty approximately $977 million in notes backed by home equity loans that GMACM had either originated or purchased from one of its affiliates. In this transaction, the GMAC Home Equity Loan Trust 2004-HE3 served as the Issuer of approximately $977 million in notes.

43. In this transaction, GMACM acted as both Seller and Servicer of the mortgage loans, and Ally Bank acted as the Custodian.

44. The 2004-HE3 transaction was structured to permit GMACM to add mortgage loans to the pool after closing ("Subsequent Mortgage Loans"). GMACM was permitted to sell Subsequent Mortgage Loans to the pool on certain Subsequent Transfer Dates pursuant to the

terms of Subsequent Transfer Agreements—but *only* in compliance with the conditions imposed upon such transfers in the Transaction Documents.

45. GMACM and RAMP offered the 2004-HE3 notes for sale pursuant to, among other things, a prospectus and a prospectus supplement that touted AGM's involvement in the 2004-HE3 transaction as the "Enhancer," as well as AGM's "triple-A" ratings. The prospectus supplement also stated that "[a]ll of the mortgage loans were underwritten generally in accordance with GMACM's underwriting standards," including the Subsequent Mortgage Loans.

46. AGM agreed to issue a financial guaranty insurance policy related to the 2004-HE3 transaction based on explicit representations and warranties by the Defendants as to the mortgage loans backing those securities. This Policy enhanced the ratings and marketability of the 2004-HE3 notes.

47. In connection with the 2004-HE3 transaction and related 2004-HE3 Policy, GMACM, RAMP, Ally Bank, and AGM executed a number of Transaction Documents.

2004-HE3 Mortgage Loan Purchase Agreement

48. Through a Mortgage Loan Purchase Agreement ("2004-HE3 MLPA"), GMACM sold a pool containing thousands of home equity loan mortgages to RAMP and RAMP deposited them with the GMAC Home Equity Loan Trust 2004-HE3, which would issue the securities at issue.

49. The 2004-HE3 MLPA expressly identifies the Note Insurer (termed the Enhancer) as AGM. The 2004-HE3 MLPA further provides that AGM is a third-party beneficiary under the agreement and is entitled to enforce the agreement. 2004-HE3 MLPA § 8.11.

50. In contracting with AGM (referred to as "Financial Security" in the transaction documents) to purchase financial guaranty insurance on the securities, GMACM made a number of representations and warranties in the 2004-HE3 MLPA concerning the quality and

characteristics of the mortgage loans underlying the transaction. 2004-HE3 MLPA § 3.1. These representations and warranties are materially false, and based on information obtained by AGM on samples of mortgage loans to date, affect a substantial number of mortgage loans in the pool. GMACM represented that:

(a) GMACM "is or will be in compliance with the laws of each state in which any Mortgaged Property is located to extent necessary to ensure the enforceability of each Mortgage Loan," 2004-HE3 MLPA § 3.1(a)(i);

(b) "The information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respect as of the date or dates respecting which such information is initially furnished," *Id.* § 3.1(b)(i);

(c) "To the best of GMACM's knowledge, there is no valid offset, defense or counterclaim of any obligor under any Loan Agreement or Mortgage," *Id.* § 3.1(b)(iv);

(d) The Mortgage File for each Mortgage Loan "contains or will contain . . . each of the documents and instrument specified to be included therein," *Id.* § 3.1(b)(ix);

(e) "A policy of hazard insurance and flood insurance, if applicable, was required from the Mortgagor for the Mortgage Loan when the Mortgage Loan was originated," *Id.* § 3.1(b)(xxviii);

(f) "To the best of the GMACM's knowledge, the related Loan Agreement and the related Mortgage at the time it was made complied in all material respects with applicable local, state and federal laws, including, but not limited to, applicable predatory lending laws," *Id.* § 3.1(b)(x);

(g) "Other than with respect to a payment default, there is no material default, breach, violation or event of acceleration existing under the terms of any Loan Agreement or Mortgage and, to the best of GMACM's knowledge, no event which, with notice and expiration

of any grace or cure period, would constitute a material default, breach, violation or event of acceleration under the terms of any Loan Agreement or Mortgage, and no such material default, breach, violation or event of acceleration has been waived by GMACM involved in originating or servicing the related Mortgage Loan," *Id.* § 3.1(b)(xxix);

(h) "GMACM used no selection procedures that identified the Mortgage Loans as being less desirable or valuable than other comparable mortgage loans originated or acquired by GMACM under the GMACM Home Equity Program. The Mortgage Loans are representative of GMACM's portfolio of adjustable rate mortgage loans that were originated under the GMACM Home Equity Program," *Id.* § 3.1(b)(xxxvii).

51. The preceding provisions are examples of the dozens of representations and warranties GMACM made in the transaction documents concerning the quality and characteristics of the mortgage loans in the 2004-HE3 transaction. These representations and warranties were essential to AGM's agreement to issue its financial guaranty insurance policy in the 2004-HE3 transaction. In fact, AGM agreed to issue the insurance policy subject only to the satisfaction of certain conditions precedent, including a certification that the representations and warranties made in the Transaction Documents "shall be true and correct on and as of the Closing Date as if made on the Closing Date." 2004-HE3 I&I § 3.01(d).

52. GMACM, as the mortgage loan originator and seller, assumed the risk and the burden of assessing the characteristics and attributes of those mortgage loans. Accordingly, among other promises, GMACM represented and warranted that it provided complete and accurate information as to the mortgage loans and that there were no material defaults, breaches, or violations relating to the mortgage loans. GMACM further assumed the obligation of verifying the accuracy of the representations and warranties concerning the mortgage loans and loan documentation and the completeness of the documentation pertaining to the mortgage loans,

which backed the securities AGM was to insure. In turn, AGM, as the Note Insurer, bore the burden of evaluating whether mortgage loans bearing the characteristics, attributes, loan documentation and other items as represented and warranted by GMACM would perform as AGM had projected, despite economic variables that might change post-closing.

53. This explicit division of responsibility was a reasoned risk allocation. GMACM and its affiliates originated the mortgage loans and prepared and finalized the loan documentation and loan files before conveying the mortgage loans to the trusts that issued the securities AGM insured. GMACM owned and serviced the mortgage loans, and Ally Bank, as Custodian, held the loan files, which afforded these entities access and control over information required to evaluate the mortgage loans. GMACM thus had the means to assess the quality of the prospective and actual mortgagors, mortgaged properties and other related mortgage loan characteristics and attributes, as well as the accuracy and completeness of the loan documentation, and—in the event a defect was discovered—exclude that mortgage loan from the securitization, or seek other recourse. By contrast, AGM did not originate any of the underlying mortgage loans, has never been in privity with the mortgage loan brokers with whom GMACM originated the mortgage loans, did not prepare or finalize the loan documentation and loan files, never owned the mortgage loans or the loan files, and lacks direct recourse against the mortgage loan brokers with whom GMACM originated the mortgage loans.

54. For these reasons, these sophisticated contracting parties sensibly agreed that GMACM would bear the risk and the burden of assessing the validity, sufficiency, and accuracy of the loan documentation and characteristics and attributes of the mortgage loans it originated and conveyed to the owning trusts, and AGM would bear the burden of evaluating whether mortgage loans bearing (amongst other things) these characteristics, attributes, and loan documentation would perform after the closing of the transactions as AGM had projected. In

reliance on GMACM's contractual representations and warranties about the mortgage loans' quality and characteristics, AGM reviewed a sampling of certain mortgage loan documentation in order to confirm that the documentation corresponded to the parameters GMACM had provided AGM. AGM was not required to verify the data provided by GMACM—that, by explicit agreement, was GMACM's contractual responsibility.

55. The MLPA required GMACM—within 45 or 90 days (depending on the circumstances) of discovering or receiving notice of a breaching mortgage loan—to "cure such breach in all material respects" *or* either (a) repurchase the breaching mortgage loan or (b) substitute a nonbreaching mortgage loan for that breaching mortgage loan. *See* 2004-HE3 MLPA § 3.1 (e). AGM has demanded that GMACM comply with this provision by sending GMACM "put back" demands—but to date, GMACM has not repurchased, substituted, or cured a single mortgage loan and therefore breached its repurchase-or-cure obligations.

56. The 2004-HE3 MLPA also contains numerous provisions regarding the sale of Subsequent Mortgage Loans to the Issuer on Subsequent Transfer Dates. *See, e.g.*, 2004-HE3 MLPA § 2.2. Although this transaction was structured to allow GMACM to sell these Subsequent Mortgage Loans into the existing pool, the MLPA sets forth specific notice and consent provisions relating to AGM, in order to give AGM the opportunity to assess and either approve or reject these new mortgage loans. For instance, the MLPA provides that:

(a) GMACM must provide certain entities, *including AGM* ("the Enhancer"), "with a timely Addition Notice . . . which notice shall be given no later than seven Business Days prior to the related Subsequent Transfer Date, and shall designate the Subsequent Mortgage Loans to be sold to the Issuer, the aggregate Principal Balance of such Subsequent Mortgage Loans as of the related Subsequent Cut-Off Date and any other information reasonably requested

by the Indenture Trustee or the Enhancer with respect to such Subsequent Mortgage Loans." 2004-HE3 MLPA § 2.2(b)(i);

(b) GMACM "shall have delivered to the Indenture Trustee and the Enhancer a duly executed Subsequent Transfer Agreement . . . (A) confirming the satisfaction of each condition precedent and representations and warranties specified in this Section 2.2(b) and in Section 2.2(c) and in the related Subsequent Transfer Agreement and (B) including a Mortgage Loan Schedule listing the Subsequent Mortgage Loans." *Id.* § 2.2(b)(ii);

(c) AGM "shall have approved the sale of the Subsequent Mortgage Loans (which approval shall not be unreasonably withheld) within five (5) Business Days of receipt of a loan tape containing the same fields of information regarding the Subsequent Mortgage Loans that was delivered to the Enhancer prior to the Closing Date with respect to the Initial Mortgage Loans." *Id.* § 2.2(b)(vi);

(d) The Issuer is not obligated to purchase any Subsequent Mortgage Loan unless the loan satisfies, among many other conditions, the following: compliance with "the representations and warranties specified in the related Subsequent Transfer Agreement" and MLPA; that GMACM has not "selected such Subsequent Mortgage Loans in a manner that it reasonably believes is adverse to the interests of the Noteholders or the Enhancer"; that GMACM "will deliver to the Enhancer and the Indenture Trustee certain Opinions of Counsel described in Section 2.2(b) and acceptable to the Enhancer and the Indenture Trustee with respect to the conveyance of such Subsequent Mortgage Loans"; and that "such Subsequent Mortgage Loan will be underwritten substantially in accordance with the criteria set forth under . . . the Prospectus Supplement." *Id.* Any Subsequent Mortgage Loan "materially varying" from these criteria may only be purchased by the Issuer if it is "acceptable to the Enhancer, in its reasonable discretion." *Id.*

(e) "[w]ithin five Business Days after each Subsequent Transfer Date, GMACM shall deliver to the Rating Agencies, the Indenture Trustee and the Enhancer a copy of the Mortgage Loan Schedule reflecting the Subsequent Mortgage Loans in electronic format." *Id.* § 2.2(c).

57. GMACM breached these disclosure-and-notice obligations. Despite the fact that through 2007, GMACM had sold hundreds of millions of dollars of Subsequent Mortgage Loans into the 2004-HE3 Trust, AGM never received any of the notice documents described above and required by the MLPA, and GMACM failed to obtain AGM's consent prior to selling the Subsequent Mortgage Loans to the 2004-HE3 Trust. These continuing contractual breaches deprived AGM of its ability to confirm that the Subsequent Mortgage Loans did not alter the risk profile in the transaction. Indeed, the Subsequent Mortgage Loans added by GMACM to the 2004-HE3 Trust have performed worse than the initial mortgage loans sold to the 2004-HE3 Trust.

2004-HE3 Servicing Agreement

58. GMACM and the 2004-HE3 Trust entered into a Servicing Agreement ("2004-HE3 SA") under which GMACM would service the underlying mortgage loans. The 2004-HE3 SA set forth numerous duties of GMACM and again designates AGM, as the Enhancer, as a third-party beneficiary to the agreement. 2004-HE3 SA § 8.05.

59. Under the terms of the 2004-HE3 SA, GMACM represented and warranted that it would "enforce the representations and warranties of the Sellers pursuant to the [2004-HE3 MLPA]." Since GMACM was both the Seller and the Servicer, GMACM effectively promised to enforce its own representations and warranties. 2004-HE3 SA § 2.03.

60. The 2004-HE3 SA reiterated the obligation of GMACM as the Seller to either cure breaches of these representations and warranties in all material respects within the

designated cure period, or to repurchase defective Mortgage Loans or substitute eligible substitute mortgage loans. 2004-HE3 SA § 2.03. As previously stated, GMACM is in breach of its repurchase obligations. GMAC is also in breach of its notice obligations under the 2004-HE3 SA. GMACM represented and warranted in the 2004-HE3 SA that it would "promptly notify [the] Seller"—again, itself—of any such breaches. *Id.*

61. The Servicing Agreement also included the following additional representations and warranties:

(a) "[T]he servicing of the Mortgage Loans has at all times been conducted in material compliance with all applicable federal, state and local laws, rules and regulations and there has been no material violation of any such laws, rules or regulations arising out of the servicing of the Mortgage Loans," *id.* § 2.01(g);

(b) "The Servicer shall service and administer the Mortgage Loans in a manner generally consistent with the terms of the Program Guide," *id.* § 3.01(a);

(c) "Whenever required by statute or regulation, the Servicer shall provide to the Enhancer, any Securityholder upon reasonable request (or a regulator for a Securityholder) or the Indenture Trustee, reasonable access to the documentation regarding the Mortgage Loans." *Id.* § 3.12.

62. Upon information and belief regarding the 2004 transaction's performance, GMACM, as Seller and Servicer, has breached its obligations under the 2004-HE3 Transaction Documents, including but not limited to Section 2.01—which provides that "the servicing of the Mortgage Loans has at all times been conducted in material compliance with all applicable federal, state and local laws, rules and regulations and there has been no material violation of any such laws, rules or regulations arising out of the servicing of the Mortgage Loans."

63. GMACM's servicing violations have been documented by various governmental agencies, including the Federal Reserve Board, which noted GMACM's "unsafe and unsound processes and practices in residential mortgage loans servicing and foreclosure processing." Press Release, Fed. Reserve Bd., Federal Reserve Board Announces Agreement in Principle with Five Banking Organizations Regarding the Issuance of Monetary Sanctions (Feb. 9, 2011). Upon information and belief, GMACM's servicing of the underlying residential mortgage loans in this case violated its obligations under the Transaction Documents.

64. Moreover, on information and belief, GMACM is and has been aware that a substantial number of the underlying mortgage loans, whether acquired at the closing or thereafter, were defective and, thus, in breach of its own representations and warranties. Despite this knowledge, GMACM has failed to repurchase the defective mortgage loans or replace them with mortgage loans which conformed to the underwriting guidelines, as it is required to do so.

65. In December 2010, because of the poor performance of the two Transactions, AGM terminated GMACM as servicer, pursuant to its contractual right, and Specialized Loan Servicing, LLC ("SLS") became the new servicer. After SLS became the servicer, it provided AGM with certain loan files for the 2004 transaction, including certain loan files for the Subsequent Mortgage Loans added by GMACM in the 2004 transaction. AGM wanted these loan files so it could compare the information in those loan files to GMACM's underwriting guidelines and GMACM's representations and warranties in the contractual documents. Before the servicer termination, AGM had repeatedly requested the same loan files from GMACM—but GMACM never provided a single loan file from the 2004 transaction to AGM, in breach of its contractual obligations to do so.

2004-HE3 Custodial Agreement

66. Also on June 30, 2004, Ally Bank (then known as GMAC Bank), entered into the 2004-HE3 Custodial Agreement ("2004-HE3 CA"), whereby it agreed, among other things, to serve as Custodian of the underlying mortgage loan notes on behalf of the 2004-HE3 Trust. AGM is an express third-party beneficiary of that agreement. 2004-HE3 CA § 4.6.

67. In the Custodial Agreement, Ally Bank undertook several obligations to AGM concerning the manner in which Ally Bank would ensure that the Mortgage Loans contained complete and accurate information, so that GMACM was in compliance with its representations and warranties regarding the origination, selection, and characteristics of those mortgage loans. The Custodial Agreement provides:

(a) "The Custodian shall deliver to the Indenture Trustee . . . with a copy to the Enhancer, with respect to the Loan Agreements related to the Initial Mortgage Loans and the Loan Agreements related to any Subsequent Mortgage Loans, on or prior to the Closing Date or the related Subsequent Transfer Date, as applicable, an Initial Certification . . . evidencing receipt of the Loan Agreements for each Initial Mortgage Loan and the Loan Agreements for each Subsequent Mortgage Loan listed on the Mortgage Loan Schedule or Amended Mortgage Loan Schedule." 2004-HE3 CA § 2.2(a);

(b) "Within 90 days from the Closing Date or Subsequent Transfer Date, as applicable, the Custodian . . . shall deliver to the Indenture Trustee, as pledgee of the Issuer and to Financial Security Assurance Inc., as the Enhancer . . . a final certification . . . evidencing the completeness of the receipt of the Loan Agreements." *Id.* § 2.2(b).

68. The Custodial Agreement also states that "[u]pon discovery by the Custodian of a breach of any representation or warranty made by either Seller in the Purchase Agreement or assigned by either Seller pursuant to the Purchase Agreement with respect to a Mortgage Loan

relating to a Loan Agreement, the Custodian shall give prompt written notice to such Seller and the Enhancer." *Id.* § 2.3.

69. Once again, AGM never received any initial or final certifications relating to the Subsequent Mortgage Loans that GMACM sold, without AGM's knowledge, into the 2004-HE3 Trust. Ally Bank's breach of its contractual obligation to provide these certifications further deprived AGM of its right to assess and either accept or reject the risk associated with these Subsequent Mortgage Loans.

2004-HE3 Insurance and Indemnity Agreement

70. Concurrent with the 2004-HE3 MLPA and 2004-HE3 SA, GMACM, RAMP, and AGM entered into an Insurance and Indemnity Agreement ("2004-HE3 I&I").

71. The 2004-HE3 I&I defined "Operative Documents" to include the 2004-HE3 MLPA, 2004-HE3 SA, and the 2004-HE3 CA. 2004-HE3 I&I App. 1-2.

72. Under the 2004-HE3 I&I, GMACM and RAMP each represented and warranted, among other things, that:

(a) "The Operative Documents . . . will constitute the legal, valid and binding obligations of each of GMACM . . . and the Depositor, enforceable in accordance with their respective terms," 2004-HE3 I&I § 2.01(f);

(b) "Neither the **Operative Documents** to which it is a party nor other material information relating to the Mortgage Loans . . . contains **any statement of a material fact which was untrue or misleading in any material respect when made**. Each of GMACM . . . and the Depositor has no knowledge of any circumstances that could reasonably be expected to cause a Material Adverse Change with respect to GMACM . . . or the Depositor. Since the furnishing of the Documents, there has been no change nor any development or event involving a

prospective change known to GMACM . . . or the Depositor that would render any of the Documents untrue or misleading in any material respect," *id.* § 2.01(k);

(c) "Each of the representations and warranties of GMACM . . . and the Depositor **contained in the applicable Operative Documents** to which it is a party **is true and correct in all material respects** as of the date reflected therein and each of GMACM . . . and the Depositor hereby makes each such representation and warranty to, and for the benefit of, Financial Security [*i.e.*, AGM] as if the same were set forth in full herein," *id.* § 2.01(m).

(d) That the Offering Document "**does not contain any untrue statement of a material fact and does not omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading as of the Closing Date.**" 2004-HE3 I&I § 2.01(l) (emphasis added). The Offering Document described the ostensible characteristics of the mortgage loans in the collateral pool, and among other things, stated that "[a]ll of the mortgage loans were underwritten generally in accordance with GMACM's underwriting standards." 2004-HE3 Prospectus Supplement, at S-40.

73. GMACM and RAMP further acknowledged AGM's position as a third-party beneficiary of the 2004-HE3 MLPA and 2004-HE3 SA: "Each of GMACM . . . and the Depositor agrees that Financial Security shall have all rights provided to Financial Security in the Operative Documents and that Financial Security shall constitute a third-party beneficiary with respect to such rights in respect of the Operative Documents and hereby incorporates and restates its representations, warranties and covenants as set forth therein for the benefit of Financial Security," *id.* § 2.02(k).

74. The 2004-HE3 I&I contains additional representations, warranties and covenants, many of which bolster those discussed above, that GMACM and RAMP made to persuade AGM to issue the requested financial guaranty insurance policy, including that GMACM and RAMP

would not "interfere in any material respect with the enforcement of any rights of Financial Security [AGM] under or with respect to any of the Operative Documents," *id.* § 2.03(a); that "[n]o practice, procedure or policy employed, or proposed to be employed, by GMACM . . . or the Depositor in the conduct of its business violates any law, regulation judgment, agreement, order or decree," *id.* § 2.01(h); and, again relating to AGM's right of access to mortgage loan information, GMACM would furnish to AGM numerous categories of financial documents and reports and, "promptly upon request, such other data as Financial Security [AGM] may reasonably request." *id.* § 2.02(c).

75. The 2004-HE3 I&I contains broad provisions defining events of default and AGM's remedies for any such events of defaults. The 2004-HE3 I&I defined an event of default to include circumstances where "[a]ny representation or warranty made by GMACM . . . or the Depositor hereunder or under the Operative Documents, or in any certificate furnished hereunder or under the Operative Documents, shall prove to be untrue or incomplete in any material respect," *id.* § 5.01(a).

76. Should an event of default occur, the 2004-HE3 I&I grants AGM broad remedies. AGM may "exercise any rights and remedies available under the Related Documents," *id.* § 5.02(a)(ii). The 2004-HE3 I&I also permits AGM to "take whatever action at law or in equity as may appear necessary or desirable in its judgment . . . to enforce performance of any obligation of the GMACM [or] the Depositor . . . under the Related Documents." *Id.* § 5.02(a)(iii).

77. Under the 2004-HE3 I&I, AGM has reimbursement rights, with interest, against GMACM for payments made by Financial Security that result from the failure of GMACM to fulfill certain responsibilities under the 2004-HE3 MLPA, and from "the enforcement, defense or preservation of any rights in respect of any of the Operative Documents." *Id.* § 3.03.

78. In addition, GMACM and RAMP agreed to indemnify AGM for all losses arising out of or related to their breach of the Operative Documents. *Id.* § 3.04(a).

2006-HSA3 Transaction

79. In 2006, the GMAC Entities again sought to issue over $200 million in securities backed by home equity loans. AGM agreed to issue a financial guaranty insurance policy covering these securities.

80. The transaction documents for this transaction (with RFC acting as seller, sponsor, and servicer, and RFMS as depositor) are substantially similar to those executed in connection with the 2004-HE3 transaction (namely, the 2006-HSA3 Home Equity Loan Purchase Agreement ["2006-HSA3 HELPA"], the 2006-HSA3 Servicing Agreement ["2006-HSA3 SA"], and the 2006-HSA3 Insurance and Indemnity Agreement ["2006-HSA3 I&I"]). As with the 2004 securitization, the GMAC Entities made comprehensive representations and warranties to induce AGM to provide financial guaranty insurance, and the GMAC Entities breached numerous representations and warranties contained in these documents.

2006-HSA3 Home Equity Loan Purchase Agreement

81. In the 2006-HSA3 transaction, RFC and its affiliates acted as both Seller and Servicer of the mortgage loans.

82. The 2006-HSA3 HELPA, pursuant to which RFC sold a pool of home equity loan mortgages to RFMS, contains many identical representations and warranties, on the part of seller RFC, as GMACM made in the 2004-HE3 MLPA: RFC attested to the truth and accuracy of the information in the Home Equity Loan Schedule (2006-HSA3 HELPA § 3.1(b)(i)); verified that there was no right of rescission, offset, etc. (*id.* § 3.1(b)(iv)); confirmed the completeness of the Mortgage Files (*id.* § 3.1(b)(ix)); represented that the Mortgage Loans complied with all applicable laws (*id.* § 3.1(b)(x)); made specific representations and warranties concerning the

quality of the mortgage loans, for instance that the CLTV for each mortgage loan was not in excess of 100% (*id.* § 3.1(b)(xiv)); and warranted that there was no material default, breach, etc. relating to the Mortgage Loans (*id.* § 3.1(b)(xxx)). RFC also represented that it complied with its own underwriting guidelines in originating the underlying mortgage loans—specifically, that "[a]ll of the Home Equity Loans have been underwritten in substantial compliance with the criteria set forth in the Program Guide," *Id.* § 3.1(b)(xli).

83. As with the 2004-HE3 transaction, these representations and warranties as to the mortgage loan characteristics and quality were essential to AGM's agreement to issue its Policy.

84. As with the 2004-HE3 MLPA, the 2006-HSA3 HELPA provides that AGM is a third-party beneficiary under the agreement and is entitled to enforce the agreement. *Id.* § 8.11. Indeed, the 2006-HSA3 HELPA expressly provides that RFC's representations and warranties are made directly to AGM, as the Credit Enhancer. *Id.* § 3.1.

2006-HSA3 Servicing Agreement

85. The 2006-HSA3 SA between RFC, as Master Servicer, and Issuer Home Equity Loan Trust 2006-HSA3 sets forth numerous duties of RFC and again designates AGM, as the Credit Enhancer, a third-party beneficiary to the agreement. The provisions of the 2006-HSA3 SA are substantially similar to those of the 2004-HE3 SA.

2006-HSA3 Insurance and Indemnity Agreement

86. Concurrent with the 2006-HSA3 HELPA and 2006-HSA3 SA, RFC, RFMS, and AGM entered into an Insurance and Indemnity Agreement ("2006-HSA3 I&I").

87. The 2006-HSA3 I&I defined "Transaction Documents" to include the 2006-HSA3 HELPA and the 2006-HSA3 SA. 2006-HSA3 I&I App. I.

88. The 2006-HSA3 I&I is substantially similar to the 2004-HE3 I&I regarding representations and warranties, events of default, remedies, reimbursement, and indemnity. The

2006-HSA3 I&I also expressly makes RFC and RFMS jointly and severally liable for any breach of their obligations. 2006-HSA3 I&I § 4.02(b).

The GMAC Entities Have Breached the Insurance and Indemnity Agreements and Transaction Documents

89. In the years since the 2004-HE3 I&I and the 2006-HSA3 I&I were executed, the performance of the mortgage loans in the securitized pools in each of the Transactions has dramatically deteriorated.

2004-HE3 Transaction

90. As of the April 25, 2012 distribution date, the 2004-HE3 transaction has incurred approximately $72.1 million in cumulative losses to collateral, and AGM has paid approximately $15.04 million in claims to noteholders. Given that there remains approximately $219.5 million of notes still outstanding in this deal, and that the performance of the 2004-HE3 Transaction has been very poor, AGM anticipates far greater losses and Policy payments on this transaction.

91. AGM has, on numerous occasions, directly requested loan files for charged-off mortgage loans from GMACM for the purpose of comparing the information in those files to GMACM's underwriting guidelines and GMACM's representations and warranties in the contractual documents. But despite these multiple requests, GMACM has never provided the requested loan files to AGM, in violation of its obligations under the Transaction Documents.

92. AGM has, however, been able to obtain from SLS a limited number of loan files underlying the 2004-HE3 transaction. What AGM found in its analysis of these loan files was extremely disturbing. In short, the majority of the mortgage loans AGM audited violated GMACM's underwriting guidelines. Many contained evidence of fraud or negligence in the origination process. AGM's review of the loan files further revealed substantial inaccuracies in the representations and warranties provided by GMACM regarding these mortgage loans, the mortgagors and the related mortgaged properties; GMACM's original underwriting and

origination processes regarding these loans; the identity, financial means, and occupational status of the mortgagors; and the completeness and accuracy of the loan documentation. Upon information and belief, as indicated by its decision to terminate GMACM as servicer, GMACM's *servicing* of the mortgage loans backing the securities that AGM insured was deficient. These defects and deficiencies represent material breaches of the GMAC Entities' representations and warranties in the relevant contractual documents. GMACM's continuing failure to repurchase any defective mortgage loans from the collateral pool, is a further breach of its contractual obligations under the Transaction Documents.

93. **Borrower Misrepresentations.** In its review of the loan files for the mortgage loans included in the 2004-HE3 transaction, AGM identified numerous instances where the borrower misrepresented, at the time of loan origination, employment, income, assets, debt obligations, and occupancy.

94. GMACM represented and warranted that "there is no material default, breach, violation or event of acceleration existing under the terms of any Loan Agreement or Mortgage." 2004-HE3 MLPA § 3.1(b)(xxix). The misrepresentations detailed above, each of which were in breach and violation of the relevant Loan Agreements and Mortgages, constitute a breach of GMACM's representations and warranties to AGM.

95. **Missing Loan File Documentation.** GMACM represented and warranted to AGM that the Mortgage File for each Mortgage Loan "contains or will contain . . . each of the documents and instruments specified to be included therein," 2004-HE3 MLPA § 3.1(b)(ix). Yet, in many cases, AGM discovered (during the course of its investigation of origination files for the mortgage loans included in the Transactions) that the loan files did not contain critical pieces of required information and/or contained deficient or defective loan documentation, including missing underwriting documents. Inclusion of mortgage loans with missing loan file

documentation in the pool breached the GMAC Entities' representations and warranties in their agreements with AGM.

96. **Discrepancies between data provided by GMACM at the time of the transaction and information in the loan file.** AGM has discovered that with regard to a large number of the mortgage loans it reviewed, the data pulled from the loan file during AGM's audit differs from "tape data" initially provided to AGM at the time of the transaction, in violation of § 2.01(k) of the 2004-HE3 I&I.

97. GMACM represented and warranted the "Accuracy of Information," which includes "material information relating to the Mortgage Loans . . . furnished to Financial Security in writing or electronic form by GMACM." 2004-HE3 I&I § 2.01(k).

98. GMACM represented and warranted that "[t]he information set forth in the Mortgage Loan Schedule with respect to each Mortgage Loan or the Mortgage Loans is true and correct in all material respect as of the date or dates respecting which such information is initially furnished," 2004-HE3 MLPA § 3.1(b)(i). The provision of inaccurate information to AGM with regard to numerous mortgage loans breached the GMACM representations and warranties in their agreements with AGM.

99. **Violations of underwriting guidelines.** In its audit of underlying mortgage loans relating to the 2004-HE3 transaction, AGM has discovered that the vast majority of the mortgage loans do not conform to GMAC's description of the underwriting guidelines as contained in the Offering Document, in violation of § 2.01(l) of the 2004-HE3 I&I.

100. **Failure to cure or repurchase.** Based on the widespread defects in the mortgage loan pool underlying the Transactions, and the fact that GMACM, its affiliates, and its related brokers and correspondents, themselves originated, sold, and serviced those mortgage loans, AGM believes that GMACM was aware of the substantial noncompliance of the mortgage loans

with the representations and warranties made to AGM and other counterparties. GMACM breached its contractual obligations by nevertheless subsequently failing to repurchase or substitute these defective mortgage loans.

101. In February 2012, AGM submitted a repurchase demand to GMACM concerning mortgage loans it was able to review detailing the breaches and violations it found. GMACM responded by informing AGM that it would not repurchase a single mortgage loan. Needless to say, GMACM has completely failed to comply with its contractual repurchase obligations.

102. **Violations of obligations to provide notice relating to Subsequent Mortgage Loans.** As detailed above, GMACM and Ally Bank violated their respective contractual obligations in the 2004-HE3 MLPA (GMACM) and the 2004-HE3 CA (Ally Bank) to provide required notices and documents relating to the hundreds of millions of dollars' worth of Subsequent Mortgage Loans that GMACM sold to the 2004-HE3 Trust without AGM's knowledge.

103. These breaches deprived AGM of its contractual rights to evaluate, and then accept or reject these additional mortgage loans. The circumstances of GMACM's sale of these mortgage loans to the 2004-HE3 Trust are rather suspect. GMACM continued to sell mortgage loans to the trust through 2007 for three years after the closing of the 2004 transaction without ever following the contractual requirements for adding new mortgage loans to 2004-HE3 Trust. Of the approximately $72.1 million in collateral losses suffered on the mortgage loans in the 2004-HE3 Trust, approximately $46 million of those losses were related to Subsequent Mortgage Loans. Given that these mortgage loans have defaulted at a rate three times higher than the original mortgage loans and the pre-funding mortgage loans, it is reasonable to conclude that GMACM had a motive for withholding the required mortgage loan data from AGM.

104. **Violations of obligations to provide requested loan documents.** As discussed above, GMACM has failed to fulfill its contractual duties under the 2004-HE3 SA and 2004-HE3 I&I to provide AGM with loan files requested on multiple occasions.

2006-HSA3 Transaction

105. As of the April 25, 2012 distribution date, the 2006-HSA3 transaction has incurred approximately $57.2 million in cumulative losses to collateral, and AGM has paid approximately $40.7 million in claims relating to the 2006-HSA3 transaction.

106. These substantial losses led AGM to investigate the mortgage loans in the 2006-HSA3 Trust beginning in 2007. As of April 30, 2012, AGM has reviewed nearly $46 million in mortgage loans, and has discovered rampant breaches of the GMAC Entities' representations and warranties under the Transaction Documents.

107. The GMAC Entities were aware of the substantial noncompliance of the mortgage loans with the representations and warranties made to AGM and other counterparties, but nevertheless breached their contractual obligations by failing to repurchase or substitute these defective mortgage loans upon discovery of the violations.

108. Faced with the GMAC Entities' inaction, AGM has been forced to make formal demands for repurchases of mortgage loans, beginning in December 2007 and continuing through May 2011.

109. In the first three rounds of repurchase demands—on December 6, 2007, April 18, 2008, and September 4, 2008—the GMAC Entities ultimately agreed, after extensive time, effort and resources were expended by AGM, to repurchase substantial numbers of defective mortgage loans (85%, 43%, and 72% of mortgage loans identified in AGM's demands, respectively). Despite their knowledge of extensive breaches in the collateral underlying the 2006-HSA3 transaction, the GMAC Entities did not repurchase any mortgage loans outside of the requests

made by AGM. But given the high incidence of breaches AGM identified to the GMAC Entities, and the GMAC Entities' agreement that substantial percentages warranted repurchase, the GMAC Entities were certainly aware that a significant percentage of the mortgage loans from the securitized pool outside of those formally "putback" to them would likely have the same types of material breaches.

110. Further, with regard to AGM's four subsequent putback requests in 2009 and 2011, the GMAC Entities became markedly uncooperative and abruptly refused to cure or repurchase more than a tiny percentage of the defective mortgage loans identified by AGM. Despite AGM's identification of over $32 million in total defective mortgage loans in these later requests, the GMAC Entities have agreed to repurchase only $5.5 million of those mortgage loans. This constitutes a further material breach of the GMAC Entities' cure, repurchase, and substitution obligations under the Transaction Documents. The GMAC Entities' deadline to comply with their cure-or-repurchase obligations under the 2006-HSA3 transaction documents has long since expired.

111. Given the high incidence of misrepresentations found in the mortgage loans that AGM has investigated to date, as well as deficiencies and defects in the loan documentation, it is a virtual certainty that a significant percentage of the mortgage loans from the 2004-HE3 and 2006-HSA3 securitized pools that AGM has not yet reviewed to date have the same or similar breaches.

Ally Financial's Domination and Control of its Subsidiaries Resulted in a Single Corporate Enterprise.

112. Ally Financial is the ultimate parent of all of the other Defendants to this action. Ally Financial owns ResCap, which in turn owns GMACM, RAMP, RFMS and RFC. Ally Financial—as the ultimate parent of ResCap, GMACM, Ally Bank, RAMP, RFMS and RFC—

has the practical ability, which it has repeatedly and admittedly exercised, to direct and control the actions of its subsidiaries.

113. Ally Financial has recently admitted to the Federal Reserve Board and FDIC that it "indirectly owns and controls . . . numerous direct and indirect nonbank subsidiaries, including Residential Capital, LLC . . . "ResCap") and its direct and indirect subsidiaries." *See In re Ally Fin. Inc.*, FRB Docket Nos. 11020-B-HC & 11020-B-DEO. FDIC-11-123b (April 13, 2011) (emphasis added).

114. Ally Financial's public statements and actions from at or around the time of the Transactions' closings until the present, also demonstrate that Ally Financial: (i) owns a majority of its subsidiaries' stock; (ii) shares resources, management, and employees with its subsidiaries; (iii) considers its mortgage businesses to be "units" of its business; and (iv) has a business relationship with its subsidiaries designed to benefit itself at the expense of its subsidiaries.

115. From its inception as the ultimate parent company, Ally Financial focused on controlling the management of its subsidiaries to the point that it treated ResCap as an extension of itself, rather than as a subsidiary whose dealings were at arm's length.

116. ResCap, for example, did not conduct any operations whatsoever until GMAC Residential Holding Corp. and GMAC-RFC Holding Corp.—two of Ally Financial's wholly-owned subsidiaries—were transferred to it in March 2005. Those two subsidiaries represented substantially all of Ally Financial's mortgage loan securitization business.

117. On December 1, 2006, Ally Financial had its inaugural conference call with investors, at which time Rick Buxton, then head of Ally Financial's Investor Relations, "welcome[d everyone] to the beginning of a new era [of Ally Financial] as an independent global financial services company." On the same investor call, Eric Feldstein, then Ally Financial's CEO, demonstrated how Ally Financial was going to take initial steps to actively control its

subsidiaries. For instance, Feldstein declared that one of Ally Financial's first acts as controlling parent was "to integrate certain of GMAC mortgage operations . . . with RFC operations . . . to drive some cost efficiencies." *Id.*

118. Ally Financial has continued to exert its domination and control over ResCap via shared resources, management, and employees. For example, Ally Financial and ResCap shared at least three common board members, including two individuals who were active participants with respect to the intertwined relationship between Ally Financial and ResCap: (1) ResCap's Chairman and Ally Financial's CEO, Eric Feldstein; and (2) Ally Financial's CFO and a director of ResCap, Sanjiv Khattri. In fact, the 2005 Operating Agreement, between ResCap and Ally Financial, which Ally Financial filed with the SEC, and which upon information and belief is still currently in effect, "*requires* that [ResCap's] board of directors include at least two independent directors, to be *selected by GMAC*." Proposed Operating Agreement, Ex. 99.1 to Form 8-K, dated June 8. 2005 (emphasis added).

119. Ally Financial has continued to make additional public statements that further demonstrate its willingness to support and fund ResCap. For instance, during an investor earnings call in May 2007, Sanjiv Khattri, the Executive Vice President and Chief Financial Officer of Ally Financial, repeatedly made statements that Ally Financial's board of directors "will take whatever reasonable efforts that need to be done to maintain [ResCap's] earnings." Ally Financial's Q1 2007 Earnings Call at 24 (May 2, 2007). Khattri pointed to the fact that "the [Ally Financial] Board ... and [Ally Financial] did not hesitate to inject a billion dollars of equity when it was appropriate . . . ." Ally Financial's Q2 2007 Earnings Call at 9 (July 30, 2007). Khattri unequivocally stated that "all I can assure you [is] that if you look at the strategic plan of [Ally Financial], a strong ResCap with an investment grade rating is a key part of our plan and a key part of our value creation." *Id.* Thus, Ally Financial's senior management assured the

market that Ally Financial was supporting ResCap for the purposes of Ally Financial's own "value creation."

120. Indeed, Ally Financial's 2011 annual report states that "ResCap remains heavily dependent on [Ally Financial] and its affiliates for funding and capital support." Ally. Fin. Inc., Annual Report (Form 10-K), at 128 (Feb. 28, 2012).

121. Further, Ally Financial has established a "Mortgage Repurchase Reserve" account for the potentially significant liabilities stemming from repurchase demands made on its mortgage-related subsidiary business units. The balance of the Mortgage Repurchase Reserve was $825 million as of the fourth quarter of 2011. *See* Ally Financial's Q4 2011 Earnings Presentation at 16. Although these repurchase demands are generally made on Ally Financial's subsidiaries—such as GMACM—in discussing the reserve on an earnings call, Ally Financial CFO Jim Mackey made clear that it was Ally Financial that was recording "repurchase expense[s]" related to mortgages, as he stated that Ally Financial "had lower mortgage repurchase expense of $44 million." Ally Financial's Q4 2011 Earnings Call at 4 (Feb. 2, 2012).

122. Similarly, in discussing Ally Financial's Mortgage Repurchase Reserve on Ally Financial's third quarter 2011 earnings call, Mackey further described losses attributable to mortgage loan repurchases as belonging to Ally Financial when he stated: "Our mortgage repurchase reserve is [as it then stood] $829 million . . . . Our loss experience improved during the quarter due to the fact that we had fewer mortgage insurance rescission payments that we experienced last quarter and that did not repeat this quarter." Ally Financial's Q3 2011 Earnings Call at 6 (Nov. 2, 2011). On the same call, Ally Financial CEO Carpenter explained that "we have routinely repurchased problem loans voluntarily and by contract . . . ." *Id.* at 8.

123. Ally Financial describes its subsidiaries as its own business units rather than separate and distinct entities. For example, Ally Financial declares, in a section of its website specifically intended to inform investors, that GMACM is a "business unit" of Ally Financial rather than an indirect subsidiary owned by ResCap. *See* Ally Financial Website, Ally Home, About Ally, *available at* http://www.ally.com/about/investor/ (last visited May 7, 2012).

124. In addition to the domination and control Ally Financial exerts over its mortgage units, ResCap also viewed GMACM and RFC as part of its own business. For example, in its investor presentation from 2007, ResCap declares that GMACM and RFC "are owned and *operated* by GMAC Residential Capital Company, LLC [ResCap]." It further states that ResCap "is part of the [Ally Financial] family of companies." As discussed above, Ally Financial dominates and controls ResCap. Upon information and belief, when Ally Financial was not directly controlling GMACM and RFC, it used ResCap as an instrument to do so.

125. Ally Financial is currently using its subsidiaries' resources as its own in order to earn favorable ratings by credit rating agencies. For instance, a report put out by Moody's in November 2011 rated Ally Financial as an "above average" originator of mortgage loans. It is evident from that report that Ally Financial obtained such a rating by providing information related to its mortgage units, including GMACM and Ally Bank. Ally Financial itself is not engaged in the mortgage loan origination business. Instead, it is using its mortgage units as instruments to obtain more favorable ratings.

CAUSES OF ACTION

Claim 1: Breach of Contract Against GMACM, RAMP, ResCap, and Ally Financial

126. AGM re-alleges and incorporates by reference each paragraph above.

127. The 2004-HE3 I&I is a valid contract entered between AGM, and GMACM and RAMP. By its terms, the 2004-HE3 I&I essentially incorporates the representations, warranties and covenants made by the GMAC Entities in the 2004-HE3 MLPA and the 2004-HE3 SA.

128. AGM has performed all of its obligations under the 2004-HE3 I&I and the Policy.

129. As detailed more fully above, GMACM and RAMP failed to perform under the 2004-HE3 I&I, the 2004-HE3 MLPA, and the 2004-HE3 SA by, amongst other things: breaching certain representations and warranties contained in the 2004-HE3 I&I, the 2004-HE3 MLPA, and the 2004-HE3 SA; breaching the repurchase/cure provisions in the 2004-HE3 I&I, the 2004-HE3 MLPA, and the 2004-HE3 SA; failing to provide proper notice of Subsequent Mortgage Loan transfers under the 2004-HE3 MLPA; failing to provide documents as required under the 2004-HE3 I&I and 2004-HE3 SA; and breaching the reimbursement and indemnification provisions found in the 2004-HE3 I&I. This list is not exhaustive of the breaches that, on a full record, GMACM and RAMP will be shown to have committed.

130. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's and RAMP's actions as set forth in this cause of action.

131. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2004-HE3 securities covered under the Policy.

Claim 2: Breach of Contract Against RFC, RFMS, ResCap, and Ally Financial

132. AGM re-alleges and incorporates by reference each paragraph above.

133. The 2006-HSA3 I&I is a valid contract entered between AGM, and RFC and RFMS. By its terms, the 2006-HSA3 I&I incorporates the representations and warranties of the 2006-HSA3 HELPA and 2006-HSA3 SA.

134. AGM has performed all of its obligations under the 2006-HSA3 I&I and the Policy.

135. As detailed more fully above, RFC and RFMS have failed to perform under the 2006-HSA3 I&I by, amongst other things: breaching certain representations and warranties contained in the 2006-HSA3 HELPA, the 2006-HSA3 SA, and the 2006-HSA3 I&I; breaching the repurchase/substitution provisions in the 2006-HSA3 HELPA, the 2006-HSA3 SA, and the 2006-HSA3 I&I; and breaching the reimbursement and indemnification provisions found in the 2006-HSA3 I&I. This list is not exhaustive of the breaches that, on a full record, RFC and RFMS will be shown to have committed.

136. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's and RFMS's actions as set forth in this cause of action.

137. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2006-HSA3 securities covered under the Policy.

Claim 3: Breach of Contract Against Ally Bank, ResCap, and Ally Financial

138. AGM re-alleges and incorporates by reference each paragraph above.

139. The 2004-HE3 Custodial Agreement is a valid and binding agreement between the parties thereto.

140. AGM is an express third-party beneficiary of the Custodial Agreement.

141. As explained above, Ally Bank has materially breached its obligations under the Custodial Agreement by failing to provide documents relating to Subsequent Mortgage Loan transfers to AGM and by failing to notify AGM of GMACM's breaches of its representations and warranties.

142. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled Ally Bank's actions as set forth in this cause of action.

143. As a result of these breaches of contract, AGM has been damaged and will continue to be damaged in an amount to be determined at trial.

Claim 4: Breach of Contract Against GMACM, ResCap, and Ally Financial

144. AGM re-alleges and incorporates by reference each paragraph above.

145. The 2004-HE3 SA is a valid contract entered between AGM and GMACM.

146. AGM has performed all of its obligations under the 2004-HE3 SA.

147. As detailed more fully above, GMACM has failed to perform under the 2004-HE3 SA by, amongst other things: breaching its servicing obligations, including the terms referred to in Section 2.01; and failing to provide documents as required under the 2004-HE3 SA. This list is not exhaustive of the breaches that, on a full record, GMACM will be shown to have committed.

148. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's actions as set forth in this cause of action.

149. Each of GMACM's acts of breaching its servicing obligations under the 2004-HE3 SA was committed with misfeasance, bad faith, or gross negligence in the performance of its duties as Servicer or with reckless disregard of the obligations of the Servicer.

150. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2004-HE3 securities covered by the governing Policy.

Claim 5: Breach of Contract Against RFC, ResCap, and Ally Financial

151. AGM re-alleges and incorporates by reference each paragraph above.

152. The 2006-HSA3 SA is a valid contract entered between AGM and RFC.

153. AGM has performed all of its obligations under the 2006-HSA3 SA.

154. As detailed more fully above, RFC has failed to perform under 2006-HSA3 SA by, amongst other things: breaching its servicing obligations, including the terms referred to in Section 2.01; and failing to provide documents as required under the 2006-HSA3 SA. This list is not exhaustive of the breaches that, on a full record, RFC will be shown to have committed.

155. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's actions as set forth in this cause of action.

156. Each of RFC's acts of breaching its servicing obligations under the 2006-HSA3 SA was committed with misfeasance, bad faith, or gross negligence in the performance of its duties as Servicer or with reckless disregard of the obligations of the Servicer.

157. As a result, AGM has suffered damages in an amount to be determined at trial, but which include, at a minimum, any payments made to holders of the 2006-HSA securities covered by the Policy.

Claim 6: Reimbursement Against GMACM, RAMP, ResCap, and Ally Financial

158. AGM re-alleges and incorporates by reference each paragraph above.

159. Pursuant to Section 3.03 of the 2004-HE3 I&I, AGM is entitled to reimbursement for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to GMACM's and RAMP's breaches of representations, warranties, or covenants contained in the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

160. As detailed more fully above and as will be presented at trial, GMACM and RAMP have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in

order to enforce, defend, and preserve AGM's rights under the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

161. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's and RAMP's actions as set forth in this cause of action.

Claim 7: Indemnification Against GMACM, RAMP, ResCap, and Ally Financial

162. AGM re-alleges and incorporates by reference each paragraph above.

163. Pursuant to Section 3.04 of the 2004-HE3 I&I, AGM is entitled to indemnification for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to GMACM's and RAMP's breaches of representations, warranties, or covenants contained in the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

164. As detailed more fully above and as will be presented at trial, GMACM and RAMP have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in order to enforce, defend, and preserve AGM's rights under the 2004-HE3 MLPA, 2004-HE3 SA, and 2004-HE3 I&I.

165. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled GMACM's and RAMP's actions as set forth in this cause of action.

Claim 8: Reimbursement Against RFC, RFMS, ResCap, and Ally Financial

166. AGM re-alleges and incorporates by reference each paragraph above.

167. Pursuant to Section 3.03 of the 2006-HSA3 I&I, AGM is entitled to reimbursement for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to RFC's and RFMS's breaches of representations, warranties, or covenants contained in the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

168. As detailed more fully above and as will be presented at trial, RFC and RFMS have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in order to enforce, defend, and preserve AGM's rights under the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

169. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's and RFMS's actions as set forth in this cause of action.

Claim 9: Indemnification Against RFC, RFMS, ResCap, and Ally Financial

170. AGM re-alleges and incorporates by reference each paragraph above.

171. Pursuant to Section 3.04 of the 2006-HSA3 I&I, AGM is entitled to indemnification for all of its claims, losses, liabilities, demands, damages, costs, and expenses of any nature whatsoever relating to RFC's and RFMS's breaches of representations, warranties, or covenants contained in the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

172. As detailed more fully above and as will be presented at trial, RFC and RFMS have breached numerous representations, warranties, and covenants that have caused and will cause AGM to incur losses, costs, and/or expenses, in an amount to be determined at trial. AGM's costs and expenses include attorneys' fees and expert fees, incurred and to be incurred in order to enforce, defend, and preserve AGM's rights under the 2006-HSA3 HELPA, 2006-HSA3 SA, and 2006-HSA3 I&I.

173. Ally Financial, acting directly and/or indirectly through ResCap, directed and controlled RFC's and RFMS's actions as set forth in this cause of action.

PRAYER FOR RELIEF

174. AGM respectfully prays that this Court, cumulatively or alternatively:

(a) Award compensatory and consequential damages, and any other present and future damages to be proven at trial;

(b) Award a sum to be determined at trial to compensate AGM for its issuance of the Policies resulting from the Defendants' misrepresentations in the documents underlying the 2004-HE3 and 2006-HSA3 transactions and compensation for AGM's guarantee of certain payments of principal and interest on securities backed by a substantial number of mortgage loans that were underwritten in violation of relevant underwriting guidelines; were originated through misrepresentations, error, omissions, or negligence; and/or concerning which there were defects or deficiencies in the underlying loan documents;

(c) Order the GMAC Entities to comply with the reimbursement and indemnification provisions of the relevant agreements;

(d) Order reimbursement and indemnification for AGM's losses and expenses related to the GMAC Entities' breaches of their representations, warranties, and covenants, including attorneys' fees, expert expenses, and other costs;

(e) Order prejudgment interest pursuant to federal law and New York Civil Practice Law & Rules §§ 5001-5004; and

(f) Order such other legal and equitable relief as this Court deems proper.

Dated: May 11, 2012

SUSMAN GODFREY LLP

By: _____

Jacob W. Buchdahl
Arun Subramanian
SUSMAN GODFREY LLP
560 Lexington Ave., 15th Floor
New York, NY 10022
(212) 336-8330

Exhibit 27

JUDGE HOLWELL

11 CIV 7010

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK



FEDERAL HOUSING FINANCE AGENCY, as Conservator for the FEDERAL HOME LOAN MORTGAGE CORPORATION,

Plaintiff,

– against –

ALLY FINANCIAL INC. f/k/a GMAC, LLC, GMAC MORTGAGE GROUP, INC., RESIDENTIAL CAPITAL LLC f/k/a RESIDENTIAL CAPITAL CORPORATION, GMAC-RFC HOLDING COMPANY, LLC d/b/a GMAC RESIDENTIAL FUNDING CORPORATION, RESIDENTIAL FUNDING COMPANY, LLC f/k/a RESIDENTIAL FUNDING CORPORATION, ALLY SECURITIES, LLC f/k/a RESIDENTIAL FUNDING SECURITIES, LLC d/b/a GMAC RFC SECURITIES and f/k/a RESIDENTIAL FUNDING SECURITIES CORPORATION, RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC., RESIDENTIAL ASSET SECURITIES CORPORATION, RESIDENTIAL ACCREDIT LOANS, INC., J.P. MORGAN SECURITIES LLC f/k/a J.P. MORGAN SECURITIES, INC. and as Successor-in-Interest to BEAR, STEARNS & CO., INC., CREDIT SUISSE SECURITIES (USA) LLC f/k/a/ CREDIT SUISSE FIRST BOSTON LLC, RBS SECURITIES, INC. d/b/a RBS GREENWICH CAPITAL and f/k/a GREENWICH CAPITAL MARKETS, INC., CITIGROUP GLOBAL MARKETS INC., BARCLAYS CAPITAL INC., UBS SECURITIES LLC, and GOLDMAN, SACHS & CO.,

Defendants.

NOTICE OF REMOVAL

Action Removed From Supreme Court, New York County, Index No. 652441/2011

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1452 and 1441(b), the undersigned defendants (the "Removing Defendants") hereby remove this action to this Court from the Supreme Court of the State of New York, County of New York ("Supreme Court"), where it was pending under Index No. 652441/2011. As grounds for removal, the Removing Defendants state as follows:

1. The action's removal is authorized by 28 U.S.C. § 1452 because this action is related to cases under the Bankruptcy Code, Title 11 of the United States Code, and therefore within the jurisdiction supplied by 28 U.S.C. § 1334(b).

2. The action's removal is also authorized by 28 U.S.C. § 1441(b) because the action arises under the laws of the United States by virtue of the provision of 12 U.S.C. § 1452(f)(2) that all civil actions to which the Federal Home Loan Mortgage Corporation "is a party shall be deemed to arise under the laws of the United States."

3. This action also falls within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1331 (laws of the United States), 28 U.S.C. § 1345 (federal agency action) and/or § 1349 (federally-owned and chartered corporation).

I. Background And Procedural Matters

A. The Federal Actions

4. On July 27, 2011 and September 2, 2011, the Federal Housing Finance Agency ("FHFA"), as Conservator for the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and in most instances also as Conservator for the Federal National Mortgage Association ("Fannie Mae"), filed in this Court thirteen substantially similar actions (the "Federal Actions") arising out of the alleged purchase by Freddie Mac and Fannie Mae of residential mortgage-backed securities ("RMBS") in the period from

2005 to 2007. Plaintiffs assert claims under the Securities Act of 1933 (the "Securities Act"), state Blue Sky Laws, and the common law.

5. This Court has recognized that the Federal Actions "preliminarily appear to bear substantial similarities and to raise similar issues," and it has directed the submission of a joint report (or separate reports if agreement cannot be reached) on or before October 19, 2011 describing the similarities and differences among the Federal Actions and proposing means for the most efficient and convenient handling of these substantially similar actions. *See* Order, *FHFA as Conservator etc. v. HSBC N. Am. Holdings, Inc. et al.*, No. 11 Civ. 6189 (LAK) (S.D.N.Y. Sept. 16, 2011) (DE 4).

B. This Action And The Other State-Court Actions

6. On September 2, 2011, FHFA filed this action in Supreme Court. Here, as in the Federal Actions, FHFA asserts common-law claims, Securities Act claims, and state Blue Sky claims arising out of alleged Freddie Mac RMBS purchases between 2005 and 2007. At issue in this action are claims related to securities from 21 securitizations in which the depositor was a subsidiary of Ally Financial Inc. ("Ally"). (Ally, once known as GMAC and before that as General Motors Acceptance Corp., is currently majority owned by the United States Treasury.) The defendants in the action are the depositors of loans in the 21 securitizations, various Ally subsidiaries alleged to control the depositors, Ally, and certain underwriters. Underwriter defendant Residential Funding Securities, LLC is an Ally subsidiary. The other underwriter defendants are unaffiliated with Ally, and they are all also defendants in at least one of the Federal Actions. The defendants in this action deny liability.

7. On September 2, 2011, FHFA also filed three additional similar actions in Supreme Court. At least two of these actions, *FHFA as Conservator etc. v. Morgan Stanley et al.*, and *FHFA as Conservator etc. v. Countrywide Financial Corp. et al.,* already have been removed to this Court and are pending as Case No. 11 Civ. 6739 (PKC) and Case No. 11 Civ. 6916 (unassigned).

C. Procedural Matters

8. In compliance with the venue provisions of 28 U.S.C. § 1446(a) and Fed. R. Bankr. P. 9027(a)(1), this Court is the district court for the district and division within which the action has been pending.

9. The claims asserted against the Removing Defendants are not core proceedings within the meaning of 28 U.S.C. § 157(b). The Removing Defendants do not consent to entry of final orders or judgments by the bankruptcy judge.

10. No defendant was served with the summons herein more than 30 days prior to the date hereof, and so removal is timely under 28 U.S.C. § 1446(b) and Fed. R. Bankr. P. 9027(a)(3).

11. The only papers served on the Removing Defendants, and the only process or pleadings in the action to date, are the summons and complaint reproduced, in accordance with 28 U.S.C. § 1446(a) and Fed. R. Bankr. P. 9027(a)(1), as Exhibit A hereto. Also filed with Supreme Court last month was the stipulation extending the defendants' time to respond to the complaint, reproduced as Exhibit B hereto.

12. Pursuant to 28 U.S.C. § 1446(d) and Fed. R. Bankr. P. 9027(b)-(c), the Removing Defendants will serve plaintiff's attorneys with a copy of this Notice of Removal and will file a copy thereof with the Clerk of Supreme Court.

II. Grounds For Removal

A. Bankruptcy Jurisdiction Removal

13. This action may be removed under 28 U.S.C. § 1452(a) because it is a civil proceeding "related to" several cases under the Bankruptcy Code, and this Court therefore has original jurisdiction over this action under 28 U.S.C. § 1334(b).

14. The allegations against the Removing Defendants relate to the following RMBS, each of which contains mortgages originated, or originally purchased and resold, by entities that are in bankruptcy or that are subsidiaries of bankrupt entities and against which one or more of the Removing Defendants has potential claims for indemnification and/or contribution (the "Bankrupt Originators/Sellers"). The Bankrupt Originators/Sellers include, but are not limited to, the following:

Offering	*Bankrupt Originators/Sellers*
RALI 2005-QO4	Choice Capital Funding; Lancaster Mortgage Bankers LLC
RALI 2006-QO4	Choice Capital Funding
RALI 2006-QO5	Aegis Wholesale Corporation; Choice Capital Funding; Franklin Bank Corporation
RALI 2006-QO8	Aegis Wholesale Corporation; Cameron Financial Group, Inc.; Choice Capital Funding; ComUnity Lending, Inc.; First Magnus Financial Corporation; Franklin Bank Corporation; Mortgage Lender's Network
RALI 2006-QO9	Aegis Wholesale Corporation; Cameron Financial Group, Inc.; Choice Capital Funding; ComUnity Lending, Inc.; First Magnus Financial Corporation; Franklin Bank Corporation
RALI 2007-QH5	First Magnus Financial Corporation

Offering	*Bankrupt Originators/Sellers*
RAMP 2005-NC1	First Magnus Financial Corporation; New Century Mortgage Corporation; Premier Mortgage Funding, Inc.
RAMP 2005-RS9	Accredited Home Lenders, Inc.; Ace Mortgage Funding; Alliance Bancorp; American Home Mortgage Acceptance, Inc.; American Home Mortgage Investment Corporation; Cameron Financial Group, Inc.; Choice Capital Funding; ComUnity Lending, Inc.; First Magnus Financial Corporation; First NLC Financial Services LLC; Franklin Bank Corporation; Homebanc Mortgage Corporation; Maverick Residential Mortgage; Mortgage Lender's Network; New Century Mortgage Corporation; Oak Street Mortgage LLC; People's Choice Home Loan, Inc.; Premier Mortgage Funding, Inc.; Realty Mortgage Corporation
RAMP 2006-RS1	Accredited Home Lenders, Inc.; Ace Mortgage Funding; Alliance Bancorp; American Home Mortgage Acceptance, Inc.; Choice Capital Funding; ComUnity Lending, Inc.; First Magnus Financial Corporation; First NLC Financial Services LLC; Homebanc Mortgage Corporation; Lancaster Mortgage Bankers LLC; Mortgage Lender's Network; Oak Street Mortgage LLC; Premier Mortgage Funding, Inc.
RASC 2005-EMX3	Mortgage Lender's Network USA Inc.; Premier Mortgage Funding, Inc.
RASC 2005-KS10	American Home Mortgage Acceptance, Inc.; American Home Mortgage Investment Corporation; Choice Capital Funding; Fieldstone Mortgage Company; Franklin Bank Corporation; Homebanc Mortgage Corporation; Lancaster Mortgage Bankers LLC; Mortgage Lender's Network; New Century Mortgage Corporation; Oak Street Mortgage LLC; People's Choice Home Loan, Inc.; Premier Mortgage Funding, Inc.

Offering	*Bankrupt Originators/Sellers*
RASC 2005-KS11	Choice Capital Funding; First NLC Financial Services LLC; Lancaster Mortgage Bankers LLC; Mortgage Lender's Network; New Century Mortgage Corporation; Oak Street Mortgage LLC; People's Choice Home Loan, Inc.; Premier Mortgage Funding, Inc.; Realty Mortgage Corporation
RASC 2006-EMX8	First Magnus Financial Corporation; Mortgage Lender's Network; Premier Mortgage Funding, Inc.
RASC 2006-EMX9	First Magnus Financial Corporation; Mortgage Lender's Network; Premier Mortgage Funding, Inc.
RASC 2006-KS3	American Home Mortgage Acceptance, Inc.; American Home Mortgage Investment Corporation; Accredited Home Lenders, Inc.; Choice Capital Funding; First NLC Financial Services LLC; Homebanc Mortgage Corporation; Oak Street Mortgage LLC; People's Choice Home Loan, Inc.; Premier Mortgage Funding, Inc.; Realty Mortgage Corporation
RASC 2006-KS9	Aegis Mortgage Corporation; Choice Capital Funding; First Magnus Financial Corporation; Meritage Mortgage Corporation; New Century Mortgage Corporation; Oak Street Mortgage LLC; OwnIt Mortgage Solutions, Inc.; People's Choice Home Loan, Inc.
RASC 2007-EMX1	Mortgage Lender's Network.; Premier Mortgage Funding, Inc.
RASC 2007-KS2	Ace Mortgage Funding; Choice Capital Funding; Maverick Residential Mortgage; New Century Mortgage Corporation; Oak Street Mortgage LLC; OwnIt Mortgage Solutions, Inc.; People's Choice Home Loan, Inc.; Realty Mortgage Corporation

Offering	*Bankrupt Originators/Sellers*
RASC 2007-KS3	Ace Mortgage Funding; Aegis Mortgage Corporation; Choice Capital Funding; Homebanc Mortgage Corporation; Meritage Mortgage Corporation; New Century Mortgage Corporation; Oak Street Mortgage LLC; OwnIt Mortgage Solutions, Inc.; People's Choice Home Loan, Inc.; Premier Mortgage Funding, Inc.; Realty Mortgage Corporation

15. Ace Mortgage Funding is the subject of a Bankruptcy Code case commenced November 5, 2008, in the United States Bankruptcy Court for the District of Delaware, *In re Ace Mortgage Funding, LLC*, Case No. 08-12645.

16. Aegis Mortgage Corp. is the subject of a Bankruptcy Code case commenced August 13, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re Aegis Mortgage Corporation*, Case No. 07-11119.

17. Aegis Wholesale Corp. is the subject of a Bankruptcy Code case commenced August 13, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re Aegis Wholesale Corp.*, Case No. 07-11120.

18. Alliance Bancorp and Alliance Bancorp Inc. are the subjects of Bankruptcy Code cases commenced December 20, 2007 and July 13, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re Alliance Bancorp*, Case No. 07-10942, and *In re Alliance Bancorp, Inc.,* Case No. 07-10943.

19. American Home Mortgage Investment Corp. and American Home Mortgage Acceptance, Inc. are the subjects of a Bankruptcy Code case commenced August 6, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re American Home Mortgage Holdings, Inc., et al.*, Case No. 07-11047.

20. Accredited Home Lenders, Inc. is the subject of a Bankruptcy Code case commenced May 1, 2009, in the United States Bankruptcy Court for the District of Delaware, *In re Accredited Home Lenders Holding, Co. et al.*, Case No. 09-11516.

21. Cameron Financial Group is the subject of a Bankruptcy Code case commenced February 19, 2008, in the United States Bankruptcy Court for the Central District of California, *In re Cameron Financial Group,* Case No. 08-10322.

22. Choice Capital Funding is the subject of a Bankruptcy Code case commenced July 5, 2007, in the United States Bankruptcy Court for the Northern District of Georgia, *In re Choice Capital Funding, Inc.*, Case No. 07-70717.

23. ComUnity Lending, Inc. is the subject of a Bankruptcy Code case commenced January 4, 2008, in the United States Bankruptcy Court for the Northern District of California, *In re ComUnity Lending, Incorporated, a California Corporation*, Case No. 08-50030.

24. Fieldstone Mortgage Company is the subject of a Bankruptcy Code case commenced November 23, 2007, in the United States Bankruptcy Court for the District of Maryland, *In re Fieldstone Mortgage Co.*., Case No. 07-21814-JS.

25. First Magnus Financial Corp. is the subject of a Bankruptcy Code case commenced August 21, 2007, in the United States Bankruptcy Court for the District of Arizona, *In re First Magnus Financial Corp.*, Case No. 4:07-bk-01578-JMM.

26. First NLC Financial Services LLC is the subject of a Bankruptcy Code case commenced January 18, 2008, in the United States Bankruptcy Court for the Southern District of Florida, *In re First NLC Financial Services, LLC, et al.*, Case No. 08-10632.

27. Franklin Bank Corporation is the subject of a Bankruptcy Code case commenced November 12, 2008, in the United States Bankruptcy Court for the District of Delaware, *In re Franklin Bank Corporation,* Case No. 08-12924.

28. Homebanc Mortgage Corporation is the subject of a Bankruptcy Code case commenced August 9, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re Homebanc Mortgage Corporation, et al.*, Case No. 07-11079.

29. Lancaster Mortgage Bankers, LLC is the subject of a Bankruptcy Code case commenced August 31, 2007, in the United States Bankruptcy Court for the District of New Jersey, *In re Lancaster Mortgage Bankers, LLC*, Case No. 07-22479-MBK. Upon information and belief, Lancaster Mortgage Bankers LLC originated mortgages under the name Lancaster Mortgage Services ("Lancaster").

30. Maverick Residential Mortgage, a/k/a The Mortgage Company, is the subject of a Bankruptcy Code case commenced February 13, 2008, in the United States Bankruptcy Court for the Eastern District of Texas, *In re Maverick Residential Mortgage, Inc.,* Case No. 08-40352.

31. Meritage Mortgage Corporation is the subject of a Bankruptcy Code case commenced February 17, 2009, in the United States Bankruptcy Court for the Northern District of Texas, *In re Meritage Mortgage Corporation,* Case No. 09-30971.

32. Mortgage Lender's Network USA, Inc. is the subject of a Bankruptcy Code case commenced February 4, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re Mortgage Lender's Network USA, Inc.*, Case No. 07-10146.

33. New Century Mortgage Corporation is the subject of a Bankruptcy Code case commenced April 2, 2007, in the United States Bankruptcy Court for the District of Delaware, *In re New Century TRS Holdings, Inc., et al.,* Case No. 07-10416.

34. Oak Street Mortgage, LLC is the subject of a Bankruptcy Code case commenced June 8, 2007, in the United States Bankruptcy Court for the Southern District of Illinois, *In re Oak Street Mortgage, LLC*, Case No. 07-05279.

35. OwnIt Mortgage Solutions, Inc. is the subject of a Bankruptcy Code case commenced December 28, 2006, in the United States Bankruptcy Court for the Central District of California, *In re OwnIt Mortgage Solutions, Inc.,* Case No. SV-06-12579.

36. People's Choice Home Loan, Inc. is the subject of a Bankruptcy Code case commenced March 14, 2007, in the United States Bankruptcy Court for the Central District of California, *In re People's Choice Home Loan, Inc.,* Case No. SA 07-10765.

37. Premier Mortgage Funding, Inc. is the subject of a Bankruptcy Code case commenced July 3, 2007 in the United States Bankruptcy Court for the Middle District of Florida, *In re Premier Mortgage Funding, Inc.*, Case No. 8:07-BK-05713.

38. Realty Mortgage Corporation is the subject of a Bankruptcy Code case commenced February 18, 2009, in the United States Bankruptcy Court for the Southern District of Mississippi, *In re Realty Mortgage Corporation,* Case No. 09-00544.

39. In selling the mortgage loan collateral to certain of the Removing Defendants, each Bankrupt Originator/Seller made representations to one or more of the Removing Defendants regarding that Bankrupt Originator/Seller's loan-underwriting standards and the characteristics of the mortgage-loan collateral for the RMBS — the very

subjects of plaintiff's allegations. (*See, e.g.*, Compl. ¶¶ 71-77, 103-126.) Pursuant to sale agreements that contained indemnification and/or contribution provisions for one or more of the Removing Defendants, the Bankrupt Originators/Sellers owe these Removing Defendants indemnification and/or contribution for any claims arising out of actual or alleged material misstatements or omissions by the Bankrupt Originators/Sellers regarding their underwriting practices and the mortgage loans at issue. These agreements further require the Bankrupt Originators/Sellers to indemnify one or more of the Removing Defendants for the costs (including legal fees) of defending such claims, regardless of their outcome.

40. A civil proceeding is "related to" a bankruptcy if "its outcome might have any conceivable effect on the bankrupt estate." *Publicker Indus., Inc. v. United States (In re Cuyahoga Equip. Corp.)*, 980 F.2d 110, 114 (2d Cir. 1992). A proceeding between non-debtors may have a "conceivable effect" on the bankruptcy estate where "the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Back v. LTV Corp. (In re Chateaugay Corp.)*, 214 B.R. 633, 638 (S.D.N.Y. 1997). This Action is related to the bankruptcy cases of the Bankrupt Originators/Sellers because the Bankrupt Originators/Sellers owe one or more of the Removing Defendants an indemnity obligation, which, as a result of any costs or expenses incurred by the Removing Defendants to defend this Action and any judgment against the Removing Defendants, could affect the property of the Bankrupt Originators/Sellers. *See IIG Capital LLC v. Wollmuth Maher & Deutsch, LLP (In re Amanat)*, 338 B.R. 574, 579-81 (Bankr. S.D.N.Y. 2005). In addition, removal is proper

under section 1452(a) as this action has a "close nexus" to these proceedings. *See Allstate Ins. Co. v. Ace Secs. Corp.*, No. 11 Civ. 1914 (LBS), 2011 U.S. Dist. LEXIS 91989, at *13-15 (S.D.N.Y. Aug. 16, 2011).

41. An indemnity obligation that affects the property of debtors gives rise to "related to" jurisdiction under 28 U.S.C. § 1334(b). The Removing Defendants may therefore remove this Action to this Court pursuant to 28 U.S.C. § 1452(a). *See Allstate*, 2011 U.S. Dist. LEXIS 91989, at *14-15 (claims for indemnification and contribution against bankrupt mortgage originators created "related to" bankruptcy jurisdiction).

42. The non-removal provisions of Section 22(a) of the Securities Act of 1933 does not bar removal under 28 U.S.C. § 1452(a). *See Cal. Pub. Employees. Ret. Sys. v. Worldcom, Inc.*, 368 F.3d 86, 108 (2d Cir. 2004).

B. Federal-Question Jurisdiction Removal

43. This action may be removed under 28 U.S.C. § 1441(b) because the action arises under the laws of the United States by virtue of 12 U.S.C. § 1452(f)(2), which states that all civil actions to which Freddie Mac "is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions." Under 28 U.S.C. § 1441(c), it is clear that "the entire case" may be removed when one of the plaintiff's claims arises under the laws of the United States, even if that claim is "joined with one or more otherwise non-removable claims or causes of action."

44. The complaint in this action makes clear that FHFA is acting on behalf of, and in the name of Freddie Mac, making Freddie Mac a party to this action. (Compl. ¶ 11.) Under the Housing and Economic Recovery Act of 2008 ("HERA"), Pub.

L. No. 110-289, 122 Stat. 2654, FHFA "shall, as conservator or receiver, and by operation of law, immediately succeed to (i) all rights, titles, powers, and privileges of the regulated entity," and may "perform all functions of the regulated entity in the name of the regulated entity." 12 U.S.C. §§ 4617(b)(2)(A), 4617(b)(2)(B)(iii). Because FHFA succeeded to Freddie Mac's rights, titles and privileges, FHFA stands in Freddie Mac's shoes and *is* Freddie Mac for all relevant legal purposes. Courts construing similar language in similar acts have reached the same conclusion that the agency "stepped 'into the shoes'" of the depository institution. *See, e.g., Waterview Mgmt. Co. v. FDIC*, 105 F.3d 696, 700-701 (D.C. Cir. 1997); *accord O'Melveny & Myers v. FDIC*, 512 U.S. 79 (1994) (finding that same provision "places [the federal agency] in the shoes of the insolvent S&L.").

45. Securities Act § 22(a) does not preclude removal under 28 U.S.C. § 1441(b). *See*, *e.g.*, *Gallagher v. Donald*, 803 F. Supp. 899, 902-04 (S.D.N.Y. 1992); *Pacific Life Ins. Co.* v. *J.P. Morgan Chase & Co.*, No. SA CV 03-813GLT (ANX), 2003 WL 22025158, at *2 (C.D. Cal. June 30, 2003) ("Section 22(a) proscribes removal based on federal question jurisdiction under 28 U.S.C. § 1441(a), but does not prevent removal based on other grounds."); *see also In re Fannie Mae 2008 Sec. Litig.*, No. 08 Civ. 7831, 09 Civ. 1352, 2009 WL 4067266, at *2-3 (S.D.N.Y. Nov. 24, 2009) (holding that because "federal courts have jurisdiction over Fannie Mae," removal of an action asserting claims under the Securities Act "was appropriate.")

III. Other Bases Of Subject-Matter Jurisdiction

A. Federal Question Jurisdiction

46. This Court has subject-matter jurisdiction over this action based on Securities Act § 22(a) and 28 U.S.C. § 1331.

B. Federal Agency And/Or Federal Corporation Jurisdiction

47. As additional or alternative bases for subject-matter jurisdiction, the Court has subject matter jurisdiction under 28 U.S.C. § 1345 (federal agency action) and/or 28 U.S.C. § 1349 (federally-owned and chartered corporation). FHFA is an agency of the United States, 12 U.S.C. § 4511(a), expressly authorized to sue on behalf of Freddie Mac under 12 U.S.C. § 4617(b)(2)(A) and 12 U.S.C. § 1452(c)(7).

WHEREFORE, the Removing Defendants hereby remove this civil action to this Court from the Supreme Court of the State of New York, County of New York.

Dated: New York, New York
October 6, 2011

MAYER BROWN LLP

By: _____
Richard A. Spehr
rspehr@mayerbrown.com
Michael O. Ware
mware@mayerbrown.com
S. Christopher Provenzano
cprovenzano@mayerbrown.com

1675 Broadway
New York, N.Y. 10019
(212) 506-2500

Attorneys for defendants Ally Financial Inc.; GMAC Mortgage Group, Inc.; Residential Capital LLC; GMAC-RFC Holding Company, LLC; Residential Funding Company, LLC; Ally Securities, LLC; Residential Asset Mortgage Products, Inc.; Residential Asset Securities Corporation; and Residential Accredit Loans, Inc.

TO: CLERK OF THE COURT
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK
500 Pearl St.
New York, N.Y. 10007

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP
1633 Broadway
New York , N.Y. 10019
Attorneys for plaintiff

SULLIVAN & CROMWELL LLP
125 Broad St.
New York, N.Y. 10004
Attorneys for defendants Barclays Capital Inc., Goldman, Sachs & Co. and J.P. Morgan Securities LLC

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, N.Y. 10019
Attorneys for defendant Citigroup Global Markets Inc.

CRAVATH, SWAIN & MOORE LLP
Worldwide Plaza
825 Eighth Ave.
New York, N.Y. 10019
Attorneys for defendant Credit Suisse Securities (USA) LLC.

SIMPSON THACHER & BARTLETT LLP
425 Lexington Ave.
New York, N.Y. 10017
Attorneys for defendant RBS Securities, Inc.

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
Four Times Square
New York, N.Y. 10036
Attorneys for defendant UBS Securities LLC

Exhibit A
to Notice of Removal

Summons and Complaint

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Plaintiff,

-against-

ALLY FINANCIAL INC. f/k/a GMAC, LLC, GMAC MORTGAGE GROUP, INC., RESIDENTIAL CAPITAL LLC f/k/a RESIDENTIAL CAPITAL CORPORATION, GMAC-RFC HOLDING COMPANY, LLC d/b/a GMAC RESIDENTIAL FUNDING CORPORATION, RESIDENTIAL FUNDING COMPANY, LLC f/k/a RESIDENTIAL FUNDING CORPORATION, ALLY SECURITIES, LLC f/k/a RESIDENTIAL FUNDING SECURITIES, LLC d/b/a GMAC RFC SECURITIES AND f/k/a RESIDENTIAL FUNDING SECURITIES CORPORATION, RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC., RESIDENTIAL ASSET SECURITIES CORPORATION, AND RESIDENTIAL ACCREDIT LOANS, INC., J.P. MORGAN SECURITIES LLC f/k/a J.P. MORGAN SECURITIES, INC. AND AS SUCCESSOR-IN-INTEREST TO BEAR, STEARNS & CO. INC., CREDIT SUISSE SECURITIES (USA) LLC f/k/a CREDIT SUISSE FIRST BOSTON LLC, RBS SECURITIES, INC. d/b/a RBS GREENWICH CAPITAL AND f/k/a GREENWICH CAPITAL MARKETS, INC., CITIGROUP GLOBAL MARKETS INC., BARCLAYS CAPITAL INC., UBS SECURITIES LLC, GOLDMAN, SACHS & CO.,

Defendants.

Index No._____
Date Purchased: September 2, 2011

Plaintiff designates New York County as the place of trial

The basis of venue is the residence of one or more of the parties pursuant to CPLR §503

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or if the Complaint is not served with this summons, to serve a notice of appearance on Plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to your within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
September 2, 2011

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: /s/ Marc E. Kasowitz
Marc E. Kasowitz (mkasowitz@kasowitz.com)
Hector Torres (htorres@kasowitz.com)
Michael S. Shuster (mshuster@kasowitz.com)
Christopher P. Johnson (cjohnson@kasowitz.com)
Charles M. Miller (cmiller@kasowitz.com)
Michael A. Hanin (mhanin@kasowitz.com)

1633 Broadway
New York, New York 10019
(212) 506-1700

Attorneys for Plaintiff Federal Housing Finance Agency, as Conservator for the Federal Home Loan Mortgage Corporation

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL HOME LOAN MORTGAGE CORPORATION,

Plaintiff,

-against-

ALLY FINANCIAL INC. f/k/a GMAC, LLC, GMAC MORTGAGE GROUP, INC., RESIDENTIAL CAPITAL LLC f/k/a RESIDENTIAL CAPITAL CORPORATION, GMAC-RFC HOLDING COMPANY, LLC d/b/a GMAC RESIDENTIAL FUNDING CORPORATION, RESIDENTIAL FUNDING COMPANY, LLC f/k/a RESIDENTIAL FUNDING CORPORATION, ALLY SECURITIES, LLC f/k/a RESIDENTIAL FUNDING SECURITIES, LLC d/b/a GMAC RFC SECURITIES and f/k/a RESIDENTIAL FUNDING SECURITIES CORPORATION, RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC., RESIDENTIAL ASSET SECURITIES CORPORATION, and RESIDENTIAL ACCREDIT LOANS, INC., J.P. MORGAN SECURITIES LLC f/k/a J.P. MORGAN SECURITIES, INC. and as successor-in-interest to BEAR, STEARNS & CO. INC., CREDIT SUISSE SECURITIES (USA) LLC f/k/a CREDIT SUISSE FIRST BOSTON LLC, RBS SECURITIES, INC. d/b/a RBS GREENWICH CAPITAL and f/k/a GREENWICH CAPITAL MARKETS, INC., CITIGROUP GLOBAL MARKETS INC., BARCLAYS CAPITAL INC., UBS SECURITIES LLC, and GOLDMAN, SACHS & CO.,

Defendants.

Index No._____

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Plaintiff Federal Housing Finance Agency ("Plaintiff" or "FHFA"), as Conservator of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), by its attorneys Kasowitz, Benson, Torres & Friedman LLP, for its Complaint against the defendants named herein ("Defendants"), alleges as follows:

NATURE OF ACTION

1. This action arises from false and misleading statements and omissions in registration statements, prospectuses, and other offering materials pursuant to which certain residential mortgage-backed securities ("RMBS") were purchased by Freddie Mac. Among other things, these documents falsely represented that the mortgage loans underlying the RMBS complied with certain underwriting guidelines and standards, and presented a false picture of the characteristics and riskiness of those loans. These representations were material to Freddie Mac, as they would have been to any reasonable investor, and their falsity violates Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, as well as Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code. Freddie Mac justifiably relied on Defendants' misrepresentations and omissions of material fact to its detriment. In addition to its strict statutory liability under federal securities law and liability under state law, Defendants' statements and omissions give rise to liability under state common law.

2. Between September 23, 2005 and May 30, 2007, Freddie Mac purchased over $6 billion in Certificates issued in connection with 21 securitizations that were virtually all sponsored and underwritten by Defendants.[1]

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[1] For purposes of this Complaint, the securities issued under the Registration Statements (as defined in note 2, *infra*) are referred to as "Certificates." Holders of Certificates are referred to as "Certificateholders."

3. The Certificates were offered for sale pursuant to one of six shelf registration statements (the "Shelf Registration Statements") filed with the Securities and Exchange Commission (the "SEC"). For each of the 21 securitizations sold to Freddie Mac (the "Securitizations"), a prospectus ("Prospectus") and prospectus supplement ("Prospectus Supplement") were filed with the SEC as part of the Registration Statement for that Securitization.[2] The Certificates were marketed and sold to Freddie Mac pursuant to the Registration Statements.

4. The Registration Statements contained representations concerning, among other things, the characteristics and credit quality of the mortgage loans underlying the Securitizations, the creditworthiness of the borrowers on those underlying mortgage loans, and the origination and underwriting practices used to make and approve the loans. Such representations were material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. Unbeknownst to Freddie Mac, those representations were false because, among other reasons, many of material percentages of the underlying mortgage loans were not originated in accordance with the represented underwriting standards and origination practices, and did not have the credit and other characteristics set forth in the Registration Statements.

5. Among other things, the Registration Statements presented the loan origination guidelines of the mortgage loan originators who originated the loans that underlay the Certificates. The Registration Statements falsely represented that those guidelines were adhered to except in specified circumstances, when in fact the guidelines systematically were disregarded in that the loans were not originated in accordance therewith.

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[2] The term "Registration Statement" as used herein incorporates the Shelf Registration Statement, the Prospectus, and the Prospectus Supplement and in Appendix A for each referenced Securitization, except where otherwise indicated.

6. The Registration Statements also set forth for each Securitization statistical summaries of the characteristics of the underlying mortgage loans, such as the percentage of loans secured by owner-occupied properties and the percentage of the loan group's aggregate principal balance with loan-to-value ratios within specified ranges. This information was material to reasonable investors, and it was material to Freddie Mac. However, a loan-level analysis of a sample of loans for each Securitization -- a review that encompassed in the aggregate thousands of mortgages across all of the Securitizations -- has revealed that for each Securitization these statistical summaries were false and misleading. The statistics reflected or were based upon misrepresentations of other key characteristics of the mortgage loans and inflated property values.

7. For example, the percentage of owner-occupied properties in the loan pool underlying a RMBS is a material risk factor to the purchasers of certificates, such as Freddie Mac, because a borrower who actually lives in a mortgaged property is generally less likely to stop paying the mortgage and more likely to take care of the property. The loan-level review revealed that the true percentage of owner-occupied properties for the loans supporting the Certificates was materially lower than that represented in the Prospectus Supplements. Likewise, the Prospectus Supplements misrepresented such material information as loan-to-value ratios -- that is, the relationship between the principal amount of the loans and the true value of the mortgaged properties securing those loans -- and the ability of the individual mortgage holders to satisfy their debts.

8. The Registration Statements also set forth ratings for each of the Securitizations. Those AAA ratings were material to a reasonable investor's decision to purchase the Certificates, and they were material to Freddie Mac. The ratings for the Securitizations were materially

inaccurate and were based upon false information supplied by Defendants. Upon information and belief, neither the Defendants nor the rating agencies who issued the ratings believed or had any sound basis to believe in their truthfulness.

9. Defendants, who are issuers, sponsors, and/or underwriters of the Certificates purchased by Freddie Mac are liable for the misstatements and omissions of material fact contained in the Registration Statements and other offering materials because they prepared, filed, and/or used these documents to market and sell the Certificates to Freddie Mac, or because they directed and controlled the entities that did so.[3]

10. Defendants misstatements and omissions of material facts have caused loss and injury to Freddie Mac. Freddie Mac purchased the highest tranches of Certificates offered for sale by Defendants. Freddie Mac would not have purchased these Certificates but for Defendants material misrepresentations and omissions concerning the mortgage loans underlying the RMBS. As the truth concerning the misrepresented and omitted facts has come to light, and as the hidden risks have materialized, the market value of the Certificates purchased by Freddie Mac has declined. Freddie Mac has suffered enormous financial losses as a result of Defendants misrepresentations and omissions. FHFA, as Conservator for Freddie Mac, now seeks rescission and damages for those losses.

PARTIES

Plaintiff

11. Plaintiff the Federal Housing Finance Agency is a federal agency located at 1700 G Street, NW in Washington, D.C. FHFA was created on July 30, 2008, pursuant to the Housing and Economic Recovery Act of 2008 (HERA), Pub L. No. 110-289, 122 Stat. 2654,

[3] The Certificates purchased by Freddie Mac are identified below in paragraph 130 and are listed *infra* in Table 10.

codified at 12 U.S.C. § 4617 *et seq.* ("HERA"), to oversee the Federal National Mortgage Association ("Fannie Mae"), Freddie Mac and the Federal Home Loan Banks. On September 6, 2008, the Director of FHFA, also pursuant to HERA, placed Freddie Mac into conservatorship and appointed FHFA as Conservator. In that capacity, FHFA has the authority to exercise all rights and remedies of Freddie Mac, including, but not limited to, the authority to bring suits on behalf of and/or for the benefit of Freddie Mac. 12 U.S.C. § 4617(b)(2).

12. Freddie Mac is a government-sponsored enterprise chartered by Congress with a mission to provide liquidity, stability and affordability to the United States housing and mortgage markets. As part of this mission, Freddie Mac invested in RMBS. Freddie Mac is located at 8200 Jones Branch Drive in McLean, Virginia.

Defendants

GMAC Defendants

13. Defendant Ally Financial Inc. ("Ally"), a leading, multi-national financial services firm with a corporate center in New York, has approximately $179 billion of assets and operations in approximately 25 countries. Ally is the parent and sole owner of Defendants GMAC Mortgage Group, Inc. and Residential Funding Services, LLC. Prior to 2010, Ally was known as GMAC, LLC.

14. Defendant GMAC Mortgage Group, Inc. ("GMACM") is a wholly-owned subsidiary and the mortgage arm of Ally. GMACM is a Delaware corporation with its principal place of business at 1100 Virginia Drive, Fort Washington, Pennsylvania 19034. GMACM transacted business in New York.

15. Defendant Residential Capital LLC ("ResCap") is a wholly-owned subsidiary of GMACM and originates, services, and securitizes mortgage loans in the United States, including New York. ResCap was incorporated in the State of Delaware and its principal office is located

at One Meridian Crossings, Minneapolis, Minnesota 55423. Prior to 2007, ResCap was known as Residential Capital Corporation.

16. Defendant GMAC-RFC Holding Company, LLC, doing business as GMAC Residential Funding Corporation (□GMAC-RFC□), is a wholly-owned subsidiary of ResCap and acquires residential mortgages and loans, which it then packages as mortgage-backed securities and sells to institutional investors. GMAC-RFC was incorporated in the State of Delaware and its principal office is located at 8400 Normandale Lake Boulevard, Minneapolis, Minnesota 55437. GMAC-RFC transacted business in New York.

17. Defendant Residential Funding Company, LLC (□RFC□) is a wholly-owned subsidiary of GMAC-RFC. RFC, a Delaware corporation, has an office in New York, has appointed an agent for service of process in New York, and has consented to the jurisdiction of the New York courts. Prior to October 2006, RFC was known as Residential Funding Corporation. RFC was the sponsor of all 21 of the Securitizations. Defendant RFC is the parent and sole owner of Homecomings Financials, LLC (□HFN□), the originator of loans underlying the Certificates for 13 of the 21 Securitizations and, upon information and belief, the only Ally subsidiary that originated residential mortgage loans during the relevant time period. Prior to 2006, HFN was known as Homecomings Financials Network, Inc.

18. Defendant Ally Securities, LLC is an SEC-registered broker-dealer and is registered to do business in New York. Prior to August 1, 2011, Ally Securities, LLC was known as Residential Funding Securities, LLC, which was doing business as GMAC RFC Securities and prior to 2007, Residential Funding Securities, LLC was known as Residential Funding Securities Corporation (collectively, □RFS□). RFS is a wholly-owned subsidiary of Ally, and was registered to do business in New York. RFS was the co-lead underwriter for five

of the Securitizations and was an underwriter for an additional six of the Securitizations. Freddie Mac purchased five of the Securitizations from RFS in its capacity as co-lead underwriter of those Securitizations.

19. Defendant Residential Asset Mortgage Products, Inc. (□RAMP□) is a wholly-owned subsidiary of GMAC-RFC and its principal office is located at 8400 Normandale Lake Boulevard, Minneapolis, Minnesota 55437. RAMP was the depositor for five of the Securitizations and transacted business in New York. RAMP, as depositor, was also responsible for preparing and filing reports required under the Securities Exchange Act of 1934 with respect to the Securitizations.

20. Defendant Residential Asset Securities Corporation (□RASC□) is a wholly-owned subsidiary of GMAC-RFC and its principal office is located at 8400 Normandale Lake Boulevard, Minneapolis, Minnesota 55437. RASC was the depositor for 10 of the Securitizations and transacted business in New York. RASC, as depositor, was also responsible for preparing and filing reports required under the Securities Exchange Act of 1934.

21. Defendant Residential Accredit Loans, Inc. (□RALI□) is a wholly-owned subsidiary of GMAC-RFC and its principal office is located at 8400 Normandale Lake Boulevard, Minneapolis, Minnesota 55437. RALI was the depositor for 6 of the Securitizations and transacted business in New York. RALI, as depositor, was also responsible for preparing and filing reports required under the Securities Exchange Act of 1934. Defendants Ally, GMACM, ResCap, GMAC-RFC, RFS, RAMP, RASC and RALI are referred to together herein as □GMAC.□

Non-GMAC Defendants

22. Defendant Barclays Capital Inc. (□Barclays□) is a Connecticut corporation with its principal place of business located at 200 Park Avenue, New York, New York 10166. Barclays

is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

23. Defendant Citigroup Global Markets Inc. ("Citi") is an SEC-registered broker-dealer. Citi is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 388 Greenwich Street, New York, New York 10013. Citi served as underwriter or co-underwriter for one Securitization.

24. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 11 Madison Ave., New York, New York 10010. Prior to January 16, 2006, Credit Suisse was known as Credit Suisse First Boston LLC. Credit Suisse is an SEC-registered broker-dealer, and was the co-lead underwriter for four of the Securitizations. Credit Suisse was co-underwriter for three of the Securitizations.

25. Defendant Goldman, Sachs & Co. ("Goldman") is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 200 West Street, New York, New York 10282. Goldman is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

26. Defendant J.P. Morgan Securities, LLC, f/k/a J.P. Morgan Securities, Inc. ("JPM"), is a limited liability company organized and existing under the laws of Delaware with its principal place of business located at 277 Park Avenue, New York, New York 10172. JPM is an SEC-registered broker-dealer and was co-lead underwriter for two of the Securitizations.

27. JPM is also the successor-in-interest to Bear, Stearns & Co., Inc. ("Bear Stearns") because on March 16, 2008, Bear Stearns' parent company, Bear Stearns Companies, Inc. ("BSCI"), entered into an Agreement and Plan of Merger with Bear Stearns Merger Corporation,

a wholly-owned subsidiary of JPMorgan Chase & Co. (□JPMorgan Chase□), making Bear Stearns a wholly-owned indirect subsidiary of JPMorgan Chase. Following the merger, on or about October 1, 2008, Bear Stearns merged with J.P. Morgan Securities Inc., a subsidiary of JPMorgan Chase, which subsequently changed its name to J.P. Morgan Securities LLC. Thus, BSCI is now doing business as Defendant JPM.

28. In a June 30, 2008 press release describing internal restructuring to be undertaken pursuant to the Merger, JPMorgan Chase stated its intent to assume Bear Stearns and its debts, liabilities, and obligations as follows:

> Following completion of this transaction, Bear Stearns plans to transfer its broker-dealer subsidiary Bear, Stearns & Co. Inc. to JPMorgan Chase, resulting in a transfer of substantially all of Bear Stearns□assets to JPMorgan Chase. In connection with such transfer, JPMorgan Chase will assume (1) all of Bear Stearns□ then-outstanding registered U.S. debt securities; (2) Bear Stearns□ obligations relating to trust preferred securities; (3) Bear Stearns□ then-outstanding foreign debt securities; and (4) Bear Stearns□ guarantees of then-outstanding foreign debt securities issued by subsidiaries of Bear Stearns, in each case, in accordance with the agreements and indentures governing these securities.

Further, the former Bear Stearns website, www.bearstearns.com, redirects Bear Stearns visitors to J.P. Morgan Securities Inc.□s website.

29. J.P. Morgan Securities Inc. was fully aware of the pending and potential claims against Bear Stearns when it consummated the merger. J.P. Morgan Securities Inc. has further evinced its intent to assume Bear Stearns□liabilities by paying to defend and settle lawsuits against Bear Stearns. JPM announced its intention to □convert to a limited liability company, effective September 1, 2010,□as part of which it changed its name to J.P. Morgan Securities LLC. As a result of the Merger, Defendant JPM Securities is the successor-in-interest to Bear Stearns and is jointly and severally liable for the misstatements and omissions of material fact alleged herein of Bear Stearns. This action is brought against JPM Securities as successor to

Bear Stearns. Prior to acquisition, Bear Stearns was an SEC-registered broker-dealer and served as an underwriter for one Securitization.

30. Defendant RBS Securities, Inc., doing business as RBS Greenwich Capital (□RBS□), is an SEC-registered broker-dealer incorporated in the State of Delaware with offices located at 101 Park Avenue, New York, New York 10178. Prior to April 2009, RBS was known as Greenwich Capital Markets, Inc. RBS served as underwriter or co-underwriter for two of the Securitizations.

31. Defendant UBS Securities LLC (□UBS□) is a Delaware limited liability company with its principal place of business located at 677 Washington Blvd., Stamford, Connecticut 06901. UBS is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

32. Defendants Barclays, Citi, Credit Suisse, Goldman, JPM, RBS, and UBS are referred to together herein as the □Non-GMAC Defendants,□and together with RFS as the □Underwriter Defendants.□

Non-Party Originators

33. The loans underlying the Certificates were acquired by the sponsor RFC for each Securitization from the following mortgage originators: Homecomings Financials Network Inc. (□HFN□); Aegis Mortgage Corporation; Decision One Mortgage Company, LLC; EFC Holdings Corporation and its subsidiary EquiFirst Corporation; Finance America, LLC; First National Bank of Nevada; Home123 Corporation; Homefield Financial Inc.; Mortgage Lenders Network USA, Inc.; New Century Mortgage Corporation; Ownit Mortgage Solutions Inc.; People□s Choice Home Loan, Inc.; Pinnacle Financial Corporation; and SCME Mortgage Bankers, Inc. HFN -- a subsidiary of Defendant Ally and an affiliate of Defendant RFC -- originated loans

underlying the Certificates for 13 of the 21 Securitizations. Together, the entities identified in this paragraph are referred to as the "Non-Party Originators."

JURISDICTION AND VENUE

34. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v and Section 7 of Article VI of the New York State Constitution.

35. This Court has personal jurisdiction over the Defendants pursuant to C.P.L.R. §§ 301 and 302.

36. Venue is proper in this district pursuant to C.P.L.R. § 503 because one or more of the parties resides in this county. The underwriters reside or have their principal place of business in this county and many of the alleged acts and transactions, including the preparation and dissemination of the Registration Statements, occurred in substantial part within New York County, New York.

FACTUAL ALLEGATIONS

I. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

37. The factual allegations set forth in paragraphs 38 through 134 below are made with respect to all causes of action against Defendants and are sufficient to establish Defendants' strict statutory liability under the federal Securities Act and the Securities Act of Virginia. With respect to such liability, no allegations are made or intended, and none are necessary, concerning Defendants' state of mind. Defendants are strictly liable, without regard to intent on their part or reliance on Freddie Mac's part, for the misstatements in, and material omissions from, the Registration Statements under Sections 11 and 12 and, for control person defendants, under Section 15, of the Securities Act, and Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code.

A. The Securitizations

1. Residential Mortgage-Backed Securitizations Generally

38. Asset-backed securitization involves pooling cash-producing financial assets and issuing securities backed by those pools of assets. In residential mortgage-backed securitizations, the cash-producing financial assets are residential mortgage loans.

39. In the most common form of securitization of mortgage loans, a sponsor -- the entity that acquires or originates the mortgage loans and initiates the securitization -- directly or indirectly transfers a portfolio of mortgage loans to a trust. In many instances, the transfer of assets to the trust is a two-step process in which the sponsor first transfers the financial assets to an intermediate entity, typically referred to as a depositor, and then the depositor transfers the assets to a trust. The trust is established pursuant to a pooling and servicing agreement or trust indenture entered into by, among others, the depositor for that securitization.

40. RMBS are the securities backed by the underlying mortgage loans in the trust. Some residential mortgage-backed securitizations are created from more than one cohort of loans, called collateral groups, in which case the trust issues different tranches of securities backed by different groups of loans. For example, a securitization may involve two groups of mortgages, with some securities backed primarily by the first group, and others primarily by the second group. Purchasers of the securities (in the form of certificates) acquire an ownership interest in the assets of the trust, which in turn owns the loans. These purchasers are thus dependent for repayment of principal and payment of interest upon the cash flows from the designated group of mortgage loans -- primarily mortgagors payments of principal and interest on the mortgage loans held by the related trust.

41. RMBS are generally issued and sold pursuant to registration statements filed with the SEC. These registration statements include prospectuses, which describe the general

structure of the investment, and prospectus supplements, which set forth detailed descriptions of, among other things, the mortgage groups underlying the certificates. Certificates are issued by the trust and sold pursuant to the registration statement, the prospectus and prospectus supplement. Underwriters purchase the certificates from the trust and then offer, sell or distribute the certificates to investors.

42. A mortgage servicer manages the collection of proceeds from the mortgage loans. The servicer is responsible for collecting homeowners mortgage loan payments, which the servicer remits to the trustee after deducting a monthly servicing fee. The servicer s duties include making collection efforts on delinquent loans, initiating foreclosure proceedings, and determining when to charge off a loan by writing down its balance. The servicer is required to report key information about the loans to the trustee. The trustee (or trust administrator) administers the trust funds and delivers payments due each month on the certificates to the investors.

2. Securitizations at Issue in this Case

43. This case involves the following 21 Securitizations:

i. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX3 (RASC 2005-EMX3);

ii. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-KS10 (RASC 2005-KS10);

iii. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-KS11 (RASC 2005-KS11);

iv. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX8 (RASC 2006-EMX8);

v. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX9 (RASC 2006-EMX9);

vi. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-KS3 (RASC 2006-KS3);

vii. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-KS9 (RASC 2006-KS9);

viii. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-EMX1 ("RASC 2007-EMX1");

ix. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-KS2 ("RASC 2007-KS2");

x. Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-KS3 ("RASC 2007-KS3");

xi. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC6 ("RAMP 2005-EFC6");

xii. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC7 ("RAMP 2005-EFC7");

xiii. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-NC1 ("RAMP 2005-NC1");

xiv. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-RS9 ("RAMP 2005-RS9");

xv. Mortgage Asset-Backed Pass-Through Certificates, Series 2006-RS1 ("RAMP 2006-RS1");

xvi. Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QO4 ("RALI 2005-QO4");

xvii. Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO4 ("RALI 2006-ii. QO4");

xviii. Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO5 ("RALI 2006-QO5");

xix. Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO8 ("RALI 2006-QO8");

xx. Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO9 ("RALI 2007-QO9"); and

xxi. Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH5 ("RALI 2007-QH5).

44. For each of the 21 Securitizations, Table 1 identifies the: (1) sponsor; (2) depositor; (3) underwriter; (4) principal amount issued for the tranches[4] purchased by Freddie

[4] A tranche is one of the classes of debt securities issued as part of a single bond or instrument. Securities are often issued in tranches to meet different investor objectives for portfolio diversification. Freddie Mac purchased two tranches of Certificates from the RALI 2006-Q04 Securitization, which is why the tables have 22 entries for 21 Securitizations.

Mac; (5) date of issuance; and (6) the loan group or groups backing the Certificate for that Securitization (referred to as the "Supporting Loan Groups").

Table 1

Transaction	Tranche	Sponsor	Depositor	Underwriters	Principal Amount Issued ($)	Date of Issuance	Supporting Loan Groups
RALI 2005-QO4	IA1	RFC	RALI	RBS	143,428,800.00	11/29/05	Group I
RALI 2006-QO4	IA1	RFC	RALI	RBS	327,356,000.00	04/27/06	Group I
RALI 2006-QO4	IA2	RFC	RALI	RBS	81,838,000.00	04/27/06	Group I
RALI 2006-QO5	IA1	RFC	RALI	UBS	179,443,000.00	05/30/06	Group I
RALI 2006-QO8	IIA	RFC	RALI	Lehman Brothers	409,198,000.00	10/30/06	Group II
RALI 2006-QO9	IIA	RFC	RALI	Lehman Brothers	284,637,000.00	11/29/06	Group II
RALI 2007-QH5	AII	RFC	RALI	Goldman RFS	143,007,000.00	05/30/07	Group II
RAMP 2005-EFC6	AII	RFC	RAMP	JPM RFS	163,581,000.00	11/22/05	Group II
RAMP 2005-EFC7	AII	RFC	RAMP	RFS Barclays	199,376,000.00	12/28/05	Group II
RAMP 2005-NC1	AII	RFC	RAMP	RFS Credit Suisse	405,004,000.00	12/28/05	Group II
RAMP 2005-RS9	AII	RFC	RAMP	Bear Credit Suisse RFS RBS	494,922,000.00	11/29/05	Group II
RAMP 2006-RS1	AII	RFC	RAMP	RFS Credit Suisse RBS BOA	409,790,000.00	01/25/06	Group II
RASC 2005-EMX3	AII	RFC	RASC	RFS Credit Suisse	267,481,000.00	09/23/05	Group II
RASC 2005-KS10	AII	RFC	RASC	JPM RFS BOA	495,741,000.00	10/28/05	Group II
RASC 2005-KS11	AII	RFC	RASC	Credit Suisse RFS RBS	547,641,000.00	11/29/05	Group II

Transaction	Tranche	Sponsor	Depositor	Underwriters	Principal Amount Issued ($)	Date of Issuance	Supporting Loan Groups
RASC 2006-EMX8	AII	RFC	RASC	RFS Barclays	236,806,000.00	09/28/06	Group II
RASC 2006-EMX9	AII	RFC	RASC	Barclays RFS	197,896,000.00	10/27/06	Group II
RASC 2006-KS3	AII	RFC	RASC	Citi	232,006,000.00	03/29/06	Group II
RASC 2006-KS9	AII	RFC	RASC	Barclays	153,311,000.00	10/27/06	Group II
RASC 2007-EMX1	AII	RFC	RASC	RFS Credit Suisse	326,812,000.00	03/12/07	Group II
RASC 2007-KS2	AII	RFC	RASC	JPM	164,400,000.00	02/23/07	Group II
RASC 2007-KS3	AII	RFC	RASC	JPM BOA RFS	167,618,000.00	03/29/07	Group II

3. Securitization Process

a. The Sponsors Grouped Mortgage Loans in Special-Purpose Trusts

45. In each case, the sponsor purchased the mortgage loans underlying the Certificates purchased by Freddie Mac for its Securitizations either directly from the originators or through affiliates of the originators. RFC sponsored 21 Securitizations and sold the acquired loans to one of three depositors, all of which are RFC-affiliated entities: RALI, RAMP and RASC.

46. RALI, RAMP and RASC were wholly-owned, limited-purpose financial subsidiaries of GMAC-RFC and affiliates of RFC. The sole purpose of RALI, RAMP and RASC as depositors was to act as a conduit through which loans acquired by the sponsor could be securitized and sold to investors.

47. As depositors for all 21 of the Securitizations, RALI, RAMP and RASC transferred the relevant mortgage loans to the respective trusts for each of those Securitizations, in each case pursuant to Assignment and Recognition Agreements or Mortgage Loan Purchase

Agreements that contained various representations and warranties regarding the mortgage loans for the Securitizations.

48. As part of each Securitization, the trustee for that Securitization, on behalf of the Certificateholders, executed a Pooling and Service Agreement ("PSA") with the relevant depositor and the relevant servicer. In each case, the trust, administered by the trustee, was required to hold the mortgage loans, pursuant to the related PSA and issued certificates, including the Certificates, backed by such loans. Freddie Mac purchased the Certificates, through which it obtained an ownership interest in the assets of the trust, including the mortgage loans.

b. The Trusts Issued Securities Backed by the Loans

49. Once the mortgage loans were transferred to the trusts in accordance with the PSAs, each trust issued Certificates backed by the underlying mortgage loans. The Certificates were then sold to investors, including Freddie Mac. Each Certificate entitles its holder to a specified portion of the cash flows from the underlying mortgages in the supporting loan group for that certificate. Therefore, the value of the Certificates, derived in part from the likelihood of payment of principal and interest on the Securitizations, depends upon the credit quality of the underlying mortgages, *i.e.*, the risk of default by borrowers and the recovery value upon default of foreclosed-upon properties.

50. The Certificates purchased by Freddie Mac were issued and sold pursuant to Shelf Registration Statements filed with the SEC on a Form S-3.[5] The Shelf Registration Statements ("S-3") were amended by one or more Form S-3/A (the "Amendments" or "S-3/A") filed with

[5] Defendant RALI filed three Shelf Registration Statements that were used to market six of the Securitizations; Defendant RAMP filed one Shelf Registration Statement that was used to market five of the Securitizations; and Defendant RASC filed two Registration Statements that were used to market 10 of the Securitizations.

the SEC. The Individual Defendants signed the six Shelf Registration Statements (and amendments thereto) that were filed, in each case, by RALI, RAMP or RASC. The SEC filing number, registrants, signatories, and filing dates for all six Shelf Registration Statements with Amendments, as well as the Certificates purchased by Freddie Mac covered by each Shelf Registration Statement, are reflected in Table 2 below.

Table 2

SEC File No.	Date S-3 Filed	Date(s) S-3/A(s) Filed	Registrants	Covered Certificates	Signatories of S-3	Signatories of S-3/A(s)[6]
333-125485	06/03/05	07/07/05	RAMP	RAMP 2005-EFC6 RAMP 2005-EFC7 RAMP 2005-NC1 RAMP 2005-RS9 RAMP 2006-RS1	Bruce Paradis Kenneth Duncan Ralph Flees David Walker	Bruce Paradis Kenneth Duncan Ralph Flees David Walker Diane Wold
333-122688	02/10/05	04/19/05	RASC	RASC 2005-EMX3 RASC 2005-KS10 RASC 2005-KS11 RASC 2006-KS3	Bruce Paradis Davee Olson Ralph Flees David Walker	Bruce Paradis Davee Olson Jack Katzmark David Walker Lisa Lundsten
333-126732	07/20/05	08/09/05	RALI	RALI 2005-QO4	Bruce Paradis Kenneth Duncan Ralph Flees David Walker	Bruce Paradis Kenneth Duncan Ralph Flees David Walker Lisa Lundsten
333-131209	01/20/06	02/23/06 03/21/06 03/30/06	RASC	RASC 2006-EMX8 RASC 2006-EMX9 RASC 2006-KS9 RASC 2007-EMX1 RASC 2007-KS2 RASC 2007-KS3	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson Lisa Lundsten
333-131213	01/23/06	03/03/06 03/06/06	RALI	RALI 2006-QO4 RALI 2006-QO5 RALI 2006-QO8 RALI 2006-QO9	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson Lisa Lundsten

[6] Some Individual Defendants signed certain S-3/As through a power of attorney.

SEC File No.	Date S-3 Filed	Date(s) S-3/A(s) Filed	Registrants	Covered Certificates	Signatories of S-3	Signatories of S-3/A(s)[6]
333-140610	02/12/07	04/03/07	RALI	RALI 2007-QH5	David Applegate David M. Bricker Ralph Flees James Young	James Jones David Bricker Ralph Flees James Young Lisa Lundsten

51. The Prospectus Supplement for each Securitization describes the loan underwriting guidelines that purportedly were used in connection with the origination of the underlying mortgage loans. In addition, the Prospectus Supplements purport to provide accurate statistics regarding the mortgage loans in each group, including: the ranges of and weighted average FICO credit scores of the borrowers, the ranges of and weighted average loan-to-value (□LTV□) ratios of the loans, the ranges of and weighted average outstanding principal balances of the loans, the debt-to-income ratios of the borrowers, the geographic distribution of the loans, the extent to which the loans were for purchase or refinance purposes, information concerning whether the loans were secured by a property to be used as a primary residence, second home, or investment property, and information concerning whether the loans were delinquent.

52. The Prospectus Supplement for each Securitization was filed with the SEC as part of the Registration Statements. The Form 8-Ks attaching the PSAs for each Securitization were also filed with the SEC. The date on which the Prospectus Supplement and Form 8-K were filed for each Securitization, as well as the filing number of the Shelf Registration Statement related to each, are set forth in Table 3 below.

Table 3

Transaction	Date Prospectus Supplement Filed	Date Form 8-K Attaching PSA	Filing No. of Related Registration Statement
RAMP 2005-EFC6	11/21/05	12/07/05	333-125485
RAMP 2005-EFC7	12/22/05	01/13/06	333-125485
RASC 2005-EMX3	09/23/05	10/14/05	333-122688
RASC 2005-KS10	10/28/05	11/14/05	333-122688
RASC 2005-KS11	11/28/05	12/14/05	333-122688
RAMP 2005-NC1	12/27/05	01/13/06	333-125485
RALI 2005-QO4	11/28/05	12/15/05	333-126732
RAMP 2005-RS9	11/29/05	12/12/05	333-125485
RASC 2006-EMX8	09/27/06	10/13/06	333-131209
RASC 2006-EMX9	10/27/06	11/13/06	333-131209
RASC 2006-KS3	03/29/06	04/13/06	333-122688
RASC 2006-KS9	10/30/06	11/13/06	333-131209
RALI 2006-QO4	04/28/06	05/15/06	333-131213
RALI 2006-QO5	05/31/06	06/14/06	333-131213
RALI 2006-QO8	11/01/06	11/14/06	333-131213
RALI 2006-QO9	11/30/06	12/14/06	333-131213
RAMP 2006-RS1	01/25/06	02/09/06	333-125485
RASC 2007-EMX1	03/09/07	03/27/07	333-131209
RASC 2007-KS2	02/23/07	03/09/07	333-131209
RASC 2007-KS3	03/28/07	04/13/07	333-131209
RALI 2007-QH5	05/30/07	06/14/07	333-140610

B. Defendants' Participation in the Securitization Process

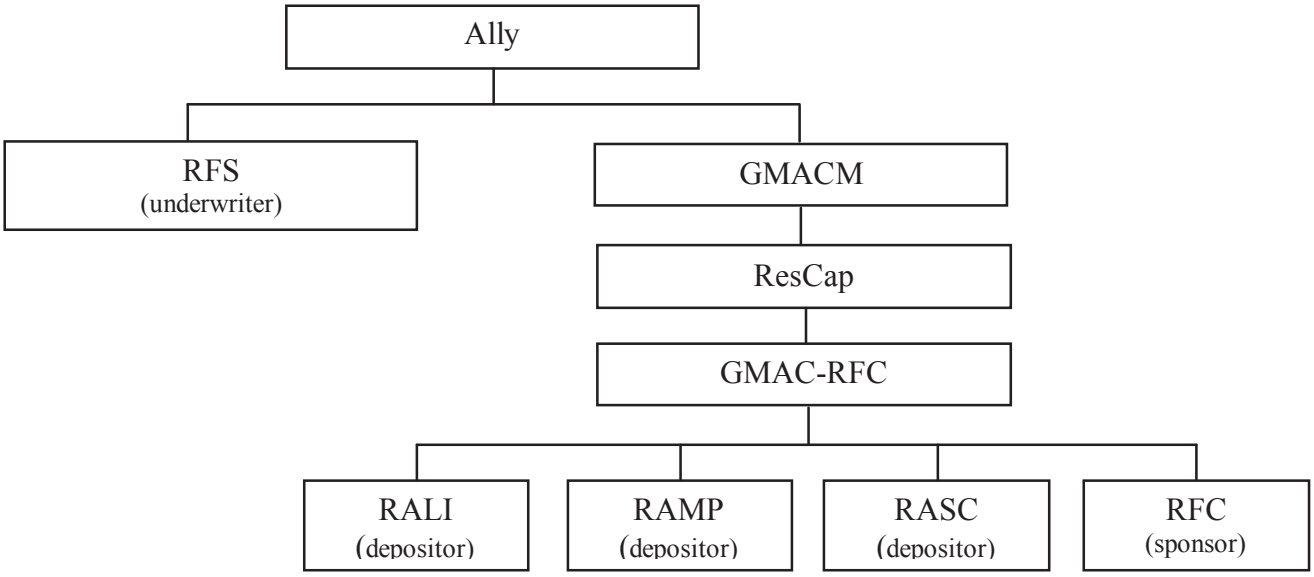
53. Each of the Defendants played a role in the securitization process and the marketing for some or all of the Certificates purchased by Freddie Mac, which included purchasing the mortgage loans from the originators, arranging the Securitizations, selling the mortgage loans to the depositor, transferring the mortgage loans to the trustee on behalf of the Certificateholders, underwriting the public offering of the Certificates, structuring and issuing the Certificates, and marketing and selling the Certificates to Freddie Mac.

54. The Defendants are liable, jointly and severally, as participants in the registration, issuance and offering of the Certificates purchased by Freddie Mac, including issuing, causing, or making materially misleading statements in the Registration Statements, and omitting material

facts required to be stated therein or necessary to make the statements contained therein not misleading.

1. Ally

55. Defendant Ally wholly owns GMACM and RFS and is also the ultimate parent of GMACM, ResCap, GMAC-RFC, RFC, RALI, RASC and RAMP. The chart below indicates the corporate structure of the relevant GMAC entities.



2. RFC

56. RFC was formed in 1985 as a wholly-owned subsidiary of GMAC-RFC for the purpose of issuing mortgage-backed securities through its affiliates RALI, RASC and RAMP. RFC was a leading sponsor of mortgage-backed securities at all relevant times based largely in part on GMAC-RFC becoming one of the largest issuers of mortgage-backed securities in the world. According to *Inside Mortgage Finance*, GMAC-RFC issued (i) $42.336 billion of non-agency mortgage-backed securities in 2004, (ii) $56.93 billion in 2005, making it the fifth largest issuer in 2005; (iii) $66.19 billion in 2006, making it the fourth largest issuer in 2006; and

(iv) $32.4 billion in 2007, which still made GMAC-RFC the eighth largest issuer in 2007.[7] *2011 Mortgage Market Statistical Annual*, Vol. II (Inside Mortgage Finance Publ□ns, Inc., 2011)

57. Defendant RFC was the sponsor of all 21 Securitizations. In that capacity, RFC determined the structure of the Securitizations, initiated the Securitizations, purchased the mortgage loans to be securitized, determined distribution of principal and interest, and provided data to the rating agencies to secure investment grade ratings for the Certificates sold to Freddie Mac. RFC also selected RALI, RASC and RAMP as the special-purpose vehicles that would be used to transfer the mortgage loans from RFC to the trusts, and selected RFS or the Non-GMAC Underwriter Defendants for the Securitizations, including Defendant RFS. In its role as sponsor, RFC knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing such loans would be issued by the relevant trusts.

58. For all 21 Securitizations that it sponsored, RFC also conveyed the mortgage loans to RALI, RASC and RAMP, as depositor, pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. In these agreements, RFC made certain representations and warranties to RALI, RASC and RAMP regarding the groups of loans collateralizing the Certificates purchased by Freddie Mac. These representations and warranties were assigned by RALI, RASC and RAMP to the trustees for the benefit of the Certificateholders.

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[7] □Agency□ mortgage-backed securities are guaranteed by a government agency or government-sponsored enterprise such as Fannie Mae or Freddie Mac, while □non-agency□ mortgage-backed securities are issued by banks and financial companies not associated with a government agency or government-sponsored enterprise.

3. RALI, RASC and RAMP

59. Defendants RALI, RASC and RAMP have been engaged in the securitization of mortgage loans as depositors since their incorporation in 1995, 1994, and 1999, respectively. They are special-purpose entities formed solely for the purpose of purchasing mortgage loans, filing registration statements with the SEC, forming issuing trusts, assigning mortgage loans and all of their rights and interests in such mortgage loans to the trustee for the benefit of certificateholders, and depositing the underlying mortgage loans into the issuing trusts.

60. RALI was the depositor for six of the 21 Securitizations, RASC was the depositor for 10 Securitizations, and RAMP was the depositor for five Securitizations. In their capacity as depositors, RALI, RASC and RAMP purchased the mortgage loans from RFC (as sponsor) pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. RALI, RASC and RAMP then sold, transferred, or otherwise conveyed the mortgage loans to be securitized to the trusts. Together with the other Defendants, RALI, RASC and RAMP were also responsible for preparing and filing the Registration Statements pursuant to which the Certificates purchased by Freddie Mac were offered for sale. The trusts, in turn, held the mortgage loans for the benefit of the Certificateholders, and issued the Certificates in public offerings for sale to investors, including Freddie Mac.

4. RFS

61. Defendant RFS was formed in 1990 and is a wholly-owned subsidiary of Ally. Defendant RFS is an investment bank, solely operating as a registered broker-dealer with respect to the issuance and underwriting of residential and commercial mortgage-backed securities. At all relevant times, RFS was one of the leading underwriters of mortgage and other asset-backed securities in the United States. According *to Inside Mortgage Finance* in 2004, RFS underwrote over $8.9 billion of non-agency mortgage-backed securities. In 2005, the data shows that RFS

underwrote $14.5 billion, and in 2006 and 2007, RFS underwrote $12.4 billion and $10.2 billion in non-agency mortgage-backed securities, respectively.

62. Defendant RFS was the co-lead and selling underwriter for five of the 21 Securitizations and an underwriter for an additional six Securitizations. In that role, it was responsible for underwriting and managing the offer and sale of the Certificates to Freddie Mac and other investors. RFS was also obligated to conduct meaningful due diligence to ensure that the Registration Statements did not contain any material misstatements or omissions, including as to the manner in which the underlying mortgage loans were originated, transferred and underwritten.

5. GMAC-RFC

63. GMAC-RFC employed its wholly-owned subsidiaries, RFC, RALI, RASC and RAMP, in the key steps of the securitization process. Unlike typical arm□s length securitizations, the Securitizations involved various Ally subsidiaries and affiliates at virtually each step in the chain. For all 21 Securitizations, RFC was the sponsor and either RALI, RASC or RAMP was the depositor.

64. GMAC-RFC, as the sole corporate parent of RFC, RALI, RASC and RAMP had the practical ability, in connection with the Securitizations, and the issuance and sale of the Certificates to Freddie Mac, to direct and control the actions of RFC, RALI, RASC and RAMP, and in fact exercised such direction and control over these activities.

6. Ally, GMACM and ResCap

65. Defendant ResCap wholly owns GMAC-RFC and Defendant GMACM wholly owns ResCap. ResCap, as the sole corporate parent of GMAC-RFC, had the practical ability to direct and control the actions of GMAC-RFC, and in fact, exercised such direction and control over the activities of this entity related to the issuance and sale of the Certificates to Freddie

Mac. GMACM, as the sole corporate parent of ResCap, had the practical ability to direct and control the actions of ResCap, and in fact, exercised such direction and control over the activities of this entity related to the issuance and sale of the Certificates to Freddie Mac.

66. As detailed, *supra*, the Securitizations involved all of the GMAC Defendants at virtually every step in the process, and Ally profited substantially from this vertically integrated approach to mortgage-backed securitization. Furthermore, ResCap shared overlapping management with the other GMAC entities. For example, in 2007, David Applegate served as President of GMACM; the COO of ResCap, GMACM's direct subsidiary; the Chairman and CEO of GMAC-RFC, ResCap's direct subsidiary; and Principal Executive Officer of RALI, GMAC-RFC's direct subsidiary, for which he signed a Shelf Registration and amendment thereto. Similarly, Bruce Paradis served as CEO of GMAC-RFC and then CEO of ResCap, while also serving as the Director, President, and CEO of RALI, RAMP, and RASC -- in which capacity he signed three Shelf Registration Statements and amendments thereto.

7. Non-GMAC Underwriters

67. The Non-GMAC Underwriters were the nation's largest non-agency mortgage-backed securities underwriters between 2004 through 2007. The Non-GMAC Underwriter Defendants were the co-lead underwriters for twelve Securitizations and underwriters for an additional seven Securitizations. In those roles, the Non-GMAC Defendants were responsible for underwriting and managing the offer and sale of the Certificates to Freddie Mac. The Non-GMAC Underwriter Defendants also were obligated to conduct due diligence to ensure that the Registration Statements did not contain any material misstatements or omissions, including as to the manner in which the underlying mortgage loans were originated, transferred and underwritten.

68. Further, through their positions at GMAC, including Defendants GMACM, ResCap, GMAC-RFC, RFS, RFC, RAMP, RALI, and RASC, certain persons had the practical ability to direct and control the actions of the GMAC Defendants in issuing and selling the Certificates, and in fact, exercised such direction and control over the activities of these entities in connection with the issuance and sale for the Certificates to Freddie Mac. Many people simultaneously held management positions at GMACM, ResCap, GMAC-RFC, RFS, and/or RFC while also holding management positions at RAMP, RALI and RASC.

C. Statements in the Prospectus Supplements

69. Plaintiff relies on its claims, in part, upon the Registration Statements in their entirety. Specific representations and warranties in the Registration Statements that form the basis for the claims herein are set forth for each Securitization in Appendix A hereto.

1. Compliance with Underwriting Guidelines

70. The Prospectus Supplement for each of the Securitizations contained detailed descriptions of the underwriting guidelines used to originate the mortgage loans included in the Securitizations. Because payment on, and the value of, the Certificates is based on the cash flows from the underlying mortgage pool, representations concerning compliance with the stated underwriting guidelines were material to reasonable investors. Investors, including Freddie Mac, did not have access to information concerning the collateral pool, and were required to rely on the representations in the Prospectus Supplements concerning that collateral.

71. Among other consequences, the failure to originate mortgage loans in accordance with stated guidelines diminished the value of the Certificates by increasing the significant risk that an investor will not be paid its principal and interest. Misrepresentations concerning, or failing accurately to disclose, borrower, loan, and property characteristics bearing on the risk of default by the borrower as well as the severity of losses given default can artificially inflate the

perceived value of the securities. Without accurate information regarding the collateral pool, reasonable investors, including Freddie Mac, are unable to accurately and independently assess whether the price of an RMBS adequately accounts for the risks they are assuming when they purchase the security.

72. The Prospectus Supplements for each of the Securitizations contained several key statements with respect to the loan purchasing and underwriting standards of the entities that originated the loans in the Securitizations. For example, with respect to the RAMP 2005-EFC7 Securitization, for which EquiFirst Corporation ("EquiFirst") was originator, RFS was a co-underwriter, and RASC was the depositor, the Prospectus Supplement states:

> "*All of the mortgage loans included in the trust were originated by EquiFirst, generally in accordance with [EquiFirst's] underwriting criteria*" (emphasis added) and that
>
> "EquiFirst's underwriting standards are primarily intended to assess the ability and willingness of the borrower to repay the debt, and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan."

73. With respect to the information evaluated by the originator (in this example, EquiFirst), the Prospectus Supplement stated that:

> *EquiFirst considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio ("Debt Ratio"), as well as the value, type and use of the mortgaged property."* (emphasis added)
>
> "The Credit Bureau Risk Score is used along with, but not limited to, mortgage payment history, seasoning on bankruptcy and/or foreclosure, and is not a substitute for the underwriter's judgment. EquiFirst's underwriting staff fully reviews each loan to determine whether EquiFirst's guidelines for income, assets, employment and collateral are met. (Emphasis added).

74. The Prospectus Supplement for the RAMP 2005-EFC7 Securitization further states:

> EquiFirst's guidelines comply with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards. All loans are subject to EquiFirst's appraisal review process. Appraisals are provided by qualified independent appraisers licensed in their respective states.

75. The Prospectus Supplements for each of the Securitizations made similar representations with respect to the underwriting guidelines employed by each of the originators in the Securitizations, which included: Aegis Mortgage Corporation, Decision One Mortgage Company, LLC, EFC Holdings Corporation and its subsidiary EquiFirst Corporation, Finance America, LLC, First National Bank of Nevada, Home123 Corporation, Homefield Financial Inc., Mortgage Lenders Network USA, Inc., New Century Mortgage Corporation, Ownit Mortgage Solutions Inc., People's Choice Home Loan, Inc., Pinnacle Financial Corporation and SCME Mortgage Bankers, Inc. *See* Appendix A.

76. Contrary to those representations, however, these originators routinely and egregiously departed from, or abandoned completely, their stated underwriting guidelines, as discussed in Section I.D.2, *infra*. As a result, the representations concerning compliance with underwriting guidelines and the inclusion and descriptions of those guidelines in the Prospectus Supplements were false and misleading, and the actual mortgages underlying each Securitization exposed the purchasers, including Freddie Mac, to a materially greater risk to investors than that represented in the Prospectus Supplements.

77. As reflected more fully in Appendix A, for the vast majority of the Securitizations, the Prospectus Supplements included representations that: (i) the mortgage loans were underwritten in accordance with each originator's underwriting guidelines in effect at the time of origination, subject only to limited exceptions; and (ii) the origination and collection

practices used by the originator with respect to each mortgage note and mortgage were in all respects legal, proper and customary in the mortgage origination and servicing business.

78. The inclusion of these representations in the Prospectus Supplements had the purpose and effect of providing assurances to investors regarding the quality of the mortgage collateral underlying the Securitizations. These representations were material to a reasonable investor's decisions to purchase the Certificates, and they were material to Freddie Mac. As alleged more fully below, Defendants' representations were materially false.

2. Occupancy Status of Borrower

79. The Prospectus Supplements for each Securitization set forth information about the occupancy status of the borrowers of the loans underlying the Securitization; that is, whether the property securing a mortgage is (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property. This information was presented in tables, typically titled "Occupancy Status of the Mortgage Loans," that assigned all the properties in the collateral group to one of the following categories: (i) "Primary," or "Owner-Occupied;" (ii) "Second Home," or "Secondary"; and (iii) "Investor" or "Non-Owner." For each category, the table stated the number of loans purportedly in that category. Occupancy statistics for the Supporting Loan Groups for each Securitization were reported in the Prospectus Supplements as follows:[8]

[8] Each Prospectus Supplement provides the total number of loans and the number of loans in the following categories: owner-occupied, investor, and second home. These numbers have been converted to percentages for ease of comparison.

Table 4

Transaction	Tranche	Supporting Loan Group	Primary or Owner-Occupied	Second Home / Secondary	Investor
RALI 2005-QO4	IA1	Group I	81.68%	1.71%	16.61%
RALI 2006-QO4	IA1	Group I	79.14%	5.53%	15.33%
RALI 2006-QO4	IA2	Group I	79.14%	5.53%	15.33%
RALI 2006-QO5	IA1	Group I	81.13%	4.10%	14.76%
RALI 2006-QO8	IIA	Group II	81.78%	3.41%	14.81%
RALI 2006-QO9	IIA	Group II	80.99%	4.05%	14.97%
RALI 2007-QH5	AII	Group II	77.36%	5.74%	16.90%
RAMP 2005-EFC6	AII	Group II	98.15%	0.37%	1.48%
RAMP 2005-EFC7	AII	Group II	100.00%	0.00%	0.00%
RAMP 2005-NC1	AII	Group II	83.96%	5.56%	10.48%
RAMP 2005-RS9	AII	Group II	65.80%	1.35%	32.85%
RAMP 2006-RS1	AII	Group II	78.45%	2.11%	19.44%
RASC 2005-EMX3	AII	Group II	93.92%	2.29%	3.79%
RASC 2005-KS10	AII	Group II	94.42%	0.85%	4.72%
RASC 2005-KS11	AII	Group II	89.88%	2.53%	7.59%
RASC 2006-EMX8	AII	Group II	100.00%	0.00%	0.00%
RASC 2006-EMX9	AII	Group II	100.00%	0.00%	0.00%
RASC 2006-KS3	AII	Group II	99.24%	0.76%	0.00%
RASC 2006-KS9	AII	Group II	95.82%	2.81%	1.36%
RASC 2007-EMX1	AII	Group II	93.65%	1.98%	4.37%
RASC 2007-KS2	AII	Group II	95.23%	0.71%	4.05%
RASC 2007-KS3	AII	Group II	95.56%	1.27%	3.17%

80. As Table 4 makes clear, the Prospectus Supplements reported that 17 of the 22 Supporting Loan Groups contained at least 80 percent owner-occupied loans, and 11 of the 22 Supporting Loan Groups contained at least 90 percent owner-occupied loans.

81. Because information about occupancy status is an important factor in determining the credit risk associated with a mortgage loan -- and, therefore, the securitization that it backs -- the statements in the Prospectus Supplements concerning occupancy status were material to a

reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. These statements were material because, among other reasons, borrowers who live in mortgaged properties are substantially less likely to default and more likely to care for their primary residence than borrowers who purchase properties as second homes or investments and live elsewhere. For example, as stated in the Prospectus Supplement for the RALI 2005-QO4 Securitization: "[T]he rate of default on mortgage loans or manufactured housing contracts that are secured by investment properties . . . may be higher than on other mortgage loans or manufactured housing contracts." Accordingly, the percentage of loans in the collateral group of a securitization that are secured by mortgage loans on owner-occupied residences is an important measure of the risk of the certificates sold in that securitization.

82. Other things being equal, the lower the percentage of loans secured by owner-occupied residences, the greater the risk of loss to Certificateholders. Even modest differences in the percentages of primary/owner-occupied, second home/secondary, and investment properties in the collateral group of a securitization can have a significant effect on the risk of each certificate sold in that securitization, and thus, are important to the decision of a reasonable investor whether to purchase any such certificate. As discussed *infra* at paragraphs 94 through 98, the Prospectus Supplements for each Securitization materially overstated the percentage of loans in the Supporting Loan Groups that were owner-occupied, thereby misrepresenting the degree of risk of the Certificates purchased by Freddie Mac.

3. Loan-to-Value Ratios

83. The loan-to-value ratio of a mortgage loan, or LTV ratio, is the ratio of the balance of the mortgage loan to the value of the mortgaged property when the loan is made.

84. The denominator in the LTV ratio is the value of the mortgaged property, and is generally the lower of the purchase price or the appraised value of the property. In a refinancing

or home-equity loan, there is no purchase price to use as the denominator, so the denominator is often equal to the appraised value at the time of the origination of the refinanced loan or home-equity loan. Accordingly, an accurate appraisal is essential to an accurate LTV ratio. In particular, an inflated appraisal will understate, sometimes greatly, the credit risks associated with a given loan.

85. The Prospectus Supplements for the Securitizations contain information about the LTV ratio for each Supporting Loan Group. Table 5 below reflects two categories of important information reported in the Prospectus Supplements concerning the LTV ratios for each Supporting Loan Group: (i) the percentage of loans with an LTV ratio of 80 percent or less; and (ii) the percentage of loans with an LTV ratio greater than 100 percent. [9]

Table 5

Transaction	Supporting Loan Group	% of Loans, by Aggregate Principal Balance, with LTV Less than or Equal to 80%	% of Loans, by Aggregate Principal Balance, with LTV Greater than 100%
RAMP 2005-EFC6	Group II	57.86%	0.00%
RAMP 2005-EFC7	Group II	71.74%	0.00%
RASC 2005-EMX3	Group II	47.33%	0.00%
RASC 2005-KS10	Group II	45.62%	0.00%
RASC 2005-KS11	Group II	61.19%	0.00%
RAMP 2005-NC1	Group II	57.07%	0.00%
RALI 2005-QO4	Group I	94.77%	0.00%
RAMP 2005-RS9	Group II	53.93%	0.00%
RASC 2006-EMX8	Group II	53.72%	0.00%
RASC 2006-EMX9	Group II	41.34%	0.00%
RASC 2006-KS3	Group II	61.60%	0.00%
RASC 2006-KS9	Group II	45.21%	0.00%
RALI 2006-QO4 (IA1 & IA2)	Group I	94.37%	0.00%
RALI 2006-QO5	Group I	95.44%	0.00%

[9] As used in this Complaint, "LTV" refers to the loan-to-value ratio for first lien mortgages and for properties with second liens subordinate to the lien included in the securitization (*i.e.*, only the securitized lien is included in the numerator of the LTV calculation). Where the securitized lien is junior to another loan, the more senior lien has been added to the securitized one to determine the numerator in the LTV calculation (this latter calculation is sometimes referred to as the combined-loan-to-value ratio, or "CLTV").

Transaction	Supporting Loan Group	% of Loans, by Aggregate Principal Balance, with LTV Less than or Equal to 80%	% of Loans, by Aggregate Principal Balance, with LTV Greater than 100%
RALI 2006-QO8	Group II	95.56%	0.00%
RALI 2006-QO9	Group II	93.89%	0.00%
RAMP 2006-RS1	Group II	44.73%	0.00%
RASC 2007-EMX1	Group II	52.14%	0.00%
RASC 2007-KS2	Group II	44.68%	0.00%
RASC 2007-KS3	Group II	43.00%	0.00%
RALI 2007-QH5	Group II	93.70%	0.00%

86. The LTV ratio is among the most important measures of the risk of a mortgage loan for several reasons. First, the LTV ratio is a strong indicator of the likelihood of default because a higher LTV ratio makes it more likely that a decline in the value of a property will completely eliminate a borrower's equity, and will incentivize the borrower to stop making mortgage payments and abandon the property. Second, the LTV ratio is a strong predictor of the severity of loss in the event of a default because the higher the LTV ratio, the smaller the "equity cushion," and the greater the likelihood that the proceeds of foreclosure will not cover the unpaid balance of the mortgage loan.

87. Thus, LTV ratios are material to a reasonable investor's investment decision with respect to the Certificates, and they were material to Freddie Mac. Even small differences between the LTV ratios of the mortgage loans in the collateral group of a securitization have a significant effect on the likelihood that collateral groups will generate sufficient funds to pay certificateholders in that securitization. Such differences are important to the decision of a reasonable investor on whether to purchase any such certificate, and they affect the intrinsic value of the certificate.

88. As Table 5 makes clear, the Prospectus Supplements for the majority of the Securitizations reported that the majority of the mortgage loans in the Supporting Loan Groups

had an LTV ratio of 80 percent or less. The Prospectus Supplements also reported that *none* of the Supporting Loan Groups contained a single loan with an LTV ratio over 100 percent.

89. As discussed *infra* at paragraphs 99 through 104, the Prospectus Supplements for the Securitizations materially *overstated* the percentage of loans in the Supporting Loan Groups with an LTV ratio at or less than 80 percent, and materially *understated* the percentage of loans in the Supporting Loan Groups with an LTV ratio over 100 percent, thereby misrepresenting the degree of risk to Certificateholders.

4. Credit Ratings

90. Credit ratings are assigned to the tranches of mortgage-backed securitizations by the credit rating agencies, including Standard & Poor□s, Moody□s Investor Service, and Fitch Ratings. Each credit rating agency uses its own scale with letter designations to describe various levels of risk. In general, AAA or its equivalent ratings are at the top of the credit rating scale and are intended to designate the safest investments. C and D ratings are at the bottom of the scale and refer to investments that are currently in default and exhibit little or no prospect for recovery. At the time Freddie Mac purchased the Certificates, investments with AAA or its equivalent ratings historically experienced a loss rate of less than .05 percent. Investments with a BBB rating, or its equivalent, historically experienced a loss rate of less than one percent. As a result, securities with credit ratings between AAA or its equivalent through BBB- or its equivalent were generally referred to as □investment grade.□

91. Rating agencies determine the credit rating for each tranche of a mortgage-backed securitization by comparing the likelihood of contractual principal and interest repayment to the □credit enhancements□available to protect investors. Rating agencies determine the likelihood of repayment by estimating cash flows based on the quality of the underlying mortgages by using sponsor-provided loan-level data. Credit enhancements, such as subordination, represent the

amount of "cushion" or protection from loss incorporated into a given securitization.[10] This cushion is intended to improve the likelihood that holders of highly-rated certificates receive the interest and principal to which they are contractually entitled. The level of credit enhancement offered is based on the composition of the loans in the underlying collateral group and entire securitization. Riskier loans underlying the securitization necessitate higher levels of credit enhancement to insure payment to senior certificate holders. If the collateral within the deal is of a higher quality, then rating agencies require less credit enhancement for an AAA or its equivalent rating.

92. For almost a hundred years, investors like pension funds, municipalities, insurance companies, and university endowments have relied heavily on credit ratings to assist them in distinguishing between safe and risky investments.

93. Each tranche of the Securitizations received a credit rating before issuance, which purported to describe the riskiness of that tranche. Defendants reported the credit ratings for each tranche in the Prospectus Supplements. For each of the Certificates purchased by Freddie Mac was AAA or its equivalent the credit rating provided. The accuracy of these ratings was material to a reasonable investor's decision to purchase the Certificates, and it was material to Freddie Mac. Among other things, the ratings provided additional assurance that investors in the Certificates would receive the expected interest and principal payments. As set forth in Table 8, *infra* at paragraph 126, the ratings for the majority of the Securitizations were severely downgraded after Freddie Mac's purchase of the Certificates. Upon information and belief, the

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[10] "Subordination" refers to the fact that the certificates for a mortgage-backed securitization are issued in a hierarchical structure, from senior to junior. The junior certificates are "subordinate" to the senior certificates in that, should the underlying mortgage loans become delinquent or default, the junior certificates suffer losses first. These subordinate certificates thus provide a degree of protection to the senior certificates from certain losses on the underlying loans.

initial ratings were based in substantial part upon the materially inaccurate and incomplete information in the Registration Statements and related information provided to the ratings agencies.

D. Falsity of Statements in the Registration Statements and Prospectus Supplements

1. The Statistical Data Provided in the Prospectus Supplements Concerning Owner-Occupancy and Loan-to-Value Ratios was Materially False

94. A review of loan-level data was conducted to assess whether the statistical information provided in the Prospectus Supplements was true and accurate. For each Securitization, the review included an analysis either of: (i) a sample of 1,000 loans randomly selected from the Supporting Loan Group; or (ii) all the loans in the Supporting Loan Group if there were fewer than 1,000 such loans. The review of sample data has confirmed, on a statistically-significant basis, that the data provided in the Prospectus Supplements concerning owner-occupancy and LTV ratios was materially false, and that the Prospectus Supplements contained material misrepresentations with respect to the underwriting standards employed by the originators, and certain key characteristics of the mortgage loans across the Securitizations.

a. Owner-Occupancy Data was Materially False

95. The data review has revealed that the owner-occupancy statistics reported in the Prospectus Supplements were materially false and inflated. Indeed, the Prospectus Supplements overreported the number of underlying properties that were occupied by their owners, and underreported the number of underlying properties held as second homes or investment properties.

96. To determine whether a given borrower actually occupied the property as claimed, a number of tests were conducted, including, *inter alia*, whether, months after the loan

closed, the borrower's tax bill was being mailed to the property or to a different address, whether the borrower had claimed a tax exemption on the property, and whether the mailing address of the property was reflected in the borrower's credit reports, tax records, or lien records. Failing two or more of these tests constitutes strong evidence that the borrower did not live at the mortgaged property and instead used it as a second home or an investment property, rendering it much more likely that a borrower will not repay the loan.

97. For each Securitization, a significant number of the underlying loans failed two or more of these tests, demonstrating that the owner-occupancy statistics provided to Freddie Mac were materially false and misleading. For example, the Prospectus Supplement for the RAMP 2005-EFC6 Securitization -- for which RFC was the sponsor and RFS was a co-underwriter -- stated that 1.85 percent of the underlying properties by loan count in the Supporting Loan Group were not owner-occupied. But the data review revealed that the true percentage of non-owner-occupied properties was 13.67 percent,[11] approximately 700 percent greater than the percentage reported in the Prospectus Supplement because for 12.04 percent of the properties represented as owner-occupied, the owners lived elsewhere.

98. The data review revealed that for each Securitization, the Prospectus Supplement misrepresented the percentage of non-owner-occupied properties. The true percentage of non-owner-occupied properties, as determined by the data review, versus the percentage stated in the Prospectus Supplement for each Securitization, is reflected in Table 6 below. Table 6

[11] The true percentage of non-owner-occupied properties (Table 6 Column C) is calculated by adding the percentage reported in the Prospectus Supplement (Table 6 Column A) to the product of owner-occupied properties reported in the Prospectus Supplement (100 minus Column A) and the percentage of properties reported as owner-occupied but with strong indication of non-owner-occupancy (Table 6 Column B).

demonstrates that the Prospectus Supplements for each Securitization significantly understated the percentage of non-owner-occupied properties.

Table 6

		A	B	C	D
Transaction	**Supporting Loan Group**	**Reported % of Non-Owner-Occupied Properties**	**Percentage of Properties As Owner-Occupied Misrepresented in the Registration Statements**	**Actual % of Non-Owner-Occupied Properties**	**Understatement of Non-Owner-Occupied Properties in the Offering Materials**
RAMP 2005-EFC6	Group II	1.85%	12.04%	13.67%	11.82%
RAMP 2005-EFC7	Group II	0.00%	11.88%	11.88%	11.88%
RASC 2005-EMX3	Group II	6.08%	9.03%	14.56%	8.48%
RASC 2005-KS10	Group II	5.58%	11.97%	16.88%	11.30%
RASC 2005-KS11	Group II	10.12%	11.41%	20.38%	10.26%
RAMP 2005-NC1	Group II	16.04%	10.72%	25.04%	9.00%
RALI 2005-QO4	Group I	18.32%	14.93%	30.52%	12.19%
RAMP 2005-RS9	Group II	34.20%	13.42%	43.03%	8.83%
RASC 2006-EMX8	Group II	0.00%	12.38%	12.38%	12.38%
RASC 2006-EMX9	Group II	0.00%	12.52%	12.52%	12.52%
RASC 2006-KS3	Group II	0.76%	13.20%	13.86%	13.10%
RASC 2006-KS9	Group II	4.18%	9.06%	12.86%	8.68%
RALI 2006-QO4 (IA1 & IA2)	Group I	20.86%	14.86%	32.62%	11.76%
RALI 2006-QO5	Group I	18.87%	13.14%	29.53%	10.66%
RALI 2006-QO8	Group II	18.22%	13.18%	29.00%	10.78%
RALI 2006-QO9	Group II	19.01%	13.84%	30.22%	11.21%
RAMP 2006-RS1	Group II	21.55%	11.66%	30.69%	9.15%
RASC 2007-EMX1	Group II	6.35%	9.44%	15.19%	8.84%
RASC 2007-KS2	Group II	4.77%	10.28%	14.56%	9.79%
RASC 2007-KS3	Group II	4.44%	11.10%	15.05%	10.60%
RALI 2007-QH5	Group II	22.64%	15.76%	34.83%	12.20%

b. Loan-to-Value Data was Materially False

99. The data review has further revealed that the LTV ratios disclosed in the Prospectus Supplements were materially false and understated, as more specifically set out below. For each of the sampled loans, an industry standard automated valuation model (□AVM□) was used to calculate the value of the underlying property at the time the mortgage loan was originated. AVMs are routinely used in the industry as a way of valuing properties during prequalification, origination, portfolio review, and servicing. AVMs rely upon similar

data as appraisers -- primarily county assessor records, tax rolls, and data on comparable properties. AVMs produce independent, statistically-derived valuation estimates by applying modeling techniques to this data.

100. Applying the AVM to the available data for the properties securing the sampled loans shows that the retroactive appraised value given to such properties was significantly higher than the actual value of such properties. The result of this overstatement of property values is a material understatement of LTV. That is, if a property s true value is significantly less than the value used in the loan underwriting, then the loan represents a significantly higher percentage of the property s value. This, of course, increases the risk a borrower will not repay the loan and the risk of greater losses in the event of a default. As stated in the Prospectus Supplement for RALI 2005-QO4: The rate of default . . . on mortgage loans or manufactured housing contracts with higher LTV ratios may be higher than for other types of mortgage loans or manufactured housing contracts.

101. For example, for the RALI 2005-QH5 Securitization, for which RFC was the sponsor and RFS was a co-underwriter, the Prospectus Supplement stated that no LTV ratios for the Supporting Loan Group were above 100 percent. In fact, 18.26 percent of the sample of loans included in the data review had LTV ratios above 100 percent. In addition, the Prospectus Supplement stated that 93.70 percent of the loans had LTV ratios at or below 80 percent. The data review indicated that only 45.89 percent of the loans had LTV ratios at or below 80 percent.

102. The data review revealed that for each Securitization, the Prospectus Supplement misrepresented the percentage of loans with an LTV ratio above 100 percent, as well the percentage of loans that had an LTV ratio at or below 80 percent. Table 7 reflects (i) the true percentage of mortgages in the Supporting Loan Group with LTV ratios above 100 percent,

versus the percentage reported in the Prospectus Supplement; and (ii) the true percentage of mortgages in the Supporting Loan Group with LTV ratios at or below 80 percent, versus the percentage reported in the Prospectus Supplement. The percentages listed in Table 7 were calculated by aggregated principal balance.

Table 7

		PROSPECTUS	DATA REVIEW	PROSPECTUS	DATA REVIEW
Transaction	Supporting Loan Group	% of Loans Reported to have LTV Ratio at or Less than 80%	True % of Loans with LTV Ratio at or Less than 80%	% of Loans Reported to have LTV Ratio Over 100%	True % of Loans with LTV Ratio Over 100%
RAMP 2005-EFC6	Group II	57.86%	35.31%	0.00%	16.70%
RAMP 2005-EFC7	Group II	71.74%	38.91%	0.00%	13.32%
RASC 2005-EMX3	Group II	47.33%	29.10%	0.00%	19.47%
RASC 2005-KS10	Group II	45.62%	31.29%	0.00%	17.94%
RASC 2005-KS11	Group II	61.19%	44.25%	0.00%	14.41%
RAMP 2005-NC1	Group II	57.07%	44.83%	0.00%	13.01%
RALI 2005-QO4	Group I	94.77%	61.17%	0.00%	8.18%
RAMP 2005-RS9	Group II	53.93%	36.91%	0.00%	17.27%
RASC 2006-EMX8	Group II	53.72%	30.69%	0.00%	26.94%
RASC 2006-EMX9	Group II	41.34%	21.70%	0.03%	33.84%
RASC 2006-KS3	Group II	61.60%	44.12%	0.00%	11.68%
RASC 2006-KS9	Group II	45.21%	27.87%	0.00%	26.92%
RALI 2006-QO4 (IA1 & IA2)	Group I	94.37%	57.25%	0.00%	8.43%
RALI 2006-QO5	Group I	95.44%	53.64%	0.00%	11.09%
RALI 2006-QO8	Group II	95.56%	46.48%	0.00%	11.62%
RALI 2006-QO9	Group II	93.89%	48.39%	0.00%	13.12%
RAMP 2006-RS1	Group II	44.73%	29.46%	2.60%	22.23%
RASC 2007-EMX1	Group II	52.14%	27.06%	0.00%	26.46%
RASC 2007-KS2	Group II	44.68%	28.40%	0.00%	28.40%
RASC 2007-KS3	Group II	43.00%	27.04%	0.00%	29.22%
RALI 2007-QH5	Group II	93.70%	45.89%	0.00%	18.26%

103. As Table 7 demonstrates, the Prospectus Supplements for all the Securitizations falsely reported that only two of the Supporting Loan Groups had mortgage loans with an LTV ratio over 100 percent: the data review revealed that at least eight percent of the mortgage loans for *every* Securitization had an LTV ratio over 100 percent, and for most Securitizations this figure was much larger. Indeed, for 19 of the 21 Securitizations, the data review revealed that

more than 10 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent. For 12 Securitizations, the data review revealed that more than 15 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent and for seven Securitizations, the data review revealed that more than 20 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent.

104. These misrepresentations with respect to reported LTV ratios also demonstrate that the representations in the Registration Statements relating to appraisal practices were false, and that the appraisers, in many instances, furnished appraisals that they understood were inaccurate and that they knew bore no reasonable relationship to the actual value of the underlying properties. Indeed, independent appraisers following proper practices, and providing genuine estimates as to valuation, would not systematically generate appraisals that deviate so significantly (and so consistently upward) from the true values of the appraised properties. The Financial Crisis Inquiry Commission ("FCIC"), created by Congress to investigate the mortgage crisis and attendant financial collapse in 2008, identified "inflated appraisals" as a pervasive problem during the period of the Securitizations, and determined through its investigation that appraisers were often pressured by mortgage originators, among others, to produce inflated results. (*See* FCIC, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (2011) ("FCIC Report"), at 91.)

2. The Originators of the Underlying Mortgage Loans Systematically Disregarded Their Underwriting Guidelines

105. The Prospectus Supplements each contained material misstatements and omissions concerning the underwriting guidelines used by the originators of the loans included in the Securitizations, defined herein as the Non-Party Originators. Among other things, the Prospectus Supplements stated that the Non-Party Originators underwrote all loans in

compliance with their respective underwriting guidelines. *See* Appendix A, Sections I-XXI at Subsections B.

106. The Non-Party Originators -- companies such as New Century, Decision One, and others -- systematically disregarded their respective underwriting guidelines, as confirmed not only by the pervasively false owner-occupancy and LTV figures alleged *supra*, but also by: (1) government investigations and private actions relating to their underwriting practices, which have revealed widespread abandonment of their reported underwriting guidelines during the period of the Securitizations; (2) the collapse of the credit ratings of Certificates purchased by Freddie Mac; and (3) the surge in delinquencies and defaults in the mortgages in the Securitizations.

a. Government and Private Investigations Confirm That the Originators of the Loans in the Securitizations Systematically Failed to Adhere to Their Underwriting Guidelines

107. An extraordinary volume of publicly-available information, including government reports and investigations, confirms that the originators whose loans were included by the Defendants in the Securitizations abandoned their loan origination guidelines throughout the period of the Securitizations.

108. For example, in November 2008, the Office of the Comptroller of the Currency (□OCC□), an office within the United States Department of the Treasury, issued a report identifying the □Worst Ten□mortgage originators in the □Worst Ten□metropolitan areas. The worst originators were defined as those with the largest number of non-prime mortgage foreclosures for 2005-2007 originations. Aegis, Decision One, New Century, Ownit,[12] and

[12] Ownit, which originated loans for one of the Securitizations, was identified by the OCC as the fifteenth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas between 2005 and 2007 with the highest

People's Choice -- the companies that originated loans for eight of the Securitizations at issue here -- were all on that list. *See* "Worst Ten in the Worst Ten," Office of the Comptroller of the Currency Press Release, November 13, 2008. Several of the Non-Party Originators -- including New Century, HFN and MLN -- have been the target of government investigations or private actions that allege a complete abandonment of their reported underwriting guidelines.

i. New Century Violated Its Underwriting Guidelines

109. New Century and its subsidiary, Home123, originated loans for at least four of the Securitizations. As stated in the Prospectus Supplement for the RAMP 2005-NC1 Securitization, "[f]or the quarter ending September 30, 2005, New Century Financial Corporation originated $40.4 billion in mortgage loans." By the end of 2006, Inside Mortgage Finance reports that New Century was the second largest subprime mortgage loan originator in the United States, with a loan production volume that year of $51.6 billion. Before its collapse in the first half of 2007, New Century was one of the largest subprime lenders in the country. New Century filed for protection from its creditors under Chapter 11 of the federal Bankruptcy Code on April 2, 2007.

110. In 2010, the OCC identified New Century as *the* worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the 10 metropolitan areas between 2005 and 2007 with the highest rates of delinquency. *See* "Worst Ten in the Worst Ten: Update," Office of the Comptroller of Currency Press Release, March 22, 2010. Further, in January 2011, the FCIC Report detailed, among other things, the collapse of mortgage underwriting standards and subsequent collapse of the mortgage market and wider economy. *See* FCIC Report. The FCIC Report singled out New Century for its role:

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rates of delinquency. *See* "Worst Ten in the Worst Ten: Update," Office of the Comptroller of Currency Press Release, March 22, 2010.

> New Century—once the nation's second-largest subprime lender—ignored early warnings that its own loan quality was deteriorating and stripped power from two risk-control departments that had noted the evidence. In a June 2004 presentation, the Quality Assurance staff reported they had found severe underwriting errors, including evidence of predatory lending, federal and state violations, and credit issues, in 25% of the loans they audited in November and December 2003. In 2004, Chief Operating Officer and later CEO Brad Morrice recommended these results be removed from the statistical tools used to track loan performance, and in 2005, the department was dissolved and its personnel terminated. The same year, the Internal Audit department identified numerous deficiencies in loan files; out of nine reviews it conducted in 2005, it gave the company's loan production department "unsatisfactory" ratings seven times. Patrick Flanagan, president of New Century's mortgage-originating subsidiary, cut the department's budget, saying in a memo that the "group was out of control and tries to dictate business practices instead of audit."

111. On February 29, 2008, after an extensive document review and conducting over 100 interviews, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a detailed report on the various deficiencies at New Century, including lax mortgage standards and a failure to follow its own underwriting guidelines. Among his findings, the Examiner reported:

> New Century had a brazen obsession with increasing loan originations without due regard for the risks associated with that business strategy. . . . Although the primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately to fatal levels.
>
> New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the "number one issue is exceptions to the guidelines." Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies.
>
> New Century . . . layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers.

Final Report of Michael J. Missal, Bankruptcy Examiner, *In re New Century TRS Holdings, Inc.*, No. 07-10416 (KJC) (Bankr. Del. Feb. 29, 2008).

112. On December 9, 2009, the SEC charged three of New Century's top officers with violations of federal securities laws. The SEC's complaint details the blatant falsity of New Century's representations regarding its underwriting guidelines, for example, its representations that it was committed to "adher[ing] to high origination standards in order to sell [its] loan products in the secondary market" and to "only approv[ing] subprime loan applications that evidence a borrower's ability to repay the loan."

113. New Century's failure to adhere to its underwriting guidelines is further reflected in allegations in the Assurance of Discontinuance signed by Morgan Stanley and the Attorney General of Massachusetts (the "Assurance of Discontinuance"), in *In re: Morgan Stanley & Co. Inc.*, Civil Action No. 10-2538 (Suffolk Cnty. Super. Ct. June 24, 2010). The Massachusetts Attorney General alleged:

- New Century "stretch[ed] underwriting guidelines to encompass or approve loans not written in accordance with the guidelines." (*Id.* ¶¶17, 23.)
- "One recurring issue identified by Morgan Stanley was New Century's origination of loans that violated Massachusetts Division of Banks' borrower's best interest standard []." (*Id.* ¶18.)
- During the period 2006-2007, 91 percent of the loans approved for securitization that did not meet New Century's underwriting guidelines did not have "sufficient compensating factors to offset such exceptions." (*Id.* ¶27.)
- "In the last three quarters of 2006, Morgan Stanley waived more than half of all material exceptions found by Clayton . . ., and purchased a substantial number of New Century loans found by Clayton to violate guidelines without sufficient compensating factors." (*Id.* ¶28.)
- The loans originated by New Century were "unfair loans to Massachusetts borrowers" and "were in violation of Massachusetts law . . . ." (*Id.* ¶¶43-44.)

114. As a result, on or about June 24, 2010, Morgan Stanley paid $102 million to settle the claims asserted by the Attorney General and also agreed to drastic changes in its underwriting practices.

115. Patricia Lindsay, a former Vice President of Corporate Risk at New Century, testified before the FCIC in April 2010 that, beginning in 2004, underwriting guidelines had been all but abandoned at New Century. Ms. Lindsay further testified that New Century systematically approved loans with 100 percent financing to borrowers with extremely low credit scores and no supporting proof of income. (*See* Written Testimony of Patricia Lindsay for the FCIC Hearing, April 7, 2010 ("Lindsay Testimony"), http://fcic-static.law.stanford.edu/cdn-media/fcic.testimony/2010-0407-Lindsay.pdf, at 3.)

116. Ms. Lindsay also testified that appraisers "fear[ed]" for their "livelihoods," and therefore cherry-picked data "that would help support the needed value rather than finding the best comparables to come up with the most accurate value." (*See* Written Testimony of Patricia Lindsay to the FCIC, April 7, 2010, at 5.) Indeed, on May 7, 2007, *The Washington Post* reported that a former New Century appraiser, Maggie Hardiman, recounted how she "didn't want to turn away a loan because all hell would break loose" and that, when she did reject a loan, "her bosses often overruled her and found another appraiser to sign off on it." (David Cho, *Pressure at Mortgage Firm Led to Mass Approval of Bad Loans*, The Washington Post (May 7, 2007).)

ii. HFN Violated Its Underwriting Guidelines

117. HFN originated loans for 13 of the Securitizations -- as discussed *infra*, HFN was the GMAC entity responsible for the origination of all of GMAC's residential mortgage loans during the relevant time period.

118. MBIA Insurance Corporation, which insured mortgage-backed securities issued by GMAC, has filed two actions against GMACM and RFC, both parents of HFN, alleging, among other things, that GMACM and RFC made fraudulent representations regarding adherence to GMAC's loan origination underwriting guidelines. MBIA alleged that it performed an extensive a review of loan files in advance of making its allegations. Its complaint explains that it performed a review of "loan files associated with 4,104 delinquent or charged off loans" and that its review revealed that "[a]t least 89% of the 4,104 delinquent or charged off loans . . . were not originated in material compliance with GMAC Mortgage's Underwriting Guidelines." (Complaint at ¶6, *MBIA Insurance Corp. v. GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation)*, No. 6008737-2010 (N.Y. Sup. Ct.) (filed Compl. Apr. 1, 2010).) MBIA's complaint further alleges that MBIA, or the experts that performed its review, found that "a significant number of mortgage loans were made on the basis of "stated incomes" that were grossly unreasonable or were approved despite [debt-to-income] or CLTV ratios in excess of the limits stated in GMAC Mortgage's Underwriting Guidelines," and that, "contrary to its Underwriting Guidelines, GMAC Mortgage failed in many cases to verify the borrower's employment when required to do so or to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with ineligible credit scores, and approved loans without verifying that the borrower had sufficient funds or reserves." (*Id.* at ¶76.)

119. In its complaint against RFC, the direct parent of HFN, MBIA also asserted a claim for fraud, among other things, alleging that MBIA's review "[o]f the 1,847 mortgage loans [revealed that] . . . only 129 mortgage loans -- less than 7% of the mortgage loans reviewed -- were originated or acquired in material compliance with RFC's representations and warranties

. . . with respect to the underwriting of the mortgage loans contributed to the RFC transactions. (Complaint at ¶46, *MBIA Insurance Corp. v. Residential Funding Co., LLC*, No. 603552-2008 (N.Y. Sup. Ct.) (filed Compl. Dec. 4, 2008).)

120. Further, on June 29, 2011, the SEC and the DOJ launched investigations of, among other things, "potential fraud related to the origination and/or underwriting of mortgage loans" by GMAC. As an originator of residential mortgage loans for the GMAC entities, the scope of the SEC and the DOJ's investigation will likely include a review of HFN's compliance with its own loan origination underwriting guidelines.

iii. MLN Violated Its Underwriting Guidelines

121. Mortgage Loan Networks USA, Inc. ("MLN"), which originated the loans for four of the Securitizations, filed for bankruptcy on February 5, 2007, and on January 6, 2011, the Liquidating Trustee for MLN filed a motion seeking to destroy certain MLN records and releasing the Trustee from responding to any future requests concerning those records. The United States Attorney objected to the Trustee's motion on the basis that "federal law enforcement records indicate that [MLN's] loans are the subject of many ongoing investigations. As a result, [MLN's] records, including but not limited to the loan files and loan related information . . . , may be relevant to pending federal criminal investigations into mortgage fraud." (Objection to Debtor's Motion for the Destruction for Certain Records, *In re Mortgage Lenders Network USA, Inc.*, No. 07-10146-PJW (Bankr. Del.) (Dkt. 3281).) Accordingly, upon information and belief, government investigations into MLN's origination of loans and compliance with its own underwriting guidelines are ongoing.

122. The originators of the mortgage loans underlying the Securitizations went beyond the systematic disregard of their own underwriting guidelines. The FCIC found that mortgage loan originators throughout the industry pressured appraisers, during the period of the

Securitizations, to issue inflated appraisals that met or exceeded the amounts needed for the subject loans to be approved, regardless of the accuracy of such appraisals, and especially when the originators aimed at putting the mortgages into a package of mortgages that would be sold for securitization. Upon information and belief, these inflated appraisals resulted in inaccurate LTV ratios.

b. The Collapse of the Certificates' Credit Ratings Further Shows that the Mortgage Loans were not Originated in Adherence to the Stated Underwriting Guidelines

123. The total collapse in the credit ratings of the Certificates invested in by Freddie Mac, typically from AAA or its equivalent to non-investment speculative grade, is further evidence of the originators systematic disregard of underwriting guidelines, underscoring that these Certificates were impaired from the start.

124. The Certificates purchased by Freddie Mac originally were assigned credit ratings of AAA or its equivalent, which purportedly reflected the description of the mortgage loan collateral and underwriting practices set forth in the Registration Statements. Those ratings artificially were inflated, however, upon information and belief, in part as a result of the same misrepresentations that the Defendants made to investors in the Prospectus Supplements.

125. Upon information and belief, GMAC provided information at the loan level to the rating agencies, including LTV ratios, owner-occupancy rates, and other loan characteristics, that the rating agencies used in part to calculate the assigned ratings of the Certificates purchased by Freddie Mac. Upon information and belief, because the information that GMAC provided, which information included among other things the Registration Statements or portions thereof, the ratings were inflated. As a result, the Certificates were offered and purchased at prices suitable for investment grade securities when in fact the Certificates actually carried a severe risk of loss and inadequate credit enhancement.

126. Since the issuance of the Certificates, the ratings agencies dramatically have downgraded their ratings to reflect the revelations regarding the true underwriting practices used to originate the mortgage loans, and the true value and credit quality of the mortgage loans. Table 8 details the extent of the downgrades.[13]

Table 8

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating at July 31, 2011 (Moody's/S&P/Fitch)
RAMP 2005-EFC6	AII	Aaa/AAA/--	A1/AAA/--
RAMP 2005-EFC7	AII	Aaa/AAA/--	Ca/D/--
RASC 2005-EMX3	AII	Aaa/AAA/--	Aa1/AAA/--
RASC 2005-KS10	AII	Aaa/AAA/--	Baa3/AAA/--
RASC 2005-KS11	AII	Aaa/AAA/--	Ba1/AAA/--
RAMP 2005-NC1	AII	Aaa/AAA/--	Ca/D/--
RALI 2005-QO4	IA1	Aaa/AAA/AAA	Caa3/CCC/C
RAMP 2005-RS9	AII	Aaa/AAA/--	Ca/D/--
RASC 2006-EMX8	AII	Aaa/AAA/--	Ca/CCC/--
RASC 2006-EMX9	AII	Aaa/AAA/--	Caa3/CCC/--
RASC 2006-KS3	AII	Aaa/AAA/--	Caa1/AA/--
RASC 2006-KS9	AII	Aaa/AAA/AAA	Ca/CCC/C
RALI 2006-QO4	IA1	Aaa/AAA/--	Ca/CCC/--
RALI 2006-QO4	IA2	Aaa/AAA/--	Ca/D/--
RALI 2006-QO5	IA1	Aaa/AAA/--	Caa3/AA-/--
RALI 2006-QO8	IIA	Aaa/AAA/--	Ca/D/--
RALI 2006-QO9	IIA	Aaa/AAA/--	Ca/D/--
RAMP 2006-RS1	AII	Aaa/AAA/--	Caa3/CCC/--
RASC 2007-EMX1	AII	Aaa/AAA/--	Ca/D/--
RASC 2007-KS2	AII	Aaa/AAA/AAA	Caa3/CCC/CC
RASC 2007-KS3	AII	Aaa/AAA/--	Caa3/CCC/--
RALI 2007-QH5	AII	Aaa/AAA/--	Ca/CC/--

c. The Surge in Mortgage Delinquency and Default Further Demonstrates that the Mortgage Loans were not Originated in Adherence to the Stated Underwriting Guidelines

127. Even though the Certificates were marketed as long-term, stable investments, a significant percentage of the mortgage loans backing the Certificates have defaulted, have been

[13] Applicable ratings are shown in sequential order separated by forward slashes: S&P/Moody□s/Fitch. A double-hyphen indicates that the relevant agency did not provide a rating at issuance.

foreclosed upon, or are delinquent, resulting in massive losses to the Certificateholders. The overall poor performance of the mortgage loans is a direct consequence of the fact that their underlying mortgage loans were not underwritten in accordance with applicable underwriting guidelines as represented in the Prospectus Supplements.

128. Loan groups that were underwritten properly and contained loans with the characteristics represented in the Prospectus Supplements would have experienced substantially fewer delinquencies and substantially lower percentages of defaults, foreclosures, and delinquencies than occurred here. Table 9 reflects the percentage of loans in the Supporting Loan Groups that are in default, have been foreclosed upon, or are delinquent as of July 2011.

Table 9

Transaction	Supporting Loan Group	Percentage of Delinquent / Defaulted / Foreclosed Loans
RAMP 2005-EFC6	Group II	33.5%
RAMP 2005-EFC7	Group II	40.2%
RASC 2005-EMX3	Group II	36.6%
RASC 2005-KS10	Group II	30.6%
RASC 2005-KS11	Group II	28.8%
RAMP 2005-NC1	Group II	29.0%
RALI 2005-QO4	Group I	42.3%
RAMP 2005-RS9	Group II	28.8%
RASC 2006-EMX8	Group II	53.0%
RASC 2006-EMX9	Group II	61.7%
RASC 2006-KS3	Group II	34.0%
RASC 2006-KS9	Group II	33.3%
RALI 2006-QO4 (IA1)	Group I	39.2%
RALI 2006-QO4 (IA2)	Group I	39.2%
RALI 2006-QO5	Group I	39.9%
RALI 2006-QO8	Group II	40.6%
RALI 2006-QO9	Group II	40.7%
RAMP 2006-RS1	Group II	27.5%
RASC 2007-EMX1	Group II	43.4%
RASC 2007-KS2	Group II	33.2%
RASC 2007-KS3	Group II	37.9%
RALI 2007-QH5	Group II	43.2%

129. The confirmed misstatements concerning owner-occupancy and LTV ratios; the confirmed systematic underwriting failures by the originators responsible for the mortgage loans

across the Securitizations; and the extraordinary drop in credit rating and rise in delinquencies across those Securitizations all demonstrate that the mortgage loans in the Supporting Loan Groups, contrary to the representations in the Registration Statements, were not originated in accordance with the stated underwriting guidelines.

E. Freddie Mac's Purchases of the Certificates

130. Between September 23, 2005 and May 30, 2007, Freddie Mac purchased from RFS, JPM, Credit Suisse, RBS, UBS, Bear Stearns, Citi, Barclays, Lehman Brothers and Goldman over $6 billion in RMBS issued in connection with the Securitizations. Table 10 reflects each of Freddie Mac's purchases of the Certificates.[14] To date, Freddie Mac has not sold any of the Certificates.

Table 10

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
RAMP 2005-EFC6	AII	76112BL32	11/22/05	163,581,000.00	100	JPM
RAMP 2005-EFC7	AII	76112BR85	12/28/05	199,376,000.00	100	RFS
RASC 2005-EMX3	AII	75405MAE4	09/23/05	267,481,000.00	100	RFS
RASC 2005-KS10	AII	75405WAD4	10/28/05	495,741,000.00	100	JPM
RASC 2005-KS11	AII	76110W7C4	11/29/05	547,641,000.00	100	Credit Suisse
RAMP 2005-NC1	AII	76112BR36	12/28/05	405,004,000.00	100	Credit Suisse
RALI 2005-QO4	IA1	761118NL8	11/30/05	143,428,800.00	100	RBS
RAMP 2005-RS9	AII	76112BL99	11/29/05	494,922,000.00	100	Bear Stearns
RASC 2006-EMX8	AII	74924UAE1	09/28/06	236,806,000.00	100	RFS
RASC 2006-EMX9	AII	74924VAE9	10/27/06	197,896,000.00	100	RFS
RASC 2006-KS3	AII	76113ABK6	03/29/06	232,006,000.00	100	Citi
RASC 2006-KS9	AII	75406YAE7	10/27/06	153,311,000.00	100	Barclays
RALI 2006-QO4	IA1	75114GAA7	04/27/06	327,356,000.00	100	RBS
RALI 2006-QO4	IA2	75114GAB5 92911DAA4	04/27/06	81,838,000.00	100	RBS

[14] Purchases and holdings of securities in Table 10 are stated in terms of unpaid principal balance ("UPB") of the relevant Certificates. Purchase prices are stated in terms of percentage of par. To date, Freddie Mac has not sold any of the Certificates it purchased as described in this section.

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
RALI 2006-QO5	IA1	75114HAA5	05/30/06	179,443,000.00	100	UBS
RALI 2006-QO8	IIA	75115FAT7	10/31/06	409,198,000.00	100	Lehman Brothers
RALI 2006-QO9	IIA	75115HAB2	11/30/06	284,637,000.00	100	Lehman Brothers
RAMP 2006-RS1	AII	76112BU24	01/25/06	409,790,000.00	100	Credit Suisse
RASC 2007-EMX1	AII	74924XAE5	03/12/07	326,812,000.00	100	RFS
RASC 2007-KS2	AII	74924WAE7	02/23/07	164,400,000.00	100	JPM
RASC 2007-KS3	AII	74924YAE3	04/19/07	167,618,000.00	99.96094	JPM
RALI 2007-QH5	AII	75116EAD4	05/30/07	143,007,000.00	100	Goldman

F. Freddie Mac was Damaged by Defendants' Violations of Sections 11, 12 and 15 of the Securities Act

131. The statements and information in the Registration Statement regarding the credit quality and characteristics of the mortgage loans underlying the Certificates, and the origination and underwriting practices pursuant to which the mortgage loans purportedly were originated, were material to a reasonable investor. But for the misrepresentations and omissions in the Registration Statement concerning those matters, Freddie Mac would not have purchased the Certificates.

132. Based upon sales of the Certificates or similar certificates in the secondary market and other indications of value, Freddie Mac has incurred substantial losses on the Certificates due to a decline in value that is directly attributable to Defendants material misrepresentations and omissions. Among other things, the mortgage loans underlying the Certificates experienced defaults and delinquencies at a higher rate than would have been the case had the loans underlying the Certificates actually conformed to the origination guidelines, and had the Certificates merited the credit ratings set forth in the Registration Statement.

133. Defendants' misstatements and omissions in the Registration Statement were the direct, proximate and actual cause of Freddie Mac's losses resulting from its purchase of the Certificates. The precise extent of Freddie Mac's injuries will be proven at trial.

134. At the time it purchased the Certificates, Freddie Mac was unaware of the Defendants' misrepresentations, omissions, and/or untrue statements. Plaintiff was appointed Conservator of Freddie Mac less than one year after the discovery of the untrue statements and omissions contained in the Registration Statement and within three years of the Certificates being offered for sale to the public. Despite the exercise of reasonable diligence, Freddie Mac could not reasonably have discovered the untrue statements and omissions in the Registration Statement more than one year prior to the appointment of the Plaintiff as Conservator. This action is timely pursuant to 12 U.S.C. §§ 4617(b)(12) & (13), which provides for extension or tolling of all statutory time periods applicable to the claims brought herein.

II. ADDITIONAL FACTUAL ALLEGATIONS

135. The allegations in paragraphs 160 through 176 below concerning Defendants' knowledge or recklessness concerning the information set forth in or omitted from the Registration Statements and any other materials provided to Freddie Mac are made solely with respect to Plaintiff's common law claims, as are the allegations set forth in paragraphs 177 through 185 concerning Freddie Mac's reliance on the material misrepresentations and omissions alleged herein.

A. Defendants Were Incentivized to Fund Risky Residential Mortgage Loans and to Securitize and Sell Them to Investors

136. Securitizing large volumes of loans was a highly lucrative and competitive business for the Defendants. All of the underwriter defendants engaged in this business on a massive scale, each doing multiple billions of dollars worth of securitizations during the period

when they sold the Certificates to Freddie Mac. Fees, which were a percentage of the balance of the loan pool being purchased, and other transaction revenues associated with the Certificates at issue here, and with the RMBS securitization business more generally, accounted for a substantial portion of the underwriter (and other) Defendants earnings in the relevant time period. The more and the larger the securitizations the Defendants arranged and participated in, the greater their earnings. This financial motive accounts for Defendants willingness, intentionally or recklessly, to make false statements in, or to omit material facts from, the Registration Statements and other offering materials. In furtherance of this motive, the Defendant underwriters took measures and entered into arrangements designed to ensure that a continuous and high volume of mortgage loans would be available for securitization.

137. Thus, among other things, the underwriters provided warehouse funding to mortgage originators to enable these originators to make, and to continue to make, loans. These subprime mortgage originators used those funds to make large numbers of loans, which they then turned around and sold back to the underwriters whose funds enabled them to make the loans in the first place. The banks then securitized the loans they effectively had funded, and transferred the risk to investors like Freddie Mac through the sale of the RMBS resulting from the securitizations.

138. These arrangements between the underwriters and loan originators undermined the underwriting process for the Certificates because the underwriters had no incentive to identify and exclude from the securitizations loans that did not conform to the loan originators stated guidelines. To the contrary, the underwriters had the motive to, and did, include loans that upon information and belief, they knew did not conform to those guidelines, and that lacked the characteristics or merited the ratings set forth in the Registration Statement.

139. Credit Suisse, Citi, Bear Stearns, Barclays, UBS and Goldman Sachs -- all of whom were underwriters of the Securitizations -- provided billions of dollars of warehouse lending to New Century. From 2000 to 2010, Citi extended warehouse lines of credit of up to $7 billion to unaffiliated originators, including $950 million to New Century and over $3.5 billion to Ameriquest. (FCIC Report at 113.) Citi and JPM lent their own mortgage origination subsidiaries at least $26.3 billion and $30 billion, respectively, between 2005 and 2007. (*See* "Who is Behind The Financial Meltdown: The Top 25 Subprime Lenders and their Wall Street Backers," The Center for Integrity, available at http://www.publicintegrity.org/investigations/economic_meltdown/the_subprime_25/.) As reported by the FCIC, Barclays provided at least $221 million in warehouse financing to New Century in connection with just a single financing. Upon information and belief, Barclays provided similar financing to originators in connection with several securitizations, leading to the same conflicts of interest. Upon information and belief, RBS also engaged in the same warehouse lending practices.

140. The practice was pervasive among investment banks. Thus, for example, Bear Stearns kept its pipeline flowing by operating its own mortgage loan originators and loan servicers: EMC Mortgage Corporation ("EMC"), Bear Stearns Residential Mortgage Corporation, and Encore Credit Corp. As a result of its strategy, Bear Stearns' fixed income net revenues were a record $4.0 billion in 2006, up 23 percent from $3.3 billion in 2005. Bear Stearns did not report how it manipulated its wholly-owed originators and servicers to push through non-compliant loans. A former EMC employee, who vetted loans for securitizations, told *The Atlantic* that "Bear traders pushed EMC analysts to get loan analysis done in only one to three days. That way, Bear could sell them off fast to eager investors and didn't have to carry

the cost of holding these loans on their books. (More Corruption: Bear Stearns Falsified Information as Raters Shrugged, The Atlantic, by Teri Buhl, May 14, 2010.) EMC analysts fabricated data such as FICO scores if lenders did not provide real information quickly enough, and Bear Stearns analysts in New York, rather than EMC employees who had access to loan information, decided how to report and calculate the presence and quality of loan documentation without adequate research. (*Id.*)

141. GMAC itself was a fully, vertically-integrated RMBS operation that was dependent on volume. GMACM and HFN originated subprime and Alt A loans; RFC sponsored securitizations of such loans and transferred them to affiliated depositors RALI, RAMP and RASC; and RFS marketed and sold the RMBS to investors. HFN, which originated loans for 13 of the Securitizations here, was under enormous pressure to extend risky loans. A former loan officer at HFN recounted that "[t]he main focus was doing Alt A because that's where the money was," and "[i]n order to keep your market share, you had to be more aggressive." (*See* "Shaky loans may spur new foreclosure wave," *The Portland Tribune* (Oct. 30, 2009).) A mortgage broker confirmed such pressure, stating: "The V.P.s came down to the office beating the drums about Option ARMs" "I had Wachovia march through here; I had GMAC." (*Id.*)

142. Defendants were motivated to churn out and securitize as many mortgages as possible because they earned so much in revenues on both ends of the securitization process, while transferring the ultimate risk of default to investors, such as Freddie Mac. Indeed, several of the Defendants ranked in the top ten of the nation's largest underwriters of RMBS between 2004 and 2007, according to Inside Mortgage Finance. The three underwriters that sold the Certificates to Freddie Mac -- JPM, Credit Suisse and RBS -- were especially prolific. By 2007, RBS ranked fifth with $50.3 billion in transactions, Credit Suisse ranked sixth with $44.1 billion,

and JPM ranked seventh with $43.5 billion. (*2011 Mortgage Market Statistical Annual*, Vol. II (Inside Mortgage Finance Publ□ns, Inc., 2011).)

B. Defendants' Material Misrepresentations and Omissions in the Offering Materials

143. In connection with the sale of the Certificates, the selling underwriters RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS, and Goldman; the depositors RALI, RASC, and RAMP; and the sponsor RFC (together, the □Fraud Defendants□) each made misrepresentations and omissions of material fact to Freddie Mac in term sheets, Registration Statements, Prospectuses, Prospectus Supplements, and other draft and final written offering documents (the □Offering Materials□). These Offering Materials describe the credit quality and other characteristics of the underlying mortgage loans and were provided to investors, including Freddie Mac.

144. Accordingly, Freddie Mac required the Fraud Defendants to provide representations and warranties regarding the origination and quality of the mortgage loans, including that the mortgage loans had been underwritten by the loan originators pursuant to extensive guidelines.

145. Through term sheets or other offering documents, the Fraud Defendants also furnished Freddie Mac with anticipated credit ratings on the proposed pool of mortgage loans intended for securitization.

146. On information and belief, the Fraud Defendants solicited the anticipated ratings from credit rating agencies based on misrepresentations by Defendants as to the credit quality of the mortgage loans and the amount of the overcollateralization in the deal. All of the Securitizations had shadow ratings of at least AAA or its equivalent.

147. Furthermore, the Fraud Defendants delivered Prospectus Supplements to Freddie Mac that included more specific information about the loans underlying the Certificates in each Securitization.

148. The materially false and misleading information contained in the initial and final Prospectus Supplements that the Fraud Defendants provided to Freddie Mac included reproductions of the same schedules that the Fraud Defendants provided to Freddie Mac, containing false data about LTV ratios and owner-occupancy statistics.

149. The Offering Materials, among other things: (1) misrepresented the loans and loan originators adherence to the stated underwriting guidelines; (2) overstated the number of loans for owner-occupied properties; (3) understated the loan pools average LTV ratios; and (4) failed to disclose that the credit ratings of the Certificates were based on false information. Each misrepresentation and omission created an additional, hidden layer of risk well beyond that known to be associated with non-agency loans or subprime loans.

150. First, the Fraud Defendants statements regarding the mortgage pools compliance with stated underwriting guidelines were false. The falsity of such representations is evident from disclosures concerning the originators systematic disregard of their stated underwriting guidelines, as well as the Certificates high default rates and plummeting credit ratings. Indeed, of the 15 originators whose loans were sold into the Securitizations, five were cited as among the worst ten in the worst ten metropolitan areas: Aegis, Decision One, New Century, Ownit, and People s Choice. Government and private investigations have confirmed that these originators failed to apply any standards at all when making high-risk loans. Moreover, the high default rates and low credit ratings confirm that the loans were not properly underwritten in the first place. As shown in Tables 8 and 9, the average rate of default

across the Securitizations is 38.03 percent, and although the Certificates invested in by Freddie Mac for all 21 of the Securitizations had been rated AAA (or its equivalent) at the time of purchase, by July 31, 2011, 18 had been downgraded, and most had been downgraded to junk or nearly junk-bond status, with eight downgraded to CCC (or its equivalent), the lowest rating above junk. *See supra* Section I.D.2.b.

151. These misstatements were material because, as discussed above, the quality of loans in the pool determined the risk of the Certificates backed by those loans. Because a reasonable underwriting process had not been followed, the entire loan pool was much riskier and more prone to default and market losses than represented. The systemic underwriting failures decreased the reliability of *all* the information provided to Freddie Mac about the loans, and thus increased the actual risk to investors. As a result of those failures, the value of the Certificates was substantially lower than the price paid by Freddie Mac for those Certificates.

152. Second, as shown in Table 6, the Fraud Defendants materially understated the non-owner-occupied status for each Securitization by an average of 10.73 percent. This information was material to Freddie Mac because high owner-occupancy rates reported to Freddie Mac should have made the Certificates purchased by Freddie Mac safer investments than certificates backed by second homes or investment properties.

153. Third, the Fraud Defendants understated the loan pools average LTV ratios, which overstates the borrowers equity cushion in the property. As Table 7 demonstrates, on average, only 38.5 percent of the loans actually had LTV ratios of less than 80 percent, as opposed to 64.2 percent as represented in the Prospectus Supplements. Moreover, while all but two of the Certificates were represented to have no loans with an LTV over 100 percent, in reality, every deal contained at least eight percent loans with greater than 100 percent LTV, with

an average of 18.5 percent. In other words, in almost all of the Securitizations, a significant percentage of the mortgage loans either were under-secured or "under water" from the start. The understatement of LTV ratios was misleading because it misrepresented the risk of a borrower abandoning a property if the value dropped below the unpaid balance of the loan, as well as the risk that proceeds from a foreclosure sale would fail to cover the unpaid balance.

154. Further, the Fraud Defendants failed to disclose that the Certificates' credit ratings were false and misleading because Defendants provided to the ratings agencies the same misinformation contained in the Offering Materials in an attempt to manufacture predetermined ratings. In testimony before the Senate Permanent Subcommittee on Investigations, Susan Barnes, the North American Practice Leader for RMBS at S&P from 2005 to 2008, confirmed that the rating agencies relied upon investment banks to provide accurate information about the loan pools:

> The securitization process relies on the quality of the data generated about the loans going into the securitizations. *S&P relies on the data produced by others and reported to both S&P and investors about those loans . . . . S&P does not receive the original loan files for the loans in the pool.* Those files are reviewed by the arranger or sponsor of the transaction, who is also responsible for reporting accurate information about the loans in the deal documents and offering documents to potential investors.

(SPSI hearing testimony, April 23, 2010) (emphasis added). As a result, the ratings failed to reflect accurately the actual risk underlying the Certificates purchased by Freddie Mac because the ratings agencies were analyzing a mortgage pool that had no relation to the pool that actually backed the Certificates purchased by Freddie Mac.

155. The AAA (or equivalent) anticipated and final credit ratings were material to Freddie Mac, because the ratings provided additional assurances that Freddie Mac would receive

the expected interest and principal payments. Freddie Mac would not have purchased the Certificates without the proper ratings.

156. Each of the Fraud Defendants is responsible for the representations made in or omitted from the Offering Materials. Specific false and misleading statements in the Registration Statements for the Certificates purchased by Freddie Mac are detailed in Sections I.C. and I.D., in paragraphs 69-134 *supra* and Appendix A, which are incorporated by reference.

157. Because payment on the Certificates ultimately was funded by payments from the mortgagors, Freddie Mac faced a risk of non-payment if too many borrowers defaulted on their loans and the value of the mortgaged properties was insufficient to cover the unpaid principal balance. Accordingly, any representation bearing on the riskiness of the underlying mortgage loans was material to Freddie Mac. By misrepresenting the true risk profile of the underlying loan pools, the Fraud Defendants defrauded Freddie Mac.

158. As the FCIC found:

> The Commission concludes that firms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. *Potential investors were not fully informed or were misled* about the poor quality of the mortgages contained in some mortgage-related securities. *These problems appear to have been significant.*

(FCIC Report at 187 (emphasis added).)

C. The Fraud Defendants Knew or were Reckless in not Knowing that Their Representations were False and Misleading

159. The Fraud Defendants knew or were reckless in not knowing that their representations in the Offering Materials were false, and that the information they omitted from documents rendered them materially misleading. The consistency of the misrepresentations and omissions across all of the 21 Securitizations is strong evidence that the Fraud Defendants did

not innocently make materially false statements and omissions, but actually knew or were reckless in not knowing that (1) the loan originators systematically disregarded their own underwriting guidelines, (2) the LTV ratios presented in the Registration Statements were materially inaccurate, (3) the owner-occupancy rates presented in the Registration Statements were materially inaccurate, and (4) the credit ratings for the Certificates were based on incomplete and inaccurate information and were not believed by the ratings agencies when provided.

160. The Fraud Defendants' financial interests and relationships with mortgage originators compromised their approach to securitizing RMBS. Thus, for example, six of the Fraud Defendants -- Credit Suisse, Citi, Bear Stearns, Barclays, Goldman Sachs, and UBS -- provided warehouse lines of credit to New Century, whose departure from its stated underwriting guidelines has now been extensively investigated and documented. Given all the revelations about New Century's flagrant conduct and the Fraud Defendants' disincentives to perform meaningful due diligence, the Fraud Defendants knew or were reckless in disregarding that New Century loans backing the Certificates were not originated in accordance with the sound underwriting practices.

161. In the case of GMAC, the GMAC entities were so closely integrated and the abusive lending practices so rampant from the top down that the depositors (RALI, RAMP and RASC), the sponsor (RFC) and the underwriter (RFS), knew -- or were reckless in not knowing -- that HFN -- a subsidiary of the sponsor -- systematically was disregarding prudent underwriting standards and that its loans lacked the characteristics represented in the Offering Materials. As detailed above, a sampling of GMACM loans conducted by MBIA has revealed a non-compliance rate of at least 89 percent.

162. Further, GMACM's abusive or reckless lending and servicing practices, including commingling funds from custodial bank accounts and questionable and unlawful foreclosure practices, have also been revealed. (*See* "Moody's downgrades $1.4 billion in GMAC subprime RMBS" *available at* http://www.housingwire.com/2011/03/25/allstates-mbs-exposure-hits-2-78-billion.) The GMAC entities also shared substantial overlapping management; for instance, David M. Applegate held simultaneous positions as the President and CEO of GMACM and the Principal Executive Officer of RALI, while Bruce Paradis was the CEO of GMAC-RFC, RALI, RAMP, and RASC. Given the overlapping management and the integrated structure, GMAC knew or was reckless in not knowing of the misrepresentations and omissions concerning HFN's underwriting guidelines.

163. Further, several of the Fraud Defendants knew that the mortgage loans they securitized were non-compliant because they had been informed of such by third-party experts. Clayton Holdings, Inc. ("Clayton") was a due diligence firm that sampled loans for many of the key players in the RMBS market.[15] Clayton was "hired to identify, among other things, whether the loans met the originators' stated underwriting guidelines and, in some measure, to enable clients to negotiate better prices on pools of loans." (FCIC Report at 166 (footnote omitted).) Yet, upon information and belief, the Fraud Defendants routinely disregarded and manipulated Clayton's findings.

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[15] Clayton was the leading provider of third-party due diligence during the relevant time period. In 2006, Clayton analyzed over $418 billion in loans underlying mortgage-backed securities, which represented 22.8% of the total outstanding U.S. non-agency mortgage-backed securities for that year. (Clayton, Form 10-K.) During 2004, 2005, and 2006, Clayton worked with each of the ten largest non-agency mortgage-backed securities underwriters, as ranked by *Inside MBS & ABS*, which accounted for 73% to 78% of the total underwriting volume during those years. The belief that GMAC used Clayton for due diligence is based upon the information that GMAC and Clayton shared senior management. (*See* http://nationalmortgageprofessional.com/news16031/national-groups-expands-its-executive-team.)

164. In January 2008, Clayton disclosed that it had entered into an agreement with the New York Attorney General ("NYAG") to provide documents and testimony regarding its due diligence reports, including copies of the actual reports provided to its clients. According to *The New York Times*, as reported on January 27, 2008, Clayton told the NYAG "that starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending expectations" and "some investment banks directed Clayton to halve the sample of loans it evaluated in each portfolio." Upon information and belief, the Fraud Defendants were included in that group of investment banks**.** Thus, these Defendants made a conscious decision *not to* avail themselves of comprehensive due diligence regarding the loans they were securitizing, which alone renders their misrepresentations concerning those loans knowing or reckless.

165. For the 18 month period ending on June 31, 2007, a significant percentage of the loans sampled by Clayton at the direction of the Fraud Defendants failed to meet the various loan originator's underwriting guidelines. This information was provided to the securities underwriters. Nonetheless, several of the Fraud Defendants overruled Clayton's findings and "waived in" substantial percentages of these loans (approximately 51 percent for JPM, 29 percent for Bear Stearns, 33 percent for Credit Suisse, 53 percent for RBS, 31 percent for Citi, 28 percent for Barclays, 33 percent for UBS, and 29 percent for and Goldman). (*See* Clayton Trending Reports, available at http://fcic.law.stanford.edu/hearings/testimony/the-impact-of-the-financial-crisis-sacramento#documents; FCIC Report, 167.)

166. Upon information and belief, these Defendants waived in these loans, found by Clayton to be non-compliant with the relevant originator's origination guidelines, without taking any adequate steps of their own to verify Clayton's findings. These loans then found their way into RMBS that were sold to investors like Freddie Mac. *See* FCIC Report, 167; *see* September

23, 2010 All Clayton Trending Reports, 1st Quarter 2006 -- 2nd Quarter 2007. Consequently, the Fraud Defendants were aware that the mortgage loans making up the pools for the Certificates were not as safe as had been represented, and were priced too high for the level of risk assumed.

167. Similarly, Citi's knowledge concerning origination practices went far beyond a general awareness that originators systematically were disregarding their own underwriting guidelines. Citi knew its representations to Freddie Mac were false. In April 2010, Richard M. Bowen III, an executive of a Citi affiliate testified before the FCIC that during the 2006-2007 time frame -- when Freddie Mac purchased Certificates -- 60 percent to 80 percent of the RMBS Citi sold were defective and in contravention to the representations and warranties made to those investors, including specifically Freddie Mac. (Written Testimony of Richard M. Bowen, III to the FCIC, April 7, 2010, at 1-2, 6.)

168. In a November 3, 2007 e-mail, Mr. Bowen recounted Citi's misrepresentations to Freddie Mac:

> We currently purchase from mortgage companies and sell to third party investors . . . mortgage loans which have not been underwritten by us but which we rep and warrant to the investors (primarily Fannie/Freddie) that these files are complete and have been underwritten to our policy criteria.
>
> Our internal Quality Assurance function, which underwrites a small sample of these files post-purchase, has reflected since 2006 . . . that 40-60% of these files are either outside of policy criteria or have documentation missing from the files. QA for recent months indicate 80% of the files fall into this category.

(Bowen Testimony, Ex. 1.) Citi retaliated against this whistleblower by decreasing the number of his direct reports from 220 people to two, slashing his bonus, and giving him poor performance reviews. (FCIC Report at 19.)

169. Defendant Goldman Sachs malfeasance in the RMBS market has also been reviewed and reported in detail by the United States Senate. The SPSI Report found that in exchange for lucrative fees, Goldman Sachs helped lenders like Long Beach, Fremont, and New Century, securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting RMBS, and sell the RMBS securities to investors, pushing billions of dollars of risky mortgages into the financial system. (*See* Sen. Levin, Carl and Sen. Coburn, Tom, U.S. Senate Permanent Subcommittee on Investigations, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* (Committee on Homeland Security and Governmental Affairs, April 13, 2011) (SPSI Report), p. 377.)

170. Bear Stearns likewise participated in -- and therefore knew about -- the origination practices behind the loans it securitized. As reported in *The Atlantic*, Bear Stearns manipulated its wholly-owned originators to push through non-compliant loans. A former EMC employee revealed that Bear traders pushed EMC analysts to get loan analysis done in only one to three days. That way, Bear could sell them off fast to eager investors and didn't have to carry the cost of holding these loans on their books. (More Corruption: Bear Stearns Falsified Information as Raters Shrugged, The Atlantic, by Teri Buhl, May 14, 2010.) EMC analysts fabricated data such as FICO scores if lenders did not provide real information quickly enough, and Bear Stearns analysts in New York, rather than EMC employees who had access to loan information, decided how to report and calculate the presence and quality of loan documentation without adequate research. (*Id.*)

171. As active participants in fraudulent origination practices, the Fraud Defendants knew or were reckless in disregarding the falsity of their statements in the Offering Materials concerning underwriting guidelines.

172. The Fraud Defendants also knew or recklessly disregarded that the owner-occupancy statistics and LTV ratios reported in the Offering Materials were false and misleading. Given their role as underwriters of the securities, the relationships they had with loan originators, and this expertise in underwriting and securitizing RMBS, the Fraud Defendants had the practical ability to gain access to loan files and the ability and resources to test the reported data points, such as owner-occupancy rates and LTV ratios. They intentionally elected not to do so, rendering their representations concerning those data knowingly or recklessly false.

173. Moreover, upon information and belief, underwriters, including certain of the Fraud Defendants, influenced the appraisals used to determine LTV ratios. Government investigations have uncovered widespread evidence of appraisers being pressured to overvalue properties so more loans could be originated. For instance, several witnesses, ranging from the President of the Appraisal Institute to appraisers and lenders on the ground, confirmed that appraisers felt compelled to come in "at value" -- *i.e.*, at least the amount needed for the loan to be approved -- or face losing future business or their livelihoods. Given the systemic pressure applied to appraisers, upon information and belief, the appraisers themselves, the originators, and the underwriters did not believe that the appraised values of the properties -- and therefore LTV ratios -- were true and accurate at the time they communicated the information to potential investors, including the GSEs.

174. Further, the Fraud Defendants knew or were reckless in not knowing that the credit ratings reported for the Certificates failed to reflect the actual risk of the securities, and that the ratings agencies had no basis to believe in the accuracy of those ratings. Not only did these Defendants provide the ratings agencies false, loan-level information, but they also routinely engaged in "ratings shopping" -- *i.e.*, pressuring the ratings agencies for favorable

ratings and playing the rating agencies off one another with the threat of withholding future business if the sponsoring bank was not given favorable treatment. As detailed in the SPSI Report:

> At the same time Moody's and S&P were pressuring their RMBS and CDO analysis to increase market share and revenues, the investment banks responsible for bringing RMBS and CDO business to the firms were pressuring those same analysts to ease rating standards. Former Moody's and S&P analysts and managers interviewed by the Subcommittee described, for example, how investment bankers pressured them to get their deals done quickly, increase the size of the tranches that received AAA ratings, and reduce the credit enhancements protecting the AAA tranches from loss. They also pressed the CRA analysts and managers to ignore a host of factors that could be seen as increasing credit risk. Sometimes described as "ratings shopping," the analysts described how some investment bankers threatened to take their business to another credit rating agency if they did not get the favorable treatment they wanted. The evidence collected by the Subcommittee indicates that the pressure exerted by investment banks frequently impacted the ratings process, enabling the banks to obtain more favorable treatment than they otherwise would have received.

(SPSI Report, at 278.)

175. As one S&P director put it in an August 8, 2006 e-mail: "[Our RMBS friends have] become so beholden to their top issuers for revenue [that] they have all developed a kind of Stockholm syndrome which they mistakenly tag as Customer Value creation." Ratings analysts who complained about the pressure, or did not do as they were told, were quickly replaced on deals or terminated.

176. Summarizing the intense pressure investment banks put on ratings analysts to provide favorable ratings, a former Moody's VP and Senior Credit Officer testified before the FCIC that "[t]he willingness to decline to rate, or to just say no to proposed transactions, steadily diminished over time. That unwillingness to say no grew in parallel with the company's share price and the proportion of total firm revenues represented by structured finance transactions . . .

coincident with the steady drive toward commoditization of the instruments we were rating . . . . The threat of losing business . . . even if not realized, absolutely tilted the balance away from independent arbiter of risk towards a captive facilitator of risk transfer . . . . The message from management was . . . "Must say yes." (*See* Written Testimony of Richard Michalek (FCIC Hearing, June 2, 2010), available at http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2008-0602-Michalek-corrected-oral.pdf; see *also* Written Statement of Eric Kolchinsky, Managing Director, Moody's Derivatives Group ("Managers of rating groups were expected by their supervisors and ultimately the Board of Directors . . . to build, or at least maintain, market shares. It was an unspoken understanding that loss of market share would cause a manager to lose his or her job; "[L]owering credit standards . . . was one easy way for a managing director to regain market share."), available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=bd65f802-961c-4727-b176-72ece145baef.)

D. Freddie Mac Justifiably Relied on the Misrepresentations and Omissions in the Offering Materials and was Damaged by Defendants' Fraudulent Conduct

177. Freddie Mac is a government-sponsored enterprise chartered by Congress to provide liquidity, stability, and affordability to the U.S. housing and mortgage markets. In furtherance of this mission, Freddie Mac purchases mortgages and invest in RMBS.

178. Generally when purchasing RMBS, Freddie Mac requires compliance with their investment requirements, as well as various representations and warranties concerning, among other things, the credit quality of the underlying loans, evaluation of the borrower's ability to pay, the accuracy of loan data provided, and adherence to applicable local, state and federal law. Such representations and warranties were material to Freddie Mac's decision to purchase RMBS, including the Certificates.

179. The Fraud Defendants intended for investors, including Freddie Mac, to rely on their representations of material facts about the assets backing the Certificates. These Defendants regularly provided prospective RMBS investors with information concerning the volume of their annual securitization business to assure investors that, by virtue of their expertise in and share of the RMBS market, Freddie Mac should rely upon the representations and warranties in their Offering Materials. *See*, *e.g.*, Prospectus Supplement for the RALI 2006-QO8 Securitization.

180. The Fraud Defendants knew that Freddie Mac had specific requirements for investing in non-agency mortgage-backed securities and intended for Freddie Mac to rely on their fraudulent misstatements as shown by their provision of representations, warranties and shadow credit ratings in connection with the Certificates, and their repetition of false loan statistics in term sheets, free writing prospectuses, and Prospectus Supplements, among other materials.

181. In fact, Freddie Mac did rely, to its detriment, on the Fraud Defendants misrepresentations and material omissions in the Offering Materials.

182. Freddie Mac's reliance was justifiable because Freddie Mac necessarily was required to rely upon the Fraud Defendants to provide accurate information regarding the loans. Freddie Mac lacked access to the actual loan files, and the loan-level data essential to perform the necessary statistical tests with respect to, among other things, owner-occupancy and LTV ratios.

183. Freddie Mac's reliance also was justifiable because industry practice was for an investor to rely upon the representations and warranties of the sponsors and underwriters regarding the quality of the mortgage loans and the standards under which they were originated.

Information regarding the originators compliance with underwriting guidelines, owner-occupancy rates, LTV ratios, and the information provided to credit ratings agencies, was peculiarly within the knowledge of the Fraud Defendants.

184. Freddie Mac was induced into buying the Certificates based on the false and misleading Offering Materials. Freddie Mac would not have purchased the Certificates had it known the truth concerning the matters alleged herein. Alternatively, Freddie Mac suffered damages because the price it paid for the Certificates was higher than their actual value.

185. From the day Freddie Mac purchased the Certificates, it suffered injury. As a result of Defendants misrepresentations, the true value of the Certificates on the date of purchase was far lower than the price paid for them by Freddie Mac.

FIRST CAUSE OF ACTION

Violation of Section 11 of the Securities Act of 1933 (Against Defendants RALI, RASC, RAMP, RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

186. Plaintiff realleges paragraphs 1 through 134 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

187. This claim is brought by FHFA pursuant to Section 11 of the Securities Act of 1933 and is asserted on behalf of Freddie Mac, which purchased the Certificates issued pursuant to the Registration Statements for the Securitizations listed in paragraph 43.

188. This claim is for strict liability based on the material misstatements and omissions in the Registration Statements that registered securities that were bona fide offered to the public on or after September 6, 2005 for the 21 Securitizations (as specified in Table 1, *supra* at paragraph 44), and is asserted against RALI, RASC, RAMP, RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS, and Goldman Sachs (together, the Section 11 Defendants).

189. RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS, and/or Goldman Sachs (the "Underwriter Defendants") acted as underwriter in connection with the sale of the Certificates for each of the 21 Securitizations (as specified in Table 1, *supra* at paragraph 44), directly and indirectly participated in distributing the Certificates, and directly and indirectly participated in drafting and disseminating the Registration Statements that registered securities that were bona fide offered to the public on or after September 6, 2005. The Underwriter Defendants were underwriters for the Certificates, and are strictly liable for the misstatements and omissions in the Registration Statements under Section 11 of the Securities Act.

190. Depositors RALI, RASC, and RAMP (the "Depositor Defendants") filed Shelf Registration Statements that registered securities that were bona fide offered to the public on or after September 6, 2005 (as specified in Table 2, *supra* at paragraph 50) pursuant to which the Securitizations were carried out, and are the "issuers" of the Certificates issued pursuant to the Registration Statements within the meaning of Section 2(a)(4) of the Securities Act, 15 U.S.C. § 77b(a)(4), and in accordance with Section 11(a), 15 U.S.C. § 77k(a).

191. At the time that they became effective, each of the Registration Statements, as set forth above, contained material misstatements of fact and omitted information necessary to make the facts stated therein not misleading. The facts misstated or omitted were material to a reasonable investor in the securities sold pursuant to the Registration Statements.

192. The untrue statements of material facts and omissions of material fact in the Registration Statements are principally those set forth herein in Section IV, and pertain to purported compliance with underwriting guidelines, occupancy status, loan-to-value ratios and credit ratings.

193. Freddie Mac purchased or otherwise acquired the Certificates pursuant to the false and misleading Registration Statements and in the primary market. At the time it purchased the Certificates, Freddie Mac was unaware of the false and misleading statements and omissions alleged herein, and if Freddie Mac had known those facts, it would not have purchased the Certificates.

194. The Section 11 Defendants were obligated to make a reasonable investigation of the statements contained in the Registration Statements at the time they became effective to ensure that such statements were true and correct, and that there were no omissions of material facts required to be stated in order to make the statements contained therein not misleading.

195. The Section 11 Defendants did not exercise such due diligence and failed to conduct a reasonable investigation. In the exercise of reasonable care, these Defendants should have known of the false statements and omissions contained in or omitted from the Registration Statements filed in connection with the Securitizations, as set forth herein. In addition, although the performance of due diligence is not an affirmative defense available to the Depositor Defendants on this strict liability claim, they nonetheless also failed to take reasonable steps to ensure the accuracy of the representations made in the Registration Statements.

196. By virtue of the foregoing, Freddie Mac sustained substantial damages, including depreciation in the value of the securities, as a result of the misstatements and omissions in the Registration Statements. Plaintiff is entitled to damages, jointly and severally, from each of the Section 11 Defendants.

197. Based on the foregoing, the Section 11 Defendants are jointly and severally liable for their wrongdoing.

SECOND CAUSE OF ACTION

Violation of Section 12(a)(2) of the Securities Act of 1933
(Against Defendants RALI, RASC, RAMP, RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

198. Plaintiff realleges paragraphs 1 through 134 as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

199. This claim is brought by Plaintiff pursuant to Section 12(a)(2) of the Securities Act of 1933 and is asserted on behalf of Freddie Mac, which purchased the Certificates issued pursuant to the Registration Statements in the Securitizations listed in paragraph 43.

200. The Underwriter Defendants are prominently identified as underwriters in each of the Prospectuses used to sell the Certificates. The Underwriter Defendants offered, promoted, and/or sold the Certificates publicly, including selling to Freddie Mac their Certificates, as set forth in the "Plan of Distribution" or "Underwriting" sections of the Prospectuses. The Underwriter Defendants offered, promoted, and/or sold the Certificates to Freddie Mac as specified in Table 2, *supra* at paragraph 50.

201. The Underwriter Defendants offered, promoted, and/or sold the Certificates to Freddie Mac by means of the Prospectuses that contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. The Underwriter Defendants successfully solicited Freddie Mac's purchases of the Certificates, and generated millions of dollars in commissions in connection with the sale of the Certificates.

202. The Underwriter Defendants offered the Certificates for sale, sold them, and distributed them by the use of means or instruments of transportation and communication in interstate commerce.

203. The Depositor Defendants are prominently identified in the Prospectuses for the Securitizations carried out under the Registration Statements that they filed. These Prospectuses were the primary documents each used to sell the Certificates for the 21 Securitizations under those Registration Statements. The Depositor Defendants offered the Certificates publicly and actively solicited their sale, including to Freddie Mac.

204. With respect to the Securitizations for which they filed Registration Statements, the Depositor Defendants offered the Certificates to Freddie Mac by means of Prospectuses that contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in the light of the circumstances under which they were made, not misleading. Upon information and belief, the Depositor Defendants reviewed and participated in drafting the Prospectuses.

205. The Depositor Defendants offered the Certificates for sale by the use of means or instruments of transportation and communication in interstate commerce.

206. The Underwriter Defendants and Depositor Defendants (together, the "Section 12 Defendants") actively participated in the solicitation of Freddie Mac's purchase of the Certificates, and did so in order to benefit themselves. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and/or assisting in marketing and selling the Certificates.

207. Each of the Prospectuses contained material misstatements of fact and omitted information necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Prospectuses.

208. The untrue statements of material facts and omissions of material fact in the Registration Statements, which include the Prospectuses, are set forth above in Section IV and pertain to compliance with underwriting guidelines, occupancy status, and loan-to-value ratios.

209. The Section 12 Defendants offered and sold the Certificates offered pursuant to the Registration Statements directly to Freddie Mac, pursuant to the false and misleading Prospectuses.

210. The Section 12 Defendants owed to Freddie Mac a duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses, to ensure that such statements were true, and to ensure that there was no omission of a material fact required to be stated in order to make the statements contained therein not misleading. The Section 12 Defendants failed to exercise such reasonable care, and in the exercise of reasonable care should have known that the Prospectuses contained untrue statements of material facts and omissions of material facts at the time of the Securitizations as set forth above.

211. Freddie Mac did not know of the misstatements and omissions contained in the Prospectuses at the time they purchased the Certificates. If Freddie Mac had known of those misstatements and omissions, it would not have purchased the Certificates.

212. Freddie Mac acquired the Certificates in the primary market pursuant to the Prospectuses.

213. Freddie Mac sustained substantial damages in connection with its investments in the Certificates and has the right to rescind and recover the consideration paid for the Certificates, with interest thereon. Plaintiff hereby seeks rescission and makes any necessary tender of its Certificates. In the alternative, Plaintiff seeks damages according to proof.

THIRD CAUSE OF ACTION

Violation of Section 15 of the Securities Act of 1933 (Against RFC, GMAC-RFC, ResCap, GMACM and Ally)

214. Plaintiff realleges paragraphs 1 through 134 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

215. This claim is brought under Section 15 of the Securities Act of 1933, 15 U.S.C. §77o ("Section 15"), against RFC, GMAC-RFC, ResCap, GMACM, and Ally for controlling-person liability with regard to the Section 11 and Section 12(a)(2) causes of actions set forth above.

216. RFC was the sponsor for all 21 Securitizations carried out pursuant to the Registration Statements filed by RALI, RAMP, and RASC (as specified in Table 1, *supra* at paragraph 44), and culpably participated in their violations of Sections 11 and 12(a)(2) by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting the Depositors as special-purpose vehicles, and selecting RFS or the Non-GMAC Underwriters as underwriters. In its role as sponsor, RFC knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing the ownership interests of investors in the mortgages would be issued by the relevant trusts.

217. RFC sold the mortgage loans to the Depositor Defendants (as specified in Table 1, *supra* at paragraph 44), and conveyed the mortgage loans to the Depositor Defendants pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. RFC controlled all aspects of the business of the Depositor Defendants, who were special-purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates.

Upon information and belief, the officers and directors of RFC overlapped with the officers and directors of the Depositor Defendants. In addition, RFC was able to, and did in fact, control the contents of the Registration Statements filed by the Depositors, including the Prospectuses and Prospectus Supplements that contained material misstatements of fact and omitted facts necessary to make the contents therein not misleading.

218. Defendant GMAC-RFC is the corporate parent of, and controlled the business operations of, RFC and the Depositor Defendants. As the sole corporate parent of RFC and the Depositor Defendants, GMAC-RFC had the practical ability to direct and control the actions of RFC and the Depositor Defendants in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of RFC and the Depositor Defendants.

219. GMAC-RFC culpably participated in the violations of Section 11 and 12(a)(2) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositors and the issuing trusts to serve as conduits for the mortgage loans.

220. Defendant ResCap wholly owns GMAC-RFC and is thus, a parent of RFC and the Depositor Defendants. ResCap culpably participated in the violations of Section 11 and 12(a)(2) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

221. Defendant GMACM wholly owns ResCap, and is thus, a parent of GMAC-RFC, RFC, and the Depositor Defendants. GMAC-RFC culpably participated in the violations of

Section 11 and 12(a)(2) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

222. Defendant Ally wholly owns GMACM and RFS and is the ultimate parent of GMAC-MG, ResCap, GMAC-RFC, RFC, and the Depositor Defendants. As the sole corporate parent of RFS, Ally had the practical ability to direct and control the actions of RFS in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of RFS in connection with the issuance and sale of the Certificates. Ally culpably participated in the violations of Section 11 and 12(a)(2) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

223. Ally, GMACM, ResCap, and GMAC-RFC are controlling persons within the meaning of Section 15 by virtue of their actual power over, control of, ownership of, and/or directorship of RFC, RFS, and the Depositor Defendants at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

224. Freddie Mac purchased the Certificates in the primary market, which were issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, in the primary market which at the time they became effective, contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Registration Statements.

225. Freddie Mac did not know of the misstatements and omissions in the Registration Statements; had Freddie Mac known of those misstatements and omissions, it would not have purchased the Certificates.

226. Freddie Mac has sustained damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation.

FOURTH CAUSE OF ACTION

Primary Violations of the Virginia Securities Act
(Against RALI, RASC, RAMP, RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

227. Plaintiff realleges paragraphs 1 through 134 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

228. This claim is brought by Plaintiff pursuant to Section 13.1-522(A)(ii) of the Virginia Code and is asserted on behalf of Freddie Mac with respect to those Certificates identified in Table 10 above that were purchased by Freddie Mac and issued pursuant to the Registration Statements.

229. The Depositor Defendants (as specified in Table 1, *supra*) made false and materially misleading statements in the Prospectuses (as supplemented by the Prospectus Supplements, hereinafter referred to in this Section as □Prospectuses□) for each Securitization. The Underwriter Defendants (as specified in Table 1, *supra*) made false and materially misleading statements in the Prospectuses for the Securitizations effected under the Shelf Registration Statements.

230. The Underwriter Defendants are prominently identified in the Prospectuses, the primary documents that they used to sell the Certificates. The Underwriter Defendants offered

the Certificates publicly, including selling to Freddie Mac the Certificates, as set forth in the "Method of Distribution" or equivalent underwriting section of each Prospectus.

231. The Underwriter Defendants offered and sold the Certificates to Freddie Mac by means of the Prospectuses, which contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. The Underwriter Defendants reviewed and participated in drafting the Prospectuses.

232. The Underwriter Defendants successfully solicited Freddie Mac's purchases of the Certificates. The Underwriter Defendants were paid a substantial commission based on the amount it received from the sale of the Certificates to the public.

233. The Underwriter Defendants offered the Certificates for sale, sold them, and distributed them to Freddie Mac in the State of Virginia.

234. The Depositor Defendants are prominently identified in the Prospectuses for the Securitizations carried out under the Registration Statements. These Prospectuses were the primary documents used to sell Certificates for the Securitizations pursuant to the Registration Statements. The Depositor Defendants offered the Certificates publicly and actively solicited their sale, including to Freddie Mac. The Depositor Defendants were paid a percentage of the total dollar amount of the offering upon completion of the Securitizations effected pursuant to the Shelf Registration Statements.

235. With respect to the Securitizations for which it filed the Shelf Registration Statements, including the related Prospectus Supplements, the Depositor Defendants offered the Certificates to Freddie Mac by means of Prospectuses which contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in the light of

the circumstances under which they were made, not misleading. The Depositor Defendants reviewed and participated in drafting the Prospectuses.

236. Each of the Underwriter Defendants and the Depositor Defendants actively participated in the solicitation of the Freddie Mac's purchase of the Certificates, and did so in order to benefit itself. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and assisting in marketing the Certificates.

237. Each of the Prospectuses contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Prospectuses, and specifically to Freddie Mac.

238. The untrue statements of material facts and omissions of material facts in the Registration Statements, which include the Prospectuses, are set forth above, and include compliance with underwriting guidelines, occupancy status, loan-to-value ratios, and accurate credit ratings.

239. The Underwriter Defendants and the Depositor Defendants offered and sold the Certificates directly to Freddie Mac pursuant to the materially false, misleading, and incomplete Prospectuses.

240. The Underwriter Defendants owed to Freddie Mac, as well as to other investors in these trusts, a duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses, to ensure that such statements were true, and to ensure that there was no omission of a material fact required to be stated in order to make the statements contained therein not misleading. The Depositor Defendants owed the same duty with respect to the Prospectuses for the Securitizations effected under the Shelf Registration Statements.

241. The Underwriter Defendants and the Depositor Defendants failed to exercise such reasonable care. These Defendants in the exercise of reasonable care should have known that the Prospectuses contained untrue statements of material facts and omissions of material facts at the time of the Securitizations, as set forth above.

242. In contrast, Freddie Mac did not know, and in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectuses at the time it purchased the Certificates. If Freddie Mac had known of those untruths and omissions, it would not have purchased the Certificates.

243. Freddie Mac sustained substantial damages in connection with its investments in the Certificates and has the right to rescind and recover the consideration paid for the Certificates, with interest thereon. Plaintiff hereby seeks rescission and makes any necessary tender of its Certificates. In the alternative, Plaintiff seeks damages according to proof.

FIFTH CAUSE OF ACTION

Controlling Person Liability Under the Virginia Securities Act (Against RFC, GMAC-RFC, ResCap, GMACM and Ally)

244. Plaintiff realleges paragraphs 1 through 134 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

245. This claim is brought under Section 13.1-522(C) of the Virginia Code and is asserted on behalf of Freddie Mac, which purchased the Certificates (identified in Table 10, supra) that were issued pursuant to the Registration Statements. This claim is brought against RFC, GMAC-RFC, ResCap, GMACM, and Ally (the "Control Persons") for controlling-person liability with regard to the claim brought by Plaintiff pursuant to Section 13.1-522(A)(ii).

246. RFC was the sponsor for all 21 Securitizations carried out pursuant to the Registration Statements filed by the Depositor Defendants (as specified in Table 1, supra), and culpably participated in their violations of Section 13.1-522(A)(ii) by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting the Depositors as special-purpose vehicles, and selecting RFS or the Non-GMAC Underwriters as underwriters. In its role as sponsor, RFC knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing the ownership interests of investors in the mortgages would be issued by the relevant trusts.

247. RFC sold the mortgage loans to the Depositor Defendants (as specified in Table 1 *supra*), and conveyed the mortgage loans to the Depositor Defendants pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. RFC controlled all aspects of the business of the Depositor Defendants, who were special-purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. Upon information and belief, the officers and directors of RFC overlapped with the officers and directors of the Depositor Defendants. In addition, RFC was able to, and did in fact, control the contents of the Registration Statements filed by the Depositors, including the Prospectuses and Prospectus Supplements that contained material misstatements of fact and omitted facts necessary to make the contents therein not misleading.

248. Defendant GMAC-RFC is the corporate parent of, and controlled the business operations of, RFC and the Depositor Defendants. As the sole corporate parent of RFC and the Depositor Defendants, GMAC-RFC had the practical ability to direct and control the actions of

RFC and the Depositor Defendants in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of RFC and the Depositor Defendants.

249. GMAC-RFC culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

250. Defendant ResCap wholly owns GMAC-RFC and is thus, a parent of RFC and the Depositor Defendants. ResCap culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

251. Defendant GMACM wholly owns ResCap, and is thus, a parent of GMAC-RFC, RFC, and the Depositor Defendants. GMAC-RFC culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

252. Defendant Ally wholly owns GMACM and RFS and is the ultimate parent of GMAC-MG, ResCap, GMAC-RFC, RFC, and the Depositor Defendants. As the sole corporate parent of RFS, Ally had the practical ability to direct and control the actions of RFS in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of

RFS in connection with the issuance and sale of the Certificates. Ally culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Depositor Defendants and the issuing trusts to serve as conduits for the mortgage loans.

253. Ally, GMACM, ResCap, and GMAC-RFC are controlling persons within the meaning of Section 13.1-522(C) of the Virginia Code by virtue of their actual power over, control of, ownership of, and/or directorship of RFC, RFS, and the Depositor Defendants at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

254. Freddie Mac purchased the Certificates, which were issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, which contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Registration Statements, and specifically to Freddie Mac.

255. Freddie Mac did not know, and in the exercise of reasonable diligence could not have known, of the misstatements and omissions in the Registration Statements; had Freddie Mac known of those misstatements and omissions, it would not have purchased the Certificates.

256. Freddie Mac has sustained substantial damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation, and for which the Control Persons are jointly and severally liable.

SIXTH CAUSE OF ACTION

(Common Law Fraud Against RALI, RAMP, RASC, RFC, RFS JPM, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

257. Plaintiff realleges paragraphs 1 through 185 as if fully set forth herein.

258. Freddie Mac was fraudulently induced to purchase the Certificates by the Fraud Defendants misrepresentations and omissions of material facts.

259. The material representations set forth above and in Appendix A were fraudulent, and the Fraud Defendants representations falsely and misleadingly misrepresented and omitted material statements of fact. The representations at issue are identified in Sections I.C. and I.D. and in Appendix A.

260. The Fraud Defendants knew their representations and omissions were false and/or misleading at the time they were made, or made such representations and omissions recklessly without knowledge of their truth or falsity.

261. Each of the Fraud Defendants made the misleading statements with the intent and for the purpose of inducing Freddie Mac to purchase the Certificates.

262. Freddie Mac justifiably relied on the Fraud Defendants false representations and misleading omissions.

263. But for the Fraud Defendants fraudulent misrepresentations and omissions regarding the Fraud Defendants underwriting practice and quality of the loans making up the securitizations, Freddie Mac would not have purchased the Certificates.

264. As a result of the foregoing, Freddie Mac has suffered damages in an amount to be proven at trial. Plaintiff hereby demands rescission and makes any necessary tender of the Certificates.

265. Because the Fraud Defendants defrauded Freddie Mac willfully and wantonly, and because, by their acts, the Fraud Defendants knowingly affected the general public, including but not limited to all persons with interest in the Certificates, Plaintiff is entitled to recover punitive damages.

SEVENTH CAUSE OF ACTION

(Aiding and Abetting Fraud Against Ally, GMACM, GMAC-MG, ResCap, GMAC-RFC, RFC, RALI, RASC and RAMP)

266. Plaintiff realleges paragraphs 1 through 185 as if fully set forth herein.

267. This is a claim for aiding and abetting fraud, in the alternative, should it be found that the Underwriting Defendants alone are liable for fraud. This claim is brought against Ally, GMACM, GMAC-MG, ResCap, GMAC-RFC, RFC, the Depositor Defendants, arising from the intentional and substantial assistance each rendered to the Underwriter Defendants to advance the fraud on Freddie Mac.

268. Through overlapping personnel, strategies, and intertwined business operations, and the fluid transfer of information among the Defendants, each of Ally, GMACM, GMAC-MG, ResCap, GMAC-RFC, RFC, the Depositor Defendants knew of the Fraud Defendants and fraudulent scheme to offload the credit risks of non-agency loans to investors, including Freddie Mac. Each of these Defendants acted in concert to defraud Freddie Mac.

269. Ally, GMACM, GMAC-MG, ResCap, GMAC-RFC, RFC, the Depositor Defendants, through their employees and representatives, substantially assisted in, among other things: (a) the extension of warehouse loans to originators; (b) acquiring the underlying mortgage loans from the originators; (c) packaging up those loans into pools which were deposited into the Trust; (d) waiving into the collateral pools of the Trusts loans previously rejected by Clayton or otherwise non-compliant loans, despite the lack of compensating factors;

(e) creating and structuring the Trusts whose Certificates would be sold to investors including Freddie Mac; and (f) preparing the Registration Statements which would be used to market the Certificates.

270. The Underwriter Defendants would not have been able to implement their fraud against Freddie Mac without such substantial assistance.

271. Through overlapping personnel, strategies, and intertwined business operations, and the fluid transfer of information among the Defendants, each of the Defendants knew of the fraud perpetrated on Freddie Mac.

272. The Underwriter Defendants could not have perpetrated their fraud without the substantial assistance of each other defendant, and they all provided financial, strategic, and marketing assistance for their scheme. Defendants are highly intertwined and interdependent businesses and each benefitted from the success of the scheme. Through the fraudulent sale of the Certificates to the Freddie Mac, the Selling Underwriters were able to materially improve their financial condition by reducing their exposure to declining subprime-related assets and garnering millions of dollars in fees from the structuring and sale of the Certificates.

273. As a direct, proximate, and foreseeable result of the conduct of Ally, GMACM, GMAC-MG, ResCap, GMAC-RFC, RFC, and the Depositor Defendants, Freddie Mac has suffered and will continue to suffer damages in an amount to be proven at trial. Plaintiff hereby demands rescission and makes any necessary tender of the Certificates.

274. Because the Fraud Defendants defrauded Freddie Mac willfully and wantonly, and because, by their acts, the Fraud Defendants knowingly affected the general public, including but not limited to all persons with interest in the Certificates, Plaintiff is entitled to recover punitive damages.

EIGHTH CAUSE OF ACTION

(Negligent Misrepresentation Against RALI, RASC, RAMP, RFC, RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

275. Plaintiff realleges paragraphs 1 through 185 as if fully set forth herein.

276. Between September 23, 2005 and May 30, 2007, RALI, RASC, RAMP, RFC, RFS, JPM, Credit Suisse, RBS, Citi, Barclays, UBS, Goldman Sachs (the "Negligent Misrepresentation Defendants") sold the Certificates Freddie Mac as described above. Because the Depositor Defendants owned and then conveyed the underlying mortgage loans to the issuing trusts, the Depositor Defendants had unique, exclusive, and special knowledge about the mortgage loans in the Securitizations through their possession of the loan files and other documentation.

277. Likewise, as underwriters of the Securitizations, the Underwriter Defendants had the access to and ability to review loan file information and were obligated to perform adequate due diligence to ensure the accuracy of the Offering Materials. Accordingly, the Underwriter Defendants had unique, exclusive, and special knowledge about the underlying mortgage loans in the Securitizations.

278. The Negligent Misrepresentation Defendants also had unique, exclusive, and special knowledge of the work of third-party due diligence providers, such as Clayton, who identified significant failures of originators to adhere to the underwriting standards represented in the Registration Statements. Freddie Mac lacked access to borrower loan files prior to the closing of the Securitizations and their purchase of the Certificates. Accordingly, when determining whether to purchase the Certificates, Freddie Mac could not evaluate the underwriting quality or the servicing practices of the mortgage loans in the Securitizations on a loan-by-loan basis. Freddie Mac therefore reasonably relied on the knowledge and

representations of the Negligent Misrepresentation Defendants regarding the underlying mortgage loans.

279. The Negligent Misrepresentation Defendants were aware that Freddie Mac reasonably relied on these Defendants for complete, accurate, and timely information. The standards under which the underlying mortgage loans were actually originated were known to these Defendants and were not known, and could not be determined, by Freddie Mac prior to the closing of the Securitizations. Freddie Mac reasonably relied upon these Defendants misrepresentations and omissions in the Offering Materials.

280. The Negligent Misrepresentation Defendants breached their duty of disclosure by making false or misleading statements of material facts to Freddie Mac when they knew or should have known of the falsity of their statements. The misrepresentations are set forth in Sections I.C. and I.D. above and Appendix A.;

281. In addition, having false or misleading representations about the underlying collateral in the Securitizations and the facts bearing on the riskiness of the Certificates, the Negligent Misrepresentation Defendants had a duty to correct the misimpressions left by their statements, including with respect to any half truths. The Negligent Misrepresentation Defendants failed to correct in a timely manner any of their misstatements or half truths.

282. Freddie Mac reasonably relied on the information provided by the Selling Negligent Misrepresentation Defendants, and as a result, Freddie Mac suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that judgment be entered:

An award in favor of Plaintiff against all Defendants, jointly and severally, for:

a. Rescission and recovery of the consideration paid for the Certificates, with interest thereon (in connection with this request for rescission, the Certificates are hereby tendered to the Defendants);

b. Freddie Mac's monetary losses, including any diminution in value of the Certificates, as well as lost principal and lost interest payments thereon;

c. Punitive damages;

d. Attorney's fees and costs;

e. Prejudgment interest at the maximum legal rate; and

f. Such other and further relief as the Court may deem just and proper.

DATED: New York, New York
September 2, 2011

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: /s/ Marc E. Kasowitz

Marc E. Kasowitz (mkasowitz@kasowitz.com)
Hector Torres (htorres@kasowitz.com)
Michael S. Shuster (mshuster@kasowitz.com)
Christopher P. Johnson (cjohnson@kasowitz.com)
Michael Hanin (mhanin@kasowitz.com)
Kanchana W. Leung (kleung@kasowitz.com)

1633 Broadway
New York, New York 10019
(212) 506-1700

Attorneys for Plaintiff
Federal Housing Finance Agency