

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY,  
AS CONSERVATOR FOR THE FEDERAL  
NATIONAL MORTGAGE ASSOCIATION  
AND THE FEDERAL HOME LOAN  
MORTGAGE CORPORATION,

Plaintiff,

-against-

COUNTRYWIDE FINANCIAL  
CORPORATION; COUNTRYWIDE HOME  
LOANS, INC.; COUNTRYWIDE CAPITAL  
MARKETS, LLC; COUNTRYWIDE  
SECURITIES CORPORATION; CWALT  
INC.; CWABS, INC.; CWMBBS, INC; BANK  
OF AMERICA CORPORATION; BANK OF  
AMERICA, N.A.; NB HOLDINGS  
CORPORATION; BANC OF AMERICA  
SECURITIES LLC; CITIGROUP GLOBAL  
MARKETS, INC.; DEUTSCHE BANK  
SECURITIES INC.; RBS SECURITIES, INC.  
(f/k/a GREENWICH CAPITAL MARKETS,  
INC.); UBS SECURITIES, LLC; N. JOSHUA  
ADLER; THOMAS H. BOONE; JEFFREY P.  
GROGIN; RANJIT KRIPALANI;  
STANFORD KURLAND; THOMAS KEITH  
MCLAUGHLIN; JENNIFER S. SANDEFUR;  
ERIC SIERACKI; DAVID A. SPECTOR;

Defendants.

Index No. \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

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Plaintiff Federal Housing Finance Agency (“FHFA”), as conservator of The Federal National Mortgage Association (“Fannie Mae”) and The Federal Home Loan Mortgage Corporation (“Freddie Mac”), by its attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, for its Complaint herein against Countrywide Financial Corporation (“Countrywide Financial”), Countrywide Home Loans, Inc. (“Countrywide Home Loans”), Countrywide Capital Markets, LLC (“Countrywide Capital Markets”), Countrywide Securities Corporation (“Countrywide Securities”); and CWALT, Inc. (“CWALT”), CWABS, Inc. (“CWABS”) and CWMBBS, Inc. (“CWMBBS”) (the “Depositor Defendants”) (all collectively, “Countrywide” or the “Countrywide Defendants”); Bank of America Corporation (“Bank of America”), Bank of America, N.A., and NB Holdings Corporation (“NB Holdings”) (together, the “Bank of America Defendants”); Banc of America Securities LLC (“BOA Securities”), CitiGroup Global Markets, Inc. (“CGMI”), Deutsche Bank Securities, Inc. (“DB Securities”), RBS Securities, Inc. (“RBS Securities”), UBS Securities, LLC (“UBS Securities”) (collectively, with Countrywide Securities, the “Underwriter Defendants”); and N. Joshua Adler, Thomas H. Boone, Jeffrey P. Grogin, Ranjit Kripalani, Stanford Kurland, Thomas Keith McLaughlin, Jennifer S. Sandefur, Eric Sieracki, and David A. Spector (the “Individual Defendants”), alleges as follows:

### **NATURE OF ACTION**

1. This action arises out of Defendants’ actionable conduct in connection with the offer and sale of certain residential mortgage-backed securities to Fannie Mae and Freddie Mac (collectively, the “Government Sponsored Enterprises” or “GSEs”). These securities were sold pursuant to registration statements, including prospectuses and prospectus supplements that formed part of those registration statements, which contained materially false or misleading statements and omissions. Defendants falsely represented that the underlying mortgage loans complied with certain underwriting guidelines and standards, including representations that

significantly overstated the ability of the borrower to repay their mortgage loans. These representations were material to the GSEs, as reasonable investors, and their falsity violates Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code, Sections 31-5606.05(a)(1)(B) and 31-5606.05(c) of the District of Columbia Code, and constitutes negligent misrepresentation, common law fraud, and aiding and abetting fraud.

2. Between August 30, 2005 and January 23, 2008, Fannie Mae and Freddie Mac purchased approximately \$26.6 billion in residential mortgage-backed securities (the “GSE Certificates”) issued in connection with 86 Countrywide-sponsored and/or Countrywide-underwritten securitizations (the “Certificates”).<sup>1</sup> The GSE Certificates purchased by Freddie Mac, along with date and amount of the purchases, are listed below in Table 11. The GSE Certificates purchased by Fannie Mae, along with date and amount of the purchases, are listed below in Table 12. The 86 securitizations at issue (collectively, the “Securitizations”) are<sup>2</sup>:

**Table 1**

<b>Transaction</b>	<b>Short Name</b>
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-57CB	CWALT 2005-57CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-63	CWALT 2005-63
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-67CB	CWALT 2005-67CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-73CB	CWALT 2005-73CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-80CB	CWALT 2005-80CB

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<sup>1</sup> For purposes of this Complaint, the securities issued under the Registration Statements (as defined in paragraph 4 n.3 below) are referred to as “Certificates,” while the particular Certificates that Fannie Mae and Freddie Mac purchased are referred to as the “GSE Certificates.” Holders of Certificates are referred to as “Certificateholders.”

<sup>2</sup> CHL Mortgage Pass-Through Trust, Series 2005-HYB10, is listed on Bloomberg as “CWHL 2005-HY10.” Thus, we refer to it by its Bloomberg name, “CWHL 2005-HY10.”

<b>Transaction</b>	<b>Short Name</b>
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-83CB	CWALT 2005-83CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-84	CWALT 2005-84
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-85CB	CWALT 2005-85CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2005-AR1	CWALT 2005-AR1
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-11CB	CWALT 2006-11CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-14CB	CWALT 2006-14CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-19CB	CWALT 2006-19CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-23CB	CWALT 2006-23CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-33CB	CWALT 2006-33CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OA14	CWALT 2006-OA14
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC1	CWALT 2006-OC1
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC10	CWALT 2006-OC10
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC11	CWALT 2006-OC11
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC3	CWALT 2006-OC3
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC4	CWALT 2006-OC4
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC5	CWALT 2006-OC5
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC6	CWALT 2006-OC6
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC7	CWALT 2006-OC7
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2006-OC8	CWALT 2006-OC8
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2007-5CB	CWALT 2007-5CB
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2007-HY2	CWALT 2007-HY2
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2007-OA10	CWALT 2007-OA10
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2007-OA3	CWALT 2007-OA3
Alternative Loan Trust Mortgage Pass-Through Certificates, Series 2007-OA8	CWALT 2007-OA8
CHL Mortgage Pass-Through Trust Mortgage Pass-Through Certificates, Series 2005-HYB10	CWHL 2005-HY10
CHL Mortgage Pass-Through Trust Mortgage Pass-Through Certificates, Series 2006-HYB1	CWHL 2006-HYB1



<b>Transaction</b>	<b>Short Name</b>
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-11	CWL 2005-11
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-12	CWL 2005-12
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-13	CWL 2005-13
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-14	CWL 2005-14
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-16	CWL 2005-16
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-17	CWL 2005-17
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-8	CWL 2005-8
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-9	CWL 2005-9
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-AB3	CWL 2005-AB3
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-AB4	CWL 2005-AB4
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-AB5	CWL 2005-AB5
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2005-BC5	CWL 2005-BC5
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-10	CWL 2006-10
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-11	CWL 2006-11
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-12	CWL 2006-12
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-13	CWL 2006-13
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-14	CWL 2006-14
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-16	CWL 2006-16
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-17	CWL 2006-17
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-18	CWL 2006-18
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-19	CWL 2006-19
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-2	CWL 2006-2
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-20	CWL 2006-20
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-21	CWL 2006-21
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-22	CWL 2006-22
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-23	CWL 2006-23

<b>Transaction</b>	<b>Short Name</b>
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-24	CWL 2006-24
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-25	CWL 2006-25
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-26	CWL 2006-26
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-3	CWL 2006-3
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-4	CWL 2006-4
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-5	CWL 2006-5
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-6	CWL 2006-6
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-7	CWL 2006-7
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-8	CWL 2006-8
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-9	CWL 2006-9
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-BC2	CWL 2006-BC2
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-BC3	CWL 2006-BC3
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-BC4	CWL 2006-BC4
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2006-BC5	CWL 2006-BC5
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-1	CWL 2007-1
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-10	CWL 2007-10
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-11	CWL 2007-11
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-12	CWL 2007-12
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-13	CWL 2007-13
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-2	CWL 2007-2
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-3	CWL 2007-3
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-5	CWL 2007-5
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-6	CWL 2007-6
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-7	CWL 2007-7
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-8	CWL 2007-8
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-9	CWL 2007-9

<b>Transaction</b>	<b>Short Name</b>
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-BC1	CWL 2007-BC1
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-BC2	CWL 2007-BC2
CWABS Asset-Backed Certificates Trust Asset-Backed Certificates, Series 2007-BC3	CWL 2007-BC3

3. The Certificates were offered for sale pursuant to one of nine shelf registration statements (the “Shelf Registration Statements”) filed with the Securities and Exchange Commission (the “SEC”) by CWABS, CWALT, and CWMBBS. The nine Shelf Registration Statements and amendments thereto filed by the Depositor Defendants were signed by or on behalf of the Individual Defendants. With respect to 70 of the Securitizations, Countrywide Securities was a lead underwriter and with respect to 69 of the Securitizations, Countrywide Securities was also the underwriter who sold the GSE Certificates to the GSEs.

4. For each Securitization, a prospectus (“Prospectus”) and prospectus supplement (“Prospectus Supplement”) were filed with the SEC as part of the Registration Statement<sup>3</sup> for that Securitization. The GSE Certificates were marketed and sold to Fannie Mae and Freddie Mac pursuant to the Registration Statements, including the Shelf Registration Statements and the corresponding Prospectuses and Prospectus Supplements.

5. The Registration Statements contained statements about the characteristics and credit quality of the mortgage loans underlying the Securitizations, the creditworthiness of the borrowers of those underlying mortgage loans, and the origination and underwriting practices used to make and approve the loans. Such statements were material to a reasonable investor’s decision to invest in mortgage-backed securities by purchasing the Certificates. Unbeknownst to

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<sup>3</sup> The term “Registration Statement,” as used herein, incorporates the Shelf Registration Statement, the Prospectus and the Prospectus Supplement for each referenced Securitization, except where otherwise indicated.

Fannie Mae and Freddie Mac, these statements were materially false, as significant percentages of the underlying mortgage loans were not originated in accordance with the represented underwriting standards and origination practices and had materially poorer credit quality than what was represented in the Registration Statements.

6. The Registration Statements also contained statistical summaries of the groups of mortgage loans in each Securitization, 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 also material to reasonable investors. However, a loan level analysis of a sample of loans for each Securitization – a review that encompassed thousands of mortgages across all of the Securitizations – has revealed that these statistics were also false and omitted material facts due to inflated property values and misstatements of other key characteristics of the mortgage loans.

7. For example, the percentage of owner-occupied properties is a material risk factor to the purchasers of Certificates, such as Fannie Mae and Freddie Mac, since a borrower who lives in mortgaged property is generally less likely to stop paying his or her mortgage and more likely to take better care of the property. The loan level review reveals that the true percentage of owner-occupied properties for the loans supporting the GSE Certificates was materially lower than what was stated in the Prospectus Supplements. Likewise, the Prospectus Supplements misrepresented other material factors, including the true value of the mortgaged properties relative to the amount of the underlying loans, and the actual ability of the individual mortgage holders to satisfy their debts.

8. Depositor Defendants CWABS, CWALT, and CWMBS (as depositors), and certain of the Individual Defendants are directly responsible for the misstatements and omissions

of material fact contained in the Registration Statements because they prepared, signed, filed and/or used these documents to market and sell the Certificates to Fannie Mae and Freddie Mac. Underwriter Defendants Countrywide Securities, BOA Securities, CGMI, DB Securities, RBS Securities, and UBS Securities are also directly responsible for the misstatements and omissions of material fact contained in the Registration Statements for the Securitizations for which they served as underwriters (as reflected in Table 2, below) because they prepared and/or used the Registration Statements to market and sell the Certificates to Fannie Mae and Freddie Mac.

9. Defendants Countrywide Home Loans, Countrywide Financial, and Countrywide Capital Markets are also responsible for the misstatements and omissions of material fact contained in the Registration Statements by virtue of their direction and control over Countrywide Securities and the Depositor Defendants. Countrywide Home Loans participated in and exercised dominion and control over the business operations of the Depositor Defendants. Countrywide Capital Markets participated in and exercised dominion and control over the business operations of Countrywide Securities. Countrywide Financial participated in and exercised dominion and control over the business operations of Countrywide Securities and the Depositor Defendants.

10. Bank of America, Bank of America, N.A., and NB Holdings are liable for the exercise of dominion and control over the business operations of Countrywide Securities and the Depositor Defendants by virtue of being Countrywide Financial's successor.

11. Fannie Mae and Freddie Mac purchased approximately \$26.6 billion of the Certificates pursuant to the Shelf Registration Statements filed with the SEC. These documents contained misstatements and omissions of material facts concerning the quality of the underlying mortgage loans, the creditworthiness of the borrowers, and the practices used to originate and

underwrite such loans. As a result of Defendants' misstatements and omissions of material fact, Fannie Mae and Freddie Mac have suffered substantial losses as the value of their holdings has significantly deteriorated.

12. FHFA, as Conservator of Fannie Mae and Freddie Mac, brings this action against the Defendants for violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l(a)(2), 77o, Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code, Sections 31-5606.05(a)(1)(B) and 31-5606.05(c) of the District of Columbia Code, and for negligent misrepresentation, common law fraud, and aiding and abetting fraud.

### **PARTIES**

#### **The Plaintiff and the GSEs**

13. 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 (2008) (codified at 12 U.S.C. § 4617) to oversee Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. On September 6, 2008, under HERA, the Director of FHFA placed Fannie Mae and Freddie Mac into conservatorship and appointed FHFA as conservator. In that capacity, FHFA has the authority to exercise all rights and remedies of the GSEs, including but not limited to, the authority to bring suits on behalf of and/or for the benefit of Fannie Mae and Freddie Mac. 12 U.S.C. § 4617(b)(2).

14. Fannie Mae and Freddie Mac are government-sponsored enterprises 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, Fannie Mae and Freddie Mac invested in residential mortgage-backed securities. Fannie Mae is located at 3900 Wisconsin Avenue, NW in Washington, D.C. Freddie Mac is located at 8200 Jones Branch Drive in McLean, Virginia.

## **The Defendants**

### **A. The Countrywide Defendants**

15. Defendant Countrywide Financial is a Delaware corporation with its principal place of business in Calabasas, California. Countrywide Financial, itself or through its subsidiaries Countrywide Home Loans, Countrywide Capital Markets, and the Depositor Defendants, is engaged in mortgage lending and other real estate finance-related businesses, including mortgage banking, securities dealing, and insurance underwriting. Pursuant to a merger completed on July 1, 2008, Countrywide Financial has been merged into and is now part of Bank of America.

16. Defendant Countrywide Home Loans, a wholly-owned subsidiary of Countrywide Financial, is a New York corporation with its principal place of business in Calabasas, California. Countrywide Home Loans originates and services residential home mortgage loans through itself or its subsidiaries, non-parties Countrywide GP, Inc. and Countrywide LP, Inc., and in turn through their subsidiary, Countrywide Home Loans Servicing LP. Countrywide Home Loans was acquired by Bank of America on July 1, 2008 and operates under the trade name "Bank of America Home Loans." Countrywide Home Loans was the sponsor of all 86 of the Securitizations.

17. Defendant Countrywide Capital Markets, a wholly-owned subsidiary of Countrywide Financial, is a California corporation with its principal place of business in Calabasas, California. Countrywide Capital Markets, which is also now part of Bank of America by virtue of the merger of Countrywide Financial into Bank of America, operates through its two main wholly-owned subsidiaries, Defendant Countrywide Securities and non-party Countrywide Servicing Exchange.

18. Defendant Countrywide Securities, a wholly-owned subsidiary of Countrywide Capital Markets, which in turn is a wholly-owned subsidiary of Countrywide Financial, is a California corporation with its principal places of business in Calabasas, California and in New York, New York. Countrywide Securities is an SEC-registered broker-dealer and underwrites offerings of mortgage-backed securities. Countrywide Securities was a lead underwriter for 70 of the Securitizations, and was intimately involved in those offerings. Countrywide Securities also sold Certificates in 69 of the 86 Securitizations to Fannie Mae or Freddie Mac in its capacity as underwriter. Countrywide Securities was acquired by Bank of America on July 1, 2008.

19. Defendant CWALT is a Delaware corporation and a limited purpose subsidiary of Countrywide Financial with its principal place of business in Calabasas, California. CWALT was the depositor for 29 of the Securitizations. CWALT, as depositor, was also responsible for preparing and filing reports required under the Securities Exchange Act of 1934.

20. Defendant CWABS is a Delaware corporation and a limited purpose subsidiary of Countrywide Financial with its principal place of business in Calabasas, California. CWABS was the depositor for 55 of the Securitizations. CWABS, as depositor, was also responsible for preparing and filing reports required under the Securities Exchange Act of 1934.

21. Defendant CWMBS is a Delaware corporation and a limited purpose subsidiary of Countrywide Financial with its principal place of business in Calabasas, California. CWMBS was the depositor for two of the Securitizations. CWMBS, as depositor, was also responsible for preparing and filing reports required under the Securities Exchange Act of 1934.

**B. The Bank of America Defendants**

22. Defendant Bank of America is a Delaware corporation with its principal place of business in Charlotte, North Carolina and offices and branches in New York, New York. Bank of America is one of the world's largest financial institutions, serving individual consumers,



small- and middle-market businesses and large corporations with a full range of banking, investing, asset-management and other financial and risk-management products and services. Countrywide Financial merged with Bank of America on July 1, 2008. As explained more fully below in Section VII, Bank of America is a successor-in-interest to the Countrywide Defendants. It is thus vicariously liable for the conduct of the Countrywide Defendants alleged herein.

23. Defendant Bank of America, N.A., is a nationally chartered U.S. bank with substantial business operations and offices in New York, New York. As explained more fully below in Section VII, Bank of America, N.A. participated in Bank of America's acquisition of substantially all of Countrywide Financial through a series of acquisitions and shares that commenced on July 1, 2008. Together with Bank of America, it is a successor-in-interest to the Countrywide Defendants.

24. NB Holdings is a Delaware corporation with its principal place of business in Charlotte, North Carolina. As explained more fully below in Section VII, NB Holdings participated in Bank of America's acquisition of substantially all of Countrywide Financial through a series of acquisitions and shares that commenced on July 1, 2008. Together with Bank of America, it is a successor-in-interest to the Countrywide Defendants.

### **C. The Underwriter Defendants**

25. As described above at paragraph 18, Defendant Countrywide Securities was a lead underwriter for 70 of the Securitizations and also sold Certificates in 69 of the 86 Securitizations to Fannie Mae or Freddie Mac in its capacity as underwriter.

26. BOA Securities has its principal place of business in New York, New York. BOA Securities was the lead underwriter for the CWALT 2006-OA14 and CWALT 2007-OA10 Securitizations, among others, and was intimately involved in those offerings. Fannie Mae

purchased the GSE Certificates for the CWALT 2006-OA14 and CWALT 2007-OA10 Securitizations from BOA Securities in its capacity as underwriter.

27. Defendant CGMI, formerly known as Salomon Smith Barney or Smith Barney, is a New York corporation and an SEC-registered broker-dealer, with its principal place of business in New York, New York. CGMI was the lead underwriter for the CWALT 2006-33CB and CWALT 2007-5CB Securitizations and was intimately involved in those offerings. Freddie Mac purchased the GSE Certificates for the CWALT 2006-33CB and CWALT 2007-5CB Securitizations from CGMI in its capacity as underwriter.

28. Defendant DB Securities is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business in New York, New York. DB Securities acted as a broker-dealer in the issuance and underwriting of residential and commercial mortgage backed securities. DB Securities was the lead underwriter for the CWALT 2005-84, CWALT 2005-85CB, CWALT 2006-14CB, and CWALT 2006-19CB Securitizations, among others, and was intimately involved in those offerings. Fannie Mae purchased the GSE Certificates for the CWALT 2005-84 and CWALT 2005-85CB Securitizations and Freddie Mac purchased the GSE Certificates for the CWALT 2006-14CB and CWALT 2006-19CB Securitizations from DB Securities in its capacity as underwriter.

29. Defendant RBS Securities is a Delaware corporation and an SEC-registered broker-dealer with its principal place of business in Greenwich, Connecticut and offices in New York, New York. Prior to April 2009, RBS Securities was known as Greenwich Capital Markets, Inc. RBS Securities was a lead underwriter for the CWALT 2005-73CB, CWALT 2006-11CB, and CWALT 2005-80CB Securitizations and was intimately involved in those offerings. Fannie Mae purchased the GSE Certificate for the CWALT 2005-80CB Securitization

and Freddie Mac purchased the GSE Certificates for the CWALT 2005-73CB and CWALT 2006-11CB Securitizations from RBS Securities in its capacity as underwriter.

30. Defendant UBS Securities is a limited liability company incorporated in Delaware with its principal places of business in Stamford, Connecticut and New York, New York. UBS Securities is an SEC-registered broker-dealer. It was the lead underwriter in the CWALT 2005-63 Securitization, among others, and was intimately involved in that offering. Fannie Mae purchased the GSE Certificate for the CWALT 2005-63 Securitization from UBS Securities, in its capacity as underwriter.

#### **D. The Individual Defendants**

31. Defendant N. Joshua Adler served as President, CEO, and member of the Board of Directors for CWALT and CWABS. Mr. Adler resides in Calabasas, California. Mr. Adler signed two of the Shelf Registration Statements and the amendments thereto.

32. Defendant Thomas H. Boone served as Executive Vice President as well as the Principal Financial and Accounting Officer for CWMBBS. Mr. Boone resides in Westlake Village, California. Mr. Boone signed one of the Shelf Registration Statements and the amendments thereto.

33. Defendant Jeffrey P. Grogin served as Director of CWMBBS. Mr. Grogin resides in Hidden Hills, California. Mr. Grogin signed one of the Shelf Registration Statements and the amendments thereto.

34. Defendant Ranjit Kripalani joined Countrywide Financial and its subsidiary Countrywide Securities in 1998, as Countrywide Financial's Executive Vice President and Countrywide Securities' National Sales Manager. He served as a Director of CWALT, CWABS, and CWMBBS. Mr. Kripalani resides in Manhattan Beach, California. Mr. Kripalani signed two of the Shelf Registration Statements and the amendments thereto.

35. Defendant Stanford Kurland was President and COO of Countrywide Financial from 1988 until he ceased working for Countrywide Financial on September 7, 2006. At all relevant times up to that date, Mr. Kurland was also the CEO, President, and Chairman of the Board of CWABS, CWALT, and CWMBS. Mr. Kurland resides in Calabasas, California. Mr. Kurland signed seven of the Shelf Registration Statements and the amendments thereto.

36. Defendant Thomas Keith McLaughlin served as Executive Vice President as well as Principal Financial and Accounting Officer for CWMBS and CWALT. Mr. McLaughlin resides in Thousand Oaks, California. Mr. McLaughlin signed one of the Shelf Registration Statements and the amendments thereto.

37. Defendant Jennifer S. Sandefur joined Countrywide Financial in 1994 as Vice President and Assistant Treasurer and was shortly thereafter promoted to Treasurer of Countrywide Home Loans. She was serving as Senior Managing Director and Treasurer of Countrywide Financial at the time of her departure in 2008. She also served as Director of CWALT, CWABS, and CWMBS. Ms. Sandefur resides in Calabasas, California. Ms. Sandefur signed two of the Shelf Registration Statements and the amendments thereto.

38. Defendant Eric Sieracki served as Countrywide Financial's Executive Managing Director and Chief Financial Officer from April 2005 through Countrywide's merger with Bank of America in 2008. Prior to his appointment as CFO, Mr. Sieracki occupied other high-level positions within Countrywide, including as Executive Managing Director, Chief Financial Officer, and Treasurer of CWALT, CWABS, and CWMBS. Mr. Sieracki resides in Lake Sherwood, California. Mr. Sieracki signed eight of the Shelf Registration Statements and the amendments thereto.

39. Defendant David A. Spector joined Countrywide in 1990. He was subsequently promoted to Managing Director in 2001 and served as Senior Managing Director of Secondary Marketing at Countrywide Financial from 2004 to 2006, as well as Managing Director of Secondary Markets at Countrywide Home Loans. He was also a member of the Board of Directors and a Vice President for CWALT, CWABS, and CWMBS. Mr. Spector resides in Tarzana, California. Mr. Spector signed seven of the Shelf Registration Statements and the amendments thereto.

### **JURISDICTION AND VENUE**

40. This Court has jurisdiction over the claims herein which arise under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 pursuant to CPLR §§ 301, 302 and Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v. This Court has further jurisdiction over the statutory claims of violations of Section 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code and Section 31-5605(a)(1)(B) and 31-5606.05(c) of the District of Columbia Code, pursuant to this Court's general jurisdiction. Most of the Underwriter Defendants, including Countrywide Securities, are principally located in New York, other Defendants, including Countrywide Home Loans and Bank of America, can be found or transact business in New York, and many of the acts and transactions alleged herein occurred in substantial part in New York.

41. Venue is proper in this Court pursuant to CPLR § 503. Many of the defendants, including Countrywide Home Loans and Countrywide Securities, have their principal offices in this County, and many of the acts and transactions alleged herein, including the preparation and dissemination of the Shelf Registration Statements and the marketing and selling of Certificates, occurred in substantial part in this County.

## **FACTUAL ALLEGATIONS**

### **I. THE SECURITIZATIONS**

#### **A. Residential Mortgage-Backed Securitizations In General**

42. Asset-backed securitization distributes risk by 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.

43. The most common form of securitization of mortgage loans involves a sponsor or seller – the entity that acquires or originates the mortgage loans and initiates the securitization – and the creation of a trust, to which the sponsor directly or indirectly transfers a portfolio of mortgage loans. The trust is established pursuant to a Pooling and Servicing Agreement entered into by, among others, the depositor for that securitization. In many instances, the transfer of assets to a trust “is a two-step process: the financial assets are transferred by the sponsor first to an intermediate entity, often a limited purpose entity created by the sponsor . . . and commonly called a depositor, and then the depositor will transfer the assets to the [trust] for the particular asset-backed transactions.” Asset-Backed Securities, Securities Act Release No. 33-8518, Exchange Act Release No. 34-50905, 84 SEC Docket 1624 (Dec. 22, 2004).

44. Residential mortgage-backed securities are backed by the underlying mortgage loans. Some residential mortgage-backed securitizations are created from more than one cohort of loans called collateral groups, in which case the trust issues securities backed by different groups. 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 acquire an ownership interest in the assets of the trust, which in turn owns the loans. Within this framework, the purchasers of the securities acquire rights to the

cash-flows from the designated mortgage group, such as homeowners' payments of principal and interest on the mortgage loans held by the related trust.

45. Residential mortgage-backed securities are issued pursuant to registration statements filed with the SEC. These registration statements include prospectuses, which explain the general structure of the investment, and prospectus supplements, which contain detailed descriptions of the mortgage groups underlying the certificates. Certificates are issued by the trust pursuant to the registration statement and the prospectus and prospectus supplement. Underwriters sell the certificates to investors.

46. A mortgage servicer is necessary to manage 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's funds and delivers payments due each month on the certificates to the investors.

#### **B. The Securitizations At Issue In This Case**

47. This case involves the 86 Securitizations listed in Table 1, above, which were sponsored and structured by Countrywide Home Loans. The vast majority of the Securitizations were underwritten by Countrywide Securities. For each of the 86 Securitizations, Table 2 identifies the (1) sponsor; (2) depositor; (3) lead underwriters (and in parentheses, the defendant underwriter who sold securities to Fannie Mae or Freddie Mac, when the defendant underwriter

was not Countrywide Securities); (4) the principal amount issued for the tranches<sup>4</sup> purchased by the GSEs; (5) the date of issuance; and (6) the loan group or groups backing the GSE Certificate for that Securitization (referred to as the “Supporting Loan Groups”).

**Table 2**

Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
CWALT 2005-57CB	1A1	Countrywide Home Loans	CWALT	Countrywide Securities, JP Morgan	\$199,860,000	10/28/05	Loan Group 1
CWALT 2005-63	1A1	Countrywide Home Loans	CWALT	UBS Securities (UBS Securities)	\$186,908,000	10/28/05	Loan Group 1
CWALT 2005-67CB	A1	Countrywide Home Loans	CWALT	Countrywide Securities, Lehman Brothers	\$199,756,000	11/29/05	Single-Group Transaction
CWALT 2005-73CB	2A2	Countrywide Home Loans	CWALT	Bear Stearns, RBS Securities (RBS Securities <sup>5</sup> )	\$123,415,000	11/29/05	Loan Group 2
CWALT 2005-80CB	3A1	Countrywide Home Loans	CWALT	RBS Securities, Countrywide Securities (RBS Securities)	\$220,446,000	12/28/05	Loan Group 3
	4A1	Countrywide Home Loans	CWALT	RBS Securities, Countrywide Securities (RBS Securities)	\$247,196,000	12/28/05	Loan Group 4
CWALT 2005-83CB	A1	Countrywide Home Loans	CWALT	Countrywide Securities	\$312,847,000	12/30/05	Single-Group Transaction
	A2	Countrywide Home Loans	CWALT	Countrywide Securities	\$34,761,000	12/30/05	Single-Group Transaction
CWALT 2005-84	2A1	Countrywide Home Loans	CWALT	DB Securities (DB Securities)	\$403,111,000	12/28/05	Loan Group 2
CWALT 2005-85CB	1A1	Countrywide Home Loans	CWALT	DB Securities, Lehman Brothers, JP Morgan (DB Securities)	\$358,968,000	12/28/05	Loan Group 1
CWALT 2005-AR1	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$152,002,000	12/29/05	Loan Group 1
CWALT 2006-11CB	1A1	Countrywide Home Loans	CWALT	RBS Securities, Countrywide Securities (RBS Securities)	\$45,796,000	3/30/06	Loan Group 1
CWALT 2006-14CB	A1	Countrywide Home Loans	CWALT	DB Securities, JP Morgan (DB Securities)	\$194,097,000	4/27/06	Single-Group Transaction
	A6	Countrywide Home Loans	CWALT	DB Securities, JP Morgan (DB Securities)	\$48,524,000	4/27/06	Single-Group Transaction

<sup>4</sup> A tranche is one of a series of certificates or interests created and issued as part of the same transaction.

<sup>5</sup> “RBS Securities” in this table refers to RBS Greenwich Capital, its predecessor.



Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
CWALT 2006-19CB	A11	Countrywide Home Loans	CWALT	DB Securities, Countrywide Securities (DB Securities)	\$201,815,000	6/29/06	Single-Group Transaction
	A30	Countrywide Home Loans	CWALT	DB Securities, Countrywide Securities (DB Securities)	\$22,424,000	6/29/06	Single-Group Transaction
CWALT 2006-23CB	1A7	Countrywide Home Loans	CWALT	UBS Securities, Countrywide Securities	\$171,694,000	6/30/06	Loan Group 1
	2A1	Countrywide Home Loans	CWALT	UBS Securities, Countrywide Securities	\$154,973,000	6/30/06	Loan Group 2
CWALT 2006-33CB	2A1	Countrywide Home Loans	CWALT	CGMI, Countrywide Securities (CGMI)	\$347,668,000	9/29/06	Loan Group 2
CWALT 2006-OA14	1A1	Countrywide Home Loans	CWALT	BOA Securities (BOA Securities)	\$164,097,000	9/29/06	Loan Group 1
CWALT 2006-OC1	1A1	Countrywide Home Loans	CWALT	Countrywide Securities	\$373,442,000	1/30/06	Loan Group 1
CWALT 2006-OC10	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$165,209,000	11/30/06	Loan Group 1
CWALT 2006-OC11	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$224,171,000	12/29/06	Loan Group 1
CWALT 2006-OC3	1A1	Countrywide Home Loans	CWALT	Countrywide Securities	\$231,143,000	4/28/06	Loan Group 1
CWALT 2006-OC4	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$165,807,000	5/30/06	Loan Group 1
CWALT 2006-OC5	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$229,217,000	6/29/06	Loan Group 1
CWALT 2006-OC6	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$102,510,000	7/28/06	Loan Group 1
CWALT 2006-OC7	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$139,441,000	8/30/06	Loan Group 1
CWALT 2006-OC8	1A1	Countrywide Home Loans	CWALT	Countrywide Securities	\$138,111,000	9/29/06	Loan Group 1
CWALT 2007-5CB	2A3	Countrywide Home Loans	CWALT	CGMI, Countrywide Securities (CGMI)	\$27,882,000	2/27/07	Loan Group 2
CWALT 2007-HY2	1A	Countrywide Home Loans	CWALT	Countrywide Securities	\$367,128,000	1/31/07	Loan Group 1
	2A	Countrywide Home Loans	CWALT	Countrywide Securities	\$117,725,000	1/31/07	Loan Group 2
CWALT 2007-OA10	1A1	Countrywide Home Loans	CWALT	BOA Securities (BOA Securities)	\$112,645,000	7/30/07	Loan Group 1
	1A2	Countrywide Home Loans	CWALT	BOA Securities (BOA Securities)	\$75,097,000	7/30/07	Loan Group 1
CWALT 2007-OA3	2A1	Countrywide Home Loans	CWALT	BOA Securities	\$208,417,000	2/28/07	Loan Group 2
CWALT 2007-OA8	1A1	Countrywide Home Loans	CWALT	BOA Securities	\$127,393,000	6/28/07	Loan Group 1
CWHL 2005-HY10	2A1	Countrywide Home Loans	CWMBBS	Countrywide Securities	\$167,974,000	12/29/05	Loan Group 2
CWHL 2006-HYB1	1A1	Countrywide Home Loans	CWMBBS	Countrywide Securities	\$471,207,000	1/31/06	Loan Group 1

Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
CWL 2005-11	2AV1	Countrywide Home Loans	CWABS	Countrywide Securities, Morgan Stanley, RBS Securities	\$552,682,000	9/28/05	Loan Group 2
CWL 2005-12	3A	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, RBS Securities	\$167,374,000	9/30/05	Loan Group 3
CWL 2005-13	2AV1	Countrywide Home Loans	CWABS	Countrywide Securities, BOA Securities, Barclays Capital	\$711,872,000	11/21/05	Loan Group 2
CWL 2005-14	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns, RBS Securities	\$29,264,000	12/21/05	Loan Group 1
	2A1	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns, RBS Securities	\$386,093,000	12/21/05	Loan Group 2
CWL 2005-16	1AF	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$388,648,000	12/28/05	Loan Group 1
	3AV	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$487,320,000	12/28/05	Loan Group 3
CWL 2005-17	2AV	Countrywide Home Loans	CWABS	Countrywide Securities, BNP Paribas Securities, RBS Securities	\$111,720,000	12/29/05	Loan Group 2
	3AV1	Countrywide Home Loans	CWABS	Countrywide Securities, BNP Paribas Securities, RBS Securities	\$407,938,000	12/29/05	Loan Group 3
CWL 2005-8	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, Lehman Brothers	\$243,773,000	8/30/05	Loan Group 1
CWL 2005-9	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, Merrill Lynch, RBS Securities	\$529,470,000	9/28/05	Loan Group 1
CWL 2005-AB3	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, BOA Securities, Barclays Capital	\$324,864,000	9/27/05	Loan Group 1
CWL 2005-AB4	1A	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, J.P. Morgan Securities	\$553,455,000	11/29/05	Loan Group 1
CWL 2005-AB5	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$202,082,000	12/29/05	Loan Group 1
CWL 2005-BC5	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$279,136,000	12/28/05	Loan Group 1
	2A1	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$246,227,000	12/28/05	Loan Group 2

Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
	2A2	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$27,358,000	12/28/05	Loan Group 2
CWL 2006-10	2AV	Countrywide Home Loans	CWABS	Countrywide Securities	\$118,696,000	6/30/06	Loan Group 2
CWL 2006-11	2AV	Countrywide Home Loans	CWABS	Countrywide Securities, UBS Securities, Barclays Capital	\$460,174,000	6/29/06	Loan Group 2
CWL 2006-12	1A	Countrywide Home Loans	CWABS	Countrywide Securities, BNP Paribas Securities, Lehman Brothers	\$492,030,000	6/30/06	Loan Group 1
CWL 2006-13	2AV	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns, Lehman Brothers	\$399,884,000	7/28/06	Loan Group 2
CWL 2006-14	1A	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, HSBC Securities	\$447,914,000	9/8/06	Loan Group 1
CWL 2006-16	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$140,766,000	9/28/06	Loan Group 1
CWL 2006-17	1A	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Lehman Brothers	\$220,938,000	9/25/06	Loan Group 1
CWL 2006-18	1A	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns, DB Securities	\$495,558,000	9/28/06	Loan Group 1
CWL 2006-19	1A	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns	\$259,807,000	9/29/06	Loan Group 1
CWL 2006-2	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, BOA Securities, J.P. Morgan Securities	\$281,750,000	2/27/06	Loan Group 1
CWL 2006-20	1A	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns, HSBC Securities	\$292,425,000	11/8/06	Loan Group 1
CWL 2006-21	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities, J.P. Morgan Securities	\$328,048,000	11/30/06	Loan Group 1
CWL 2006-22	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities, Barclays Capital	\$608,250,000	11/30/06	Loan Group 1
CWL 2006-23	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities, J.P. Morgan Securities	\$465,514,000	12/8/06	Loan Group 1
CWL 2006-24	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$423,724,000	12/29/06	Loan Group 1

Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
CWL 2006-25	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$495,720,000	12/29/06	Loan Group 1
CWL 2006-26	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$449,571,000	12/29/06	Loan Group 1
CWL 2006-3	1A	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Barclays Capital	\$508,785,000	2/27/06	Loan Group 1
CWL 2006-4	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, Lehman Brothers, J.P. Morgan Securities	\$131,072,000	3/17/06	Loan Group 1
CWL 2006-5	1A	Countrywide Home Loans	CWABS	Countrywide Securities, Bear Stearns, Lehman Brothers	\$251,100,000	3/28/06	Loan Group 1
CWL 2006-6	1A1	Countrywide Home Loans	CWABS	Countrywide Securities	\$501,329,000	3/29/06	Loan Group 1
CWL 2006-7	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$313,365,000	6/28/06	Loan Group 1
CWL 2006-8	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$330,630,000	6/28/06	Loan Group 1
CWL 2006-9	2AV	Countrywide Home Loans	CWABS	Countrywide Securities	\$118,400,000	6/30/06	Loan Group 2
CWL 2006-BC2	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$237,900,000	5/30/06	Loan Group 1
CWL 2006-BC3	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$173,003,000	8/30/06	Loan Group 1
CWL 2006-BC4	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$200,970,000	9/29/06	Loan Group 1
CWL 2006-BC5	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$258,862,000	12/29/06	Loan Group 1
CWL 2007-1	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$540,940,000	2/9/07	Loan Group 1
CWL 2007-10	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Barclays Capital	\$291,060,000	6/29/07	Loan Group 1
	1A2	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Barclays Capital	\$32,340,000	6/29/07	Loan Group 1
	1M1	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Barclays Capital	\$20,800,000	6/29/07	Loan Group 1
	1M2	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Barclays Capital	\$14,800,000	6/29/07	Loan Group 1
	1M3	Countrywide Home Loans	CWABS	Countrywide Securities, DB Securities, Barclays Capital	\$6,200,000	6/29/07	Loan Group 1

Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
CWL 2007-11	1M1	Countrywide Home Loans	CWABS	Countrywide Securities, Merrill Lynch, HSBC Securities	\$13,600,000	6/29/07	Loan Group 1
	1M2	Countrywide Home Loans	CWABS	Countrywide Securities, Merrill Lynch, HSBC Securities	\$10,880,000	6/29/07	Loan Group 1
	1M3	Countrywide Home Loans	CWABS	Countrywide Securities, Merrill Lynch, HSBC Securities	\$2,992,000	6/29/07	Loan Group 1
	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, Merrill Lynch, HSBC Securities	\$199,022,000	6/29/07	Loan Group 1
	1A2	Countrywide Home Loans	CWABS	Countrywide Securities, Merrill Lynch, HSBC Securities	\$22,114,000	6/29/07	Loan Group 1
CWL 2007-12	1A1	Countrywide Home Loans	CWABS	Countrywide Securities	\$501,417,000	8/13/07	Loan Group 1
	1A2	Countrywide Home Loans	CWABS	Countrywide Securities	\$55,713,000	8/13/07	Loan Group 1
	1M1	Countrywide Home Loans	CWABS	Countrywide Securities	\$17,953,000	8/13/07	Loan Group 1
CWL 2007-13	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$218,300,000	10/30/07	Loan Group 1
	1M1	Countrywide Home Loans	CWABS	Countrywide Securities	\$9,916,000	10/30/07	Loan Group 1
CWL 2007-2	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$513,888,000	2/28/07	Loan Group 1
CWL 2007-3	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$237,450,000	3/29/07	Loan Group 1
CWL 2007-5	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$372,609,000	3/30/07	Loan Group 1
CWL 2007-6	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$272,850,000	3/30/07	Loan Group 1
CWL 2007-7	1A	Countrywide Home Loans	CWABS	Countrywide Securities, RBS Securities	\$276,930,000	5/4/07	Loan Group 1
CWL 2007-8	1A1	Countrywide Home Loans	CWABS	Countrywide Securities, Lehman Brothers, RBS Securities	\$424,293,000	5/31/07	Loan Group 1
	1A2	Countrywide Home Loans	CWABS	Countrywide Securities, Lehman Brothers, RBS Securities	\$47,144,000	5/31/07	Loan Group 1
CWL 2007-9	1A	Countrywide Home Loans	CWABS	Countrywide Securities, Lehman Brothers, RBS Securities	\$443,360,000	6/8/07	Loan Group 1
CWL 2007-BC1	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$113,153,000	2/28/07	Loan Group 1

Transaction	Tranche	Sponsor	Depositor	Lead Underwriters and Selling Underwriter When Not CW Securities (in parentheses)	Principal Amount Issued (\$)	Date of Issuance	Supporting Loan Group(s)
CWL 2007-BC2	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$205,140,000	4/27/07	Loan Group 1
CWL 2007-BC3	1A	Countrywide Home Loans	CWABS	Countrywide Securities	\$185,759,000	6/29/07	Loan Group 1

### **C. The Securitization Process**

#### **1. Countrywide Home Loans Groups Mortgage Loans in Special Purpose Trusts**

48. Countrywide Home Loans acted as the sponsor for each of the 86 Securitizations.

It originated the Mortgage Loans that were pooled together in the securitizations or, in some cases, acquired the Mortgage Loans from other originators or through affiliates of the originators.

49. Countrywide Home Loans then sold the mortgage loans for each of the Securitizations that it sponsored to one of the three Depositor Defendants, each of which are Countrywide-affiliated entities: CWABS, CWALT, and CWMBS.

50. CWABS, CWALT, and CWMBS were each limited-purpose subsidiaries of Countrywide Financial. The sole purpose of the Depositor Defendants was to act as a conduit through which loans originated or acquired by Countrywide could be securitized and sold to investors.

51. As depositors for the 86 Securitizations, the Depositor Defendants transferred the relevant mortgage loans to the trusts pursuant to a Pooling and Servicing Agreement (“PSA”) that contained various representations and warranties regarding the mortgage loans for the Securitizations.

52. As part of each of the Securitizations, the trustee, on behalf of the Certificateholders, executed the PSA with the relevant depositor and the parties responsible for

monitoring and servicing the mortgage loans in that Securitization. The trust, administered by the trustee, held the mortgage loans pursuant to the related PSA and issued Certificates, including the GSE Certificates, backed by such loans. The GSEs purchased the GSE Certificates, through which they obtained an ownership interest in the assets of the trust, including the mortgage loans.

## **2. The Trusts Issue Securities Backed by the Loans**

53. 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 like Fannie Mae and Freddie Mac, which thereby acquired an ownership interest in the assets of the corresponding trust. Each Certificate entitles its holder to a specified portion of the cashflows from the underlying mortgages in the Supporting Loan Group. The level of risk inherent in the Certificates was a function of the capital structure of the related transaction and the credit quality of the underlying mortgages.

54. The Certificates were issued pursuant to one of nine Shelf Registration Statements, filed with the SEC on a Form S-3. The Registration Statements were amended by one or more Forms S-3/A filed with the SEC (the “Amendments”). Each Individual Defendant signed one or more of the Shelf Registration Statements and the Amendments that were filed by the Depositor Defendants. The SEC filing number, registrants, signatories and filing dates of the Shelf Registration Statements and Amendments, as well as the Certificates covered by each Shelf Registration Statement, are set forth in Table 3 below.

**Table 3**

SEC File No.	Date Shelf Registration Statement Filed	Date(s) Amended Shelf Registration Statement Filed	Registrant	Covered Certificates	Signatories of Shelf Registration Statement	Signatories of Amendments
333-100418	10/8/2002	10/28/2002	CWMBS	CWHL 2005-HY10	Stanford L. Kurland; Thomas Keith McLaughlin; Thomas H. Boone; David Spector; Jeffrey P. Grogin	Stanford L. Kurland; Thomas Keith McLaughlin; Thomas H. Boone; David Spector; Jeffrey P. Grogin
333-125164	5/23/2005	6/10/2005	CWABS	CWL 2005-8 CWL 2005-9 CWL 2005-11 CWL 2005-12 CWL 2005-13 CWL 2005-14 CWL 2005-16 CWL 2005-17 CWL 2005-AB3 CWL 2005-AB4 CWL 2005-AB5 CWL 2005-BC5	Stanford L. Kurland; Eric P. Sieracki; David A. Spector	Stanford L. Kurland; Eric P. Sieracki; David A. Spector
333-125902	6/17/2005	7/25/2005	CWALT	CWALT 2005-57CB CWALT 2005-63 CWALT 2005-67CB CWALT 2005-73CB CWALT 2005-80CB CWALT 2005-83CB CWALT 2005-84 CWALT 2005-85CB CWALT 2005-AR CWALT 2006-OC1	Stanford L. Kurland; Eric P. Sieracki; David A. Spector	Stanford L. Kurland; Eric P. Sieracki; David A. Spector
333-125963	6/20/2005	7/25/2005	CWMBS	CWHL 2006-HYB1	Stanford L. Kurland; Eric P. Sieracki; David A. Spector	Stanford L. Kurland; Eric P. Sieracki; David A. Spector
333-131591	2/6/2006	2/21/2006	CWABS	CWL 2006-2 CWL 2006-3 CWL 2006-4 CWL 2006-5 CWL 2006-6 CWL 2006-7 CWL 2006-8 CWL 2006-9 CWL 2006-10 CWL 2006-11 CWL 2006-12 CWL 2006-13 CWL 2006-BC2	Stanford L. Kurland; Eric P. Sieracki; David A. Spector	Stanford L. Kurland; Eric P. Sieracki; David A. Spector



SEC File No.	Date Shelf Registration Statement Filed	Date(s) Amended Shelf Registration Statement Filed	Registrant	Covered Certificates	Signatories of Shelf Registration Statement	Signatories of Amendments
333-131630	2/7/2006	3/6/2006	CWALT	CWALT 2006-11CB CWALT 2006-14CB CWALT 2006-19CB CWALT 2006-23CB CWALT 2006-33CB CWALT 2006-OA14 CWALT 2006-OC3 CWALT 2006-OC4 CWALT 2006-OC5 CWALT 2006-OC6 CWALT 2006-OC7 CWALT 2006-OC8 CWALT 2006-OC10 CWALT 2006-OC11 CWALT 2007-5CB CWALT 2007-HY2 CWALT 2007-OA3	Stanford L. Kurland; Eric P. Sieracki; David A. Spector	Stanford L. Kurland; Eric P. Sieracki; David A. Spector
333-135846	7/18/2006	8/8/2006	CWABS	CWL 2006-14 CWL 2006-16 CWL 2006-17 CWL 2006-18 CWL 2006-19 CWL 2006-20 CWL 2006-21 CWL 2006-22 CWL 2006-23 CWL 2006-24 CWL 2006-25 CWL 2006-26 CWL 2006-BC3 CWL 2006-BC4 CWL 2006-BC5 CWL 2007-1 CWL 2007-2 CWL 2007-3 CWL 2007-5 CWL 2007-6 CWL 2007-BC1	Stanford L. Kurland; Eric P. Sieracki; David A. Spector	Stanford L. Kurland; Eric P. Sieracki; David A. Spector
333-140960	2/28/2007	4/24/2007	CWABS	CWL 2007-7 CWL 2007-8 CWL 2007-9 CWL 2007-10 CWL 2007-11 CWL 2007-12 CWL 2007-13 CWL 2007-BC2 CWL 2007-BC3	N. Joshua Adler; Eric P. Sieracki; Ranjit Kripalani; Jennifer S. Sandefur	N. Joshua Adler; Eric P. Sieracki; Ranjit Kripalani; Jennifer S. Sandefur
333-140962	2/28/2007	4/24/2007	CWALT	CWALT 2007-OA8 CWALT 2007-OA10	N. Joshua Adler; Eric P. Sieracki; Ranjit Kripalani; Jennifer S. Sandefur	N. Joshua Adler; Eric P. Sieracki; Ranjit Kripalani; Jennifer S. Sandefur

55. The Prospectus Supplement for each Securitization describes the 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 ratios of the loans, the ranges of and weighted average outstanding principal balances of the loans, the debt-to-income ratios, 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.

56. The Prospectus Supplements associated with each Securitization were 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 4 below.

**Table 4**

<b>Transaction</b>	<b>Date Prospectus Supplement Filed</b>	<b>Date of Filing Form 8-K Attaching PSA Filed</b>	<b>Filing No. of Related Registration Statement</b>
CWALT 2005-57CB	11/2/05	1/18/06	333-125902
CWALT 2005-63	10/31/05	1/10/06	333-125902
CWALT 2005-67CB	11/30/05	1/12/06	333-125902
CWALT 2005-73CB	12/1/05	1/12/06	333-125902
CWALT 2005-80CB	1/3/06	1/17/06	333-125902
CWALT 2005-83CB	1/3/06	1/17/06	333-125902
CWALT 2005-84	12/29/05	1/17/06	333-125902
CWALT 2005-85CB	12/30/05	1/23/06	333-125902
CWALT 2005-AR1	12/30/05	1/17/06	333-125902
CWALT 2006-11CB	3/30/06	4/14/06	333-131630
CWALT 2006-14CB	5/1/06	5/12/06	333-131630
CWALT 2006-19CB	6/30/06	7/14/06	333-131630

<b>Transaction</b>	<b>Date Prospectus Supplement Filed</b>	<b>Date of Filing Form 8-K Attaching PSA Filed</b>	<b>Filing No. of Related Registration Statement</b>
CWALT 2006-23CB	6/30/06	7/13/06	333-131630
CWALT 2006-33CB	10/3/06	10/13/06	333-131630
CWALT 2006-OA14	10/4/06	10/20/06	333-131630
CWALT 2006-OC1	2/1/06	2/14/06	333-125902
CWALT 2006-OC10	12/4/06	12/15/06	333-131630
CWALT 2006-OC11	1/3/07	1/10/07	333-131630
CWALT 2006-OC3	5/2/06	5/12/06	333-131630
CWALT 2006-OC4	6/1/06	6/14/06	333-131630
CWALT 2006-OC5	7/3/06	7/14/06	333-131630
CWALT 2006-OC6	8/1/06	8/10/06	333-131630
CWALT 2006-OC7	9/1/06	10/23/06	333-131630
CWALT 2006-OC8	10/3/06	10/23/06	333-131630
CWALT 2007-5CB	3/1/07	3/16/07	333-131630
CWALT 2007-HY2	2/1/07	5/24/07	333-131630
CWALT 2007-OA10	8/1/07	8/17/07	333-140962
CWALT 2007-OA3	3/5/07	4/2/07	333-131630
CWALT 2007-OA8	7/2/07	7/13/07	333-140962
CWHL 2005-HY10	12/29/05	1/24/06	333-100418
CWHL 2006-HYB1	1/31/06	2/13/06	333-125963
CWL 2005-11	9/29/05	10/13/05	333-125164
CWL 2005-12	10/4/05	11/4/05	333-125164
CWL 2005-13	11/21/05	12/7/05	333-125164
CWL 2005-14	12/23/05	1/30/06	333-125164
CWL 2005-16	12/29/05	1/27/06	333-125164
CWL 2005-17	12/30/05	1/27/06	333-125164
CWL 2005-8	9/6/05	11/4/05	333-125164
CWL 2005-9	9/26/05	11/4/05	333-125164
CWL 2005-AB3	9/30/05	10/12/05	333-125164
CWL 2005-AB4	11/29/05	1/27/06	333-125164
CWL 2005-AB5	12/30/05	1/27/06	333-125164
CWL 2005-BC5	12/28/05	1/17/06	333-125164
CWL 2006-10	7/5/06	8/8/06	333-131591
CWL 2006-11	7/3/06	8/8/06	333-131591
CWL 2006-12	7/5/06	8/7/06	333-131591
CWL 2006-13	8/1/06	8/11/06	333-131591
CWL 2006-14	9/12/06	11/20/06	333-135846
CWL 2006-16	10/2/06	11/20/06	333-135846
CWL 2006-17	9/28/06	11/17/06	333-135846
CWL 2006-18	10/2/06	11/17/06	333-135846
CWL 2006-19	10/3/06	11/17/06	333-135846
CWL 2006-2	2/28/06	3/13/06	333-131591

<b>Transaction</b>	<b>Date Prospectus Supplement Filed</b>	<b>Date of Filing Form 8-K Attaching PSA Filed</b>	<b>Filing No. of Related Registration Statement</b>
CWL 2006-20	11/13/06	11/22/06	333-135846
CWL 2006-21	12/4/06	12/15/06	333-135846
CWL 2006-22	12/4/06	12/29/06	333-135846
CWL 2006-23	12/13/06	12/22/06	333-135846
CWL 2006-24	1/4/07	1/12/07	333-135846
CWL 2006-25	1/4/07	1/12/07	333-135846
CWL 2006-26	1/4/07	1/12/07	333-135846
CWL 2006-3	2/28/06	3/14/06	333-131591
CWL 2006-4	3/20/06	4/3/06	333-131591
CWL 2006-5	3/28/06	4/12/06	333-131591
CWL 2006-6	3/30/06	4/14/06	333-131591
CWL 2006-7	6/30/06	8/3/06	333-131591
CWL 2006-8	6/30/06	8/3/06	333-131591
CWL 2006-9	7/5/06	8/8/06	333-131591
CWL 2006-BC2	5/31/06	6/15/06	333-131591
CWL 2006-BC3	8/31/06	9/19/06	333-131591
CWL 2006-BC4	9/28/06	12/20/06	333-135846
CWL 2006-BC5	1/3/07	1/30/07	333-135846
CWL 2007-1	2/12/07	2/23/07	333-135846
CWL 2007-10	7/3/07	7/16/07	333-140960
CWL 2007-11	7/3/07	7/16/07	333-140960
CWL 2007-12	8/15/07	8/28/07	333-140960
CWL 2007-13	11/1/07	11/14/07	333-140960
CWL 2007-2	3/2/07	5/10/07	333-135846
CWL 2007-3	4/2/07	4/13/07	333-135846
CWL 2007-5	4/3/07	5/11/07	333-135846
CWL 2007-6	4/3/07	4/16/07	333-135846
CWL 2007-7	5/8/07	6/20/07	333-140960
CWL 2007-8	6/4/07	6/15/07	333-140960
CWL 2007-9	6/12/07	6/25/07	333-140960
CWL 2007-BC1	3/1/07	5/2/07	333-135846
CWL 2007-BC2	4/30/07	6/26/07	333-140960
CWL 2007-BC3	6/29/07	8/8/07	333-140960

57. The Certificates were issued pursuant to the PSAs, and the Underwriter Defendants offered and sold the GSE Certificates to Fannie Mae and Freddie Mac pursuant to

the Registration Statements, which, as noted previously, included the Prospectuses and Prospectus Supplements.<sup>6</sup>

## **II. THE DEFENDANTS' PARTICIPATION IN THE SECURITIZATION PROCESS**

### **A. The Role of Each of the Countrywide, Underwriter, and Individual Defendants**

58. Each of the Countrywide Defendants, including the Individual Defendants, had a role in the securitization process and the marketing for most or all of the Certificates, 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 investors such as Fannie Mae and Freddie Mac.

59. With respect to each Securitization, the Depositor Defendants, the Underwriting Defendants, and the Individual Defendants who signed the Registration Statement, as well as the Defendants who exercised control over their activities, are liable, jointly and severally, as participants in the registration, issuance, and offering of the Certificates, 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. Countrywide Home Loans**

60. Defendant Countrywide Home Loans, which has been involved in the securitization of home loans since 1969, was at all times relevant to this Complaint a leading

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<sup>6</sup> Countrywide Securities was a selling underwriter for 69 of the Securitizations; the selling underwriter for each Securitization is reflected at Tables 11 and 12, below at paragraphs 248 and 249.

sponsor of mortgage-backed securities and loan originator. The volume of loans originated and aggregated by Countrywide Home Loans made it possible for Countrywide Financial to “[take] the crown” as the biggest mortgage originator from 2004 until 2007. *See* Financial Crisis Inquiry Commission (“FCIC”), Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States at 105 (Jan. 2011) (hereinafter “FCIC Report”).

According to the SEC, by 2005, Countrywide was the largest mortgage lender in the United States, originating over \$490 billion in mortgage loans in 2005, over \$450 billion in 2006, and over \$408 billion in 2007. *See* Complaint, *SEC v. Mozilo*, No. 09-03994, Docket Entry 1 (C.D. Cal, filed June 4, 2009) (hereinafter “SEC Complaint”). Countrywide achieved a 16.8 percent market share by 2007. *Goldstein & Fligstein*, “The Rise and Fall of the Nonconventional Mortgage Industry” at Table 1 (July 2010).

61. In its capacity as sponsor of all 86 Securitizations, Countrywide Home Loans determined the structure of the Securitizations, initiated the Securitizations, determined distribution of principal and interest, and provided data to the rating agencies to secure investment grade ratings for the Certificates. Countrywide Home Loans originated most of the mortgage loans that were pooled together before being sold or transferred to the Depositor Defendants in anticipation of securitization. Countrywide Home Loans also selected the Depositor Defendants as the special purpose vehicles that would be used to transfer the mortgage loans from Countrywide Home Loans to the trusts, and selected Countrywide Securities as the underwriter for most of the Securitizations. In its role as sponsor, Countrywide Home Loans knew and intended that the mortgage loans it originated or acquired would be sold in connection with the securitization process, and that certificates representing such loans would be issued by the relevant trusts.

62. For the 86 Securitizations that it sponsored, Countrywide Home Loans also conveyed the mortgage loans to the Depositor Defendants pursuant to the PSAs. In these agreements, Countrywide Home Loans made certain representations and warranties to the Depositor Defendants regarding the groups of loans collateralizing the Certificates. These representations and warranties were assigned by the Depositor Defendants to the trustees for the benefit of the Certificateholders.

## **2. The Depositor Defendants CWALT, CWABS, and CWMBS**

63. Each of the Depositor Defendants – CWALT, CWABS, and CWMBS – was a special purpose entity formed solely for the purpose of purchasing mortgage loans, filing registration statements with the SEC, forming issuing trusts, assigning mortgage loans and all of its rights and interests in such mortgage loans to the trustee for the benefit of the certificateholders, and depositing the underlying mortgage loans into the issuing trusts.

64. The Securitizations in which each Depositor Defendant participated are identified in Table 2, above. Acting as depositor, each Depositor Defendant purchased mortgage loans from Countrywide Home Loans (as sponsor), pursuant to the PSAs. Each Depositor Defendant then sold, transferred, or otherwise conveyed the mortgage loans to be securitized to the trust. The Depositor Defendants were also responsible for preparing and filing the Registration Statements pursuant to which the Certificates were offered for sale.

65. 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 such as Fannie Mae and Freddie Mac.

## **3. Countrywide Securities**

66. Defendant Countrywide Securities was, at all relevant times, an investment bank and registered broker-dealer and one of the leading underwriters of mortgage and other asset-

backed securities in the United States. In 2007, *Inside Mortgage Finance* ranked Countrywide as one of the top non-agency mortgage-backed securities issuers, with 13.6 percent of the market share.<sup>7</sup> *Goldstein & Fligstein*, “The Rise and Fall of the Nonconventional Mortgage Industry” at Table 1 (July 2010). Countrywide ranked number one in issuance of securities backed by subprime mortgages for the years 2005 to 2007, generating almost \$86 billion in such issuances over those three years. “Mortgage Repurchases Part II: Private Label RMBS Investors Take Aim – Quantifying the Risks,” *Mortgage Finance* at 8 (Aug. 17, 2010).

67. Defendant Countrywide Securities was the lead underwriter for the vast majority of the Securitizations. In that role, it was responsible for underwriting and managing the offer and sale of the Certificates to Fannie Mae and Freddie Mac and other investors. Countrywide Securities 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.

#### **4. Countrywide Capital Markets**

68. Defendant Countrywide Capital Markets was the sole parent of Countrywide Securities. As such, it had the practical ability to direct and control the actions of Countrywide Securities related to the Securitizations in which its wholly-owned subsidiary participated as underwriter and in fact exercised such control over the activities of its subsidiary related to the issuance and sale of the Certificates.

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<sup>7</sup> “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.



## **5. Countrywide Financial**

69. Countrywide Financial employed its wholly-owned subsidiaries, Countrywide Home Loans, Countrywide Securities, and each of the Depositor Defendants, in the key steps of the securitization process. Unlike typical arms' length transactions, the Securitizations here involved various Countrywide subsidiaries and affiliates at virtually each step in the chain – with few exceptions, the sponsor was Countrywide Home Loans, the depositors were CWABS, CWALT, or CWMBBS, and the lead or co-lead underwriter was Countrywide Securities.

70. As the sole corporate parent of these entities, Countrywide Financial had the practical ability to direct and control the actions of Countrywide Home Loans, Countrywide Securities, and the Depositor Defendants related to the Securitizations, and in fact exercised such direction and control over their activities related to the issuance and sale of the Certificates.

## **6. The Underwriter Defendants**

71. Like Underwriter Defendant Countrywide Securities, the remaining Underwriter Defendants – BOA Securities, CGMI, DB Securities, RBS Securities, and UBS Securities – were all registered broker-dealers, participated in underwriting one or more Securitizations, and in those capacities sold Certificates to Fannie Mae and Freddie Mac and other investors. The Securitizations in which each Underwriter Defendant sold GSE Certificates to Fannie Mae and Freddie Mac are identified below at Tables 11 and 12.

72. Defendant BOA Securities was the lead underwriter for the CWALT 2006-OA14 and CWALT 2007-OA10 Securitizations, among other Securitizations. In that role, BOA Securities was responsible for underwriting and managing the offer and sale of the Certificates issued in those Securitizations. BOA Securities managed the offer and sale of GSE Certificates to Fannie Mae in the CWALT 2006-OA14 and CWALT 2007-OA10 Securitizations.

73. Defendant CGMI was at all relevant times CitiGroup Inc.'s private label securities arm, specializing in "nonconforming and alternative pools" of loans. Mortgage Banking Magazine, *CitiMortgage on the Move*, December 2006. CGMI was the lead underwriter for the CWALT 2006-33CB, and CWALT 2007-5CB Securitizations and in that role was responsible for underwriting and managing the offer and sale of the Certificates issued in those Securitizations. CGMI managed the offer and sale of GSE Certificates to Freddie Mac in the CWALT 2006-33CB and CWALT 2007-5CB Securitizations.

74. Defendant DB Securities was at all relevant times one of the leading underwriters of mortgage and other asset-backed securities in the United States. DB Securities was the lead underwriter for the CWALT 2005-84, CWALT 2005-85CB, CWALT 2006-14CB, and CWALT 2006-19CB Securitizations, among other Securitizations. In that role, DB Securities was responsible for underwriting and managing the offer and sale of the Certificates issued in those Securitizations. DB Securities managed the offer and sale of GSE Certificates to Fannie Mae in the CWALT 2005-84 and CWALT 2005-85CB Securitizations and to Freddie Mac in the CWALT 2006-14CB and CWALT 2006-19CB Securitizations.

75. Defendant RBS Securities was at all relevant times one of the leading underwriters of mortgage and other asset-backed securities in the United States. RBS Securities was a lead underwriter for the CWALT 2005-73CB, CWALT 2006-11CB, and CWALT 2005-80CB Securitizations, among other Securitizations. In that role, RBS Securities was responsible for underwriting and managing the offer and sale of the Certificates issued in those Securitizations. RBS Securities also managed the offer and sale of the GSE Certificates to Fannie Mae in the CWALT 2005-80CB Securitization and to Freddie Mac in the CWALT 2005-73CB and CWALT 2006-11CB Securitizations.

76. Defendant UBS Securities was at all relevant times one of the leading underwriters of mortgage and other asset-backed securities in the United States. UBS Securities was the lead underwriter for the CWALT 2005-63 Securitization, among other Securitizations. In that role, UBS Securities was responsible for underwriting and managing the offer and sale of the Certificates issued in those Securitizations. UBS Securities also managed the offer and sale of the GSE Certificate to Fannie Mae in the CWALT 2005-63 Securitization.

77. Each of the Underwriter Defendants was obligated to conduct meaningful due diligence to ensure that the Registration Statements for the Securitizations they underwrote did not contain any material misstatements or omissions, including the manner in which the underlying mortgage loans were originated, transferred, and underwritten.

#### **7. The Individual Defendants**

78. Defendant N. Joshua Adler served as President, CEO, and member of the Board of Directors for CWALT and CWABS. Mr. Adler signed two of the Shelf Registration Statements and the amendments thereto.

79. Defendant Thomas H. Boone served as Executive Vice President as well as the Principal Financial and Accounting Officer for CWMBS. Mr. Boone signed one of the Shelf Registration Statements and the amendments thereto.

80. Defendant Jeffrey P. Grogin served as Director of CWMBS. Mr. Grogin signed one of the Shelf Registration Statements and the amendments thereto.

81. Defendant Ranjit Kripalani served as Countrywide Financial's Executive Vice President and Countrywide Securities' National Sales Manager. He also served as Director of CWALT, CWABS, and CWMBS. Mr. Kripalani signed two of the Shelf Registration Statements and the amendments thereto.

82. Defendant Stanford Kurland was President and COO of Countrywide Financial and also the CEO, President, and Chairman of the Board of CWABS, CWALT, and CWMBBS. Mr. Kurland signed seven of the Shelf Registration Statements and the amendments thereto.

83. Defendant Thomas Keith McLaughlin served as Executive Vice President as well as Principal Financial and Accounting Officer for CWMBBS and CWALT. Mr. McLaughlin signed one of the Shelf Registration Statements and the amendments thereto.

84. Defendant Jennifer S. Sandefur served as Vice-President and Assistant Treasurer of Countrywide Financial and Treasurer of Countrywide Home Loans. She served as Director of CWALT, CWABS, and CWMBBS. Ms. Sandefur signed two of the Shelf Registration Statements and the amendments thereto.

85. Defendant Eric Sieracki served as Countrywide Financial's Executive Managing Director and Chief Financial Officer. Prior to becoming CFO of Countrywide Financial, Mr. Sieracki occupied other high-level positions within Countrywide, including as Executive Managing Director, Chief Financial Officer, and Treasurer of CWALT, CWABS, and CWMBBS. Mr. Sieracki signed eight of the Shelf Registration Statements and the amendments thereto.

86. Defendant David A. Spector joined Countrywide in 1990. He served as Managing and Senior Managing Director at Countrywide Financial from 2004 to 2006, as well as Managing Director of Secondary Markets at Countrywide Home Loans. He was also a member of the Board of Directors and a Vice President for CWALT, CWABS, and CWMBBS. Mr. Spector signed seven of the Shelf Registration Statements and the amendments thereto.

**B. The Defendants' Failure To Conduct Proper Due Diligence**

87. The Defendants failed to conduct adequate and sufficient due diligence to ensure that the mortgage loans underlying the Securitizations complied with the representations in the

Registration Statements, and failed to abide by their own stated underwriting standards in originating and underwriting loans.

88. During the time period in which the Certificates were issued – approximately 2005 through 2007 – Countrywide’s involvement in the mortgage-backed securitization market was rapidly expanding. Countrywide’s CEO, Angelo Mozilo, stated on a conference call with analysts in 2003 that his goal for Countrywide Financial was to “dominate” the mortgage market and “to get our market share to the ultimate 30% by 2006, 2007.” Q2 2003 Countrywide Financial Corporation Earnings Conference Call (July 22, 2003). As described below, in the drive to achieve this objective, Countrywide abandoned its underwriting guidelines and failed to perform the due diligence necessary to ensure the accuracy of the Registration Statements.

89. Defendants had enormous financial incentives to complete as many offerings as quickly as possible without regard to ensuring the accuracy or completeness of the Registration Statements, or conducting adequate and reasonable due diligence. For example, the Depositor Defendants were paid a percentage of the total dollar amount of the offerings upon completion of the Securitizations, and the Underwriting Defendants, including but not limited to Countrywide Securities, were paid a commission based on the amount received from the sale of the Certificates to the public.

90. The push to securitize large volumes of mortgage loans contributed to the absence of controls needed to prevent the inclusion of untrue statements of material facts and omissions of material facts in the Registration Statements. In particular, Defendants failed to conduct adequate diligence or otherwise to ensure the accuracy of the statements in the Registrations Statements pertaining to the Securitizations.

91. For instance, Countrywide retained third-parties, including Clayton Holdings, Inc. (“Clayton”), to analyze the loans it was considering placing in its securitizations, but waived a significant number of loans into the Securitizations that these firms had recommended for exclusion, and did so without taking adequate steps to ensure that these loans had in fact been underwritten in accordance with applicable guidelines or had compensating factors that excused the loans’ non-compliance with those guidelines. On January 27, 2008, Clayton revealed that it had entered into an agreement with the New York Attorney General (the “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.”

92. Countrywide was negligent in allowing into the Securitizations a substantial number of mortgage loans that, as reported to Countrywide by third-party due diligence firms, did not conform to the underwriting standards stated in the Registration Statements, including the Prospectuses and Prospectus Supplements. Even upon learning from the third-party due diligence firms that there were high percentages of defective or at least questionable loans in the sample of loans reviewed by the third-party due diligence firms, Countrywide failed to take any additional steps to verify that the population of loans in the Securitizations did not include a similar percentage of defective and/or questionable loans.

93. Clayton’s trending reports reveal that from the fourth quarter of 2006 to the first quarter of 2007, 26 percent of the mortgages Countrywide submitted to Clayton to review in residential mortgage-backed securities groups were rejected by Clayton as falling outside of the

applicable underwriting guidelines. Of the mortgages that Clayton found defective, twelve percent were subsequently waived in by Countrywide and included in securitizations like the ones in which Fannie Mae and Freddie Mac invested. *See All Clayton Trending Reports Q1 2006-Q2 2007*, at 3 (Clayton Services Inc. 2007).

94. Clayton also produced a report containing the rejection and waiver rates for loans originated by Countrywide. This report stated that between thirteen and 24 percent of the loans Countrywide originated during the same time frame did not comply with applicable underwriting guidelines. Clayton Originator Trending Report (Clayton Services Inc. 2007).

95. The Underwriting Defendants other than Countrywide also failed to perform adequate due diligence when underwriting securitizations of mortgage-backed securities. These Defendants were negligent in allowing into their securitizations a substantial number of mortgage loans that, as reported to them by third-party due diligence firms, did not conform to the underwriting standards stated in the registration statements pursuant to which they made offerings, including the prospectuses and prospectus supplements that formed part of those registration statements. Clayton's trending reports revealed that, in the period from the first quarter of 2006 to the second quarter of 2007, the non-Countrywide Underwriter Defendants, and their affiliates, routinely waived into pools for securitizations loans that had been recommended for exclusion, without taking adequate steps to ensure that these loans had in fact been underwritten in accordance with applicable guidelines. These reports are described below:

- Bank of America: Clayton rejected 30 percent of the total pool of loans it reviewed for Bank of America. Nonetheless, Bank of America waived in 27 percent of those rejected loans.
- Citigroup: Clayton rejected 42 percent of the total pool of loans it reviewed for Citigroup. Nonetheless, Citigroup waived in nearly a third of those rejected loans.

- Deutsche Bank: Clayton rejected 35 percent of the total pool of loans it reviewed for Deutsche Bank. Nonetheless, Deutsche Bank waived in seventeen percent of these rejected loans.
- RBS: Clayton rejected eighteen percent of the total pool of loans it reviewed for RBS. Nonetheless, RBS waived in 53 percent of these rejected loans.
- UBS: Clayton rejected 20 percent of the total pool of loans it reviewed for UBS. Nonetheless, UBS waived in thirteen percent of these loans.

*See All Clayton Trending Reports Q1 2006-Q2 2007, at 3 (Clayton Services Inc. 2007).*

96. Based on the information provided to them by the third-party due diligence firms, the Underwriter Defendants should have known that a substantial number of the mortgage loans did not conform to the underwriting standards stated in the Registration Statements, including the Prospectuses and Prospectus Supplements, and that the mortgage loans did not have the characteristics represented in those documents.

### **III. THE REGISTRATION STATEMENTS AND THE PROSPECTUS SUPPLEMENTS**

#### **A. Compliance With Underwriting Guidelines**

97. The Prospectuses and Prospectus Supplements for each Securitization describe the mortgage loan underwriting guidelines pursuant to which the mortgage loans underlying the related Securitizations were to have been originated. These guidelines were intended to assess the creditworthiness of the borrower, the ability of the borrower to repay the loan, and the adequacy of the mortgaged property as security for the loan.

98. The statements made in the Prospectuses and Prospectus Supplements, which, as discussed, formed part of the Registration Statement for each Securitization, were material to a reasonable investor's decision to purchase and invest in the Certificates because the failure to originate a mortgage loan in accordance with the applicable guidelines creates a higher risk of



delinquency and default by the borrower, as well as a risk that losses upon liquidation will be higher, thus resulting in a greater economic risk to an investor.

99. The Prospectuses and Prospectus Supplements for the Securitizations contained several key statements with respect to the underwriting standards of the entities that originated the loans in the Securitizations.

100. For example, the Prospectus Supplement for the CWALT 2007-OA10 Securitization, for which Countrywide Home Loans was the sponsor, CWALT was the depositor, and BOA Securities was the underwriter, stated that all mortgage loans had been originated under Countrywide Home Loans' underwriting guidelines. The Prospectus Supplement set forth that "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."

101. Further, according to the Prospectus Supplement, the same underwriting standards applied regardless of whether the loan was originated or acquired by Countrywide Home Loans. The Prospectus Supplement represented that all loans "will have been originated or acquired by Countrywide Home Loans in accordance with its credit, appraisal and underwriting process."

102. With respect to the information evaluated by the originator, the Prospectus – to which the Prospectus Supplement refers – stated that, "In general, a prospective borrower applying for a loan is required to fill out a detailed application designed to provide to the underwriting officer pertinent credit information. As part of the description of the borrower's financial condition, the borrower generally is required to provide a current list of 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 local merchants and lenders and any record of bankruptcy.”

103. The central purpose of the collection of information regarding each mortgage loan was to assess the borrower's ability to repay the loan. As the Prospectus Supplement stated: “Once all applicable employment, credit and property information is received, a determination generally is made as to whether the prospective borrower has sufficient monthly income available to meet monthly housing expenses and other financial obligations and monthly living expenses . . . .”

104. The Prospectus Supplement specified that although exceptions could be made to Countrywide Home Loans' underwriting guidelines, in each instance there must be “compensating factors . . . demonstrated by a prospective borrower.”

105. Additionally, the Prospectus Supplement claimed that to assess the adequacy of the value of the mortgaged property as collateral, Countrywide Home Loans obtained independent appraisals of the subject property. According to the Prospectus Supplement, the appraisers “inspect and appraise the proposed mortgaged property and verify that the property is in acceptable condition.”

106. With respect to approximately 60 percent of the Securitizations, the Prospectus Supplement specified that substantially all of the mortgage loans had been made to borrowers with “blemished” credit histories. The Prospectus Supplement applicable to the CWL 2007-10 Securitization, for example, stated that all of the mortgage loans in the loan group supporting the Certificate purchased by the GSEs “were originated by Countrywide Home Loans in accordance with its underwriting standards for credit-blemished mortgage loans.”

107. The guidelines applied for the credit-blemished mortgage loans nonetheless required a determination that the borrower was able to repay the loan. The Prospectus Supplement for the CWL 2007-10 Securitization stated: “While more flexible, Countrywide Home Loans’ underwriting guidelines [for credit-blemished mortgage loans] still place primary reliance on a borrower’s ability to repay; however Countrywide Home Loans may require lower loan-to-value ratios than for loans underwritten to more traditional standards.” The Prospectus Supplement for the CWL 2007-10 Securitization represented that that through use of an internal credit grading system for credit-blemished mortgage loans, Countrywide Home Loans was able “to grade the likelihood that the mortgagor will satisfy the repayment conditions of the mortgage loans.”

108. The Prospectus Supplement for the CWL 2007-10 Securitization stated, as did the Prospectuses and Prospectus Supplements for Securitizations involving non-blemished mortgage loans: “Countrywide Home Loans’ underwriting standards are primarily 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.”

109. The Prospectus Supplement for the CWL 2007-10 Securitization stated that loans were evaluated on a “case-by-case basis,” and that “compensating factors” must exist for an exception. The compensating factors enumerated in the Prospectus Supplement included: “low loan-to-value ratio or combined loan-to-value ratio, as applicable, low debt-to-income ratio, stable employment, time in the same residence or other factors.”

110. As in the case of non-blemished loans, moreover, the Prospectus Supplement for the CWL 2007-10 Securitization represented that every property had been subjected to an independent appraisal. The Prospectus Statement also stated that before the mortgage loans were

funded, a representative of Countrywide Home Loans had reviewed the appraisal and that generally Countrywide Home Loans required an additional appraisal “in connection with appraisals not provided by Landsafe Appraisals, Inc., a wholly-owned subsidiary of Countrywide Home Loans.”

111. The Prospectuses and Prospectus Supplements for each of the Securitizations had similar representations to those quoted above. The relevant representations in the Prospectuses and Prospectus Supplements pertaining to originating entity underwriting standards for each Securitization are reflected in Appendix A to this Complaint. As discussed below in Section IV, in fact, Countrywide Home Loans and the other originators of the mortgage loans in the Supporting Loan Group for the Securitizations did not adhere to their stated underwriting guidelines, thus rendering the description of those guidelines in the Prospectuses and Prospectus Supplements false and misleading.

112. Further, for many of the Securitizations, the Prospectuses and Prospectus Supplements described additional representations and warranties concerning the mortgage loans backing the Securitizations that were made by the originator to the depositor in the PSA. The Prospectus Supplement for the CWALT 2007-OA10 Securitization, for example, stated that “Under the [PSA], Countrywide Home Loans will make certain representations, warranties and covenants to the depositor relating to, among other things . . . certain characteristics of the Mortgage Loans,” including that the originator “was the sole owner of those Mortgage Loans free and clear of any pledge, lien, encumbrance or other security interest . . . .” The representations and warranties in the PSAs for additional Securitizations are described in greater detail in Appendix A.

113. The inclusion of these representations in the Prospectuses and Prospectus Supplements had the purpose and effect of providing additional assurances to investors regarding the quality of the mortgage collateral underlying the Securitizations and the compliance of that collateral with the underwriting guidelines described in the Prospectuses and Prospectus Supplements. These representations were material to a reasonable investor’s decision to purchase the Certificates.

**B. Statements Regarding Occupancy Status of Borrower**

114. The Prospectus Supplements contained collateral group-level information about the occupancy status of the borrowers of the loans in the Securitizations. Occupancy status refers to whether the property securing a mortgage is to be the primary residence of the borrower, a second home, or an investment property. The Prospectus Supplements for each of the Securitizations presented this information in tabular form, usually in a table entitled “Occupancy Types for the . . . Mortgage Loans.” This table divided all the loans in the collateral group by occupancy status, e.g., into the following categories: (i) “Primary,” or “Owner-Occupied”; (ii) “Second Home,” or “Secondary”; and (iii) “Investment” or “Non-Owner.” For each category, the table stated the number of loans in that category. Occupancy statistics for the Supporting Loan Groups for each Securitization were reported in the Prospectus Supplements as follows:<sup>8</sup>

**Table 5**

Transaction	Supporting Loan Group	Primary or Owner-Occupied (%)	Second Home/Secondary (%)	Investor (%)
CWALT 2005-57CB	Group 1	100.00	0.00	0.00

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<sup>8</sup> 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 then been converted to percentages.

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Primary or Owner-Occupied (%)</b>	<b>Second Home/Secondary (%)</b>	<b>Investor (%)</b>
CWALT 2005-63	Group 1	82.90	11.37	5.73
CWALT 2005-67CB	Single-Group Transaction	100.00	0.00	0.00
CWALT 2005-73CB	Group 2	76.79	5.83	17.38
CWALT 2005-80CB	Group 3	60.65	5.19	34.17
	Group 4	82.44	4.90	12.67
CWALT 2005-83CB	Single-Group Transaction	100.00	0.00	0.00
CWALT 2005-84	Group 2	80.49	12.78	6.73
CWALT 2005-85CB	Group 1	77.57	5.46	16.97
CWALT 2005-AR1	Group 1	92.41	1.72	5.86
CWALT 2006-11CB	Group 1	83.46	5.38	11.15
CWALT 2006-14CB	Single-Group Transaction	88.28	4.37	7.36
CWALT 2006-19CB	Single-Group Transaction	90.08	4.09	5.82
CWALT 2006-23CB	Group 1	89.70	4.23	6.08
	Group 2	80.23	6.74	13.04
CWALT 2006-33CB	Group 2	88.92	5.26	5.82
CWALT 2006-OA14	Group 1	71.87	9.17	18.96
CWALT 2006-OC1	Group 1	79.82	2.36	17.82
CWALT 2006-OC10	Group 1	76.50	9.28	14.22
CWALT 2006-OC11	Group 1	53.67	9.78	36.55
CWALT 2006-OC3	Group 1	75.93	3.71	20.36
CWALT 2006-OC4	Group 1	63.33	9.69	26.98
CWALT 2006-OC5	Group 1	78.18	1.76	20.07
CWALT 2006-OC6	Group 1	71.25	8.97	19.78
CWALT 2006-OC7	Group 1	81.21	4.34	14.45
CWALT 2006-OC8	Group 1	81.52	6.13	12.35
CWALT 2007-5CB	Group 2	79.57	4.80	15.63
CWALT 2007-HY2	Group 1	68.94	9.80	21.26
	Group 2	74.68	6.87	18.45
CWALT 2007-OA10	Group 1	73.97	5.01	21.03
CWALT 2007-OA3	Group 2	69.24	8.71	22.05
CWALT 2007-OA8	Group 1	74.86	8.53	16.61
CWHL 2005-HY10	Group 2	79.47	8.28	12.24
CWHL 2006-HYB1	Group 1	75.15	6.53	18.31
CWL 2005-11	Group 2	98.49	0.46	1.06
CWL 2005-12	Group 3	100.00	0.00	0.00
CWL 2005-13	Group 2	95.01	1.35	3.64
CWL 2005-14	Group 1	95.59	1.08	3.32

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Primary or Owner-Occupied (%)</b>	<b>Second Home/Secondary (%)</b>	<b>Investor (%)</b>
	Group 2	96.85	1.01	2.14
CWL 2005-16	Group 1	97.62	0.38	2.01
	Group 3	96.50	0.63	2.87
CWL 2005-17	Group 2	100.00	0.00	0.00
	Group 3	95.98	0.81	3.21
CWL 2005-8	Group 1	96.66	0.51	2.83
CWL 2005-9	Group 1	97.49	0.39	2.12
CWL 2005-AB3	Group 1	92.19	1.41	6.40
CWL 2005-AB4	Group 1	92.23	1.07	6.70
CWL 2005-AB5	Group 1	92.63	2.27	5.10
CWL 2005-BC5	Group 1	95.47	0.58	3.94
	Group 2	98.34	0.44	1.22
CWL 2006-10	Group 2	92.42	1.34	6.24
CWL 2006-11	Group 2	97.10	0.43	2.47
CWL 2006-12	Group 1	92.69	1.36	5.95
CWL 2006-13	Group 2	97.99	0.16	1.86
CWL 2006-14	Group 1	97.49	0.35	2.16
CWL 2006-16	Group 1	95.87	0.90	3.23
CWL 2006-17	Group 1	95.64	0.99	3.37
CWL 2006-18	Group 1	97.48	0.70	1.82
CWL 2006-19	Group 1	96.81	0.54	2.65
CWL 2006-2	Group 1	92.42	2.16	5.41
CWL 2006-20	Group 1	93.91	0.99	5.10
CWL 2006-21	Group 1	95.70	0.71	3.59
CWL 2006-22	Group 1	93.98	1.35	4.67
CWL 2006-23	Group 1	95.69	0.90	3.41
CWL 2006-24	Group 1	94.84	0.78	4.38
CWL 2006-25	Group 1	94.60	0.91	4.49
CWL 2006-26	Group 1	92.18	1.38	6.43
CWL 2006-3	Group 1	94.34	0.83	4.83
CWL 2006-4	Group 1	94.59	1.08	4.32
CWL 2006-5	Group 1	92.92	1.51	5.57
CWL 2006-6	Group 1	97.65	0.48	1.87
CWL 2006-7	Group 1	96.47	0.88	2.65
CWL 2006-8	Group 1	97.55	0.45	2.00
CWL 2006-9	Group 2	94.57	1.45	3.99
CWL 2006-BC2	Group 1	95.75	0.50	3.75
CWL 2006-BC3	Group 1	96.22	0.61	3.18
CWL 2006-BC4	Group 1	97.44	0.80	1.76

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Primary or Owner-Occupied (%)</b>	<b>Second Home/Secondary (%)</b>	<b>Investor (%)</b>
CWL 2006-BC5	Group 1	97.62	0.53	1.84
CWL 2007-1	Group 1	95.22	1.49	3.29
CWL 2007-10	Group 1	96.39	0.99	2.62
CWL 2007-11	Group 1	96.71	0.58	2.71
CWL 2007-12	Group 1	94.89	0.55	4.55
CWL 2007-13	Group 1	95.95	0.67	3.37
CWL 2007-2	Group 1	92.52	2.08	5.40
CWL 2007-3	Group 1	91.76	2.09	6.15
CWL 2007-5	Group 1	90.27	2.24	7.50
CWL 2007-6	Group 1	93.90	1.84	4.26
CWL 2007-7	Group 1	90.55	1.87	7.58
CWL 2007-8	Group 1	96.28	0.54	3.18
CWL 2007-9	Group 1	95.09	0.90	4.01
CWL 2007-BC1	Group 1	95.44	1.85	2.71
CWL 2007-BC2	Group 1	93.26	1.54	5.19
CWL 2007-BC3	Group 1	90.10	0.67	9.23

115. As Table 5 makes clear, the Prospectus Supplements for most of the Securitizations reported that an overwhelming majority of the mortgage loans in the Supporting Loan Groups were owner-occupied, while a small percentage were reported to be non-owner-occupied (*i.e.*, a second home or investor property).

116. The statements about occupancy status were material to a reasonable investor's decision to invest in the Certificates. Information about occupancy status is an important factor in determining the credit risk associated with a mortgage loan and, therefore, the securitization that it collateralizes. Because borrowers who reside in mortgaged properties are less likely to default and more likely to care for their primary residence than borrowers who purchase homes as second homes or investments and live elsewhere, the percentage of loans in the collateral group of a securitization that are not secured by mortgage loans on owner-occupied residences is an important measure of the risk of the certificates sold in that securitization.



117. Other things being equal, the higher the percentage of loans not secured by owner-occupied residences, the greater the risk of loss to the certificateholders. 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. As discussed below at paragraphs 129 through 132, the Registration Statement 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 GSE Certificates.

**C. Statements Regarding Loan-to-Value Ratios**

118. 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.

119. 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. Accordingly, an accurate appraisal is essential to an accurate LTV ratio. In particular, an inflated appraisal will understate, sometimes greatly, the credit risk associated with a given loan.

120. The Prospectus Supplements for each Securitization also contained group-level information about the LTV ratio for the underlying group of loans as a whole. The percentage of loans with an LTV ratio at or less than 80 percent and the percentage of loans with an LTV ratio

greater than 100 percent as reported in the Prospectus Supplements for the Supporting Loan Groups are reflected in Table 6 below.<sup>9</sup>

**Table 6**

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Percentage of loans, by aggregate principal balance, with LTV less than or equal to 80</b>	<b>Percentage of loans, by aggregate principal balance, with LTV greater than 100</b>
CWALT 2005-57CB	Group 1	87.26	0.00
CWALT 2005-63	Group 1	88.73	0.00
CWALT 2005-67CB	Single-group transaction	85.83	0.00
CWALT 2005-73CB	Group 2	90.70	0.00
CWALT 2005-80CB	Group 3	78.89	0.00
	Group 4	88.10	0.00
CWALT 2005-83CB	Single-group transaction	88.06	0.00
CWALT 2005-84	Group 2	90.80	0.00
CWALT 2005-85CB	Group 1	90.56	0.00
CWALT 2005-AR1	Group 1	99.09	0.00
CWALT 2006-11CB	Group 1	91.37	0.00
CWALT 2006-14CB	Single-group transaction	94.73	0.00
CWALT 2006-19CB	Single-group transaction	93.34	0.00
CWALT 2006-23CB	Group 1	90.60	0.00
	Group 2	90.23	0.00
CWALT 2006-33CB	Group 2	96.60	0.00
CWALT 2006-OA14	Group 1	92.22	0.00
CWALT 2006-OC1	Group 1	94.75	0.00
CWALT 2006-OC10	Group 1	89.61	0.00
CWALT 2006-OC11	Group 1	92.05	0.00
CWALT 2006-OC3	Group 1	92.09	0.00
CWALT 2006-OC4	Group 1	92.63	0.00

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<sup>9</sup> As used in this Complaint, “LTV” refers to the original loan-to-value ratio for first lien mortgages and for properties with second liens that are subordinate to the lien that was included in the securitization (*i.e.*, only the securitized lien is included in the numerator of the LTV calculation). However, for second lien mortgages, 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”).

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Percentage of loans, by aggregate principal balance, with LTV less than or equal to 80</b>	<b>Percentage of loans, by aggregate principal balance, with LTV greater than 100</b>
CWALT 2006-OC5	Group 1	93.97	0.00
CWALT 2006-OC6	Group 1	88.51	0.00
CWALT 2006-OC7	Group 1	85.61	0.00
CWALT 2006-OC8	Group 1	87.48	0.00
CWALT 2007-5CB	Group 2	91.47	0.00
CWALT 2007-HY2	Group 1	92.52	0.00
	Group 2	87.31	0.00
CWALT 2007-OA10	Group 1	81.69	0.00
CWALT 2007-OA3	Group 2	85.81	0.00
CWALT 2007-OA8	Group 1	71.37	0.00
CWHL 2005-HY10	Group 2	95.06	0.00
CWHL 2006-HYB1	Group 1	96.56	0.00
CWL 2005-11	Group 2	55.80	0.00
CWL 2005-12	Group 3	47.70	0.00
CWL 2005-13	Group 2	66.49	0.00
CWL 2005-14	Group 1	58.90	0.00
	Group 2	61.93	0.00
CWL 2005-16	Group 1	70.02	0.00
	Group 3	69.38	0.00
CWL 2005-17	Group 2	70.73	0.00
	Group 3	71.77	0.00
CWL 2005-8	Group 1	61.35	0.00
CWL 2005-9	Group 1	90.93	0.00
CWL 2005-AB3	Group 1	38.27	0.00
CWL 2005-AB4	Group 1	57.85	0.00
CWL 2005-AB5	Group 1	54.46	0.00
CWL 2005-BC5	Group 1	62.95	0.00
	Group 2	73.00	0.00
CWL 2006-10	Group 2	67.67	0.00
CWL 2006-11	Group 2	63.09	0.00
CWL 2006-12	Group 1	61.09	0.00
CWL 2006-13	Group 2	66.62	0.00
CWL 2006-14	Group 1	64.04	0.00
CWL 2006-16	Group 1	58.85	0.00
CWL 2006-17	Group 1	62.95	0.00
CWL 2006-18	Group 1	63.15	0.00
CWL 2006-19	Group 1	61.32	0.00
CWL 2006-2	Group 1	63.55	0.00
CWL 2006-20	Group 1	59.83	0.00

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Percentage of loans, by aggregate principal balance, with LTV less than or equal to 80</b>	<b>Percentage of loans, by aggregate principal balance, with LTV greater than 100</b>
CWL 2006-21	Group 1	63.28	0.00
CWL 2006-22	Group 1	62.53	0.00
CWL 2006-23	Group 1	50.04	0.00
CWL 2006-24	Group 1	55.15	0.00
CWL 2006-25	Group 1	49.52	0.00
CWL 2006-26	Group 1	51.88	0.00
CWL 2006-3	Group 1	65.74	0.00
CWL 2006-4	Group 1	74.72	0.00
CWL 2006-5	Group 1	67.88	0.00
CWL 2006-6	Group 1	65.25	0.00
CWL 2006-7	Group 1	60.78	0.00
CWL 2006-8	Group 1	63.41	0.00
CWL 2006-9	Group 2	58.37	0.00
CWL 2006-BC2	Group 1	54.52	0.00
CWL 2006-BC3	Group 1	62.50	0.00
CWL 2006-BC4	Group 1	66.48	0.00
CWL 2006-BC5	Group 1	56.64	0.00
CWL 2007-1	Group 1	55.26	0.00
CWL 2007-10	Group 1	60.53	0.00
CWL 2007-11	Group 1	62.32	0.00
CWL 2007-12	Group 1	61.06	0.00
CWL 2007-13	Group 1	69.15	0.00
CWL 2007-2	Group 1	52.22	0.00
CWL 2007-3	Group 1	48.78	0.00
CWL 2007-5	Group 1	44.97	0.00
CWL 2007-6	Group 1	59.09	0.00
CWL 2007-7	Group 1	53.60	0.00
CWL 2007-8	Group 1	60.62	0.00
CWL 2007-9	Group 1	60.00	0.00
CWL 2007-BC1	Group 1	62.12	0.00
CWL 2007-BC2	Group 1	46.38	0.00
CWL 2007-BC3	Group 1	56.21	0.00

121. As Table 6 makes clear, the Prospectus Supplements for most of the Securitizations reported that the majority of the mortgage loans in most of the Supporting Loan Groups had an LTV ratio of 80 percent or less, and the Prospectus Supplement for all of the

Securitizations reported that *zero* mortgage loans in the Supporting Loan Group had an LTV over 100 percent.

122. The LTV ratio is among the most important measures of the risk of a mortgage loan, and thus, it is one of the most important indicators of the default risk of the mortgage loans underlying the Certificates. The lower the ratio, the less likely that a decline in the value of the property will wipe out an owner's equity, and thereby give an owner an incentive to stop making mortgage payments and abandon the property. This ratio also predicts the severity of loss in the event of default. The lower the LTV, the greater the "equity cushion," so the greater the likelihood that the proceeds of foreclosure will cover the unpaid balance of the mortgage loan.

123. Thus, the LTV ratio is a material consideration to a reasonable investor in deciding whether to purchase a certificate in a securitization of mortgage loans. Even small differences in the LTV ratios of the mortgage loans in the collateral group of a securitization have a significant effect on the likelihood that the collateral groups will generate sufficient funds to pay certificateholders in that securitization, and thus are material to the decision of a reasonable investor whether to purchase any such certificate. As discussed below at paragraphs 133 through 138, the Registration Statements 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 of the GSE Certificates.

#### **D. Statements Regarding Credit Ratings**

124. Credit ratings are assigned to the tranches of mortgage-backed securitizations by the credit rating agencies, including Standard & Poor's, Moody's Investors 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 the GSEs purchased the GSE 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.”

125. 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 cashflows 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 deal.<sup>10</sup> 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 make-up 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 AAA or its equivalent rating.

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<sup>10</sup> “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 notes 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 losses on the underlying loans.

126. Credit ratings have been an important tool to gauge risk when making investment decisions. 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. Fannie Mae's and Freddie Mac's respective internal policies limited their purchases of private label residential mortgage-backed securities to those rated AAA (or its equivalent) and in very limited instances, AA or A bonds (or their equivalent).

127. Each tranche of the Securitizations received a credit rating upon issuance, which purported to describe the riskiness of that tranche. The Defendants reported the credit ratings for each tranche in the Prospectus Supplements. The credit rating provided for each of the GSE Certificates was "investment grade," almost always "AAA" or its equivalent. The accuracy of these ratings was material to a reasonable investor's decision to purchase the GSE Certificates. As set forth in Table 9, below at paragraph 196, the ratings for the Securitizations were inflated as a result of Defendants' provision of incorrect data concerning the attributes of the underlying mortgage collateral to the ratings agencies, and, as a result, Defendants sold and marketed the GSE Certificates in almost all cases as AAA (or its equivalent), when, in fact, they were not.

#### **IV. FALSITY OF STATEMENTS IN THE REGISTRATION STATEMENTS AND PROSPECTUS SUPPLEMENTS**

##### **A. The Statistical Data Provided in the Prospectus Supplements Concerning Owner Occupancy and LTV Ratios Was Materially False**

128. A review of loan-level data was conducted in order to assess whether the statistical information provided in the Prospectus Supplements was true and accurate. For each Securitization, the sample consisted of 1,000 randomly selected loans per Supporting Loan Group, or all the loans in the group if there were fewer than 1,000 loans in the Supporting Loan Group. The sample data confirms, on a statistically significant basis, material misrepresentations

of underwriting standards and of certain key characteristics of the mortgage loans across the Securitizations. The data review demonstrates that the data concerning owner occupancy and LTV ratios was materially false and misleading.

### **1. Owner-Occupancy Data Was Materially False**

129. The data review has revealed that the owner-occupancy statistics were materially false and inflated. In fact, far fewer underlying properties were occupied by their owners than disclosed in the Prospectus Supplements, and more correspondingly were held as second homes or investment properties.

130. 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 is a strong indication that the borrower did not live at the mortgaged property and instead used it as a second home or an investment property, both of which make it much more likely that a borrower will not repay the loan.

131. A significant number of the loans failed two or more of these tests, indicating that the owner-occupancy statistics provided to Fannie Mae and Freddie Mac were materially false and misleading. For example, the CWALT 2007-HY2 Securitization, for which Countrywide Home Loans was the sponsor and Countrywide Securities was the underwriter, the Prospectus Supplement stated that 25.32 percent of the underlying properties by loan count in the Supporting Loan Group 2 were not owner-occupied. But the data review revealed that, for 26.09 percent of the properties represented as owner-occupied, the owners lived elsewhere, indicating



that the true percentage of non-owner occupied properties was 44.80 percent, approximately 1.75 times the percentage reported in the Prospectus Supplement.<sup>11</sup>

132. 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 7 below. Table 7 demonstrates that the Prospectus Supplements for each Securitization understated the percentage of non-owner-occupied properties by at least 6.27 percent, and for nearly two-thirds of the Securitizations by 10 percent or more.

**Table 7**

Transaction	Supporting Loan Group	Reported Percentage of Non-Owner Occupied Properties	Percentage of Properties Reported as Owner-Occupied With Strong Indication of Non-Owner Occupancy <sup>12</sup>	Actual Percentage of Non-Owner Occupied Properties	Prospectus Percentage Understatement of Non-Owner Occupied Properties
CWALT 2005-57CB	Group 1	0.00	10.79	10.79	10.79
CWALT 2005-63	Group 1	17.10	16.20	30.53	13.43
CWALT 2005-67CB	Single-group transaction	0.00	11.43	11.43	11.43
CWALT 2005-73CB	Group 2	23.21	14.86	34.62	11.41
CWALT 2005-80CB	Group 3	39.35	17.99	50.26	10.91
	Group 4	17.56	18.02	32.41	14.85
CWALT 2005-83CB	Single-group transaction	0.00	14.90	14.90	14.90
CWALT 2005-84	Group 2	19.51	16.10	32.47	12.96

<sup>11</sup> This conclusion is arrived at by summing (a) the stated non-owner-occupied percentage in the Prospectus Supplement (here, 25.32 percent), and (b) the product of (i) the stated owner-occupied percentage (here, 74.68 percent) and (ii) the percentage of the properties represented as owner-occupied in the sample that showed strong indications that their owners in fact lived elsewhere (here, 26.09 percent).

<sup>12</sup> Strong indication is defined for purposes of this Complaint as failing two or more owner occupancy tests, as explained in paragraph 131.

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Reported Percentage of Non-Owner Occupied Properties</b>	<b>Percentage of Properties Reported as Owner-Occupied With Strong Indication of Non-Owner Occupancy<sup>12</sup></b>	<b>Actual Percentage of Non-Owner Occupied Properties</b>	<b>Prospectus Percentage Understatement of Non-Owner Occupied Properties</b>
CWALT 2005-85CB	Group 1	22.43	15.80	34.68	12.25
CWALT 2005-AR1	Group 1	7.59	9.68	16.54	8.95
CWALT 2006-11CB	Group 1	16.54	17.72	31.33	14.79
CWALT 2006-14CB	Single-group transaction	11.72	14.50	24.52	12.80
CWALT 2006-19CB	Single-group transaction	9.92	14.95	23.39	13.47
CWALT 2006-23CB	Group 1	10.30	13.06	22.01	11.71
	Group 2	19.77	16.31	32.86	13.09
CWALT 2006-33CB	Group 2	11.08	12.33	22.04	10.96
CWALT 2006-OA14	Group 1	28.13	17.54	40.74	12.60
CWALT 2006-OC1	Group 1	20.18	12.17	29.89	9.71
CWALT 2006-OC10	Group 1	23.50	10.88	31.82	8.32
CWALT 2006-OC11	Group 1	46.33	13.91	53.80	7.46
CWALT 2006-OC3	Group 1	24.07	16.52	36.62	12.54
CWALT 2006-OC4	Group 1	36.67	16.92	47.39	10.72
CWALT 2006-OC5	Group 1	21.82	14.23	32.95	11.12
CWALT 2006-OC6	Group 1	28.75	13.85	38.62	9.86
CWALT 2006-OC7	Group 1	18.79	13.88	30.06	11.27
CWALT 2006-OC8	Group 1	18.48	14.84	30.58	12.10
CWALT 2007-5CB	Group 2	20.43	16.63	33.67	13.23
CWALT 2007-HY2	Group 1	31.06	21.94	46.19	15.12
	Group 2	25.32	26.09	44.80	19.48
CWALT 2007-OA10	Group 1	26.03	24.68	44.29	18.26
CWALT 2007-OA3	Group 2	30.76	22.01	46.00	15.24
CWALT 2007-OA8	Group 1	25.14	18.48	38.98	13.84
CWHL 2005-HY10	Group 2	20.53	11.36	29.55	9.03
CWHL 2006-HYB1	Group 1	24.85	18.87	39.03	14.18
CWL 2005-11	Group 2	1.51	12.48	13.81	12.29
CWL 2005-12	Group 3	0.00	11.51	11.51	11.51
CWL 2005-13	Group 2	4.99	10.09	14.58	9.59
CWL 2005-14	Group 1	4.41	11.82	15.71	11.30
	Group 2	3.15	10.36	13.18	10.03
CWL 2005-16	Group 1	2.38	7.74	9.94	7.56
	Group 3	3.50	10.26	13.40	9.90
CWL 2005-17	Group 2	0.00	11.64	11.64	11.64

<b>Transaction</b>	<b>Supporting Loan Group</b>	<b>Reported Percentage of Non-Owner Occupied Properties</b>	<b>Percentage of Properties Reported as Owner-Occupied With Strong Indication of Non-Owner Occupancy<sup>12</sup></b>	<b>Actual Percentage of Non-Owner Occupied Properties</b>	<b>Prospectus Percentage Understatement of Non-Owner Occupied Properties</b>
	Group 3	4.02	13.73	17.20	13.18
CWL 2005-8	Group 1	3.34	12.23	15.16	11.82
CWL 2005-9	Group 1	2.51	12.84	15.03	12.52
CWL 2005-AB3	Group 1	7.81	14.27	20.96	13.15
CWL 2005-AB4	Group 1	7.77	14.27	20.93	13.16
CWL 2005-AB5	Group 1	7.37	14.34	20.65	13.28
CWL 2005-BC5	Group 1	4.53	10.25	14.31	9.79
	Group 2	1.66	14.02	15.44	13.78
CWL 2006-10	Group 2	7.58	9.09	15.98	8.40
CWL 2006-11	Group 2	2.90	10.47	13.07	10.17
CWL 2006-12	Group 1	7.31	11.08	17.58	10.27
CWL 2006-13	Group 2	2.01	9.98	11.79	9.77
CWL 2006-14	Group 1	2.51	10.93	13.17	10.66
CWL 2006-16	Group 1	4.13	10.98	14.65	10.53
CWL 2006-17	Group 1	4.36	10.90	14.79	10.43
CWL 2006-18	Group 1	2.52	12.09	14.31	11.79
CWL 2006-19	Group 1	3.19	11.61	14.43	11.24
CWL 2006-2	Group 1	7.58	10.93	17.68	10.10
CWL 2006-20	Group 1	6.09	10.43	15.88	9.80
CWL 2006-21	Group 1	4.30	10.86	14.70	10.40
CWL 2006-22	Group 1	6.02	12.56	17.83	11.81
CWL 2006-23	Group 1	4.31	11.31	15.13	10.82
CWL 2006-24	Group 1	5.16	10.67	15.28	10.12
CWL 2006-25	Group 1	5.40	11.37	16.16	10.76
CWL 2006-26	Group 1	7.82	10.42	17.43	9.61
CWL 2006-3	Group 1	5.66	10.39	15.47	9.81
CWL 2006-4	Group 1	5.41	11.92	16.68	11.28
CWL 2006-5	Group 1	7.08	10.64	16.97	9.88
CWL 2006-6	Group 1	2.35	9.63	11.76	9.41
CWL 2006-7	Group 1	3.53	9.35	12.55	9.02
CWL 2006-8	Group 1	2.45	10.46	12.65	10.21
CWL 2006-9	Group 2	5.43	10.48	15.35	9.91
CWL 2006-BC2	Group 1	4.25	9.33	13.18	8.94
CWL 2006-BC3	Group 1	3.78	9.14	12.57	8.79
CWL 2006-BC4	Group 1	2.56	8.93	11.26	8.70

Transaction	Supporting Loan Group	Reported Percentage of Non-Owner Occupied Properties	Percentage of Properties Reported as Owner-Occupied With Strong Indication of Non-Owner Occupancy <sup>12</sup>	Actual Percentage of Non-Owner Occupied Properties	Prospectus Percentage Understatement of Non-Owner Occupied Properties
CWL 2006-BC5	Group 1	2.38	11.23	13.34	10.96
CWL 2007-1	Group 1	4.78	9.68	14.00	9.21
CWL 2007-10	Group 1	3.61	10.29	13.53	9.92
CWL 2007-11	Group 1	3.29	9.81	12.78	9.49
CWL 2007-12	Group 1	5.11	10.86	15.41	10.30
CWL 2007-13	Group 1	4.05	9.65	13.31	9.26
CWL 2007-2	Group 1	7.48	12.47	19.02	11.54
CWL 2007-3	Group 1	8.24	9.53	16.99	8.74
CWL 2007-5	Group 1	9.73	9.66	18.45	8.72
CWL 2007-6	Group 1	6.10	12.05	17.42	11.32
CWL 2007-7	Group 1	9.45	9.11	17.70	8.25
CWL 2007-8	Group 1	3.72	12.41	15.67	11.95
CWL 2007-9	Group 1	4.91	12.40	16.70	11.79
CWL 2007-BC1	Group 1	4.56	6.57	10.83	6.27
CWL 2007-BC2	Group 1	6.74	8.44	14.60	7.87
CWL 2007-BC3	Group 1	9.90	7.92	17.04	7.14

## 2. Loan-to-Value Data Was Materially False

133. 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.

134. Applying the AVM to the available data for the properties securing the sampled loans shows that the 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 as well as the risk of greater losses in the event of a default. Mortgage loans with higher loan-to-value ratios present a greater risk of loss than mortgage loans with loan-to-value ratios of 80 percent or below.

135. For example, for the CWALT 2007-OA10 Securitization, which was sponsored by Countrywide Home Loans and underwritten by Countrywide Securities, the Prospectus Supplement stated that no LTV ratios for the Supporting Loan Group were above 100 percent. In fact, 26.25 percent of the sample of loans included in the data review had LTV ratios above 100 percent. In addition, the Prospectus Supplement stated that 81.69 percent of the loans had LTV ratios at or below 80 percent. The data review indicated that only 42.14 percent of the loans had LTV ratios at or below 80 percent.

136. 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 as the percentage of loans that had an LTV ratio at or below 80 percent. Table 8 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 8 were calculated by aggregated principal balance.

**Table 8**

		<b>PROSPECTUS</b>	<b>DATA REVIEW</b>	<b>PROSPECTUS</b>	<b>DATA REVIEW</b>
<b>Transaction</b>	<b>Supporting Loan Group(s)</b>	<b>Percentage of Loans Reported to Have LTV Ratio At Or Less Than 80</b>	<b>Percentage of Loans in Data Review With LTV Ratio At Or Less Than 80</b>	<b>Percentage of Loans Represented in Prospectus to Have LTV Ratio Over 100</b>	<b>Percentage of Loans in Data Review With LTV Ratio Over 100</b>
CWALT 2005-57CB	Group 1	87.26	57.31	0.00	3.98
CWALT 2005-63	Group 1	88.73	51.63	0.00	5.76
CWALT 2005-67CB	Single-group transaction	85.83	56.13	0.00	4.91
CWALT 2005-73CB	Group 2	90.70	64.85	0.00	6.97
CWALT 2005-80CB	Group 3	78.89	48.30	0.00	9.98
	Group 4	88.10	50.78	0.00	8.16
CWALT 2005-83CB	Single-group transaction	88.06	51.38	0.00	8.30
CWALT 2005-84	Group 2	90.80	52.12	0.00	6.56
CWALT 2005-85CB	Group 1	90.56	64.75	0.00	5.02
CWALT 2005-AR1	Group 1	99.09	45.06	0.00	6.97
CWALT 2006-11CB	Group 1	91.37	62.65	0.00	6.65
CWALT 2006-14CB	Single-group transaction	94.73	62.99	0.00	6.76
CWALT 2006-19CB	Single-group transaction	93.34	67.91	0.00	5.34
CWALT 2006-23CB	Group 1	90.60	64.28	0.00	5.69
	Group 2	90.23	58.73	0.00	7.75
CWALT 2006-33CB	Group 2	96.60	69.90	0.00	3.17
CWALT 2006-OA14	Group 1	92.22	48.39	0.00	11.93
CWALT 2006-OC1	Group 1	94.75	48.06	0.00	7.59
CWALT 2006-OC10	Group 1	89.61	44.53	0.00	14.34
CWALT 2006-OC11	Group 1	92.05	47.12	0.00	14.18
CWALT 2006-OC3	Group 1	92.09	43.72	0.00	8.35
CWALT 2006-OC4	Group 1	92.63	50.29	0.00	7.87

		<b>PROSPECTUS</b>	<b>DATA REVIEW</b>	<b>PROSPECTUS</b>	<b>DATA REVIEW</b>
<b>Transaction</b>	<b>Supporting Loan Group(s)</b>	<b>Percentage of Loans Reported to Have LTV Ratio At Or Less Than 80</b>	<b>Percentage of Loans in Data Review With LTV Ratio At Or Less Than 80</b>	<b>Percentage of Loans Represented in Prospectus to Have LTV Ratio Over 100</b>	<b>Percentage of Loans in Data Review With LTV Ratio Over 100</b>
CWALT 2006-OC5	Group 1	93.97	44.62	0.00	8.53
CWALT 2006-OC6	Group 1	88.51	46.33	0.00	10.91
CWALT 2006-OC7	Group 1	85.61	49.39	0.00	13.38
CWALT 2006-OC8	Group 1	87.48	47.75	0.00	7.78
CWALT 2007-5CB	Group 2	91.47	63.09	0.00	8.36
CWALT 2007-HY2	Group 1	92.52	56.72	0.00	9.35
	Group 2	87.31	62.86	0.00	7.58
CWALT 2007-OA10	Group 1	81.69	42.14	0.00	26.25
CWALT 2007-OA3	Group 2	85.81	48.89	0.00	14.48
CWALT 2007-OA8	Group 1	71.37	33.93	0.00	24.50
CWHL 2005-HY10	Group 2	95.06	52.70	0.00	2.97
CWHL 2006-HYB1	Group 1	96.56	53.46	0.00	6.14
CWL 2005-11	Group 2	55.80	38.29	0.00	15.23
CWL 2005-12	Group 3	47.70	38.27	0.00	14.55
CWL 2005-13	Group 2	66.49	48.98	0.00	11.20
CWL 2005-14	Group 1	58.90	41.70	0.00	14.25
	Group 2	61.93	45.43	0.00	12.36
CWL 2005-16	Group 1	70.02	55.75	0.00	8.17
	Group 3	69.38	48.15	0.00	10.15
CWL 2005-17	Group 2	70.73	45.96	0.00	10.16
	Group 3	71.77	47.71	0.00	12.23
CWL 2005-8	Group 1	61.35	42.42	0.00	13.34
CWL 2005-9	Group 1	90.93	63.66	0.00	5.94
CWL 2005-AB3	Group 1	38.27	23.22	0.00	22.96
CWL 2005-AB4	Group 1	57.85	31.99	0.00	13.04
CWL 2005-AB5	Group 1	54.46	35.58	0.00	14.54
CWL 2005-BC5	Group 1	62.95	45.37	0.00	12.33
	Group 2	73.00	46.46	0.00	9.94
CWL 2006-10	Group 2	67.67	42.05	0.00	9.69
CWL 2006-11	Group 2	63.09	44.07	0.00	9.89
CWL 2006-12	Group 1	61.09	40.62	0.00	17.87
CWL 2006-13	Group 2	66.62	43.87	0.00	14.40
CWL 2006-14	Group 1	64.04	45.48	0.00	13.02
CWL 2006-16	Group 1	58.85	31.33	0.00	17.58

		<b>PROSPECTUS</b>	<b>DATA REVIEW</b>	<b>PROSPECTUS</b>	<b>DATA REVIEW</b>
<b>Transaction</b>	<b>Supporting Loan Group(s)</b>	<b>Percentage of Loans Reported to Have LTV Ratio At Or Less Than 80</b>	<b>Percentage of Loans in Data Review With LTV Ratio At Or Less Than 80</b>	<b>Percentage of Loans Represented in Prospectus to Have LTV Ratio Over 100</b>	<b>Percentage of Loans in Data Review With LTV Ratio Over 100</b>
CWL 2006-17	Group 1	62.95	44.35	0.00	14.66
CWL 2006-18	Group 1	63.15	44.46	0.00	15.18
CWL 2006-19	Group 1	61.32	39.05	0.00	15.53
CWL 2006-2	Group 1	63.55	45.68	0.00	11.48
CWL 2006-20	Group 1	59.83	44.40	0.00	15.32
CWL 2006-21	Group 1	63.28	44.63	0.00	15.01
CWL 2006-22	Group 1	62.53	42.10	0.00	16.98
CWL 2006-23	Group 1	50.04	36.57	0.00	15.29
CWL 2006-24	Group 1	55.15	33.49	0.00	17.37
CWL 2006-25	Group 1	49.52	36.62	0.00	18.16
CWL 2006-26	Group 1	51.88	35.10	0.00	17.55
CWL 2006-3	Group 1	65.74	44.82	0.00	11.96
CWL 2006-4	Group 1	74.72	47.58	0.00	10.10
CWL 2006-5	Group 1	67.88	43.81	0.00	14.62
CWL 2006-6	Group 1	65.25	42.09	0.00	15.11
CWL 2006-7	Group 1	60.78	37.48	0.00	14.28
CWL 2006-8	Group 1	63.41	46.40	0.00	12.02
CWL 2006-9	Group 2	58.37	40.94	0.00	14.83
CWL 2006-BC2	Group 1	54.52	34.63	0.00	18.03
CWL 2006-BC3	Group 1	62.50	45.22	0.00	14.71
CWL 2006-BC4	Group 1	66.48	49.06	0.00	14.96
CWL 2006-BC5	Group 1	56.64	42.07	0.00	15.18
CWL 2007-1	Group 1	55.26	39.12	0.00	21.11
CWL 2007-10	Group 1	60.53	44.60	0.00	17.94
CWL 2007-11	Group 1	62.32	41.58	0.00	18.41
CWL 2007-12	Group 1	61.06	42.46	0.00	20.05
CWL 2007-13	Group 1	69.15	48.11	0.00	17.38
CWL 2007-2	Group 1	52.22	36.25	0.00	20.19
CWL 2007-3	Group 1	48.78	31.52	0.00	24.33
CWL 2007-5	Group 1	44.97	28.56	0.00	25.78
CWL 2007-6	Group 1	59.09	43.37	0.00	18.76
CWL 2007-7	Group 1	53.60	41.42	0.00	20.05
CWL 2007-8	Group 1	60.62	44.94	0.00	17.26
CWL 2007-9	Group 1	60.00	43.17	0.00	18.99
CWL 2007-BC1	Group 1	62.12	36.97	0.00	18.96



		PROSPECTUS	DATA REVIEW	PROSPECTUS	DATA REVIEW
Transaction	Supporting Loan Group(s)	Percentage of Loans Reported to Have LTV Ratio At Or Less Than 80	Percentage of Loans in Data Review With LTV Ratio At Or Less Than 80	Percentage of Loans Represented in Prospectus to Have LTV Ratio Over 100	Percentage of Loans in Data Review With LTV Ratio Over 100
CWL 2007-BC2	Group 1	46.38	28.36	0.00	27.12
CWL 2007-BC3	Group 1	56.21	33.55	0.00	23.70

137. As Table 8 demonstrates, the Prospectus Supplements for each Securitization reported that *none* of the mortgage loans in the Supporting Loan Groups had an LTV ratio over 100 percent. In contrast, the data review revealed that at least 2.97 percent of the mortgage loans for each Securitization had an LTV ratio over 100 percent, and for most Securitizations this figure was much larger. Indeed, for 58 of the 86 Securitizations, the data review revealed that more than ten percent of the mortgages in the Supporting Loan Groups had a true LTV ratio of over 100 percent. For 33 Securitizations, the data review revealed that more than fifteen percent of the mortgages in the Supporting Loan Groups had a true LTV ratio over 100 percent. The Prospectus Supplements also routinely overstated the percentage of loans with LTV ratios of 80 percent or less – in fact, for all but one Securitization, the difference between the representation in the Prospectus Supplement and the percentage revealed by the data review was over ten percent.

138. These inaccuracies with respect to reported LTV ratios also indicate that the representations in the Registration Statements relating to appraisal practices were false, and that the appraisers themselves, 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. This conclusion is further confirmed by the findings of the FCIC, which 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 Report at 91.

**B. Countrywide Systematically Disregarded Its Underwriting Guidelines**

139. A vast majority of the loans at issue in the Securitizations were stated in the Registration Statements to have been originated in accordance with Countrywide Home Loans’ underwriting guidelines. Countrywide Home Loans originated, or acquired according to its own guidelines, all the mortgage loans in 62 of the 86 Securitizations. For these 62 Securitizations, no other originators than Countrywide Home Loans were identified. Prospectus Supplements for two of the Securitizations state that the sum total of loans acquired from other originators was less than ten percent. The Prospectus Supplements relating to approximately 22 more Securitizations identify at least one originator other than Countrywide Home Loans. Based on the Prospectus Supplements, however, it appears that no identifiable non-Countrywide Home Loans entity originated more than three percent of the total number of loans at issue in this Complaint.

140. The Registration Statements contained material misstatements and omissions regarding compliance with underwriting guidelines. Indeed, Countrywide Home Loans systematically disregarded its underwriting guidelines during the relevant period in order to increase production and profits derived from its mortgage lending businesses.

141. This is confirmed by the systematically misreported owner-occupancy and LTV statistics, discussed above, and by (1) government investigations into Countrywide’s underwriting practices, which have documented widespread abandonment of Countrywide’s

reported underwriting guidelines during the relevant period; (2) information disclosed as a result of additional investigations and actions by state enforcement authorities and private actors; (3) the collapse of the Certificates' credit ratings; and (4) the surge in delinquency and default in the mortgages in the Securitizations.

**1. Government Investigations Have Confirmed That Countrywide Routinely Failed to Adhere to Its Underwriting Guidelines**

142. Numerous government reports and investigations have described rampant underwriting failures at Countrywide throughout the period of the Securitizations. In addition, in the case of Countrywide, 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. Courts including the federal court that presided over a civil action brought by the SEC against Countrywide's former leaders have found that allegations of Countrywide's failure to comply with underwriting guidelines, and lack of diligence regarding the accuracy of representations made in registration statements relating to offerings of securitizations of mortgage loans, are facially valid and raise genuine issues of material fact.

**a. Investigations and Actions of Federal Authorities**

143. In November 2008, the Office of the Comptroller of the Currency, an office within the United States Department of the Treasury, issued a report identifying Countrywide as one of 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. Countrywide, which the report defined to include Countrywide Home Loans and Countrywide Bank, another Countrywide origination entity, was on that list. *See* Press Release, Office of the Comptroller of the Currency, Comptroller Dugan Testifies before the FCIC, Appendix B, Attachment 2 at 1 (Apr. 8, 2010).

144. In January 2011, the FCIC issued its final report, which detailed, among other things, the collapse of mortgage underwriting standards and subsequent collapse of the mortgage market and wider economy. Created to “examine the causes of the current financial and economic crisis in the United States,” 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.” FCIC Report at xi. The FCIC Report singled out Countrywide for its role, specifically identifying Countrywide in its summary discussions of the Report’s conclusions about 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.

*Id.* at xxii.

145. The SEC and the U.S. Department of Justice investigated potential securities law violations by Countrywide and its personnel in the securitizations of mortgage loans and offerings of mortgage-backed securities in the secondary market, including allegations that Countrywide made false and misleading disclosures to influence the stock trading price, and allegations of insider trading by the three most senior executives of Countrywide Financial: Angelo Mozilo (Countrywide’s CEO), David Sambol (Countrywide’s President and COO), and Individual Defendant Eric Sieracki (Countrywide’s CFO).

146. 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* SEC Complaint. 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 its 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, 2010 WL 3656068, at \*10, 12-14 (C.D. Cal. Sept. 16, 2010)

(hereinafter "SEC Order"). After this decision was rendered, Messrs. Mozilo, Sambol, and Sieracki settled with 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).

147. The “matching strategy” described in the Court’s decision in the SEC action, by which Countrywide mixed and matched the least demanding guideline requirements of other lenders, led Countrywide to deliberately abandon its guidelines and instead to apply the most lax underwriting guidelines in the market. The SEC’s allegations, based on information that came to light during discovery, were deemed to create a genuine issue of material fact that Countrywide, in its drive to increase market share, created an underwriting process in which repeated attempts were made to approve loans in circumvention of Countrywide’s established guidelines. SEC Order at \*19.

148. First, loans were processed by an automated system that would either approve the loan or refer it to manual underwriting. The manual underwriter would then seek to determine if the loan could be approved under his or her exception authority. If the loan exceeded the underwriter’s exception authority, it was then referred to the Structured Lending Desk, where underwriters with broader exception authority attempted to get the loan approved. Finally, if all prior attempts to find an “exception” failed, it would be referred to the Secondary Markets Structured Lending Desk, where the sole criterion for approving was whether it could be sold, not whether it complied with applicable guidelines. *Id.* at \*11. These steps were what the court in the SEC action found to be Countrywide’s “four attempts” at approving a loan, a methodology that led to in excess of 20 percent of mortgage loans typically being approved as exceptions to Countrywide’s guidelines. *Id.* At one point, nearly a quarter of Countrywide’s subprime first-lien loans – 23 percent – were generated as “exceptions.” *Id.* at \*17.

149. To apply its “matching strategy” effectively, Countrywide expanded the number of employees who were authorized to grant exceptions. A wide range of employees were given authority to grant exceptions and to change the terms of a loan, including underwriters, their superiors, branch managers, and regional vice presidents. If Countrywide’s automated system recommended denying a loan, for example, an underwriter could override that denial by obtaining permission from his or her supervisor. SEC Complaint at 11-12.

150. The SEC action established that it was openly known at Countrywide that loans were being approved for securitization based solely on Countrywide’s ability to sell the loan in the market, rather than on compliance with underwriting criteria. Countrywide’s high-volume computer system, called the “Exception Processing System,” was known to approve virtually every borrower and loan profile, albeit with a pricing add-on by which Countrywide charged the borrowers extra points and fees. The Exception Processing System was known within Countrywide as the “Price Any Loan” system. Through the Exception Processing System, Countrywide was able not only to generate enormous profits from these higher fees, but also routinely approve loans that did not satisfy even its weakened theoretical underwriting criteria.

151. According to a class action securities complaint against Countrywide, Amended Complaint, *In re Countrywide Financial Corp. Securities Litigation*, No. CV-07-05295 (C.D. Calif. filed Jan. 6, 2009), a former supervising underwriter at Countrywide provided information that up to 15 percent or 20 percent of the loans that Countrywide generated were processed via the Exception Processing System, of which very few were ever rejected. *Id.* at 64. One former Countrywide employee, also referenced in the complaint, remarked that he could “count on one finger” the number of loans that his supervisors permitted him to reject as an underwriter with Countrywide’s Structured Loan Desks. *Id.* at 68.

**b. Admissions in Countrywide's Internal Reporting and Emails**

152. The SEC action also led to the disclosure of internal Countrywide reports and e-mails among Countrywide employees that provide contemporaneous documentation of Countrywide's routine failure to comply with its underwriting guidelines and abandonment of case-by-case determinations of the borrower's ability to repay the loan.

153. In November 2007, by which time Countrywide was learning of the poor performance of its loans, Countrywide prepared a "lessons learned" analysis. *See* Exs. A-I to Declaration Of Randall S. Luskey in Support of David Sambol's Motion *In Limine* No. 4 To Preclude Evidence Of Countrywide's "Lesson's Learned" Analysis, *SEC v. Mozilo*, No. 09-03994, Docket Entry 391-1 (C.D. Cal., filed Sept. 24, 2010) ("Luskey Decl."). In these quotes from this internal presentation, Countrywide repeatedly admits that its exclusive focus on market share led it to ignore underwriting guidelines:

- "We were driven by market share, and wouldn't say 'no' (to guideline expansion)." Ex. C at 9 to Luskey Decl.
- "The strategies that could have avoided the situation were not very appealing at the time. Do not produce risky loans in the first place: This strategy would have hurt our production franchise and reduced earnings." Ex. D at 13 to Luskey Decl.
- "Market share, size and dominance were driving themes. . . . Created huge upside in good times, but challenges in today's environment." *Id.* at 15.

154. Countrywide also admitted that applying its "matching strategy" came at the price of compliance with risk assessment procedures, including application of Countrywide's underwriting guidelines. The Lessons Learned Analysis noted:

- "With riskier products, you need to be exquisite in off-loading the risk. This puts significant pressure on risk management. Our systems never caught up with the risks, or with the pace of change." Ex. D at 16 to Luskey Decl.



- “Risk indicators and internal control systems may not have gotten enough attention in the institutional risk and Board committees.” *Id.* at 13.
- “Not enough people had an incentive to manage risk.” *Id.* at 14.
- “Decentralized and local decision making were another characteristic of our model. . . . The downside was fewer risk controls and less focus on risk, as the local decision makers were not directly measured on risk.” *Id.*
- “Our wide guidelines were not supported by the proper infrastructure (credit, risk management).” *Id.* at 16.
- “[W]e did not put meaningful boundaries around the [broad product] strategy, even when our instincts might have suggested that we do so, and we allowed the model to outrun its critical support infrastructure in investment and credit risk management. . . . Our risk management systems were not able to provide enough counterbalance . . . .” Ex. E at 28 to Luskey Decl.
- “The focus of production was volume and margin, not credit risk. There was also massive emphasis on share.” Ex. I at 71 to Luskey Decl.

155. 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, Docket Entry 230-2 (C.D. Cal., filed Aug. 16, 2010). In early 2006, HSBC, the global bank based in London, had begun to contractually force Countrywide to buy back loans that did not comply with underwriting guidelines. In an April 13, 2006 e-mail, Mr. Mozilo wrote to Mr. 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, Docket Entry 227-5 (C.D. Cal., filed Aug. 16, 2010). Mr. Mozilo further stated that,

“I have personally observed a serious lack of compliance within 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].” *Id.*

156. According to the SEC, in mid-2006 attendees at an internal Countrywide credit meeting were informed that one-third of the loans referred out of Countrywide’s automated underwriting system violated “major” underwriting guidelines, 23 percent of the subprime first-lien loans were generated as “exceptions,” and that “exception” loans were performing 2.8 times worse than loans written within guidelines. As the court presiding over the SEC action noted, the circumstance that the loans approved by exceptions were performing so much worse than other similar loans is itself strong evidence that the “exceptions” were not being granted based on any purported countervailing circumstances in the borrowers’ credit profile. SEC Order at \*12.

157. Nearly a year later, on May 29, 2007, Messrs. Sambol and Sieracki attended a Credit Risk Committee Meeting, in which they learned that “loans continue[d] to be originated outside guidelines,” primarily via the Secondary Structured Lending Desk without “formal guidance or governance surrounding” the approvals. *Id.* at \*17.

158. The SEC complaint also described a December 13, 2007 internal memo from Countrywide’s enterprise risk assessment officer to Mr. Mozilo, in which the officer reported that Countrywide had re-reviewed mortgages originated by Countrywide in 2006 and 2007 “to get a sense of the quality of file documentation and underwriting practices, and to assess compliance with internal policies and procedures.” The memo concluded that “borrower repayment capacity was not adequately assessed by the bank during the underwriting process for home equity loans.” SEC Complaint at 23.

159. Ultimately, Countrywide’s exception policy was designed to ensure that all loans were approved. For example, in an April 14, 2005 e-mail chain, various managing directors were discussing what FICO scores Countrywide would accept. One Managing Director wrote that the “spirit” of the exception policy was to “provide flexibility and authority to attempt to approve all loans submitted under an approved program/guideline which are later determined to be outside.” He continued: “I would argue that the [exception] policy would also contemplate more general exceptions such as . . . to keep pace with fast changing markets prior to submitting a formal product change.” Ex. 213 to Declaration Of John M. McCoy III in Support of SEC’s Opposition To Defendants’ Motions For Summary Judgment Or Adjudication (“McCoy Decl.”), Part 1, *SEC v. Mozilo*, No. 09-03994, Docket Entry 253 (C.D. Cal., filed Aug. 16, 2010).

160. Another internal Countrywide document described the objectives of Countrywide’s Exception Processing System to include “[a]pprov[ing] virtually every borrower and loan profile,” with “pricing add on” (*i.e.*, additional fees to be charged by Countrywide). The objectives also included providing “[p]rocess and price exceptions on standard products for high risk borrowers.” *See* Ex. C to Sentencing Memorandum by Kourosh Partow, *United States v. Partow*, No. 06-cr-00104, Docket Entry 39 (D. Alaska, filed Aug. 16, 2007). In his testimony in the SEC proceeding, Mr. Sambol identified a February 13, 2005 e-mail in which he stated that the “purpose of the [Structured Loan Desk] and our pricing philosophy” should be expanded. Mr. Sambol wrote, “[W]e 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.” Ex. 276 at 50 to McCoy Decl.

**c. Deposition Testimony of Countrywide’s Top Executives**

161. The SEC also annexed to court filings the deposition testimony given by Countrywide’s former executives in the civil action. In the testimony, Countrywide’s top

executives conceded that Countrywide stopped ensuring compliance with underwriting guidelines as a consequence of attempting to out-do its competitors in increasing its volume of mortgage-backed securitizations.

162. For instance, in his testimony, John McMurray, Countrywide's Chief Risk Officer, admitted that the "matching strategy" was "a corporate principle and practice that had a profound effect on credit policy." Investigative Testimony Relied Upon in Plaintiff SEC's Opposition to Defendants' Motion for Summary Judgment: Witness John McMurray, *SEC v. Mozilo*, No. 09-03994, Docket Entry 290, at 80 (C.D. Cal., filed Aug. 16, 2010) ("McMurray Investigative Testimony"). He testified that it was indeed not possible to understand Countrywide's underwriting policies without knowing of and understanding the matching strategy, and that the strategy was rolled out by use of "the exception desks." *Id.* at 81-83. He also testified that exceptions were being made without determinations that sufficient compensating factors existed. *Id.* at 101-02.

163. Mr. McMurray conceded that the use of exceptions, even as a general matter, was associated with higher risk of poor loan performance: "[a]lmost by definition, you are dealing with a riskier transaction" when the loan is approved by an exception, and in fact there were areas in which his group found a "big disparity" in performance between "exception" loans and others. *Id.* at 25, 87.

164. Mr. McMurray also testified that there were "composite" negative effects of Countrywide's "matching strategy." Ex. 266 to McCoy Decl. He explained that when Countrywide matched the guidelines of different lenders on separate products, the match "would be more aggressive than either one of those competitor reference points viewed in isolation." *Id.* at 133-34. Mr. McMurray was concerned that Countrywide's competitors imposed additional

requirements for their loan products not factored into Countrywide's system, such as credit history requirements. These standards might enable competitors to use their products safely, whereas Countrywide could be "ceding our credit policy to the most aggressive players in the market." *Id.* at 151-52.

165. The testimony of Frank Aguilera, a Managing Director responsible for risk management, established that Countrywide even created a large database of products offered by competitors so Countrywide personnel could check the database when a new product was proposed, to see if a competitor had already approved the product. Investigative Testimony Relied Upon in Plaintiff SEC's Opposition to Defendants' Motions for Summary Judgment: Witness Frank Aguilera, *SEC v. Mozilo*, No. 09-03994, Docket Entry 219 at 5-7 (C.D. Cal., filed Aug. 16, 2010). Mr. Aguilera also confirmed that the "matching strategy" was implemented through Countrywide's "exception" processes. *Id.* at 10. Indeed, Mr. Aguilera testified that "90 percent" of his time as the person responsible for Countrywide's "technical manuals" was spent on "expansions" of the guidelines. Ex. 236 at 40:7 to McCoy Decl.

166. Mr. Aguilera also authored an e-mail regarding the "particularly alarming" results of an internal review on June 12, 2006. He reported to others in Countrywide that 23 percent of the subprime loans at the time were generated as exceptions, even taking into account "all guidelines, published and not published, approved and not yet approved." Ex. 217 to McCoy Decl. Mr. Aguilera wrote at the time that "[t]he results speak towards our inability to adequately impose and monitor controls on production operations." *Id.*

167. In February 21, 2007 Mr. Aguilera disputed a belief expressed in a prior meeting that there were adequate controls with regard to exceptions, and stressed that the guidelines were meaningless when so many exceptions were being granted: "Our review of January data

suggests that these controls need to be reviewed. Any Guideline tightening should be considered purely optics with little change in overall execution unless these exceptions can be contained.”

Ex. 86 to Dean Decl. As an example, Mr. Aguilera provided data on loans that were approved as “exceptions” despite having high loan-to-value ratios. He found “significant levels of exceptions” under “all high risk programs.” *Id.*

168. In his testimony, CEO Mozilo admitted that Countrywide’s practice of matching competitors heightened the risk that the loans would perform poorly. He stated: “if the only reason why you offered a product, without any other thought, any other study, any other actuarial work being done is because someone else was doing it, that’s a dangerous game to play.” Testimony of Angelo Mozilo, SEC Investigation, at 157 (Aug. 8, 2008).

169. Nathan Adler, the President of many of the Depositor Defendants here and also an Individual Defendant in this action, testified that at Countrywide, the application of guidelines was wholly secondary to selling the loan. He testified that Countrywide’s exception policy had “core guidelines.” Deposition Testimony Relied Upon in Plaintiff SEC’s Opposition to Defendants’ Motions for Summary Judgment: Witness Nathan Joshua Adler, *SEC v. Mozilo*, No. 09-03994, Docket Entry 237 at 2 (C.D. Cal., filed Aug. 16, 2010). If those were not met, the company applied what he termed “shadow” guidelines. *Id.* If even the “shadow” guidelines were not met, the loans were given to “Secondary Marketing to determine if the loan could be sold given the exception that was being asked for.” *Id.* at 3. Thus, Mr. Adler conceded, “saleability” was a “factor in the determination of whether to make a loan on an exception basis.” *Id.*

**2. Actions Brought by State Enforcement Authorities and Private Litigants Have Corroborated that Countrywide Systematically Failed to Adhere to Its Underwriting Guidelines**

170. Countrywide's systematic failure to adhere to its underwriting guidelines, resulting in the material misstatements in the Registration Statements, has also been revealed in a substantial number of investigations and suits brought by State enforcement authorities and in private suits. Like the SEC, a number of state attorneys general have investigated Countrywide's lending practices and commenced enforcement actions in which they have alleged that Countrywide abandoned its underwriting guidelines, which were intended to ensure borrowers' ability to repay their loans. Countrywide also faces substantial civil litigation brought by private parties and alleging that Countrywide's lending practices were deficient and fraudulent. After initially vowing to fight these cases, Countrywide's successor, Bank of America, recently has begun entering into settlements, obligating it to pay the billions of dollars in liabilities arising from Countrywide's routinely deficient origination of mortgage loans bound for securitizations like the Securitization at issue here.

**a. State Enforcement Actions**

171. In *People of the State of California v. Countrywide Financial Corp. et al.*, 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, asserting 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, *California v. Countrywide Financial Corp. et al.*, No. LC081846 (Cal Super., L.A. County, filed June 24, 2008).

172. In *People of the State of Illinois v. Countrywide Financial Corp. et al.*, 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, alleging 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, *Illinois v. Countrywide Financial Corp. et al.*, No. 08CH22994 (Ill. Cir. Ct. Ch. Div., Cook County, filed June 25, 2008).

173. In *State of Connecticut v. Countrywide Financial Corp. et al.*, 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. et al.*, No. 1207 (Conn. Super., Hartford, filed July 28, 2008).

174. In *Office of the Attorney General for the State of Florida v. Countrywide Financial Corp. et al.*, the Florida Attorney General commenced a civil action against Countrywide and Mozilo, asserting state unfair practices statutory claims, and alleging that since January 2004, Countrywide promoted a scheme to originate subprime mortgage loans to unqualified borrowers, and relatedly engaged in securities law violations. The Attorney General alleges that Countrywide violated state statutory lender laws by falsely representing that Countrywide 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. et al.*, No. 08 30105 (Fla. Cir. Ct. 17th Judicial Circuit, filed June 30, 2008).

175. In *State of Indiana v. Countrywide Financial Corp. et al.*, 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. et al.*, No. 76C01-0808-PL-0952 (Ind. Cir. Ct., filed Aug. 22, 2008).

176. 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).

**b. Civil Litigation and Settlements**

177. On June 28, 2011, Bank of America announced an \$8.5 billion proposed settlement with Bank of New York Mellon (“BoNY”), as Trustee for trusts established in Countrywide-sponsored securitizations of mortgage-backed securities. The proposed settlement applies to claims that could be brought by BoNY, on behalf of major institutional investors, in connection with 530 securitizations of mortgage-backed securities that were underwritten by Countrywide, in the same time period relevant here. Investors claimed that units of Countrywide Financial failed to honor contracts obligating it to repurchase over \$400 billion dollars’ worth of loans that had been originated in violation of underwriting guidelines and thus failed to live up to the represented quality. Under the proposed settlement, Bank of America is responsible for payment of the \$8.5 billion settlement, indemnification of the Trustee, and payment of \$85 million in legal fees to counsel for the group of investors that negotiated the settlement. *See* Press Release, Bank of America, Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase and Servicing Claims (June 29, 2011).

178. The settlement was widely reported to be Bank of America’s recognition of the lingering and “poisonous” issues created by the deficient lending practices of Countrywide for its acquirer, Bank of America. *The New York Times*, for example, reported in an article published

on June 29, 2011, that the settlement “represents a major acknowledgment of just how flawed the mortgage process became in the giddy years leading up to the financial crisis of 2008, typified by the excesses at Countrywide Financial, the subprime mortgage lender Bank of America acquired in 2008.” CEO Brian Moynihan, who had vowed in November 2010 to engage in “hand to hand combat” in litigation arising from Countrywide’s securitizations of mortgage-backed securities, *see* Hugh Son & David Milkenberg, *Bank of America in ‘Hand-to-Hand Combat’ Over Mortgage Disputes, CEO Says*, Bloomberg (Nov. 16, 2010), conceded in announcing the BoNY settlement that “cleaning up” Countrywide’s “mortgage issues” had become a paramount objective. Press Release, Bank of America, Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase and Servicing Claims (June 29, 2011) (“This is another important step we are taking in the interest of our shareholders to minimize the impact of future economic uncertainty and put legacy issues behind us . . . . We will continue to act aggressively, and in the best interest of our shareholders, to clean up the mortgage issues largely stemming from our purchase of Countrywide.”).

179. Multiple other investors in Countrywide-issued securities have filed suits against Countrywide for misrepresentations relating to its origination practices and the credit quality of the loans it originated from 2004 to early 2008. Indeed, as Countrywide noted in its motion to consolidate many of these cases in a federal multidistrict litigation, the actions include “twelve securities disclosure cases currently pending around the country” in connection with equity, debt, and mortgage-backed securities issued by Countrywide or its subsidiaries, the allegations of which include that Countrywide abandoned its loan underwriting standards, that Countrywide made exceptions to its underwriting standards without determining whether compensating factors offset the increased credit risk, and that Countrywide ignored borrowers’ ability to repay their

loans. *See In re Countrywide Financial Corp. Sec. Litig. Cases*, MDL Docket No. 11-59 (C.D. Cal., filed May 23, 2011).

180. The monoline insurers hired by Countrywide to provide financial guaranty insurance for Countrywide-sponsored securitizations are among those suing Countrywide and Bank of America, its successor. MBIA Insurance Corporation (“MBIA”) and Syncora Insurance Company (“Syncora”) have alleged that Countrywide and Bank of America induced them to provide insurance for the securitizations based on false representations and warranties about the quality of the loans originated by Countrywide, and in particular, Countrywide’s adherence to its own underwriting guidelines. MBIA and Syncora, who gained access to the origination files for the loans underlying the securitizations for which they provided insurance, have publicized in court filings the result of their analyses of those origination files. Their analyses show that Countrywide systematically failed to comply with its stated underwriting guidelines when originating mortgage loans intended for securitization.

181. After paying over \$1.4 billion dollars in claims to investors in fifteen Countrywide-sponsored securitizations because of the poor performance of the underlying Countrywide-originated mortgage loans, MBIA obtained and reviewed nearly five thousand loan origination files for the defaulted and delinquent loans among the tens of thousands of loans in the pools backing the securitizations. MBIA’s analysis found an “extraordinarily high incidence of material deviations from the underwriting guidelines Countrywide represented it would follow.” *See Amended Complaint, MBIA Ins. Corp. v. Countrywide et al.*, No. 602825/08, Docket Entry No. 9 at \*24 (Sup. Ct. N.Y. County filed Aug. 24, 2009).

182. The trial court deemed MBIA’s claims of fraud and breach of contract sufficient to withstand a motion to dismiss, a decision that was affirmed on appeal. According to MBIA,

91 percent of the defaulted or delinquent loans in the pools contained these material deviations. As described in the complaint, the loan applications frequently “(i) lack key documentation, such as verification of borrower assets or income; (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 borrower income, FICO score, debt, DTI [debt-to-income,] or CLTV [combined loan-to-value] ratios, fails to meet stated Countrywide guidelines (without any permissible exception).” *Id.* at 24. The defective loans covered Countrywide’s securitizations from 2004 to 2007, encompassing the same time period that the loans in this case were originated and securitized by Countrywide.

183. Syncora conducted a similar re-review of defaulted loans underlying two Countrywide-sponsored securitizations that it insured in 2005 and 2006, based on loan origination files it was able to obtain through exercise of contractual rights. Syncora found that 75 percent of the loans it reviewed “were . . . materially in breach of Countrywide’s representations and warranties, representing over \$187 million in defective loans.” Complaint, *Syncora Guarantee Inc. v. Countrywide Home Loans et al.*, No. 650042/09, at 38 (Sup. Ct. N.Y. County, filed Jan. 28, 2009). The trial court denied Countrywide’s motion to dismiss Syncora’s fraud claims. *Syncora Guarantee Inc. v. Countrywide Home Loans*, No. 650042/20 (Sup. Ct. N.Y. County Apr. 2, 2010). Through additional information gained in discovery, Syncora identified more than 2,700 loans that “were underwritten in violation of Countrywide’s own lending guidelines, lack any compensating factors that could justify their increased risk, and should never have been made.” Amended Complaint, *Syncora Guarantee Inc. v. Countrywide Home Loans et al.*, No. 650042/09, at 6 (Sup. Ct. N.Y. County, filed May 6, 2010).

184. Many of the loans, according to Syncora, had DTI and LTV ratios that exceeded limits set forth in Countrywide's underwriting guidelines, without adequate compensating factors to justify the increased risk of default. Loan amounts routinely exceeded the maximum amounts permitted under Countrywide's guidelines based on a borrower's credit score, documentation, and the value of the mortgaged property. Syncora found that Countrywide also improperly issued loans to borrowers when their loan files lacked adequate documentation of borrowers' income, assets, credit, employment, cash reserves, or property values. *Id.* at 39-43. Syncora also found that, despite a representation that all loans would be appraised by an "independent third-party" appraiser, the vast majority of appraisals were performed by a Countrywide affiliate, LandSafe, Inc. ("LandSafe"); and Syncora's review of non-performing loans revealed that LandSafe appraisers "consistently and significantly exceeded contemporaneous sale prices for comparable properties in the same location," artificially reducing CLTV ratios. *Id.* at 43-44.

185. Former Countrywide employees have also stated that Countrywide was not following its underwriting guidelines insofar as those guidelines represented that independent appraisals, sufficient to assess the adequacy of the collateral underlying the loans, had been carried out.

186. Mark Zachary, a former Regional Vice President of Countrywide, informed Countrywide executives in 2006 that in the case of appraisals performed on properties built by national home manufacturer KB Home and purchased with mortgage loans originated by Countrywide, appraisers were strongly encouraged to inflate appraisal values by as much as six percent to allow homeowners to "roll up" all closing costs. According to Mr. Zachary, Countrywide executives had knowledge of this practice, which also resulted in borrowers being

“duped” as to the true values of their homes. Complaint, *Capitol West Appraisals v. Countrywide Financial Corp.*, No. 2:08-cv-01520-RAJ (W.D. Wash., filed Dec. 15, 2008).

187. Mr. Zachary’s claims have been echoed by allegations made in lawsuits related to Countrywide’s appraisal practices. According to Capitol West Appraisals, LLC, a company that has provided real estate appraisals to mortgage brokers and lenders since 2005, and is a “review appraiser” for many major mortgage lenders, Countrywide Financial and Countrywide Home Loans engaged in a pattern and practice of pressuring even non-affiliated, purportedly independent real estate appraisers to increase appraisal values artificially for properties underlying mortgages Countrywide Home Loans originated. Capitol West has sued, among others, Countrywide Financial and Countrywide Home Loans, alleging that Countrywide Home Loans officers sought to pressure Capitol West to increase appraisal values in three loan transactions. Capitol West has alleged that Countrywide Home Loans retaliated against it when it refused to vary the appraisal values from what it independently determined was appropriate.

188. In particular, according to Capitol West, from at least 2004, and continuing through at least 2007, Countrywide Home Loans maintained a database titled the “Field Review List” containing the names of appraisers whose reports Countrywide Home Loans would not accept unless the mortgage broker also submitted a report from a second appraiser. Countrywide Home Loans placed Capitol West on the Field Review List, according to Capitol West, after Capitol West refused to buckle under the pressure to inflate the value of the properties.

189. Countrywide Home Loans created additional procedures to further enforce its blacklisting of uncooperative appraisers like Capitol West – for instance, subjecting properties appraised by an appraiser on the Field Review List to an additional review by its wholly-owned subsidiary, LandSafe. LandSafe then issued another appraisal for the subject designed to “shoot

holes” in the appraisal performed by the blacklisted appraiser such that the mortgage transaction could not close based on that appraisal. According to Capitol West, LandSafe found defects in the appraisal from the blacklisted appraiser even if another (and non-blacklisted) appraiser appraised the underlying property at the same value.

190. Capitol West has alleged that given Countrywide’s significant mortgage lending business and likelihood that it would be the ultimate lender, brokers had a strong incentive to refrain from using a blacklisted appraiser.

191. Additionally, as the FCIC has confirmed, mortgage loan originators throughout the industry pressured appraisers, during the period of the Securitizations, to issue inflated appraisals that met or exceeded the amount needed for the subject loans to be approved, regardless of the accuracy of such appraisals, and especially when the originators intended to sell the mortgages for securitization. This resulted in lower LTV ratios, discussed above, which in turn made the loans appear to the investors less risky than they were.

192. As described by Patricia Lindsay, a former wholesale lender who testified before the FCIC in April 2010, 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, Apr. 7, 2010, at 5. Likewise, Jim Amarin, President of the Appraisal Institute, confirmed in his testimony 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.’” *See* Testimony of Jim Amarin to the FCIC, Apr. 23, 2009, at 5, available at [www.appraisalinstitute.org/newsadvocacy/downloads/ltrs\\_tstmny/2009/AI-ASA-ASFMRA-](http://www.appraisalinstitute.org/newsadvocacy/downloads/ltrs_tstmny/2009/AI-ASA-ASFMRA-)

NAIFATestimonyonMortgageReform042309final.pdf. Faced with this choice, appraisers systematically abandoned applicable guidelines and over-valued properties in order to facilitate the issuance of mortgages that could then be collateralized into mortgage-backed securitizations.

**3. The Collapse of the GSE Certificates' Credit Ratings Further Indicates that the Mortgage Loans Were Not Originated in Adherence to the Stated Underwriting Guidelines**

193. The total collapse in the credit ratings of the GSE Certificates, typically from AAA or its equivalent to non-investment speculative grade in many instances is further evidence of the originators' systematic disregard of underwriting guidelines, amplifying that the GSE Certificates were impaired from the start.

194. Almost all of the GSE Certificates that Fannie Mae and Freddie Mac purchased were originally 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. These ratings were artificially inflated, however, as a result of the very same misrepresentations that the Defendants made to investors in the Prospectus Supplements.

195. Countrywide provided or caused to be provided loan-level information to the rating agencies that they relied upon in order to calculate the Certificates' assigned ratings, including the borrower's LTV ratio, debt-to income ratio, owner-occupancy status, and other loan-level information described in aggregation reports in the Prospectus Supplements. Because the information that Countrywide provided or caused to be provided was false, the ratings were inflated and the level of subordination that the rating agencies required for the sale of the GSE Certificates was inadequate to provide investors with the level of protection that those ratings signified. As a result, the GSEs paid Defendants inflated prices for purported "investment grade" Certificates, unaware that those Certificates actually carried a severe risk of loss and carried inadequate credit enhancement.



196. Since the issuance of the Certificates, the ratings agencies have dramatically 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 9 details the extent of the downgrades.<sup>13</sup>

**Table 9**

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating as of July 31, 2011 (Moody's/S&P/Fitch)
CWALT 2005-57CB	1A1	Aaa/---/AAA	Caa2/---/C
CWALT 2005-63	1A1	Aaa/AAA/---	Caa3/CCC/---
CWALT 2005-67CB	A1	Aaa/---/AAA	Caa2/---/CC
CWALT 2005-73CB	2A2	Aaa/AAA/---	Caa3/CCC/---
CWALT 2005-80CB	3A1	Aaa/AAA/---	Ca/D/---
	4A1	Aaa/AAA/---	Ca/D/---
CWALT 2005-83CB	A1	Aaa/---/AAA	Caa2/---/CC
	A2	Aaa/---/AAA	C/---/D
CWALT 2005-84	2A1	Aaa/AAA/---	Ca/D/---
CWALT 2005-85CB	1A1	Aaa/AAA/---	Caa3/CCC/---
CWALT 2005-AR1	1A	Aaa/AAA/---	Ca/D/---
CWALT 2006-11CB	1A1	Aaa/---/AAA	Ca/---/D
CWALT 2006-14CB	A1	Aaa/AAA/AAA	Caa2/B-/CC
	A6	Aaa/AAA/AAA	C/D/D
CWALT 2006-19CB	A11	Aaa/AAA/AAA	Caa2/CCC/CC
	A30	Aaa/AAA/AAA	C/CC/C
CWALT 2006-23CB	1A7	Aaa/---/AAA	Caa3/---/D
	2A1	Aaa/---/AAA	Ca/---/D
CWALT 2006-33CB	2A1	Aaa/---/AAA	Caa3/---/C
CWALT 2006-OA14	1A1	Aaa/AAA/---	Ca/B-/---
CWALT 2006-OC1	1A1	Aaa/AAA/---	Caa3/CCC/---
CWALT 2006-OC10	1A	Aaa/AAA/---	Ca/D/---
CWALT 2006-OC11	1A	Aaa/AAA/---	Ca/D/---
CWALT 2006-OC3	1A1	Aaa/AAA/---	Ca/CC/---
CWALT 2006-OC4	1A	Aaa/AAA/---	Ca/D/---
CWALT 2006-OC5	1A	Aaa/AAA/---	Ca/D/---
CWALT 2006-OC6	1A	Aaa/AAA/---	Ca/D/---

<sup>13</sup> Applicable ratings are shown in sequential order separated by forward slashes: Moody's/S&P/Fitch. A hyphen between forward slashes indicates that the relevant agency did not provide a rating at issuance.

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating as of July 31, 2011 (Moody's/S&P/Fitch)
CWALT 2006-OC7	1A	Aaa/AAA/---	Ca/D/---
CWALT 2006-OC8	1A1	Aaa/AAA/---	Caa3/D/---
CWALT 2007-5CB	2A3	Aaa/AAA/AAA	Ca/D/D
CWALT 2007-HY2	1A	Aaa/AAA/---	Ca/D/---
	2A	Aaa/AAA/---	Ca/D/---
CWALT 2007-OA10	1A1	Aaa/AAA/---	Caa3/CCC/---
	1A2	Aaa/AAA/---	Aa3/AA+/---
CWALT 2007-OA3	2A1	Aaa/AAA/AAA	Caa3/CCC/CC
CWALT 2007-OA8	1A1	Aaa/AAA/---	Caa3/CCC/---
CWHL 2005-HY10	2A1	Aaa/AAA/---	Ca/CCC/---
CWHL 2006-HYB1	1A1	Aaa/AAA/---	Ca/CCC/---
CWL 2005-11	2AV1	Aaa/AAA/---	Aa1/AAA/---
CWL 2005-12	3A	Aaa/AAA/---	Baa1/AAA/---
CWL 2005-13	2AV1	Aaa/AAA/---	B2/B/---
CWL 2005-14	1A1	Aaa/AAA/---	B1/BB+/---
	2A1	Aaa/AAA/---	Ba3/BBB/---
CWL 2005-16	1AF	Aaa/AAA/---	Caa2/CCC/---
	3AV	Aaa/AAA/---	B1/BBB/---
CWL 2005-17	2AV	Aaa/AAA/---	Caa2/CCC/---
	3AV1	Aaa/AAA/---	B1/BB/---
CWL 2005-8	1A1	Aaa/AAA/---	Aa1/AAA/---
CWL 2005-9	1A1	---/AAA/AAA	---/AAA/CCC
CWL 2005-AB3	1A1	Aaa/AAA/---	Caa3/AA/---
CWL 2005-AB4	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2005-AB5	1A1	Aaa/AAA/---	Ca/CCC/---
CWL 2005-BC5	1A	Aaa/AAA/---	A2/AAA/---
	2A1	Aaa/AAA/---	Baa2/AA/---
	2A2	Aaa/AAA/---	Baa3/AA/---
CWL 2006-10	2AV	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-11	2AV	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-12	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-13	2AV	Aaa/AAA/---	Caa2/CCC/---
CWL 2006-14	1A	Aaa/AAA/---	Caa2/CCC/---
CWL 2006-16	1A	Aaa/AAA/---	Caa3/B/---
CWL 2006-17	1A	Aaa/AAA/---	Caa2/BB/---
CWL 2006-18	1A	Aaa/AAA/---	Caa2/BB/---
CWL 2006-19	1A	Aaa/AAA/---	Caa2/BB+/---
CWL 2006-2	1A1	Aaa/AAA/---	Caa1/A/---
CWL 2006-20	1A	Aaa/AAA/---	Caa3/B+/---
CWL 2006-21	1A	Aaa/AAA/---	Caa3/B+/---

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating as of July 31, 2011 (Moody's/S&P/Fitch)
CWL 2006-22	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-23	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-24	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-25	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-26	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2006-3	1A	Aaa/AAA/---	B1/AA+/---
CWL 2006-4	1A1	Aaa/AAA/---	Caa2/BBB-/---
CWL 2006-5	1A	Aaa/AAA/---	Caa2/BBB/---
CWL 2006-6	1A1	Aaa/AAA/---	Caa2/BB/---
CWL 2006-7	1A	Aaa/AAA/---	Caa3/B-/---
CWL 2006-8	1A	Aaa/AAA/---	Caa2/B/---
CWL 2006-9	2AV	Aaa/AAA/---	Caa3/B-/---
CWL 2006-BC2	1A	Aaa/AAA/---	B1/AA/---
CWL 2006-BC3	1A	Aaa/AAA/---	Ba2/BB-/---
CWL 2006-BC4	1A	Aaa/AAA/---	Caa3/BB/---
CWL 2006-BC5	1A	Aaa/AAA/---	Ca/CCC/---
CWL 2007-1	1A	Aaa/AAA/---	Caa3/B-/---
CWL 2007-10	1A1	Aaa/AAA/---	Caa3/CCC/---
	1A2	Aaa/AAA/---	Ca/CCC/---
	1M1	Aa1/AA+/---	C/CCC/---
	1M2	Aa2/AA/---	C/CCC/---
	1M3	Aa3/AA-/---	C/CCC/---
CWL 2007-11	1M1	Aa1/AA+/---	C/CCC/---
	1M2	Aa2/AA/---	C/CCC/---
	1M3	Aa3/AA-/---	C/CCC/---
	1A1	Aaa/AAA/---	Caa3/CCC/---
	1A2	Aaa/AAA/---	Ca/CCC/---
CWL 2007-12	1A1	Aaa/AAA/---	Caa2/CCC/---
	1A2	Aaa/AAA/---	C/CCC/---
	1M1	Aa1/AA+/---	C/CCC/---
CWL 2007-13	1A	Aaa/AAA/---	Caa3/CCC/---
	1M1	Aa1/AA+/---	C/CCC/---
CWL 2007-2	1A	Aaa/AAA/---	Caa3/B-/---
CWL 2007-3	1A	Aaa/AAA/---	Caa3/BB/---
CWL 2007-5	1A	Aaa/AAA/---	Ca/CCC/---
CWL 2007-6	1A	Aaa/AAA/---	Caa3/CCC/---
CWL 2007-7	1A	Aaa/AAA/---	Ca/B/---
CWL 2007-8	1A1	Aaa/AAA/---	Caa3/BBB/---
	1A2	Aaa/AAA/---	C/BB/---
CWL 2007-9	1A	Aaa/AAA/---	Ca/B/---

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating as of July 31, 2011 (Moody's/S&P/Fitch)
CWL 2007-BC1	1A	Aaa/AAA/---	Ca/B/---
CWL 2007-BC2	1A	Aaa/AAA/---	Ca/CCC/---
CWL 2007-BC3	1A	Aaa/AAA/---	Ca/B/---

**4. The Surge in Mortgage Delinquency and Default Further Demonstrates that the Mortgage Loans Were Not Originated in Adherence to the Stated Underwriting Guidelines**

197. Even though the Certificates purchased by Fannie Mae and Freddie Mac were supposed to represent long-term, stable investments, a staggering percentage of the mortgage loans backing the Certificates – frequently over half of the supporting loan group – have defaulted, have been 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 they were not underwritten in accordance with applicable underwriting guidelines as represented in the Registration Statements.

198. Loan groups that were properly underwritten and contained loans with the characteristics represented in the Registration Statements would have experienced substantially fewer payment problems and substantially lower percentages of defaults, foreclosures, and delinquencies than occurred here. Table 10 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 10**

Transaction	Supporting Loan Group(s)	Percentage of Delinquent/Defaulted/Foreclosed Loans
CWALT 2005-57CB	Loan Group 1	20.6
CWALT 2005-63	Loan Group 1	39.6
CWALT 2005-67CB	Single-group transaction	17.2
CWALT 2005-73CB	Loan Group 2	28.6
CWALT 2005-80CB	Loan Group 3	48.7
	Loan Group 4	39.5
CWALT 2005-83CB	Single-group transaction	27.3

<b>Transaction</b>	<b>Supporting Loan Group(s)</b>	<b>Percentage of Delinquent/Defaulted/Foreclosed Loans</b>
CWALT 2005-84	Loan Group 2	45.2
CWALT 2005-85CB	Loan Group 1	29.5
CWALT 2005-AR1	Loan Group 1	61.7
CWALT 2006-11CB	Loan Group 1	36.0
CWALT 2006-14CB	Single-group transaction	33.1
CWALT 2006-19CB	Single-group transaction	27.7
CWALT 2006-23CB	Loan Group 1	29.5
	Loan Group 2	43.6
CWALT 2006-33CB	Loan Group 2	35.9
CWALT 2006-OA14	Loan Group 1	56.2
CWALT 2006-OC1	Loan Group 1	55.6
CWALT 2006-OC10	Loan Group 1	61.8
CWALT 2006-OC11	Loan Group 1	57.0
CWALT 2006-OC3	Loan Group 1	57.9
CWALT 2006-OC4	Loan Group 1	65.3
CWALT 2006-OC5	Loan Group 1	58.6
CWALT 2006-OC6	Loan Group 1	51.5
CWALT 2006-OC7	Loan Group 1	59.8
CWALT 2006-OC8	Loan Group 1	54.8
CWALT 2007-5CB	Loan Group 2	35.5
CWALT 2007-HY2	Loan Group 1	44.8
	Loan Group 2	38.7
CWALT 2007-OA10	Loan Group 1	48.2
CWALT 2007-OA3	Loan Group 2	58.2
CWALT 2007-OA8	Loan Group 1	58.2
CWHL 2005-HY10	Loan Group 2	42.3
CWHL 2006-HYB1	Loan Group 1	40.9
CWL 2005-11	Loan Group 2	71.8
CWL 2005-12	Loan Group 3	74.2
CWL 2005-13	Loan Group 2	63.5
CWL 2005-14	Loan Group 1	64.2
	Loan Group 2	63.7
CWL 2005-16	Loan Group 1	42.9
	Loan Group 3	63.3
CWL 2005-17	Loan Group 2	70.0
	Loan Group 3	63.6
CWL 2005-8	Loan Group 1	59.6
CWL 2005-9	Loan Group 1	64.2
CWL 2005-AB3	Loan Group 1	71.0

<b>Transaction</b>	<b>Supporting Loan Group(s)</b>	<b>Percentage of Delinquent/Defaulted/Foreclosed Loans</b>
CWL 2005-AB4	Loan Group 1	66.6
CWL 2005-AB5	Loan Group 1	70.2
CWL 2005-BC5	Loan Group 1	58.3
CWL 2005-BC5	Loan Group 2	59.8
CWL 2006-10	Loan Group 2	65.9
CWL 2006-11	Loan Group 2	63.2
CWL 2006-12	Loan Group 1	73.2
CWL 2006-13	Loan Group 2	61.4
CWL 2006-14	Loan Group 1	66.2
CWL 2006-16	Loan Group 1	72.2
CWL 2006-17	Loan Group 1	65.3
CWL 2006-18	Loan Group 1	67.1
CWL 2006-19	Loan Group 1	69.2
CWL 2006-2	Loan Group 1	60.9
CWL 2006-20	Loan Group 1	68.5
CWL 2006-21	Loan Group 1	66.9
CWL 2006-22	Loan Group 1	67.1
CWL 2006-23	Loan Group 1	64.7
CWL 2006-24	Loan Group 1	65.3
CWL 2006-25	Loan Group 1	67.9
CWL 2006-26	Loan Group 1	65.2
CWL 2006-3	Loan Group 1	61.3
CWL 2006-4	Loan Group 1	60.8
CWL 2006-5	Loan Group 1	66.6
CWL 2006-6	Loan Group 1	70.3
CWL 2006-7	Loan Group 1	69.5
CWL 2006-8	Loan Group 1	59.9
CWL 2006-9	Loan Group 2	56.1
CWL 2006-BC2	Loan Group 1	71.0
CWL 2006-BC3	Loan Group 1	63.6
CWL 2006-BC4	Loan Group 1	71.3
CWL 2006-BC5	Loan Group 1	71.3
CWL 2007-1	Loan Group 1	67.5
CWL 2007-10	Loan Group 1	59.9
CWL 2007-11	Loan Group 1	62.8
CWL 2007-12	Loan Group 1	62.2
CWL 2007-13	Loan Group 1	58.4
CWL 2007-2	Loan Group 1	64.1
CWL 2007-3	Loan Group 1	69.2

Transaction	Supporting Loan Group(s)	Percentage of Delinquent/Defaulted/Foreclosed Loans
CWL 2007-5	Loan Group 1	68.0
CWL 2007-6	Loan Group 1	70.5
CWL 2007-7	Loan Group 1	63.8
CWL 2007-8	Loan Group 1	61.4
CWL 2007-9	Loan Group 1	63.1
CWL 2007-BC1	Loan Group 1	64.0
CWL 2007-BC2	Loan Group 1	68.5
CWL 2007-BC3	Loan Group 1	65.0

199. The confirmed misstatements concerning owner occupancy and LTV ratios, the confirmed systematic underwriting failures by Countrywide, which was primarily responsible for the mortgage loans across the Securitizations, and the extraordinary drop in credit rating and rise in delinquencies across those Securitizations all confirm 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.

**V. COUNTRYWIDE KNEW ITS REPRESENTATIONS WERE FALSE AND THE GSEs JUSTIFIABLY RELIED ON COUNTRYWIDE’S REPRESENTATIONS**

200. The allegations in this Section V are made in support of Plaintiff’s common law fraud claim against Countrywide Securities, Countrywide Home Loans, and the Depositor Defendants (the “Countrywide Fraud Defendants”), and *not* in support of Plaintiff’s claims under (i) Sections 11, 12(a)(2) and 15 of the Securities Act, (ii) Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code, (iii) Sections 31-5606.05(a)(1)(B) and 31-5606.05(c) of the District of Columbia Code, which are based solely on strict liability and negligence, or (iv) negligent misrepresentation. *See* CPLR § 3014 (permitting alternative statements of a claim); *Raglan Realty Corp. v. Tudor Hotel Corp.*, 149 A.D.2d 373, 374 (1st Dep’t 1989) (same).

**A. The Countrywide Defendants Knew Their Representations Were False**

201. The same evidence discussed above not only shows that Countrywide's representations were untrue, but that the Countrywide Fraud Defendants *knew*, or were reckless in not knowing, that they were falsely representing that the mortgage loans collateralizing the GSE Certificates had been originated in compliance with Countrywide's underwriting guidelines. These Defendants also knew, or were reckless in not knowing, that they were falsely representing the fundamental risk characteristics of the mortgage loans.

202. For instance, the incidence of material discrepancies is so high – as discussed above, there were material discrepancies in Countrywide's representations about owner-occupancy data and LTV ratios *for all 86 Securitizations* – that it could not have been the result of human error. Instead, Countrywide was clearly ignoring sound underwriting methodology and knew that its failure to follow its underwriting guidelines would result in the origination of loans which the borrower would not be able to repay. Other evidence of Countrywide's knowledge of its disregard of underwriting guidelines includes the following:

- Countrywide's post-mortem internal analysis admitted that it did not "heed the warnings," and that "[l]ots of experienced people were uncomfortable."
- Countrywide's CEO's e-mails showed that he saw "errors of both judgment and protocol," "massive disregard for the guidelines," and "serious lack of compliance within our origination system."
- Countrywide's internal audits discovered that a staggering percentage of loans were being approved as "exceptions." For instance, one "particularly alarming" audit found that over 23 percent of subprime loans were at the time being processed as exceptions, and another found that 52 percent of the subprime division's 100 percent financings were done with exceptions.
- The amount of loans approved as "exceptions" was seen within Countrywide as "speak[ing] toward our inability to adequately impose and monitor controls on production operations."



- Other correspondence and testimony confirmed that the “exceptions” were just a tool being used to “keep pace” and to implement the “matching” strategy.
- Countrywide’s credit officers viewed the “matching” strategy as “ceding” Countrywide’s policies to the market. Another saw Countrywide’s underwriting policies as “theoretical,” and saw it as indefensible that Countrywide continued to use “saleability” as the sole criterion for approval.
- Countrywide’s risk officers wrote that the company “basically continued to act as though they never received” policies the credit officers circulated, and that it was “frustrating” to have their judgment “overridden with whining and escalations.”
- Countrywide’s documents referred to “several recent examples” where products were approved despite explicit rejections by the company’s credit risk department.
- According to former employees, borrowers who could not qualify for a loan were steered into low-documentation products, then coached on how to falsify the application to ensure it would be approved.
- According to former borrowers, in some instances Countrywide’s loan officers were the ones to fill out the application with misrepresentations without the borrowers’ knowledge.
- Countrywide’s internal reviews found at one point that 40 percent of the reduced-documentation loans had income overstatements of ten percent or more and a “significant percent of those loans would have income overstated by 50% or more.”

### **1. Countrywide Pursued a Dominant Market Share at All Costs**

203. Countrywide’s fraudulent representations were the means by which it pursued dominant market share. Around May 2003, Mr. Sambol became particularly close to Mr. Mozilo and emerged as a major force within Countrywide Financial and Countrywide Home Loans, taking complete charge of loan production in 2004. Countrywide executives, and Mr. Sambol in particular, sent a clear message to loan origination and underwriting employees that overall volume was far more important than creditworthiness. Rather than relying on its publicly stated underwriting standards to maintain Countrywide’s profitability, Mr. Sambol argued that by

originating and procuring a large volume of loans, regardless of their relative risk, Countrywide would be able to cover any losses incurred on the riskier loans by the profits it generated on other loans.

204. At the same time that Mr. Mozilo issued Countrywide's market share mandate – for “the ultimate 30% by 2006, 2007,” *see* Q2 2003 Countrywide Financial Corporation Earnings Conference Call (July 22, 2003) – Countrywide gave assurances to the public that its growth in originations would not compromise its strict underwriting standards. Indeed, Mr. Mozilo publicly stated that Countrywide would target the safest borrowers in this market in order to maintain its commitment to quality: “Going for 30% mortgage share here is totally unrelated to quality of loans we go after. . . . There will be no compromise in that as we grow market share. Nor is there a necessity to do that.” Q4 2003 Countrywide Financial Corporation Earnings Conference Call (Jan. 27, 2004).

205. During a March 15, 2005 conference with analysts, Mr. Mozilo responded to a question about Countrywide's strategy for increasing market share, and again assured Countrywide's constituents that Countrywide would not sacrifice its strict and disciplined underwriting standards:

Your question is 30 percent, is that realistic, the 30 percent goal that we set for ourselves 2008? . . . Is it achievable? Absolutely. . . . But I will say this to you, that under no circumstances will Countrywide ever sacrifice sound lending and margins for the sake of getting to that 30 percent market share.

Countrywide Financial Corp. at Piper Jaffray Financial Conference 2005 at 5-6 (Mar. 15, 2005).

206. Contrary to its public assurances, Mr. Mozilo's mandate of a 30 percent market share required Countrywide to systemically depart from its underwriting standards. A former senior regional vice president of Countrywide was quoted in a January 17, 2008 *Business Week* article as saying that Countrywide “approached making loans like making widgets, focusing on

cost to produce and not risk or compliance.” Chris Palmeri, *One Insider’s View of Countrywide*, Business Week (Jan. 17, 2008).

207. Indeed, in an interview with the FCIC, Mr. Mozilo stated that a “gold rush” mentality overtook the housing market during the relevant time frame, and that he was swept up in it. FCIC Staff Interview with Angelo Mozilo, Sept. 24, 2010. Confirming that saleability was the sole criteria for approving a loan, Mr. Sambol stated in his interview with the FCIC that Countrywide “was selling virtually all of its production to Wall Street in the form of mortgage-backed securities or in the form of mortgage whole loans” and that Countrywide’s essential business strategy was “originating that which was saleable into the secondary market.” FCIC Staff Interview with David Sambol, Sept. 27, 2010.

## **2. Countrywide’s Own Documents Reveal It Knew the Falsity of Its Representations**

208. The Countrywide Fraud Defendants’ knowledge of the falsity of their representations is established by evidence from Countrywide’s own documents and employees. For example, Countrywide’s 2007 Lessons Learned analysis (discussed above at paragraphs 153 through 154) showed that Countrywide knew at the time what it was doing was wrong, but proceeded anyway:

- “We did not fully heed the warnings of our credit models. Delinquencies were rising, and models predicted worse to come.” Ex. I at 68 to Luskey Decl.
- “Early indicators of credit risk exposure existed. Internal control systems highlighted many of the risks that eventually transpired.” *Id.* at 69.
- “Lots of experienced people were uncomfortable with underwriting guidelines. Going forward, we need to rely on our experience and instinct when business practices don’t make sense. In particular, stated income and high LTV was highly counter-intuitive.” *Id.* at 72.

209. These concerns mirrored concerns that Countrywide's Credit Risk Committee raised long before Countrywide's problems became public, demonstrating that Countrywide's admissions were not mere hindsight. In a February 13, 2007 Board of Directors Credit Risk Committee presentation highlighting "areas of concern," alternatively known as a "wall of worries," one of the Credit Risk Committee's "areas of concern" was Countrywide's "loan quality," including "increased fraud," "exception underwriting," "guideline drift," "[a]ttribute deterioration," and "[a]ppraisal quality." Ex. 142 at 23 to Dean Decl.

210. Mr. McMurray (Countrywide's then-Chief Risk Officer) gave repeated, explicit, and alarming warnings to Messrs. Sambol, Mozilo, and others that the company's matching strategy and use of exceptions resulted in riskier loans with high default rates. Countrywide ignored the risk management department's warnings about the consequences of abandoning underwriting standards and continued with its efforts to increase market share and loan volume.

211. As early as 2005, Mr. McMurray warned Mr. Sambol that loans which were originated as exceptions to Countrywide's stated origination guidelines would likely experience higher default rates. On May 22, 2005, he wrote that "exceptions are generally done at terms even more aggressive than our guidelines." Ex. 84 to Dean Decl. In a May 22, 2005 e-mail, McMurray warned Sambol that the company would face liability for its faulty underwriting practices and misrepresentations to investors: "We've sold much of the credit risk associated with high risk transactions away to third parties. Nevertheless, we will see higher rates of default on the riskier transactions and third parties coming back to us seeking a repurchase or indemnification based on an alleged R&W breach as the rationale." Ex. 84 to Dean Decl.

212. Mr. McMurray continued to express concern throughout 2006 and 2007. Indeed, in a November 2, 2006 e-mail to Kevin Bartlett, Countrywide's Chief Investment Officer, Mr.

McMurray directly asked whether Countrywide “want[ed] to effectively cede” its underwriting policies to the market. This email was forwarded to Mr. Sambol. *See* Ex. 105 to Dean Decl.

213. In a February 11, 2007 e-mail to Mr. Sambol, Mr. McMurray reiterated his concerns about Countrywide’s strategy of matching any type of loan product offered by its competitors, which he said could expose the company to the riskiest offerings in the market: “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 . . . to whoever has the most liberal guidelines.” E-mail from John McMurray to Dave Sambol (Feb. 11, 2007).

214. Yet when Mr. McMurray attempted to enforce a set of underwriting guidelines, his efforts were quashed, and his repeated warnings were ignored by Countrywide’s senior executives. On November 16, 2006, Mr. McMurray wrote to Mr. Sambol regarding the “fundamental deficiencies” within Countrywide with regard to risk:

First, we need to agree on a risk vision and guiding principles that the entire enterprise will follow. I previously created a set of guiding principles, but there hasn’t been acceptance from some of the key business units. The most widely held belief is that our guiding principle is simply doing what anyone else in the market is doing; if it’s in the market, we have to do it.

Second, we should require everyone to follow established risk guidance and policies[;] a product cannot be rolled out or transactions closed without required approvals. There are several recent examples where products or transactions proceeded without the required risk approvals or in contradiction of established policy.

Ex. 94 to Dean Decl.

215. On September 7, 2007, over a year after circulating his proposed policy, Mr. McMurray concluded in an e-mail: “I was never supported on this and Secondary [Marketing], [the] Production [Division], and [Countrywide Capital Markets] basically continued to operate as though they never received this policy.” Ex. 187 to Dean Decl.

216. Mr. McMurray identified during his SEC testimony his own notes from November 3, 2006, wherein he indicated that he had discussed with Mr. Sambol that he was concerned that he would be personally blamed for products that he “never advocated and often recommended against.” *Id.* at 16-17. His testimony also indicates he raised “concerns about inadequate controls, infrastructure, etc.” *Id.*

217. Mr. Aguilera, who also managed the risk management department, testified that he did not think investors were aware of Countrywide’s internal “matching” strategy. Ex. 236 at 21 to McCoy Decl. He stated that the use of this strategy to originate riskier subprime loans was “not a tolerable process” and that he had raised his concerns formally with at least two other managers at Countrywide. *Id.* at 13-14.

218. Christian Ingerslev, Countrywide’s Executive Vice President of Credit Risk Management, also warned Mr. Sambol and others about the consequences of Countrywide’s failure to adhere to underwriting guidelines. In his testimony, Mr. Ingerslev confirmed that internal documentation from November 2006 showed that products and transactions were going forward “without the required risk approvals or in contradiction of established policy.” Mr. Ingerslev said it was “part of the culture” to have “pressure to [] move things along and say yes to things, and you felt that pressure.” He also testified that he thought the company’s guidelines had gone “too far” given the “additional layers of risk” in the product mix and changing interest rates.

219. He also testified there was no “consequence or penalty” for originating loans that had not been approved by Mr. McMurray. Testimony of Christian Ingerslev (“Ingerslev Test.”) at 151-53, SEC Investigation (Aug. 19, 2008). Instead, the sales team ruled at Countrywide. In a March 7, 2005 e-mail, Mr. Ingerslev complained:

[S]ounds like they got on the line with the traders, and long story short, they now think they can sell them . . . . [I]t's frustrating to try and hold the line and then just be overridden with whining and escalations . . . . [J]ust reinforces that sales can have anything they want if they yell loud enough to [D]rew [Gissinger, President of Countrywide Home Loans].

Exhibit 303 to Declaration of Spencer E. Bendell in Opposition to Motion for Summary Judgment ("Bendell Decl."), *SEC v. Mozilo*, No. 09-03994, Docket Entry 305-10 (C.D. Cal., filed Aug. 16, 2010).

220. Mr. Ingerslev also confirmed that Countrywide was made aware internally of the risks that its shoddy procedures were creating:

In an organization like Countrywide, sales, the strategy of the company was predominantly, you know, a sales-oriented one because of our history as a mortgage banker and, you know, being able to sell off a lot of credit risk, that was one instant, one probability factor that contributes to the culture that we have.... So that - and ultimately, you know, disagreements or ties were broken, you know, to the - you know, to the side of erring on, well, we don't want to lose volume, we want to keep up the volume and keep up our market share. That was a strategy that the company had.

But, you know, John [McMurray] and I and those of us in credit still felt like it was our obligation to make sure that there was perspective, and we were doing it with eyes wide open. In other words, in that environment, there was conflict. Some of it you'd expect, and some of it went beyond what you would expect and was tough.

Ingerslev Test. at 132-33.

221. As stated above, the top Countrywide executive, Mr. Mozilo himself, admitted that he saw a "serious lack of compliance within our origination system." Ex. 16 to Dean Decl.

### **3. Countrywide Purposefully Abused Its Documentation Programs and Falsified Loan Applications**

222. Countrywide used low-documentation loan programs as a tool to get around Countrywide's theoretical underwriting standards. When a loan officer knew an application would not be approved on the basis of the applicant's actual financial condition, the officer often steered applicants into low-documentation products. Once in those programs, Countrywide

coached borrowers on how to falsify the application to ensure it would be approved, and in some instances would even fill out the required misrepresentations without the borrower's knowledge.

223. According to Mr. Zachary, a former Regional Vice President of Countrywide, a high executive at Countrywide KB Home Loans sanctioned the falsification of information. In an October 25, 2006 e-mail, Mr. Zachary posed to the executive a situation in which a loan officer confessed that a potential borrower did not have a job in the local area, when that is a requirement of the mortgage for which the borrower was applying. Even more drastically, Mr. Zachary wondered what would happen if the loan officer mentioned that the borrower was applying for a stated-income loan because he was unemployed. Mr. Zachary asked for confirmation that in those circumstances, when there was evidence that the borrower and/or loan officer were falsifying the borrower's information, the company would reject the loan. Shockingly, the senior executive wrote back that "I wouldn't deny it [the loan] because I didn't hear anything. I would definitely tell the [loan officer] to shut up or shoot him!" Second Amended Complaint, *Zachary v. Countrywide Financial Corp.*, No. 08 Civ. 00214, at 5-6 (S.D. Tex., filed Apr. 9, 2008).

224. According to Mr. Zachary, he refused to unconditionally approve borrowers that did not meet Countrywide's stated guidelines, at which point he was taken out of the approval process and the loans were approved anyway, by his supervisor. *Id.*

225. A former Countrywide loan officer described in the California Attorney General's complaint against Countrywide reiterated the fact that borrowers were coached on how to lie. He explained that a loan officer might say, "with your credit score of X, for this payment, and to make X payment, X is the income you need to make." Complaint, *California v. Countrywide Fin. Corp. et al.*, No. LC081846, at 21 (Cal. Super. Ct. N.W. Dist., filed June 24, 2008). And



NBC News reported that it spoke to six other former Countrywide employees, who worked in different parts of the country, who described the same “anything goes” corrupt culture and practices. Some of those employees even said that borrowers’ W-2 forms and other documents were falsified to allow for loan approval. One employee stated that “I’ve seen supervisors stand over employees’ shoulders and watch them . . . change incomes and things like that to make the loan work.” Lisa Myers, *Countrywide Whistleblower Reports ‘Liar Loans’*, NBC News (July 1, 2008).

226. Borrowers have confirmed that Countrywide falsified loan applications and encouraged them to falsify their loan applications. Julie Santoboni, who took out a Countrywide mortgage on her family’s home in Washington, D.C., was interviewed on National Public Radio. Ms. Santoboni stated a Countrywide loan officer pressured her to lie about her income to obtain a more attractive loan, and that he wanted her to write a letter stating she made \$60,000 during each of the past two years and get her accountant to sign it, even though that would have been fraudulent, since she had no income. *See* Chris Arnold, *Woman: Countrywide Proposed Fibbing to Get Loan*, NPR (May 6, 2008). Another Countrywide borrower, Bruce Rose, described obtaining a mortgage loan from Countrywide that stated his monthly income as \$12,166, as he realized only later, even though his income at the time was only around \$16,000 a year. *See* Nick Carey, *Option ARMs, Next Chapter in Housing Crisis*, Reuters (Feb. 1, 2008). Yet another borrower told NBC News that her Countrywide loan officer told her to claim she made more than twice her actual income in order to gain approval for her loan. *See* Lisa Myers, *Countrywide Whistleblower Reports ‘Liar Loans’*, NBC News (July 1, 2008).

227. In a June 2006 e-mail chain that included both Mr. McMurray and Mr. Sambol, Countrywide circulated the results of an audit it had conducted. Among the findings were that

“approximately 40% of the Bank’s reduced documentation loans . . . could potentially have income overstated by more than 10% and a significant percent of those loans would have income overstated by 50% or more.” Ex. 117 to Dean Decl. Mr. McMurray stated that was “obviously the case” that “perhaps many” of these overstatements were the result of misrepresentations. *Id.* Another Countrywide Risk Officer, Clifford Rossi, agreed, testifying to the SEC that “the vast majority” of the overstated income amounts was “likely” due to misrepresentations. Deposition Testimony Relied Upon in Plaintiff SEC’s Opposition to Defendants’ Motions for Summary Judgment: Witness Clifford Rossi, *SEC v. Mozilo*, No. 09-03994, Docket Entry 278 at 8-9 (C.D. Cal., filed Aug. 16, 2010).

#### **4. Countrywide “Cherry Picked” the Best Loans While Selling Riskier Loans to Investors**

228. Additionally, Countrywide knowingly offloaded its high-risk assets onto investors by selectively “cherry picking” high quality loans to keep on its own balance sheet, while securitizing the riskier loans and selling them on the secondary market.

229. On August 2, 2005, Mr. Sambol openly acknowledged and questioned the company’s policy of “cherry picking” the best loans for itself while leaving the higher-risk leftovers for securitization:

While it makes sense for us to be selective as to the loans which the Bank retains, we need to analyze the securitization implications on what remains if the bank is only cherry-picking and what remains to be securitized/sold is overly concentrated with higher risk loans. This concern and issue gets magnified as we put a bigger percentage of our pay option production into the Bank because the remaining production then increasingly looks like an adversely selected pool.

Ex. 297 to Bendell Decl.

230. Mr. Mozilo responded the same day, expressing his preference to continue the practice:

I absolutely understand your position however there is a price we will pay no matter what we do. The difference being that by placing less attractive loans in the secondary market we know exactly the economic price we will pay when the sales settle. By placing, even at 50%, into the Bank we have no idea what economic and reputational losses we will suffer not to say anything about restrictions placed upon us by the regulators.

*Id.*

231. Mr. McMurray testified that he also raised concerns about Countrywide's policy of picking the best loans to keep on its balance sheet:

[T]here's another element that we need to bring in here that's important with respect to securities performance. Countrywide's bank tended to - on - on some of the key products, tended to select the best loans out of the ones that were originated. By best - I'm talking about from a credit risk standpoint, so let me clarify that. So as - as those loans are drawn out of the population, what's left to put into the securities were not - are not as good as what you started out with, and then that can have an adverse effect on securities performance.

Ex. 266-1 to McCoy Decl.

232. That Countrywide was "cherry-picking" the loans it would keep for itself was also confirmed by the testimony of Clifford Rossi, a Countrywide Risk Officer, who testified that the general strategy of the bank "was to originate and to cherry pick the better quality assets." Deposition Testimony Relied Upon in Plaintiff SEC's Opposition to Defendants' Motions for Summary Judgment: Witness Clifford Rossi, *SEC v. Mozilo*, No. 09-03994, Docket Entry 278 at 30 (C.D. Ca. Aug. 16, 2010).

##### **5. Countrywide Had Knowledge from Due Diligence Firms that Loans Failed to Comply with Underwriting Guidelines**

233. The Countrywide Fraud Defendants also knew that the loans Countrywide placed in investments like the Securitizations failed to comply with Countrywide's underwriting standards because of due diligence performed by firms like Clayton and the Bohan Group

(“Bohan”), who were routinely hired by investment banks, and Countrywide, to perform due diligence on mortgage loans intended for securitization.

234. Due to strong demand, originators such as Countrywide gained bargaining power over investment banks seeking to purchase mortgage loans and sponsor securitizations. One way originators exercised this bargaining power was to insist that investment banks limit their due diligence to smaller percentages of loan pools prior to purchase. If an investment bank chose to kick out a large number of loans from a pool (*e.g.*, because the loans failed to conform to the mortgage originator’s guidelines or did not contain adequate documentation), it risked being excluded from future loan purchases. As a result, investment banks performed increasingly cursory due diligence on the loans they securitized.

235. 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.” E. Scott Reckard, *Sub-Prime Mortgage Watchdogs Kept On Leash*, *Los Angeles Times*, March 17, 2008. Ironically, while the investment banks pressured third-party reviewers to make exceptions for defective loans, they often utilized information about bad loans to negotiate for themselves a lower price for the pool of loans from the seller (*i.e.*, the originator). Indeed, according to September 2010 testimony before the FCIC by Clayton’s former president, D. Keith Johnson, this was one of the primary purposes of the due diligence review.

236. Countrywide knew of the red flags raised by the due diligence conducted by Clayton and Bohan. As an originator, Countrywide was aware of the pressure on investment

banks to scale back their due diligence and limit the number of loans kicked out of a securitization. In addition, Countrywide itself retained third-party due diligence firms such as Clayton to perform due diligence with respect to the securitizations it sponsored.

237. Clayton provided the FCIC with documents showing the defect and waiver rates for some of the investment banks that retained Clayton to conduct loan pool due diligence. Clayton produced a report containing the rejection and waiver rates for loans originated by Countrywide. Clayton Originator Trending Report (Clayton Services Inc. 2007). Those rates are as follows:

	1Q 2006	2Q 2006	3Q 2006	4Q 2006	1Q 2007
Rejection rate	24%	23%	13%	14%	16%
Waiver rate	8%	14%	16%	11%	14%

238. The Clayton documents also include statistics on the rejection and waiver rates for loans Countrywide submitted to Clayton for review and that Countrywide was considering including in its own securitizations. Clayton’s report reveals that from the fourth quarter of 2006 to the first quarter of 2007, 26 percent of the mortgages Countrywide submitted for potential inclusion in its securitizations were rejected, which included a finding by Clayton that the loans had been granted despite the lack of any purported compensating factors justifying an exception. Of the mortgages that Clayton rejected, twelve percent were subsequently “waived in” by Countrywide and included in securitizations like the ones in which Fannie Mae and Freddie Mac invested. *See All Clayton Trending Reports Q1 2006-Q2 2007*, at 3 (Clayton Services Inc. 2007).

239. Countrywide never disclosed to Fannie Mae and Freddie Mac that the due diligence conducted by Clayton and Bohan demonstrated that a substantial number of the loans in the pools backing Countrywide’s securities were defective, that Countrywide had waived the

defects as to a substantial number of the loans, or that the underwriters were using this information to negotiate a lower price for the loan pools.

## 6. Countrywide Knew The GSE Certificate's Ratings Were False

240. Countrywide also failed to disclose that the GSE Certificates' credit ratings were false and misleading because Countrywide fed the same misinformation found in the Registration Statements to the ratings agencies 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 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.

Senate Homeland Security and Governmental Affairs Subcommittee on Investigations, Hearings on Wall Street and the Financial Crisis: The Role of Credit Rating Agencies, Apr. 23, 2010 (emphasis added). The ratings obtained for the Securitizations themselves failed to reflect accurately the actual risk underlying the GSE Certificates because the ratings agencies were in fact analyzing a mortgage pool that had no relation to the pool that actually backed the Certificates marketed to investors, like the GSEs.

**7. The District Court in the SEC Civil Action Found Triable Issues of Fact as to the Countrywide Executives' Knowledge**

241. In the SEC civil action, in the course of rejecting Messrs. Mozilo's, Sambol's, and Sieracki's motions for summary judgment, the court found that a triable issue of fact existed on the question of scienter based on evidence presented in that case, and discussed above:

Here, the SEC has presented evidence from which a reasonable jury could conclude that Defendants possessed the requisite scienter. For example, the SEC has demonstrated that Defendants were aware that Countrywide routinely ignored its underwriting guidelines and that Defendants understood the accompanying risks.... The SEC has also presented evidence that Sambol was aware that Countrywide's matching strategy resulted in Countrywide's composite guidelines being the most aggressive guidelines in the industry....

Moreover, in addition to demonstrating that Defendants were aware of the facts which made their statements misleading, the SEC has presented evidence that Sambol and Sieracki knew that Countrywide's Chief Risk Officer John McMurray firmly believed that Countrywide should include greater credit risk disclosures in its SEC filings....

Accordingly, the SEC's evidence is sufficient to raise a genuine issue of material fact with respect to Defendants' scienter, and summary judgment is inappropriate.

SEC Order at \*16-20 (emphasis added).

**B. The GSEs Justifiably Relied on Countrywide's Representations**

242. Fannie Mae and Freddie Mac purchased the GSE Certificates based upon the representations by the Countrywide Fraud Defendants as the sponsor, depositors, and lead and selling underwriter in the Securitizations (as set forth in Tables 2, 11, and 12). Countrywide provided term sheets to the GSEs that contained critical data as to the Securitizations, including with respect to anticipated credit ratings by the credit rating agencies, loan-to-value and combined loan-to-value ratios for the underlying collateral, and owner-occupancy statistics. This data was subsequently incorporated into Prospectus Supplements that were received by the GSEs upon the close of each Securitization.

243. The GSEs relied upon the accuracy of the data transmitted to them and subsequently reflected in the Prospectus Supplements. In particular, the GSEs relied upon the credit ratings that the credit rating agencies indicated they would bestow on the Certificates. These credit ratings represented a determination by the credit rating agencies that the GSE Certificates were “AAA” quality (or its equivalent) – meaning the Certificates had an extremely strong capacity to meet the payment obligations described in the respective PSAs.

244. The Countrywide Fraud Defendants, as the sponsor, depositors, and lead and selling underwriter in the vast majority of the Securitizations (as set forth in tables 2, 11, and 12), provided detailed information about the underlying collateral and structure of each Securitization to the credit rating agencies. The credit rating agencies based their ratings on the information provided to them by these Defendants, and the agencies’ anticipated ratings of the Certificates were dependant on the accuracy of that information. The GSEs relied on the accuracy of the anticipated credit ratings and the actual credit ratings assigned to the Certificates by the credit rating agencies, and upon the accuracy of the representations of the Countrywide Fraud Defendants in the term sheets and Prospectus Supplements as to the strength of the Securitizations.

245. In addition, the GSEs relied on the fact that the originators of the mortgage loans in the Securitizations had acted in conformity with their underwriting guidelines, which were described in the Prospectus Supplements. Compliance with underwriting guidelines was a *sine qua non* to agreeing to purchase the Certificates, since the strength of the mortgage loan collateral – and the GSEs’ decision to purchase the Certificates – was directly premised on the GSEs’ reasonable belief that applicable underwriting standards had been observed.



246. In purchasing the GSE Certificates, the GSEs justifiably relied on Countrywide's false representations and omissions of material fact detailed above, including the misstatements and omissions in the term sheets about the underlying collateral, which were reflected in the Prospectus Supplements. These representations materially altered the total mix of information upon which the GSEs made their purchasing decisions.

247. But for the above misrepresentations and omissions, the GSEs would not have purchased or acquired the Certificates as they ultimately did, because those representations and omissions were material to their decision to acquire the GSE Certificates, as described above.

## VI. FANNIE MAE'S AND FREDDIE MAC'S PURCHASES OF THE GSE CERTIFICATES AND THE RESULTING DAMAGES

248. In total, between August 30, 2005 and January 23, 2008, Fannie Mae and Freddie Mac purchased approximately \$26.6 billion in residential mortgage-backed securities issued in connection with the Securitizations. Table 11 reflects each of Freddie Mac's purchases of the Certificates.<sup>14</sup>

**Table 11**

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
CWALT 2005-57CB	1A1	12668AYE9	10/31/2005	\$199,860,000	99.96875	Countrywide Securities
CWALT 2005-67CB	A1	12668AJ89	11/30/2005	\$199,756,000	99.8515625	Countrywide Securities
CWALT 2005-73CB	2A2	12668AV44	10/15/2007	\$13,800,000	97.59375	RBS Securities
			10/31/2007	\$100,000,000	97.96875	N/A
CWALT 2005-83CB	A1	12668BGX5	12/30/2005	\$312,847,000	98.0625	Countrywide Securities
	A2	12668BGY3	12/30/2005	\$34,761,000	98.0625	Countrywide Securities
CWALT 2005-AR1	1A	12668A4P7	12/29/2005	\$152,002,000	100	Countrywide Securities
CWALT 2006-11CB	1A1	12668BVY6	9/10/2007	\$44,446,000	97.9140625	RBS Securities

<sup>14</sup> Purchased securities in Tables 11 and 12 are stated in terms of the unpaid principal balance of the relevant Certificates. Purchase prices are stated in terms of percentage of par.

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
CWALT 2006-14CB	A1	021468AA1	4/28/2006	\$194,097,000	100.1679688	DB Securities
	A6	021468AF0	4/28/2006	\$48,524,000	100.1679688	DB Securities
CWALT 2006-19CB	A11	02147QAL6	6/30/2006	\$201,815,000	98.7109375	DB Securities
	A30	02147QBF8	6/30/2006	\$22,424,000	98.7109375	DB Securities
CWALT 2006-23CB	1A7	02147RAG5	9/28/2007	\$44,085,000	98.125	N/A <sup>15</sup>
	2A1	02147RAN0	9/14/2007	\$100,473,000	100.125	N/A
CWALT 2006-33CB	2A1	02148BAC8	9/28/2007	\$73,910,000	98.140625	CGMI
CWALT 2006-OC10	1A	23245FAA1	11/30/2006	\$165,209,000	100	Countrywide Securities
CWALT 2006-OC11	1A	23244JAA4	12/29/2006	\$224,171,000	100	Countrywide Securities
CWALT 2006-OC4	1A	021455AA8	5/30/2006	\$165,807,000	100	Countrywide Securities
CWALT 2006-OC5	1A	02147HAA0	6/29/2006	\$229,217,000	100	Countrywide Securities
CWALT 2006-OC6	1A	23243DAA8	7/28/2006	\$102,510,000	100	Countrywide Securities
CWALT 2006-OC7	1A	23243VAA8	8/30/2006	\$139,441,000	100	Countrywide Securities
CWALT 2006-OC8	1A1	232434AA8	9/29/2006	\$138,111,000	100	Countrywide Securities
CWALT 2007-5CB	2A3	02150ECA9	9/14/2007	\$27,882,000	98.19140625	CGMI
CWALT 2007-HY2	1A	02148LAA0	1/31/2007	\$367,128,000	101.2765	Countrywide Securities
	2A	02148LAB8	1/31/2007	\$117,725,000	101.3989	Countrywide Securities
CWALT 2007-OA3	2A1	02150TAD2	1/23/2008	\$208,417,000	93.75	N/A
CWALT 2007-OA8	1A1	02148GAA1	1/23/2008	\$127,393,000	93.75	N/A
CWL 2005-11	2AV1	126670CW6	9/28/2005	\$552,682,000	100	Countrywide Securities
CWL 2005-12	3A	126670EX2	9/30/2005	\$167,374,000	100	Countrywide Securities
CWL 2005-13	2AV1	126670HD3	11/21/2005	\$711,872,000	100	Countrywide Securities
CWL 2005-14	1A1	126670LH9	12/21/2005	\$429,264,000	100	Countrywide Securities
CWL 2005-16	1AF	126670NV6	12/28/2005	\$388,648,000	99.77192	Countrywide Securities
	3AV	126670PC6	12/28/2005	\$487,320,000	100	Countrywide Securities
CWL 2005-17	2AV	126670QX9	12/29/2005	\$111,720,000	100	Countrywide Securities
CWL 2005-8	1A1	1266735Q1	8/30/2005	\$243,773,000	100	N/A
CWL 2005-9	1A1	1266736A5	9/28/2005	\$529,470,000	100	Countrywide Securities

<sup>15</sup> “N/A” in Tables 11 and 12 indicates that there is no claim for purposes of Section 12 (and relatedly, Section 15) against the entity which sold the Certificate to Freddie Mac or Fannie Mae.

<b>Transaction</b>	<b>Tranche</b>	<b>CUSIP</b>	<b>Settlement Date of Purchase by Freddie Mac</b>	<b>Initial Unpaid Principal Balance</b>	<b>Purchase Price (% of Par)</b>	<b>Seller to Freddie Mac</b>
CWL 2005-AB3	1A1	126670BM9	9/27/2005	\$324,864,000	100	Countrywide Securities
CWL 2005-AB4	1A	126670KJ6	11/29/2005	\$553,455,000	100	Countrywide Securities
CWL 2005-BC5	1A	126670MY1	12/28/2005	\$279,136,000	100	Countrywide Securities
CWL 2006-10	2AV	12666PAR5	6/30/2006	\$118,696,000	100	Countrywide Securities
CWL 2006-12	1A	12667AAA4	6/30/2006	\$492,030,000	100	Countrywide Securities
CWL 2006-16	1A	23242FAA4	9/28/2006	\$140,766,000	100	Countrywide Securities
CWL 2006-19	1A	12667CAA0	9/29/2006	\$259,807,000	100	Countrywide Securities
CWL 2006-2	1A1	126670UR7	2/27/2006	\$281,750,000	100	Countrywide Securities
CWL 2006-20	1A	12667HAA9	11/8/2006	\$292,425,000	100	Countrywide Securities
CWL 2006-22	1A	12666BAA3	11/30/2006	\$608,250,000	100	Countrywide Securities
CWL 2006-24	1A	23243HAA9	12/29/2006	\$423,724,000	100	Countrywide Securities
CWL 2006-26	1A	12668HAA8	12/29/2006	\$449,571,000	100	Countrywide Securities
CWL 2006-3	1A	126670VW5	2/27/2006	\$508,785,000	100	Countrywide Securities
CWL 2006-5	1A	126670YE2	3/28/2006	\$251,100,000	100	Countrywide Securities
CWL 2006-7	1A	232422AA3	6/28/2006	\$313,365,000	100	Countrywide Securities
CWL 2006-9	2AV	12666RAR1	6/30/2006	\$118,400,000	100	Countrywide Securities
CWL 2006-BC2	1A	22237JAA5	5/30/2006	\$237,900,000	100	Countrywide Securities
CWL 2006-BC3	1A	23242HAA0	8/30/2006	\$173,003,000	100	Countrywide Securities
CWL 2006-BC4	1A	12667NAA6	9/29/2006	\$200,970,000	100	Countrywide Securities
CWL 2006-BC5	1A	12666SAA6	12/29/2006	\$258,862,000	100	Countrywide Securities
CWL 2007-2	1A	12668NAA5	2/28/2007	\$513,888,000	100	Countrywide Securities
CWL 2007-5	1A	12668KAA1	3/30/2007	\$372,609,000	100	Countrywide Securities
CWL 2007-7	1A	12669VAA6	5/4/2007	\$276,930,000	100	Countrywide Securities
CWL 2007-9	1A	12670FAA8	6/8/2007	\$443,360,000	100	Countrywide Securities
CWL 2007-BC1	1A	12668TAA2	2/28/2007	\$113,153,000	100	Countrywide Securities
CWL 2007-BC2	1A	12669QAA7	4/27/2007	\$205,140,000	100	Countrywide Securities
CWL 2007-BC3	1A	23246LAA7	6/29/2007	\$185,759,000	100	Countrywide Securities

249. Table 12 reflects each of Fannie Mae's purchases of the Certificates:

**Table 12**

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Fannie Mae	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Fannie Mae
CWALT 2005-63	1A1	12668AXB6	31-Oct-05	\$27,224,000	100.3991	UBS Securities
CWALT 2005-80CB	3A1	12668BGE7	30-Dec-05	\$220,446,000	101.3750	RBS Securities
	4A1	12668BGF4	30-Dec-05	\$247,196,000	99.6563	RBS Securities
CWALT 2005-84	2A1	12668BAV5	30-Dec-05	\$303,111,000	100.5287	DB Securities
CWALT 2005-85CB	1A1	12668BEE9	30-Dec-05	\$358,968,000	99.6406	DB Securities
CWALT 2006-OA14	1A1	02146SAA7	3-Oct-06	\$163,435,236	102.0000	BOA Securities
CWALT 2006-OC1	1A1	12668BJD6	30-Jan-06	\$373,442,000	100.0000	Countrywide Securities
CWALT 2006-OC3	1A1	021464AA0	28-Apr-06	\$231,143,000	100.0000	Countrywide Securities
CWALT 2007-OA10	1A1	02149QAA8	30-Jul-07	\$112,645,000	99.7225	BOA Securities
	1A2	02149QAB6	30-Jul-07	\$75,097,000	99.7225	BOA Securities
CWHL 2005-HY10	2A1	126694VK1	29-Dec-05	\$167,974,000	100.0938	Countrywide Securities
CWHL 2006-HYB1	1A1	126694WE4	29-Jun-07	\$58,787,215	99.1445	N/A
CWL 2005-14	2A1	126670LJ5	21-Dec-05	\$386,093,000	100.0000	Countrywide Securities
CWL 2005-17	3AV1	126670QY7	29-Dec-05	\$407,938,000	100.0000	Countrywide Securities
CWL 2005-AB5	1A1	126670PZ5	29-Dec-05	\$202,082,000	100.0000	Countrywide Securities
CWL 2005-BC5	2A1	126670MZ8	28-Dec-05	\$246,227,000	100.0000	Countrywide Securities
	2A2	126670NA2	28-Dec-05	\$27,358,000	100.0000	Countrywide Securities
CWL 2006-11	2AV	12666TAG1	29-Jun-06	\$460,174,000	100.0000	Countrywide Securities
CWL 2006-13	2AV	23242EAG4	28-Jul-06	\$399,884,000	100.0000	Countrywide Securities
CWL 2006-14	1A	23243LAA0	8-Sep-06	\$447,914,000	100.0000	Countrywide Securities
CWL 2006-17	1A	12666VAA9	25-Sep-06	\$220,938,000	100.0000	Countrywide Securities
CWL 2006-18	1A	23243WAA6	28-Sep-06	\$495,558,000	100.0000	Countrywide Securities
CWL 2006-21	1A	12667LAA0	30-Nov-06	\$328,048,000	100.0000	Countrywide Securities
CWL 2006-23	1A	12666CAA1	8-Dec-06	\$465,514,000	100.0000	Countrywide Securities
CWL 2006-25	1A	12667TAA3	29-Dec-06	\$495,720,000	100.0000	Countrywide Securities
CWL 2006-4	1A1	126670WQ7	17-Mar-06	\$131,072,000	100.0000	Countrywide Securities
CWL 2006-6	1A1	126670ZH4	29-Mar-06	\$501,329,000	100.0000	Countrywide Securities

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Fannie Mae	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Fannie Mae
CWL 2006-8	1A	045427AS0	28-Jun-06	\$330,630,000	100.0000	Countrywide Securities
CWL 2007-1	1A	23245CAA8	9-Feb-07	\$540,940,000	100.0000	Countrywide Securities
CWL 2007-10	1A1	23246BAE1	29-Jun-07	\$291,060,000	100.0000	Countrywide Securities
	1A2	23246BAF8	29-Jun-07	\$32,340,000	100.0000	Countrywide Securities
	1M1	23246BAL5	29-Jun-07	\$20,800,000	100.0000	Countrywide Securities
	1M2	23246BAN1	29-Jun-07	\$14,800,000	100.0000	Countrywide Securities
	1M3	23246BAQ4	29-Jun-07	\$6,200,000	100.0000	Countrywide Securities
CWL 2007-11	1M1	23247LAE8	29-Jun-07	\$13,600,000	100.0000	Countrywide Securities
	1M2	23247LAG3	29-Jun-07	\$10,880,000	100.0000	Countrywide Securities
	1M3	23247LAJ7	29-Jun-07	\$2,992,000	100.0000	Countrywide Securities
	1A1	23247LAW8	29-Jun-07	\$199,022,000	100.0000	Countrywide Securities
	1A2	23247LAX6	29-Jun-07	\$22,114,000	100.0000	Countrywide Securities
CWL 2007-12	1A1	126697AA9	16-Aug-07	\$501,417,000	99.6765	Countrywide Securities
	1A2	126697AB7	16-Aug-07	\$55,713,000	99.6771	Countrywide Securities
	1M1	126697AG6	8/29 & 9/7/07	\$17,953,000	96.1914/93.79	Countrywide Securities
CWL 2007-13	1A	126698AA7	30-Oct-07	\$218,300,000	100.0000	Countrywide Securities
	1M1	126698AG4	30-Oct-07	\$9,916,000	100.0000	Countrywide Securities
CWL 2007-3	1A	12668UAD3	29-Mar-07	\$237,450,000	100.0000	Countrywide Securities
CWL 2007-6	1A	12669LAA8	30-Mar-07	\$272,850,000	100.0000	Countrywide Securities
CWL 2007-8	1A1	12669WAA4	31-May-07	\$424,293,000	100.0000	Countrywide Securities
	1A2	12669WAB2	31-May-07	\$47,144,000	100.0000	Countrywide Securities

250. The statements and assurances in the Registration Statements regarding the credit quality and characteristics of the mortgage loans underlying the GSE Certificates, and the origination and underwriting practices pursuant to which the mortgage loans were originated, which were summarized in such documents, were material to a reasonable investor's decision to purchase the GSE Certificates.

251. The false statements of material facts and omissions of material facts in the Registration Statements, including the Prospectuses and Prospectus Supplements, directly caused Fannie Mae and Freddie Mac to suffer billions of dollars in damages, including without limitation depreciation in the value of the securities. The mortgage loans underlying the GSE Certificates experienced defaults and delinquencies at a much higher rate than they would have had the loan originators adhered to the underwriting guidelines set forth in the Registration Statements, and the payments to the trusts were therefore much lower than they would have been had the loans been underwritten as described in the Registration Statements.

252. Fannie Mae's and Freddie Mac's losses have been much greater than they would have been if the mortgage loans had the credit quality represented in the Registration Statements.

253. Countrywide's misstatements and omissions in the Registration Statements regarding the true characteristics of the loans were the proximate cause of Fannie Mae's and Freddie Mac's losses relating to their purchases of the GSE Certificates. Based upon sales of the Certificates or similar certificates in the secondary market, Countrywide proximately caused billions of dollars in damages to Fannie Mae and Freddie Mac in an amount to be determined at trial.

## **VII. THE SUCCESSOR LIABILITY OF THE BANK OF AMERICA DEFENDANTS**

254. In 2008, Bank of America "de facto" merged with Countrywide Financial, consolidating and merging with the Countrywide Defendants and acquiring substantially all of the assets of all the Countrywide Defendants. Because of the manner in which this merger was carried out, Bank of America, Bank of America, N.A., and NB Holdings are the successors in liability to Countrywide and are jointly and severally liable for the wrongful conduct alleged herein of the Countrywide Defendants.

255. Under New York law, where an acquiring corporation has purchased another corporation not merely to hold it as a subsidiary, but has effectively merged with the acquired corporation, the de facto merger doctrine applies to hold the acquiring corporation liable as a successor-in-interest. *Fitzgerald v. Fahnestock & Co.*, 286 A.D.2d 573, 574 (N.Y. App. Div. 1st Dep't 2001). Based on the same facts set forth below, the Supreme Court of the State of New York in *MBIA Ins. Corp. v. Countrywide Home Loans, et al.*, Index No. 602825/08, held that MBIA sufficiently alleged a de facto merger "in which Bank of America intended to absorb and continue the operation of Countrywide." Order on Motion to Dismiss, *MBIA Ins. Corp. v. Countrywide Home Loans, Inc. et al.*, No. 602825/08, Docket Entry No. 108 at \*15 (Sup. Ct. N.Y. County filed Apr. 29, 2010).

256. On January 11, 2008, Bank of America announced that it would purchase Countrywide Financial for approximately \$4.1 billion. See Press Release, Bank of America Corp., Bank of America Agrees to Purchase Countrywide Financial Corp., (Jan. 11, 2008). Based upon the steps taken to consummate this transaction, Bank of America, Bank of America, N.A., and NB Holdings became the successors-in-interest to Countrywide Financial because (a) there was continuity of ownership between Bank of America and Countrywide, (b) Countrywide ceased ordinary business soon after the transaction was consummated, (c) there was continuity of management, personnel, physical location, assets and general business operations between Bank of America and Countrywide, (d) Bank of America assumed the liabilities ordinarily necessary for the uninterrupted continuation of Countrywide's business, and (e) Bank of America assumed Countrywide's mortgage repurchase and tort liabilities. Bank of America, Bank of America, N.A., and NB Holdings also became the successors-in-interest to Countrywide because a series of transactions between July 1, 2008 and November 7, 2008, which were not arm's length

transactions and which gave inadequate consideration to Countrywide, were structured in such a way as to leave Countrywide unable to satisfy its massive contingent liabilities.

**A. The Structuring of Bank of America's Merger with Countrywide**

257. Bank of America's Form 8-K, dated January 11, 2008, states that under the terms of the merger "shareholders of Countrywide [] receive[d] .1822 of a share of Bank of America Corporation's stock in exchange for each share of Countrywide." *See* Bank of America Corp., Form 8-K, Ex. 99.1 at 2 (Jan. 11, 2008). In other words, former Countrywide shareholders became Bank of America shareholders.

258. On July 1, 2008, a subsidiary of Bank of America completed the merger with Defendant Countrywide Financial, the parent of all of the Countrywide entities. Bank of America's Form 10-Q for the period ending September 30, 2009, reported that "On July 1, 2008, the Corporation [*i.e.*, Bank of America] acquired Countrywide through its merger with a subsidiary of the Corporation .... The acquisition of Countrywide significantly expanded the Corporation's mortgage originating and servicing capabilities, making it a leading mortgage originator and servicer." Bank of America Corp., Form 10-Q at 7 (Nov. 6, 2008). According to the 10-Q, "Countrywide's results of operations were included in the Corporation's results beginning July 1, 2008." *Id.* The Form 10-Q also acknowledged pending litigation against Countrywide. *Id.* at 35.

259. Following this initial transaction and over the course of the next few months, Bank of America planned to and did enter into a series of transactions with Countrywide Financial and its various subsidiaries, which Bank of America then controlled. These transactions were designed both to integrate Countrywide's operations with Bank of America's and to leave Countrywide Financial without any source of income and with insufficient assets to cover its massive contingent liabilities arising from Countrywide's mortgage origination,



securitization, and servicing practices. Moreover, these transactions were not negotiated at arm's length because after July 1, 2008, Bank of America owned Countrywide Financial.

260. In particular, on July 2, 2008, Countrywide Home Loans, a subsidiary of Countrywide Financial (controlled by Bank of America as of this date), completed the sale of some or substantially all of its assets to NB Holdings, another wholly-owned subsidiary of Bank of America. Specifically, Countrywide Home Loans sold NB Holdings its membership interests in Countrywide GP, LLC and Countrywide LP, LLC, whose sole assets were equity interests in Countrywide Home Loans Servicing LP, in exchange for an approximately \$19.7 billion promissory note. Countrywide Home Loans Servicing LP was the operating entity which serviced the vast majority of residential mortgage loans for Countrywide and was an operating business. Countrywide Home Loans also sold a pool of residential mortgages to NB Holdings for approximately \$9.4 billion. NB Holdings is Countrywide Home Loans' successor.

261. On November 7, 2008, after obtaining the necessary consents and approvals, two additional transactions occurred that facilitated the completion of Bank of America's merger with Countrywide. First, in exchange for approximately \$1.76 billion, Countrywide Home Loans sold Bank of America substantially all of its remaining assets. Second, in exchange for promissory notes of approximately \$3.6 billion Bank of America acquired 100 percent of Countrywide Financial's equity interest in various subsidiaries, including Countrywide Bank, FSB. In connection with this transaction, Bank of America also assumed approximately \$16.6 billion of Countrywide's public debt and related guarantees. These two transactions completed Bank of America's transfer of substantially all of the operating and income generating assets of Countrywide out of the Countrywide entities. In February of 2009 Countrywide Bank, FSB, filed an application to become a National Association, and in April of 2009, Countrywide Bank,

NA was merged into Bank of America, N.A. Similarly, on July 1, 2011, BAC Home Loans Servicing, L.P. (f/k/a Countrywide Home Loans Servicing, L.P.) was merged into Bank of America, N.A. As a result of these mergers, Bank of America, N.A. assumed all of the liabilities of Countrywide Bank, NA and BAC Home Loans Servicing, L.P. (f/k/a Countrywide Home Loans Servicing, L.P.).

262. At the time of the November 2008 transactions, Countrywide Bank, FSB was the largest Countrywide subsidiary. Countrywide's 2007 10-K revealed that "as of December 31, 2007, over 90% of [Countrywide's] monthly mortgage loan production occurred in Countrywide Bank" and that as of January 1, 2008 Countrywide's "production channels ha[d] moved into the Bank, completing the migration of substantially all of [Countrywide's] loan production activities from CHL to the Bank." *See* Countrywide Financial Corporation Form 10-K (Feb. 29, 2008). By transferring to itself Countrywide Bank, FSB, along with substantially all of the assets of Countrywide Home Loans, Bank of America left the remaining Countrywide entities with only illiquid assets, no ongoing business, no ability to generate revenue, and insufficient assets to satisfy their contingent liabilities. This conclusion is echoed by Bruce Bingham (who prepared a report on behalf of BoNY, trustee for Countrywide-issued residential mortgage-backed securities, attempting to value Countrywide Financial) who found that Countrywide Financial "has negative earnings," "minimal operating revenues," "does not originate, securitize, or service real estate loans" and "has no operations that by themselves are economically viable on a go-forward basis."

263. The transactions between Countrywide and Bank of America were intentionally structured so that Countrywide's massive contingent liabilities relating to its mortgage origination, securitization, and servicing practices remained with Countrywide, while all of its

assets and businesses that generated revenue were sold to Bank of America, thus leaving Countrywide unable to satisfy these liabilities. Not only did Bank of America control the Countrywide entities at the time these transactions were entered into, but Bank of America did not provide adequate consideration for the assets it received from Countrywide. In other words, in self-dealing transactions, and in exchange for inadequate consideration, Bank of America intentionally rendered Countrywide insolvent and unable to satisfy its creditors. Moreover, Bank of America was fully aware of Countrywide's contingent liabilities when it transferred these assets out of Countrywide. For example, in an interview published on February 22, 2008 in the legal publication *Corporate Counsel*, a Bank of America spokesperson acknowledged Countrywide's liabilities:

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.'

See Amy Miller, *Countrywide in Crosshairs as Mortgage Crisis Fuels Litigation*, *Corporate Counsel*, Feb. 22, 2008.

264. One significant entity that Bank of America did not acquire was Countrywide Securities, which acted as Countrywide's broker-dealer and underwriter. However, on October 29, 2008, just before the November transactions, this entity withdrew its registration as a broker dealer from FINRA. See Financial Industry Regulatory Authority (FINRA), *BrokerCheck Report for Countrywide Securities Corporation*, Aug. 17, 2011 at 2. Without this registration, Countrywide Securities was unable to continue in the business in which it had primarily been engaged (securities dealing and underwriting) and so as of October 29, 2008, Countrywide

Securities effectively ceased doing business. This is yet more evidence that Countrywide is no longer engaged in revenue producing activities.

**B. Countrywide Ceases Doing Business and Is Rebranded as Bank of America**

265. On April 27, 2009, Bank of America rebranded Countrywide Home Loans as “Bank of America Home Loans.” See Press Release, Bank of America Corp., Bank of America Responds to Consumer Desire for Increased Transparency (Apr. 27, 2009). Many former Countrywide locations, employees, assets and business operations now continue under the Bank of America Home Loans brand. On the Form 10-K submitted by Bank of America on February 26, 2010, both Countrywide Capital Markets and Countrywide Securities were listed as Bank of America subsidiaries. See Bank of America Corporation, Form 10-K, Ex. 21 at 13 (Feb. 26, 2010).

266. As is customary in large corporate mergers, at least some of the Countrywide Defendants retained their pre-merger corporate names following their merger with Bank of America. However, Countrywide’s operations are fully consolidated into Bank of America’s and the Countrywide entities have lost any independent identity they had maintained following the merger. Bank of America announced in its April 27, 2009 press release that “[t]he Countrywide brand has been retired” and that Bank of America would operate its home loan and mortgage business through a new division named Bank of America Home Loans, which “represents the combined operations of Bank of America’s mortgage and home equity business and Countrywide Home Loans.” Bank of America Press Release, “Bank of America Responds to Consumer Desire for Increased Transparency” (Apr. 27, 2009).

267. A May 2009 article published by *Housing Wire* magazine reported that “the move to shutter the Countrywide name” was essentially complete and noted that Bank of America would be migrating some of its mortgage operations over to a technology platform it acquired

from Countrywide to originate and service loans. Barbara Desoer, the then-head of the combined mortgage, home equity and insurance business of Bank of America and Countrywide Financial, explained that the integration of Countrywide Financial and Bank of America platforms was a critical goal. *Q&A with BofA Mortgage Chief Barbara Desoer*, Housing Wire Magazine (May 2009).

268. Desoer stated in an October 2009 issue of *Mortgage Banking* that “it was the highlight of the year . . . when we retired the Countrywide brand and launched the Bank of America Home Loans brand.” Robert Stowe England, *Profile: Bank of America Home Mortgage*, *Mortgage Banking* (Oct. 1, 2009). Desoer explained “the first year is a good story in terms of the two companies [coming] together and meeting all the major [goals and] milestones that we had set for ourselves for how we would work to integrate the companies.” *Id.* In the same profile, Mary Kanaga, a Countrywide transition executive who helped oversee integration, likened the process of integration to the completion of a mosaic: “Everything [*i.e.*, each business element] counts. Everything has to get there, whether it is the biggest project or the smallest project. It’s very much putting a puzzle together. If there is a missing piece, we have a broken chain and we can’t complete the mosaic.” *Id.*

269. Countrywide’s former web address, [www.countrywide.com](http://www.countrywide.com), now takes users to Bank of America’s website. The Bank of America website announced that the companies merged and the now-discontinued Countrywide website previously redirected inquiries about the merger to the Bank of America webpage regarding the merger. Bank of America noted on its website that it was “combining the valuable resources and extensive product lines of both companies.”

270. The April 27, 2009 press release made clear that Bank of America planned to complete its integration of Countrywide Financial into Bank of America “later this year.” The press release explained that Bank of America was in the process of rebranding former Countrywide “locations, account statements, marketing materials and advertising” as Bank of America Home Loans, and stated that “the full systems conversion” to Bank of America Home Loans would occur later in 2009. *See* Press Release, Bank of America Corp., Bank of America Responds to Consumer Desire for Increased Transparency (Apr. 27, 2009). “Bank of America Home Loans” is thus a direct continuation of Countrywide’s operations, and the Bank of America Defendants have represented that Bank of America Home Loans is a “trade name” rather than a separate legal entity. It is a Bank of America trade name or brand and thus a part of Bank of America.

271. As of September 21, 2009, former Countrywide bank deposit accounts were reportedly converted to Bank of America accounts. And on November 9, 2009, online account services for Countrywide mortgages were reportedly transferred to Bank of America’s Online Banking website. Bank of America Home Loans continued to operate out of Countrywide’s offices in Calabasas, California, with substantially the same employees as the former Countrywide entities.

272. Mortgage contracts and legal documents state that BAC Home Loans Servicing, LP is the entity “formerly known as” Countrywide Home Loans Servicing, a Countrywide subsidiary, which clearly shows that BAC Home Loans Servicing, LP is the direct successor to Countrywide Home Loans, since it is a mere continuation of Countrywide’s business.

273. Bank of America’s heritage website, <http://message.bankofamerica.com/heritage/>, lists Countrywide as one of the list of companies Bank of America has acquired under its

“Merger History” tab. The “Merger History” tab also states that Bank of America, in connection with the acquisition of Countrywide “rebranded its mortgage offerings as Bank of America Home Loans.” Lastly, under the “Merger History” tab, the website states that the acquisition of Countrywide “resulted in the launch of Bank of America Home Loans in 2009, making the bank the nation’s leading mortgage originator and servicer.” The Countrywide logo appears on the page.

274. Bank of America has described the transaction through which it acquired Countrywide Financial and its subsidiaries as a merger of the mortgage operations of both companies and made clear that it intended to integrate Countrywide Financial and its subsidiaries into Bank of America fully by the end of 2009. Public statements by Bank of America and Countrywide confirm that Bank of America intended for the two companies to combine into one:

- In a July 1, 2008 Bank of America press release, Desoer stated “Now we begin to combine the two companies and prepare to introduce our new name and way of operating.” Press Release, Bank of America, Bank of America Completes Countrywide Financial Purchase (July 1, 2008).
- That press release also stated that the bank “anticipates substantial cost savings from combining the two companies. Cost reductions will come from a range of sources, including the elimination of positions announced last week, and the reduction of overlapping technology, vendor and marketing expenses. In addition, [Countrywide] is expected to benefit by leveraging its broad product set to deepen relationships with existing Countrywide customers.” *Id.*
- Bank of America, in its 2008 Annual Report, stated that by acquiring Countrywide, it became the “No. 1 provider of both mortgage originations and servicing” and, “as a combined company,” it would be recognized as a “responsible lender who is committed to helping our customers become successful homeowners.” *See* Bank of America 2008 Annual Report, at 14 (Mar. 2009).
- In a January 11, 2008 Bank of America press release, Angelo Mozilo stated that “the combination of Countrywide and Bank of America will create one of the most powerful mortgage franchises in the world.”

Press Release, Bank of America Corp., Bank of America Agrees to Purchase Countrywide Financial Corp. (Jan. 11, 2008).

- Former CEO of Bank of America Ken Lewis on an October 6, 2008 earnings call responded to a question about the formal guaranteeing of Countrywide's debt, stating "The normal process we followed is what are the operational movements that we'll make to combine the operations. When we do that we've said the debt would fall in line . . . ." Transcript of Q3 Earnings Call at 16-17, Bank of America Corp. Q3 2008 Earnings Call (Oct. 6, 2008).

**C. Bank of America Takes Steps To Expressly and Impliedly Assume Countrywide Financial's Liabilities**

275. Substantially all of Countrywide Financial's and Countrywide Home Loans' assets were transferred to Bank of America on November 7, 2008 "in connection with Countrywide's integration with Bank of America's other businesses and operations," along with certain of Countrywide's debt securities and related guarantees." Bank of America Corp., Form-8-K (Nov. 10, 2008). According to the Bank of America website, while the integration was being completed "Countrywide customers . . . ha[d] access to Bank of America's 6,100 banking centers." Press Release, Bank of America Corp., Bank of America Responds to Consumer Desire for Increased Transparency (Apr. 27, 2009).

276. Countrywide Financial ceased filing its own financial statements in November 2008, and its assets and liabilities have been included in Bank of America's recent financial statements. Bank of America has paid to restructure certain of Countrywide Financial's home loans on its behalf, including permitting Countrywide Financial and Countrywide Home Loans to settle the lawsuits brought by state attorneys general and agreeing to modify up to 390,000 Countrywide loans, as described above at paragraph 176. *See* Press Release, Mortgage-Foreclosure.com, Bank of America Modified 50,000 Loans in Countrywide Settlement (May 26, 2009). As also described above, at paragraphs 177 through 178, Bank of America also announced on June 28, 2011 that it would settle for \$8.5 billion with BoNY (as Trustee) for



Countrywide residential mortgage-backed security trusts. *See* Bank of America Corp., Form 8-K at 2 (June 29, 2011).

277. As stated above, in purchasing Countrywide Financial and its subsidiaries for 27 percent of its book value, Bank of America was fully aware of the pending claims and potential claims against Countrywide and factored them into the transaction.

278. Moreover, on October 6, 2008, during an earnings call, Joe Price, Bank of America's Chief Financial Officer, stated that "As we transfer those operations [*i.e.*, Countrywide Financial and its subsidiaries] our company intends to assume the outstanding Countrywide debt totaling approximately \$21 billion." *See* Transcript of Q3 Earnings Call at 7, Bank of America Corp. Q3 2008 Earnings Call (Oct. 6, 2008).

279. Similarly, former CEO Lewis was quoted in a January 23, 2008 *New York Times* article reporting on the acquisition of Countrywide Financial and its subsidiaries, in which he acknowledged that Bank of America knew of the legal liabilities of Countrywide Financial and its subsidiaries and impliedly accepted them as part of the cost of the acquisition:

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.

*See* Julie Creswell, *Bank of America Joins Parade of Mortgage-Related Losses*, N.Y. Times (Jan. 23, 2008) (emphasis added).

280. Bank of America has made additional statements showing that it has assumed the liabilities of Countrywide. In a press release announcing the merger, Lewis stated that he was aware of the "issues within the housing and mortgage industries" and said that "the transaction [with Countrywide] reflects those challenges." *See* Press Release, Bank of America Corp., Bank of America Agrees to Purchase Countrywide Financial Corp. (Jan. 11, 2008). Despite these

challenges, Lewis stated in September 2009 that “The Merrill Lynch and Countrywide integrations are on track and returning value already.” Press Release, Bank of America Corp., Ken Lewis Announces His Retirement (Sept. 30, 2009).

281. Likewise, in Bank of America’s Form 10-K for 2009, Bank of America acknowledged that, “[W]e face increased litigation risk and regulatory scrutiny as a result of the Merrill Lynch and Countrywide acquisitions.” See Bank of America Corp., Form 10-K at 8 (Feb. 26, 2010).

282. Brian Moynihan, Bank of America’s CEO and President, testified before the Financial Crisis Inquiry Commission on January 13, 2010, that “our primary window into the mortgage crisis came through the acquisition of Countrywide .... 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 of Countrywide operations, but we are looking forward.” Press Release, Bank of America Corp., Testimony to Financial Crisis Inquiry Commission (FCIC), Brian T. Moynihan, President and Chief Executive Officer, Bank of America (Jan. 13, 2010). Addressing investor demands for refunds on faulty loans sold by Countrywide, Moynihan stated: “There’s a lot of people out there with a lot of thoughts about how we should solve this, but at the end of the day, we’ll pay for the things that Countrywide did.” See Hugh Son & David Mildenberg, *Bank of America in ‘Hand-to-Hand Combat’ Over Mortgage Disputes, CEO Says*, Bloomberg (Nov. 16, 2010).

283. Similarly, Jerry Dubrowski, a spokesman for Bank of America, was quoted in an article published by Bloomberg in December 2010 that the bank will “act responsibly” and repurchase loans in cases where there were valid defects with the loans. Hugh Son & Dakin Campbell, *BofA’s ‘Sloppy’ Prime Mortgages Add to Pressure for Buybacks*, Bloomberg (Dec. 1,

2010). Through the third quarter of 2010, Bank of America has faced \$26.7 billion in repurchase requests and has resolved, declined or rescinded \$18 billion of those claims. It has established a reserve fund against the remaining \$8.7 billion in repurchase requests, which at the end of the third quarter stood at \$4.4 billion. *Id.*

284. During an earnings call for the second quarter of 2010, Charles Noski, Bank of America's Chief Financial Officer, stated that "we increased our reps and warranties expense by \$722 million to \$1.2 billion as a result of our continued evaluation of exposure to repurchases including our exposure to repurchase demands from certain monoline insurers." *See* Transcript of Q2 Earnings Call, Bank of America Corp. Q2 2010 Earnings Call (July 16, 2010). And during the earnings call for the third quarter of 2010, Noski stated that "[t]hrough September, we've received \$4.8 billion of reps and warranty claims related to the monoline-insured deals, of which \$4.2 billion remains outstanding, and approximately \$550 million were repurchased." *See* Transcript of Q3 Earnings Call, Bank of America Corp. Q3 2010 Earnings Call (Oct. 19, 2010).

285. Bank of America has reached various settlement agreements in which it has directly taken responsibility for Countrywide's liabilities. As part of the settlement agreement with state attorneys general, Bank of America agreed to forgive up to 30 percent of the outstanding mortgage balances owed by former Countrywide customers. The loans were made before Bank of America acquired Countrywide. *See* Press Release, Bank of America Corp., Bank of America Announces Nationwide Homeownership Retention Program for Countrywide Customers (Oct. 6, 2008) .

286. In October 2010, the *New York Times* reported that Bank of America is "on the hook" for \$20 million of the disgorgement that CEO Mozilo agreed to pay in his settlement agreement with the SEC. *See* Gretchen Morgenson, *Lending Magnate Settles Fraud Case*, N.Y.

Times, Oct. 16, 2010, at A1. The agreement and plan of merger between Bank of America and Countrywide provided that all indemnification provisions “shall survive the merger and shall continue in full force and effect . . . for a period of six years.” *Id.* According to the article, “Because Countrywide would have had to pay Mr. Mozilo’s disgorgement, Bank of America took on the same obligation, even though it had nothing to do with the company’s operations at the time.” *Id.*

287. On April 15, 2011, Assured Guaranty Ltd. (“Assured”) reached a comprehensive \$1.1 billion settlement with Bank of America regarding its liabilities with respect to 29 residential mortgage-backed securities transactions insured by Assured. The settlement agreement covered Bank of America and Countrywide-sponsored securitizations, as well as certain other securitizations containing concentrations of Countrywide-originated loans that Assured insured on a primary basis. *See* Press Release, Bank of America Corp., Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase and Servicing Claims (Apr. 15, 2011).

288. On May 26, 2011, Bank of America agreed to pay more than \$22 million to settle charges that it improperly foreclosed on the homes of active-duty members of the U.S. military between January 2006 and May 2009. In a public statement concerning the settlement, Bank of America Executive President Terry Laughlin said: “While most cases involve loans originated by Countrywide and the improper foreclosures were taken or started by Countrywide prior to our acquisition, it is our responsibility to make things right.” Press Release, The United States Department of Justice, Justice Department Settles with Bank of America and Saxon Mortgage for Illegally Foreclosing on Servicemembers (May 26, 2011).

289. Under the proposed \$8.5 billion settlement announced June 28, 2011 between Bank of America and BoNY (as Trustee for certain Countrywide RMBS), Bank of America is responsible for payment of the settlement, indemnification of the Trustee, and payment of legal fees. *See* Press Release, Bank of America Corp., Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase and Servicing Claims (June 29, 2011).

290. Bank of America's public statements accepting responsibility for Countrywide's contingent liabilities arising from Countrywide's mortgage origination, securitization and servicing practices, along with Bank of America's actual settlement of such liabilities demonstrates that Bank of America and Countrywide intentionally structured the transfer of substantially all Countrywide's assets in such a way as to leave minimal and inadequate assets remaining in Countrywide to cover these liabilities.

291. Bank of America has also generated substantial earnings from the absorption of Countrywide's mortgage business. For example, a Bank of America press release regarding the company's 2009 first quarter earnings stated that "[n]et revenue nearly quadrupled to \$5.2 billion primarily due to the acquisition of Countrywide and from higher mortgage banking income as lower interest rates drove an increase in mortgage activity." Lewis was quoted as saying, "We are especially gratified that our new teammates at Countrywide and Merrill Lynch had outstanding performance that contributed significantly to our success." Press Release, Bank of America Corp., Bank of America Earns \$4.2 Billion in First Quarter (Apr. 20, 2009).

292. A press release regarding Bank of America's 2009 second quarter earnings similarly stated that "[n]et revenue rose mainly due to the acquisition of Countrywide and higher mortgage banking income as lower interest rates spurred an increase in refinance activity." The press release explained that "higher mortgage banking income, trading account profits and

investment and brokerage services income reflected the addition of Merrill Lynch and Countrywide.” Bank of America reported that its average retail deposits in the quarter increased \$136.3 billion, or 26 percent, from a year earlier, including \$104.3 billion in balances from Merrill and Countrywide. Press Release, Bank of America Corp., Bank of America Earns \$3.2 Billion in Second Quarter (July 17, 2009).

293. Bank of America’s 2009 annual report stated that “[r]evenue, net of interest expense on a fully taxable-equivalent ... basis, rose to \$120.9 billion, representing a 63 percent increase from \$74.0 billion in 2008, reflecting in part the addition of Merrill Lynch and the full-year impact of Countrywide.” Bank of America also reported that “[m]ortgage banking income increased \$4.7 billion driven by higher production and servicing income . . . primarily due to increased volume as a result of the full-year impact of Countrywide . . . .” Insurance income also increased \$927 million “due to the full-year impact of Countrywide’s property and casualty businesses.” Bank of America Corp., Form 10-K at 30, 32 (Feb. 26, 2010).

294. The above allegations demonstrate Bank of America’s de facto merger with Countrywide and its assumption of Countrywide’s liabilities.

### **FIRST CAUSE OF ACTION**

#### **Violation of Section 11 of the Securities Act of 1933 (Against the Underwriter Defendants, CWALT and CWABS, and N. Joshua Adler, Ranjit Kripalani, Stanford Kurland, Jennifer S. Sandefur, Eric Sieracki, and David A. Spector (the “Section 11 Individual Defendants”))**

295. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that 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 specifically excludes the allegations as to Defendants’ scienter, including those set forth in Section V.

296. This claim is brought by Plaintiff pursuant to Section 11 of the Securities Act of 1933 and is asserted on behalf of Fannie Mae and Freddie Mac, which purchased the GSE Certificates issued pursuant to the Registration Statements. This claim is brought against Countrywide Securities with respect to the Registration Statements for the Securitizations for which it was a lead or co-lead underwriter or sold the GSE Certificates (as set forth in Tables 2, 11, and 12), and against Countrywide Securities and the other Underwriter Defendants with respect to the Registration Statements for the Securitizations for which they sold the GSE Certificates (as set forth in Tables 11 and 12), and is brought against CWALT and CWABS and the Section 11 Individual Defendants with respect to the Registration Statements filed by CWALT and CWABS that registered securities that were bona fide offered to the public on or after September 6, 2005.

297. This claim is predicated upon the strict liability of the Underwriter Defendants for making false and materially misleading statements in one or more of the Registration Statements for the Securitizations (as set forth in Tables 2, 11, and 12), and for omitting facts necessary to make the facts stated therein not misleading. CWALT and CWABS and the Section 11 Individual Defendants are strictly liable for making false and materially misleading statements in the Registration Statements filed by the Depositor Defendants that registered securities that were bona fide offered to the public on or after September 6, 2005 and for omitting facts necessary to make the facts stated therein not misleading.

298. The Underwriter Defendants served as underwriter for one or more of the 86 Securitizations (as set forth in Tables 2, 11, and 12), and as such, are liable for the misstatements and omissions in the Registration Statements under Section 11 of the Securities Act.

299. The Depositor Defendants filed nine Registration Statements under which 86 Securitizations were carried out. As depositors, the Depositor Defendants are issuers of the GSE Certificates issued pursuant to the Registration Statements they filed 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). As such, CWALT and CWABS are liable under Section 11 of the Securities Act for the misstatements and omissions in those five Registration Statements that registered securities that were bona fide offered to the public on or after September 6, 2005.

300. At the time CWALT and CWABS filed five Registration Statements applicable to 62 Securitizations, the Section 11 Individual Defendants were officers and/or directors of CWALT and CWABS. In addition, the Section 11 Individual Defendants signed those Registration Statements and either signed or authorized another to sign on their behalf the amendments to those Registration Statements. As such, the Section 11 Individual Defendants are liable under Section 11 of the Securities Act for the misstatements and omissions in those Registration Statements that registered securities that were bona fide offered to the public on or after September 6, 2005.

301. At the time that they became effective, each of the Registration Statements contained material misstatements of fact and omitted information necessary to make the facts stated therein not misleading, as set forth above. The facts misstated or omitted were material to a reasonable investor reviewing the Registration Statements.

302. The untrue statements of material facts and omissions of material fact in the Registration Statements are set forth above in Section IV and pertain to compliance with underwriting guidelines, occupancy status and loan-to-value ratios.



303. Fannie Mae and Freddie Mac purchased or otherwise acquired the GSE Certificates pursuant to the false and misleading Registration Statements. At the time they purchased the GSE Certificates, Fannie Mae and Freddie Mac did not know of the facts concerning the false and misleading statements and omissions alleged herein, and if the GSEs would have known those facts, they would not have purchased the GSE Certificates.

304. The Underwriter Defendants owed to Fannie Mae, Freddie Mac, and other investors a duty to make a reasonable and diligent 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. The Section 11 Individual Defendants owed the same duty with respect to the five Registration Statements that they signed that registered securities that were bona fide offered to the public on or after September 6, 2005, which are applicable to 62 of the Securitizations.

305. The Underwriter Defendants and the Section 11 Individual 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, CWALT and CWABS, though subject to strict liability without regard to whether they performed diligence, also failed to take reasonable steps to ensure the accuracy of the representations.

306. Fannie Mae and Freddie Mac sustained substantial damages as a result of the misstatements and omissions in the Registration Statements.

307. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, Countrywide Securities, Countrywide Home Loans, CWALT, CWMBS, CWABS, and Bank of America. In addition, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

308. By reason of the conduct herein alleged, the Underwriter Defendants, CWALT and CWABS, and the Section 11 Individual 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 the Underwriter Defendants and the Depositor Defendants)**

309. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that 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 specifically excludes the allegations as to Defendants' scienter, including those set forth in Section V.

310. This claim is brought by Plaintiff pursuant to Section 12(a)(2) of the Securities Act of 1933 and is asserted on behalf of Fannie Mae and Freddie Mac, which purchased the GSE Certificates issued pursuant to the Registration Statements in the Securitizations listed in Table 1.

311. This claim is predicated upon the negligence of the Underwriter Defendants as selling underwriters to Freddie Mac and Fannie Mae (as specified in Tables 11 and 12, above) for making false and materially misleading statements in the Prospectuses (as supplemented by the Prospectus Supplements, hereinafter referred to in this Section as "Prospectuses") for one or more Securitizations. The Depositor Defendants acted negligently in making false and

materially misleading statements in the Prospectuses for the Securitizations carried out under the Registration Statements they filed, which are applicable to all 86 Securitizations.

312. The Underwriter Defendants are prominently identified in the Prospectuses, the primary documents that they used to sell the GSE Certificates. The Underwriter Defendants offered the Certificates publicly, including selling to Fannie Mae and Freddie Mac their GSE Certificates, as set forth in the “Plan of Distribution” or “Underwriting” sections of the Prospectuses.

313. The Underwriter Defendants offered and sold the GSE Certificates to Fannie Mae and 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. Countrywide Securities and the Underwriter Defendants reviewed and participated in drafting the Prospectuses.

314. The Underwriter Defendants successfully solicited Fannie Mae’s and Freddie Mac’s purchases of the GSE Certificates. As underwriters, the Underwriter Defendants obtained substantial commissions based upon the amount received from the sale of the Certificates to the public.

315. The Underwriter Defendants offered the GSE Certificates for sale, sold them, and distributed them by the use of means or instruments of transportation and communication in interstate commerce.

316. 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 Certificates for the 86 Securitizations under those

Registration Statements. The Depositor Defendants offered the Certificates publicly and actively solicited their sale, including to Fannie Mae and Freddie Mac.

317. With respect to the 86 Securitizations for which they filed Registration Statements, the Depositor Defendants offered the GSE Certificates to Fannie Mae and 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.

318. The Depositor Defendants offered the GSE Certificates for sale by the use of means or instruments of transportation and communication in interstate commerce.

319. Each of the Underwriter Defendants and the Depositor Defendants actively participated in the solicitation of the GSEs' purchase of the GSE Certificates, and did so in order to benefit themselves. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and assisting in marketing the GSE Certificates.

320. 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.

321. 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, loan-to-value ratios, and accurate credit ratings.

322. The Underwriter Defendants and the Depositor Defendants offered and sold the GSE Certificates offered pursuant to the Registration Statements directly to Fannie Mae and Freddie Mac, pursuant to the false and misleading Prospectuses.

323. The Underwriter Defendants owed to Fannie Mae and 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 for the Securitizations in which they acted as selling underwriter, 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 carried out under the nine Registration Statements filed by them.

324. 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.

325. In contrast, Fannie Mae and Freddie Mac did not know of the untruths and omissions contained in the Prospectuses at the time they purchased the GSE Certificates. If the GSEs would have known of those untruths and omissions, they would not have purchased the GSE Certificates.

326. Fannie Mae and Freddie Mac acquired all of the GSE Certificates sold by the Underwriter Defendants, as specified in Tables 11 and 12, above, in the primary market pursuant to the Prospectuses.

327. Fannie Mae and Freddie Mac sustained substantial damages in connection with their investments in the GSE Certificates and have the right to rescind and recover the consideration paid for the GSE Certificates, with interest thereon.

328. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

### **THIRD CAUSE OF ACTION**

#### **Violation of Section 15 of the Securities Act of 1933 (Against Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Individual Defendants)**

329. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that 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 specifically excludes the allegations as to Defendants' scienter, including those set forth in Section V.

330. This claim is brought under Section 15 of the Securities Act of 1933, 15 U.S.C. §77o ("Section 15"), against Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Individual Defendants for controlling-person liability with regard to the Section 11 and Section 12(a)(2) causes of actions set forth above.

331. The Individual Defendants at all relevant times participated in the operation and management of the Depositor Defendants and their related subsidiaries, and conducted and participated, directly and indirectly, in the conduct of the Depositor Defendants' business affairs.

332. Defendant Countrywide Home Loans was the sponsor for the 86 Securitizations carried out under the nine Registration Statements filed by the Depositor Defendants and

culpably participated in the violations of Sections 11 and 12(a)(2) set forth above with respect to the offering of the GSE Certificates by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting the Depositor Defendants as the special purpose vehicles, and selecting Countrywide Securities as underwriter. In its role as sponsor, Countrywide Home Loans 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 cashflows would be issued by the relevant trusts.

333. Defendant Countrywide Home Loans also acted as the seller of the mortgage loans for the 86 Securitizations carried out under the nine Registration Statements filed by the Depositor Defendants, in that it conveyed such mortgage loans to the Depositor Defendants pursuant to the PSAs.

334. Defendant Countrywide Home Loans also controlled all aspects of the business of the Depositor Defendants, as the Depositor Defendants were merely special purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. In addition, because of its position as sponsor, Countrywide Home Loans was able to, and did in fact, control the contents of the nine Registration Statements filed by the Depositor Defendants, including the Prospectuses and Prospectus Supplements, which pertained to 86 Securitizations and which contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading.

335. Defendant Countrywide Capital Markets controlled the business operations of Defendant Countrywide Securities. Countrywide Capital Markets is the sole owner of Countrywide Securities and as such, had the practical ability to direct and control the actions of

Countrywide Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Countrywide Securities in connection with the issuance and sale of the Certificates.

336. Defendant Countrywide Capital Markets culpably participated in the violations of Section 11 and 12(a)(2) set forth. It oversaw the actions of its subsidiary, Countrywide Securities, and allowed it to misrepresent the mortgage loans' characteristics in the Registration Statements.

337. Defendant Countrywide Financial controlled the business operations of the Depositor Defendants and Countrywide Securities. Defendant Countrywide Financial is the corporate parent of the Depositor Defendants and the ultimate corporate parent of Countrywide Securities. As such, Countrywide Financial had the practical ability to direct and control the actions of Countrywide Securities and the Depositor Defendants in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Countrywide Securities and the Depositor Defendants in connection with the issuance and sale of the Certificates.

338. Countrywide Financial expanded its share of the residential mortgage-backed securitization market in order to increase revenue and profits. The push to securitize large volumes of mortgage loans contributed to the inclusion of untrue statements of material facts and omissions of material facts in the Registration Statements.

339. Countrywide Financial 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.

340. Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Individual Defendants are controlling persons within the meaning of Section 15 by virtue of their actual power over, control of, ownership of, and/or directorship of Countrywide Securities 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.

341. Fannie Mae and Freddie Mac purchased in the primary market Certificates issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, 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.

342. Fannie Mae and Freddie Mac did not know of the misstatements and omissions in the Registration Statements; had the GSEs known of those misstatements and omissions, they would not have purchased the GSE Certificates.

343. Fannie Mae and Freddie Mac have sustained damages as a result of the misstatements and omissions in the Registration Statements, for which they are entitled to compensation.

344. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

#### **FOURTH CAUSE OF ACTION**

##### **Violation of Section 13.1-522(A)(ii) of the Virginia Code (Against Countrywide Securities, CGMI, DB Securities, and RBS Securities (the “Freddie Mac Underwriter Defendants”) and CWALT and CWABS)**

345. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that Plaintiff expressly excludes from this cause of action any allegation that could be construed as alleging fraudulent or intentional or reckless conduct. This cause of action specifically excludes the allegations as to Defendants’ scienter, including those set forth in Section V.

346. 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. The allegations set forth below in this cause of action pertain to only those GSE Certificates identified in Table 11 above that were purchased by Freddie Mac on or after September 6, 2006.

347. This claim is predicated upon the negligence of the Freddie Mac Underwriter Defendants as selling underwriters to Freddie Mac (as specified in Table 11, above) for making false and materially misleading statements in the Prospectuses (as supplemented by the Prospectus Supplements, hereinafter referred to in this Section as “Prospectuses”) for one or more Securitizations. CWALT and CWABS acted negligently in making false and materially misleading statements in the Prospectuses for the Securitizations carried out under the Registration Statements they filed.

348. The Freddie Mac Underwriter Defendants are prominently identified in the Prospectuses, the primary documents that they used to sell the GSE Certificates. The Freddie Mac Underwriter Defendants offered the Certificates publicly, including selling to Freddie Mac its GSE Certificates, as set forth in the “Plan of Distribution” or “Underwriting” sections of the Prospectuses.

349. The Freddie Mac Underwriter Defendants offered and sold the GSE 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 Freddie Mac Underwriter Defendants reviewed and participated in drafting the Prospectuses.

350. The Freddie Mac Underwriter Defendants successfully solicited Freddie Mac's purchases of the GSE Certificates. As underwriters, the Freddie Mac Underwriter Defendants obtained substantial commissions based upon the amount received from the sale of the Certificates to the public.

351. The Freddie Mac Underwriter Defendants offered the GSE Certificates for sale, sold them, and distributed them to Freddie Mac in the State of Virginia.

352. CWALT and CWABS 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 Certificates for the Securitizations under those Registration Statements. CWALT and CWABS offered the Certificates publicly and actively solicited their sale, including to Freddie Mac.

353. With respect to the Securitizations for which they filed Registration Statements, CWALT and CWABS offered the GSE 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, CWALT and CWABS reviewed and participated in drafting the Prospectuses.

354. Each of the Freddie Mac Underwriter Defendants, CWALT, and CWABS actively participated in the solicitation of Freddie Mac's purchase of the GSE Certificates, and did so in order to benefit themselves. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and assisting in marketing the GSE Certificates.

355. 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.

356. 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, loan-to-value ratios, and accurate credit ratings.

357. The Freddie Mac Underwriter Defendants, CWALT, and CWABS offered and sold the GSE Certificates offered pursuant to the Registration Statements directly to Freddie Mac, pursuant to the false and misleading Prospectuses.

358. The Freddie Mac 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 for the Securitizations in which they acted as selling underwriter, 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. CWALT and CWABS owed the same duty with respect to the Prospectuses for the Securitizations carried out under the Registration Statements filed by them.

359. The Freddie Mac Underwriter Defendants, CWALT, and CWABS 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.

360. In contrast, Freddie Mac did not know of the untruths and omissions contained in the Prospectuses at the time it purchased the GSE Certificates. If Freddie Mac would have known of those untruths and omissions, it would not have purchased the GSE Certificates.

361. Freddie Mac sustained substantial damages in connection with its investments in the GSE Certificates and has the right to rescind and recover the consideration paid for the GSE Certificates, with interest thereon.

362. This action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

#### **FIFTH CAUSE OF ACTION**

#### **Violation of Section 13.1-522(C) of the Virginia Code (Against Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and N. Joshua Adler, Ranjit Kripalani, Stanford Kurland, Jennifer S. Sandefur, Eric Sieracki, and David A. Spector (the “Freddie Mac Individual Defendants”))**

363. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that 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 specifically excludes the allegations as to Defendants’ scienter, including those set forth in Section V.

364. This claim is brought by Plaintiff under Section 13.1-522(C) of the Virginia Code and is asserted on behalf of Freddie Mac. The allegations set forth in this cause of action pertain only to those GSE Certificates identified in Table 11 above that were purchased by Freddie Mac

on or after September 6, 2006. This claim is brought against Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Freddie Mac Individual Defendants for controlling-person liability with regard to the Fourth Cause of Action set forth above.

365. The Freddie Mac Individual Defendants at all relevant times participated in the operation and management of CWALT and CWABS and their related subsidiaries, and conducted and participated, directly and indirectly, in the conduct of CWALT's and CWABS' business affairs.

366. Defendant Countrywide Home Loans was the sponsor for the Securitizations carried out under the Registration Statements filed by CWALT and CWABS and culpably participated in the violations of Section 13.1-522(A)(ii) set forth above with respect to the offering of the GSE Certificates by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting CWALT and CWABS as the special purpose vehicles, and selecting Countrywide Securities as underwriter. In its role as sponsor, Countrywide Home Loans 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 cashflows would be issued by the relevant trusts.

367. Defendant Countrywide Home Loans also acted as the seller of the mortgage loans for the Securitizations carried out under the Registration Statements filed by CWALT and CWABS, in that it conveyed such mortgage loans to those Defendants pursuant to the PSAs.

368. Defendant Countrywide Home Loans also controlled all aspects of the business of CWALT and CWABS, as those Defendants were merely special purpose entities created for the

purpose of acting as a pass-through for the issuance of the Certificates. In addition, because of its position as sponsor, Countrywide Home Loans was able to, and did in fact, control the contents of the Registration Statements filed by CWALT and CWABS, including the Prospectuses and Prospectus Supplements, which pertained to the Securitizations and which contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading.

369. Defendant Countrywide Capital Markets controlled the business operations of Defendant Countrywide Securities. Countrywide Capital Markets is the sole owner of Countrywide Securities and as such, had the practical ability to direct and control the actions of Countrywide Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Countrywide Securities in connection with the issuance and sale of the Certificates.

370. Defendant Countrywide Capital Markets culpably participated in the violation of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiary, Countrywide Securities, and allowed it to misrepresent the mortgage loans' characteristics in the Registration Statements.

371. Defendant Countrywide Financial controlled the business operations of the CWALT and CWABS and Countrywide Securities. Defendant Countrywide Financial is the corporate parent of CWALT and CWABS and the ultimate corporate parent of Countrywide Securities. As such, Countrywide Financial had the practical ability to direct and control the actions of Countrywide Securities, CWALT, and CWABS in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Countrywide Securities, CWALT, and CWABS in connection with the issuance and sale of the Certificates.

372. Countrywide Financial expanded its share of the residential mortgage-backed securitization market in order to increase revenue and profits. The push to securitize large volumes of mortgage loans contributed to the inclusion of untrue statements of material facts and omissions of material facts in the Registration Statements.

373. Countrywide Financial culpably participated in the violation 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 CWALT and CWABS and the issuing trusts to serve as conduits for the mortgage loans.

374. Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Freddie Mac Individual Defendants are controlling persons within the meaning of Section 13.1-522(C) by virtue of their actual power over, control of, ownership of, and/or directorship of Countrywide Securities, CWALT, and CWABS at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

375. Freddie Mac purchased in Certificates issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, 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.

376. 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 GSE Certificates.



377. Freddie Mac has sustained damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation.

378. This action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

### **SIXTH CAUSE OF ACTION**

#### **Violation of Section 31-5606.05(a)(1)(B) of the District of Columbia Code (Against Countrywide Securities, BOA Securities, DB Securities, RBS Securities, and UBS Securities (the “Fannie Mae Underwriter Defendants”) and the Depositor Defendants)**

379. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that Plaintiff expressly excludes from this cause of action any allegation that could be construed as alleging fraudulent or intentional or reckless conduct. This cause of action specifically excludes the allegations as to Defendants’ scienter, including those set forth in Section V.

380. This claim is brought by Plaintiff pursuant to Section 31-5606.05(a)(1)(B) of the District of Columbia Code and is asserted on behalf of Fannie Mae. The allegations set forth below in this cause of action pertain only to those GSE Certificates identified in Table 12 above.

381. This claim is predicated upon the negligence of the Fannie Mae Underwriter Defendants as selling underwriters to Fannie Mae (as specified in Table 12, above) for making false and materially misleading statements in the Prospectuses (as supplemented by the Prospectus Supplements, hereinafter referred to in this Section as “Prospectuses”) for one or more Securitizations. The Depositor Defendants acted negligently in making false and materially misleading statements in the Prospectuses for the Securitizations carried out under the Registration Statements they filed.

382. The Fannie Mae Underwriter Defendants are prominently identified in the Prospectuses, the primary documents that they used to sell the GSE Certificates. The Fannie Mae Underwriter Defendants offered the Certificates publicly, including selling to Fannie Mae its GSE Certificates, as set forth in the “Plan of Distribution” or “Underwriting” sections of the Prospectuses.

383. The Fannie Mae Underwriter Defendants offered and sold GSE Certificates to Fannie Mae 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 Fannie Mae Underwriting Defendants reviewed and participated in drafting the Prospectuses.

384. The Fannie Mae Underwriter Defendants successfully solicited Fannie Mae’s purchases of the GSE Certificates. As underwriters, the Fannie Mae Underwriter Defendants obtained substantial commissions based upon the amount received from the sale of the Certificates to the public.

385. The Fannie Mae Underwriter Defendants offered the GSE Certificates for sale, sold them, and distributed them to Fannie Mae in the District of Columbia.

386. 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 Certificates for the Securitizations under those Registration Statements. The Depositor Defendants offered the Certificates publicly and actively solicited their sale, including to Fannie Mae.

387. With respect to the Securitizations for which they filed Registration Statements, the Depositor Defendants offered the GSE Certificates to Fannie Mae 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.

388. Each of the Fannie Mae Underwriter Defendants and the Depositor Defendants actively participated in the solicitation of Fannie Mae's purchase of the GSE Certificates, and did so in order to benefit themselves. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and assisting in marketing the GSE Certificates.

389. 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.

390. 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, loan-to-value ratios, and accurate credit ratings.

391. The Fannie Mae Underwriter Defendants and the Depositor Defendants offered and sold the GSE Certificates offered pursuant to the Registration Statements directly to Fannie Mae, pursuant to the false and misleading Prospectuses.

392. The Fannie Mae Underwriter Defendants owed to Fannie Mae, 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 for the Securitizations in which they acted as selling underwriter, 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 carried out under the Registration Statements filed by them.

393. The Fannie Mae 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.

394. In contrast, Fannie Mae did not know of the untruths and omissions contained in the Prospectuses at the time it purchased the GSE Certificates. If Fannie Mae would have known of those untruths and omissions, it would not have purchased the GSE Certificates.

395. Fannie Mae sustained substantial damages in connection with its investments in the GSE Certificates and has the right to rescind and recover the consideration paid for the GSE Certificates, with interest thereon.

396. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

### **SEVENTH CAUSE OF ACTION**

#### **Violation of Section 31-5606.05(c) of the District of Columbia Code (Against Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Individual Defendants)**

397. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that Plaintiff expressly excludes from this cause of action any allegation that could be construed as alleging fraudulent or intentional or reckless conduct. This cause of action

specifically excludes the allegations as to Defendants' scienter, including those set forth in Section V.

398. This claim is brought by Plaintiff pursuant to Section 31-5606.05(c) of the District of Columbia Code and is asserted on behalf of Fannie Mae. The allegations set forth below in this cause of action pertain only to those GSE Certificates identified in Table 12 above that were purchased by Fannie Mae. This claim is brought against Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Individual Defendants for controlling-person liability with regard to the Sixth Cause of Action set forth above.

399. The Individual Defendants at all relevant times participated in the operation and management of the Depositor Defendants and their related subsidiaries, and conducted and participated, directly and indirectly, in the conduct of the Depositor Defendants' business affairs.

400. Defendant Countrywide Home Loans was the sponsor for the Securitizations carried out under the Registration Statements filed by the Depositor Defendants and culpably participated in the violations of Section 31-5606.05(a)(1)(B) set forth above with respect to the offering of the GSE Certificates by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting the Depositor Defendants as the special purpose vehicles, and selecting Countrywide Securities as underwriter. In its role as sponsor, Countrywide Home Loans 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 cashflows would be issued by the relevant trusts.

401. Defendant Countrywide Home Loans also acted as the seller of the mortgage loans for the Securitizations carried out under the Registration Statements filed by the Depositor

Defendants, in that it conveyed such mortgage loans to the Depositor Defendants pursuant to the PSAs.

402. Defendant Countrywide Home Loans also controlled all aspects of the business of the Depositor Defendants, as the Depositor Defendants were merely special purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. In addition, because of its position as sponsor, Countrywide Home Loans was able to, and did in fact, control the contents of the Registration Statements filed by the Depositor Defendants, including the Prospectuses and Prospectus Supplements, which pertained to the Securitizations and which contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading.

403. Defendant Countrywide Capital Markets controlled the business operations of Defendant Countrywide Securities. Countrywide Capital Markets is the sole owner of Countrywide Securities and as such, had the practical ability to direct and control the actions of Countrywide Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Countrywide Securities in connection with the issuance and sale of the Certificates.

404. Defendant Countrywide Capital Markets culpably participated in the violation of Section 31-5606.05(a)(1)(B) set forth above. It oversaw the actions of its subsidiary, Countrywide Securities, and allowed it to misrepresent the mortgage loans' characteristics in the Registration Statements.

405. Defendant Countrywide Financial controlled the business operations of the Depositor Defendants and Countrywide Securities. Defendant Countrywide Financial is the corporate parent of the Depositor Defendants and the ultimate corporate parent of Countrywide

Securities. As such, Countrywide Financial had the practical ability to direct and control the actions of Countrywide Securities and the Depositor Defendants in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Countrywide Securities and the Depositor Defendants in connection with the issuance and sale of the Certificates.

406. Countrywide Financial expanded its share of the residential mortgage-backed securitization market in order to increase revenue and profits. The push to securitize large volumes of mortgage loans contributed to the inclusion of untrue statements of material facts and omissions of material facts in the Registration Statements.

407. Countrywide Financial culpably participated in the violation of Section 31-5606.05(a)(1)(B) 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.

408. Countrywide Financial, Countrywide Home Loans, Countrywide Capital Markets, and the Individual Defendants are controlling persons within the meaning of Section 31-5606.05(c) by virtue of their actual power over, control of, ownership of, and/or directorship of Countrywide Securities 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.

409. Fannie Mae purchased in Certificates issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, 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.

410. Fannie Mae did not know of the misstatements and omissions in the Registration Statements; had Fannie Mae known of those misstatements and omissions, it would not have purchased the GSE Certificates.

411. Fannie Mae has sustained damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation.

412. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

### **EIGHTH CAUSE OF ACTION**

#### **Common Law Negligent Misrepresentation (Against Countrywide Securities and the Depositor Defendants)**

413. Plaintiff realleges each allegation above as if fully set forth herein, except to the extent that Plaintiff expressly excludes from this cause of action any allegation that could be construed as alleging fraudulent or intentional or reckless conduct. This cause of action specifically excludes the allegations as to Defendants' scienter, including those set forth in Section V.

414. This is a claim for common law negligent misrepresentation against Countrywide Securities and the Depositor Defendants.

415. Between September 27, 2005 and October 30, 2007, Countrywide Securities and the Depositor Defendants sold the GSE Certificates to the GSEs as described above. Because the



Depositor Defendants owned and then conveyed the underlying mortgage loans that collateralized the Securitizations for which they served as depositors, 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.

416. Likewise, as underwriter for the vast majority of the Securitizations, Countrywide Securities was obligated – and had the opportunity – to perform sufficient due diligence to ensure that the Registration Statements for those Securitizations, including without limitation the corresponding Prospectus Supplements, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As a result of this privileged position as underwriter – which gave it access to loan file information and obligated it to perform adequate due diligence to ensure the accuracy of the Registration Statements – Countrywide Securities had unique, exclusive, and special knowledge about the underlying mortgage loans in the Securitizations.

417. Countrywide Securities 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. The GSEs, like other investors, had no 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 GSE Certificates, the GSEs could not evaluate the underwriting quality or the servicing practices of the mortgage loans in the Securitizations on a loan-by-loan basis. The GSEs therefore reasonably relied on Countrywide Securities' knowledge and its express representations made prior to the closing of the Securitizations regarding the underlying mortgage loans.

418. Countrywide Securities and the Depositor Defendants were aware that the GSEs reasonably relied on their reputations and unique, exclusive, and special expertise and experience, as well as their express representations made prior to the closing of the Securitizations, and that the GSEs depended upon 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 the GSEs prior to the closing of the Securitizations.

419. Based upon their unique, exclusive, and special knowledge and expertise about the loans held by the trusts in the Securitizations, Countrywide Securities and the Depositor Defendants had a duty to provide the GSEs complete, accurate, and timely information regarding the mortgage loans and the Securitizations. Countrywide Securities and the Depositor Defendants negligently breached their duty to provide such information to the GSEs by instead making to the GSEs untrue statements of material facts in the Securitizations, or otherwise misrepresenting to the GSEs material facts about the Securitizations. The misrepresentations are set forth in Section IV above, and include misrepresentations as to the accuracy of the represented credit ratings, compliance with underwriting guidelines for the mortgage loans and the accuracy of the owner-occupancy statistics and the loan-to-value ratios applicable to the Securitizations, as disclosed in the term sheets and Prospectus Supplements.

420. In addition, having made actual representations about the underlying collateral in the Securitizations and the facts bearing on the riskiness of the Certificates, Countrywide Securities and the Depositor Defendants had a duty to correct misimpressions left by their statements, including with respect to any “half truths.” The GSEs were entitled to rely upon the representations of Countrywide Securities and the Depositor Defendants about the

Securitized, and these Defendants failed to correct in a timely manner any of their misstatements or half truths, including misrepresentations as to compliance with underwriting guidelines for the mortgage loans.

421. The GSEs reasonably relied on the information Countrywide Securities and the Depositor Defendants provided, and these Defendants knew that the GSEs were acting in reliance on such information. The GSEs were damaged in an amount to be determined at trial as a direct, proximate, and foreseeable result of Countrywide Securities' and the Depositor Defendants' misrepresentations, including any half truths.

422. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

### **NINTH CAUSE OF ACTION**

#### **Common Law Fraud (Against the Countrywide Fraud Defendants)**

423. Plaintiff realleges each allegation in paragraphs 1 through 294 above as if fully set forth herein.

424. This is a claim for common law fraud against the Countrywide Fraud Defendants.

425. The material representations set forth above were fraudulent, and the representations of Countrywide Securities to the GSEs in the term sheets and Prospectus Supplements falsely and misleadingly misrepresented and omitted material statements of fact. The misrepresentations are set forth in Section IV above, and include misrepresentations as to the accuracy of the represented credit ratings, compliance with underwriting guidelines for the

mortgage loans, and the accuracy of the owner-occupancy statistics and the loan-to-value ratios applicable to the Securitizations, as disclosed in the terms sheets and Prospectus Supplements. The representations on which the GSEs relied were directly communicated to them by Countrywide Securities. Countrywide Securities knew, or was reckless in not knowing, that its representations and omissions were false and/or misleading at the time they were made. Countrywide Securities made the misleading statements for the purpose of inducing the GSEs to purchase the GSE Certificates.

426. The basis for the false representations in the term sheets and Prospectus Supplements that Countrywide Securities made to the GSEs was information that Countrywide Home Loans and the Depositor Defendants provided to Countrywide Securities as to the strength of the collateral underlying the GSE Certificate and the structure of the Securitizations. Countrywide Home Loans and the Depositor Defendants communicated this information to Countrywide Securities with the knowledge and intent that Countrywide Securities would communicate this information to purchasers of the GSE Certificates. Countrywide Home Loans and the Depositor Defendants each had reason to expect that the GSEs were among the class of persons who would receive and rely on such representations.

427. Each of the Countrywide Fraud Defendants intended that the above misleading statements were to be made for the purpose of inducing the GSEs to purchase the GSE Certificates. Countrywide Home Loans made misleading statements with reason to expect that Fannie Mae and Freddie Mac would be among the class of persons who would receive and rely upon the statements.

428. The GSEs justifiably relied on the Countrywide Fraud Defendants' false representations and misleading omissions.

429. Had the GSEs known the true facts regarding Countrywide's underwriting practices and quality of the mortgage loans collateralizing the GSE Certificates, they would not have purchased the GSE Certificates.

430. As a result of the foregoing, the GSEs have suffered damages according to proof. In the alternative, Plaintiff hereby demands rescission and makes any necessary tender of the GSE Certificates.

431. The misconduct of the Countrywide Fraud Defendants was intentional and wanton. The immediate victims of the fraud perpetrated by the Countrywide Fraud Defendants were Fannie Mae and Freddie Mac, two Government-sponsored entities whose primary mission is assuring affordable housing to millions of Americans. Further, the public nature of the Countrywide Fraud Defendants' harm is apparent in – and conclusively demonstrated by – the state and federal suits and investigations that have been pursued against Countrywide as a direct result of its fraudulent conduct at issue in this Complaint (as set forth above in Section V). *See, e.g.,* SEC Complaint; FCIC Report, *passim*. Punitive damages are therefore warranted for the actions of the Countrywide Fraud Defendants in order to punish, deter them from future misconduct, and protect the public.

432. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

## **TENTH CAUSE OF ACTION**

### **Aiding and Abetting Fraud (Against Countrywide Home Loans and the Depositor Defendants)**

433. Plaintiff realleges each allegation in paragraphs 1 through 294 above as if fully set forth herein.

434. This is a claim for aiding and abetting fraud against Defendants Countywide Home Loans and the Depositor Defendants with respect to the Securitizations sponsored by Countrywide Home Loans.

435. Countrywide Home Loans, as sponsor of all 70 Securitizations in which Countrywide Securities was a lead underwriter, substantially assisted Countrywide Securities' fraud by choosing which mortgage loans would be included in those Securitizations. It also selected and pooled for securitization mortgage loans it had originated itself, knowing that those mortgage loans had not been originated in compliance with its underwriting guidelines. Countrywide Home Loans' action in originating, selecting, and pooling for securitization mortgage loans that had not been originated in compliance with its underwriting guidelines was an integral part of the Securitizations.

436. Likewise, the Depositor Defendants, as depositors of the Securitizations, substantially assisted Countrywide Securities' fraud by issuing the Registration Statements that were used to offer publicly the Certificates. As the issuers of the Certificates, the Depositor Defendants were an integral part of Countrywide Securities' sale of the Certificates to the GSEs.

437. As described above, Countrywide Securities made fraudulent and untrue statements of material fact and omitted to state material facts regarding the true credit quality of the GSE Certificates, the true rate of owner occupancy, the true LTV and CLTV ratio of the

underlying mortgage loans, the true credit ratings, and compliance by the originators with applicable underwriting guidelines.

438. Each of Countrywide Home Loans and the Depositor Defendants had unique access to the loan files, and therefore was aware of the extreme weakness of the loans. In fact, as described above in Section V, during the same period that it was selling mortgage loans to be securitized, and thereby passing on to investors such as Fannie Mae and Freddie Mac the risks of non-performance of those loans, Countrywide Home Loans was well aware that the loans had not been originated in compliance with underwriting guidelines and thus that their risk profiles had been significantly understated. Accordingly, Countrywide Home Loans and the Depositor Defendants were aware that the representations and omissions of Countrywide Securities were fraudulent.

439. The central role of Countrywide Home Loans and the Depositor Defendants in Countrywide Securities' vertically integrated sales strategy for the Certificates substantially assisted in Countrywide Securities' fraud. The Depositor Defendants, as the purchaser of the underlying mortgage loans, worked closely with Countrywide Home Loans, as the vehicle for securitizing the mortgage loans, which in turn worked closely with Countrywide Securities, as the distribution arm for the Certificates collateralized by those mortgage loans and then sold to the GSEs. Each of Countrywide Home Loans and the Depositor Defendants worked hand-in-glove to provide their affiliate Countrywide Securities with Certificates that it could fraudulently sell to the GSEs.

440. Countrywide Home Loans' and the Depositor Defendants' substantial assistance in Countrywide Securities' fraud played a significant and material role in inducing the GSEs to purchase the GSE Certificates. As a direct, proximate, and foreseeable result of Countrywide

Home Loans and the Depositor Defendants aiding and abetting Countrywide Securities in perpetrating a fraud against the GSEs, the GSEs have been damaged in an amount to be determined at trial.

441. Because Countywide Home Loans and the Depositor Defendants aided and abetted Countrywide Securities' fraud willfully and wantonly, and because by means of their acts Countrywide Home Loans and the Depositor Defendants knowingly affected the general public, including but not limited to all persons with interests in the Certificates, Plaintiff is entitled to recover punitive damages.

442. The time period from July 13, 2009 through August 30, 2011 has been tolled for statute of limitations purposes by virtue of a tolling agreement entered into between Fannie Mae, CWALT, CWMBS, CWABS, Countrywide Securities, and Countrywide Home Loans. Additionally, this action is brought within three years of the date that the FHFA was appointed as Conservator of Fannie Mae and Freddie Mac, and is thus timely under 12 U.S.C. § 4617(b)(12).

**ELEVENTH CAUSE OF ACTION**  
**(Successor and Vicarious Liability)**  
**(Against the Bank of America Defendants)**

443. Plaintiff realleges each allegation above as if fully set forth herein.

444. The Bank of America Defendants are jointly and severally liable or otherwise vicariously liable for any and all damages resulting from the wrongful actions of Countrywide, as alleged herein, because they are the successors-in-interest to Countrywide.

445. The Bank of America Defendants became the successors-in-interest to Countrywide because (a) there was continuity of ownership between Bank of America and Countrywide; (b) Countrywide ceased ordinary business soon after the transaction was consummated; (c) there was continuity of management, personnel, physical location, assets and general business operations between Bank of America and Countrywide; (d) Bank of America



assumed the liabilities ordinarily necessary for the uninterrupted continuation of Countrywide's business; and (e) Bank of America assumed Countrywide's mortgage repurchase and tort liabilities. The Bank of America Defendants also became successors-in-interest to Countrywide because the transactions, which were not arm's length transactions and which gave inadequate consideration to Countrywide, were structured in such a way as to leave Countrywide unable to satisfy massive contingent liabilities.

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff prays for relief as follows:

An award in favor of Plaintiff 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:

- a. Rescission and recovery of the consideration paid for the GSE Certificates, with interest thereon;
- b. Each GSE's monetary losses, including any diminution in value of the GSE Certificates, as well as lost principal and lost interest payments thereon;
- c. Punitive damages;
- d. Attorneys' 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

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