

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

In the Matter of the Application of

THE BANK OF NEW YORK MELLON, in its
Capacity as Trustee or Indenture Trustee of 530
Countrywide Residential Mortgage-Backed
Securitization Trusts,

Petitioner,

For Judicial Instructions under CPLR Article 77
on the Distribution of a Settlement Payment.

Index No. 150973/2016

IAS Part 39

Hon. Saliann Scarpulla

AFFIDAVIT OF DEAN SMITH

I, Dean Smith, affirm as follows pursuant to CPLR 3021:

I. Summary

1. I have been retained by MoloLamken LLP, counsel for Respondents Tilden Park Capital Management LP (“Tilden Park”) and Prosirir Capital Management LP (“Prosirir”). The scope of my assignment is: (1) to model how Settlement funds in this case would be paid to certificateholders in the 14 trusts held by Prosirir and Tilden, pursuant to the Pooling and Servicing Agreements (“PSAs”) governing those trusts; (2) to analyze whether, in light of my experience in structured finance, the terms of those PSAs’ payment methods are commercially reasonable; and (3) to analyze the arguments made by James Finkel, an expert retained by American International Group (“AIG”), and by John Sim of JPMorgan Chase Bank, N.A.

2. A summary of my opinions, based on my experience in the structured finance market, is as follows: (a) I read the plain language of the trust PSAs to require that the Principal Distribution Amount be calculated and distributed prior to any write-up of the certificate balance

for any class in the securitization trusts; (b) This structural provision is neither unusual nor unfair to any particular class of certificates, but rather represents the negotiated balance of interests between senior and subordinate interests; (c) A correct calculation of the cash flows eliminates the spurious “under collateralization” identified by Sim and Finkel; and (d) Subsequent Recoveries are principally intended to compensate junior investors for losses suffered in prior distribution periods.

II. My Qualifications and Experience

3. I am a Principal of Stonehenge Financial Partners, LLC (“Stonehenge”), a firm that provides advisory services to clients in the areas of structured finance, and residential and commercial mortgage securitization. As discussed more fully below, I have extensive experience in the areas of asset valuation, investment banking, investment management, trading, and risk management for mortgage backed securities (“MBS”) and unsecuritized mortgage loans.

4. I graduated from the University of California San Diego in 1984 with a B.A. in economics. I received M.A. and M.Phil. degrees in economics from Columbia University in 1985 and 1986, respectively.

5. I have worked in the structured finance industry since 1988. I began my career in finance at Financial Security Assurance Inc. (“FSA,” now part of Assured Guaranty Ltd.) where I helped to create some of the earliest applications of financial guaranty insurance to MBS. My responsibilities included designing computer models to evaluate MBS cash flows based on the payment priority and cash flow provisions of the PSA to determine the risks in mortgage pools FSA was considering insuring.

6. In 1991, I joined Donaldson, Lufkin and Jenrette (“DLJ”), an investment banking firm. At DLJ, I managed the MBS Structuring Group, including overseeing a team of analysts who designed the cash flow models that were used to structure residential MBS (“RMBS”) and

commercial MBS (“CMBS”) underwritten by DLJ. I worked with legal counsel and accountants to prepare the offering materials for the RMBS and CMBS underwritten by DLJ. I was responsible for ensuring the numerical data in those documents was accurate and for working with the rating agencies to obtain ratings for DLJ’s RMBS and CMBS deals.

7. In 1993 I joined Nomura Securities International (“Nomura”), and ultimately became the co-head of their Structured Finance Group. At Nomura, I had overall responsibility for a non-agency mortgage “conduit,” a business unit that acquired mortgage loans from third-party originators, which were then securitized in RMBS. My duties included: creating the underwriting guidelines that Nomura’s correspondent lenders were obligated to use; developing and overseeing policies and procedures to make sure that the guidelines were, in fact, met for mortgage loans Nomura purchased; setting prices and terms for mortgage loans Nomura purchased from correspondents; negotiating mortgage loan purchase agreements (MLPAs) with correspondents; enforcing remedies arising from breaches of MLPA representations and warranties by correspondents; issuing and trading the RMBS; and overseeing the offering documents and other disclosures that Nomura provided to RMBS investors.

8. In 1996 I formed Stonehenge to advise institutional clients including banks, insurance companies, and hedge funds, on RMBS and CMBS investments. At Stonehenge, I have structured and executed over a billion dollars of MBS private placements on behalf of institutional clients. Stonehenge also managed a commercial mortgage loan conduit, with responsibility for underwriting, risk management, and financing. In 2002 Stonehenge advised a financial guaranty company regarding a lawsuit alleging breach of representations and warranties in the origination and securitization of sub-prime mortgage loans by a large bank. From 2002-2010, Stonehenge also managed a collateralized debt obligation (“CDO”) for a large Canadian

financial institution. A CDO is a securitized investment vehicle that holds other securities as collateral.

9. From 2004 through 2010, I was a partner at Highland Financial Holdings Group LLC (“HFH”), a hedge fund management firm managing in excess of \$2 billion in agency and non-agency RMBS and CDOs. At HFH, I was responsible for credit strategies, and oversaw investment portfolios of RMBS backed by subprime mortgages and high-risk assets. In 2006, in response to my growing belief that housing prices were in a bubble and that many RMBS were likely to perform poorly, I launched and managed the Highland ShortPlus Fund, a hedge fund that executed a leveraged short subprime strategy that returned in excess of 200% to investors cumulatively over a little more than two years through 2008.

10. Since leaving HFH in 2010, I have continued providing advisory services to institutional investors. I currently help manage investments in distressed real estate assets and until recently a portfolio of RMBS and CMBS for a \$1.5 billion private equity fund. I also consult with parties involved in litigation related to RMBS and mortgage investments.

III. Payment of Settlement Funds

A. How RMBS “Waterfalls” are Negotiated

11. RMBS are paid out via “waterfall” provisions that lay out a specified order of payment to different classes of holders. RMBS waterfalls are carefully negotiated between the parties through discussions and exchanges of term sheets so that investors know, from the PSA, the cash flows to which they are entitled and the risks they assume.

12. At each step in the distribution of principal and interest to certificateholders, the PSA determines the priority of payments to each class. In these deals, the PSA requires payments to senior-most certificates on a priority basis until credit enhancement requirements have been satisfied. At that point, principal payments may be distributed to the next most senior

class. (The parties could have initially structured the PSA payment waterfall differently — for example, with a strict priority to senior certificates that distributed all principal on a straight sequential basis.¹ But the Senior Subordinate and other more junior classes might have then been more difficult to sell to investors).

13. In any case, RMBS investors need certainty and predictability of cash flows. They rely on the deal language to be applied as written.

14. Credit enhancements such as overcollateralization or subordination are an important feature of structured securities such as RMBS. But, crucially, that credit enhancement provided to senior classes from more subordinate classes is not unconditional: It is limited by the distribution rules contained in the PSA. As a result, under certain circumstances, junior certificate holders may be entitled to receive payments before more senior certificate holders. For example, most RMBS transactions contain so-called “Trigger” language that allows distributions of principal to subordinate classes unless delinquencies increase beyond a predetermined threshold.

15. The allocation of Subsequent Recoveries is substantially similar: Provided the Principal Distribution amount has been distributed to the Senior classes (and any other classes then entitled to share in the PDA under the terms of the PSA), no specific or general principle prohibits Subsequent Recoveries from being paid to senior subordinate certificates like those owned by Respondents.

B. The Trusts and PSAs at Issue

16. The Trusts at issue here have a provision in which the “Principal Distribution Amount” is calculated based on certificate balances “immediately prior” to each Distribution

¹ This type of structure is well understood in the marketplace, and is the way most Commercial Mortgage Backed Securities are structured.

Date. The PDA definition is distinct from the order of operations debate for which the Trustee sought the Court's instruction.

17. The PDA calculation based on certificate balances determined in the prior period distinguishes these trusts from other Countrywide trusts in which the PDA is defined by reference to an "Overcollateralization Amount."

18. When the rules for distributions contained in these PSAs are applied, paying the Settlement funds results in an allocation of Subsequent Recoveries to those classes that have, in fact, incurred realized losses (defined in these deals as Unpaid Realized Loss Amount, or URLA). This is the very point of the rules for distributions of Subsequent Recoveries.

19. Subsequent Recoveries are intended to partially mitigate losses actually incurred by certificates, not as an opportunity for a windfall for holders that have not had losses. Based on my experience in the structured-finance market, I believe most investors would view the re-direction of Subsequent Recoveries from the classes that suffered the losses and to those classes that had not suffered such losses to be unfair. Such a step would be contrary to the definitive documents that formed the basis for their investment decision.

20. The following hypothetical shows how waterfall payments would work for deals like these, which have the same PDA definition in all trusts at issue. Subsequent Recoveries are distributed according to the terms of the PSA in the following manner:

<u>Certificates</u>	<u>Current Face</u>	<u>Accumulated Losses</u>
A1	90	1
A2	10	5
Prior Period Collateral Balance 100		
Principal Received	2	
New Collateral Balance	98	
Subsequent Recovery	5	
OC Target	2	
Available Funds	7 (Principal Received plus Subsequent Recovery; 2+5)	
Principal Distribution Amount ("PDA")	4 (Certificate Balance less Collateral Balance plus OC Target; 100-98+2)	

Basic Payment rules contained in PSA at 4.02²

- 1) Pay PDA pro rata based on outstanding face
- 2) From any remaining available funds, pay Subsequent Recovery sequentially to the extent of prior losses incurred by each class of certificates
- 3) Write up bonds to the *full extent* of Subsequent Recovery in proportion to prior losses

<u>Class</u>	<u>PDA</u>	<u>URLA</u>	<u>Write Up</u>	<u>Ending Balance</u>
A1	3.6	1.0	1.0	86.4
A2	0.4	2.0	4.0	11.6
				98.0

21. At the first step in the waterfall, the PDA is paid to the certificates up to the defined limit. This is an attempt to bring the trust into "parity," whereby the "assets" of the trust (the balance of the collateral) equals the "liabilities" (the bonds plus the OC target). Next, since there are accumulated losses, and we have Subsequent Recoveries, the excess is distributed to the certificates, sequentially up to their Unpaid Realized Loss Amounts, but only to the extent of remaining cash, now only \$3, after payment of the \$4 in respect of the PDA.

22. Note, however, that because of the priority of the PDA in the waterfall over the URLA, some of the Subsequent Recovery cash has been depleted, and paid to the A1 tranche, even though the A2 tranche has suffered greater prior losses. This is a feature of this structure

² The example could have been structured with sequential rather than pro-rata payments of the PDA, without altering the essential argument.

that is glossed over in the Sim and Finkel examples, and one we will return to when we consider actual payment calculations.

23. Finally, the certificates are written up in an amount equal to the full amount of the Subsequent Recoveries. This must be done to maintain parity in the structure. That is because the payments from Subsequent Recoveries do not accompany a concomitant reduction in the collateral balance; unless the certificate balances are increased to account for the external funds, the trust would be over-collateralized. This is a highly simplified example, of course. But it illustrates the basic principles at work in the structures at issue in the matter.

24. The Trustee has in fact applied this priority in the past, even when it would cause what the senior holders now call “leakage.” In October 2010, the CWALT 2007-OA10 trust received a large Subsequent Recovery totaling \$4.7 million. In that distribution period, two deeply subordinated classes received Subsequent Recoveries of approximately \$628,000 and \$110,000 respectively, the amount allocated to them based on prior losses after the PDA payment to the Senior Classes 1A1, 1A2, 2A1, 2A2 and 2A3.

25. The senior holders have not incurred losses in the Countrywide deals (although they may in the future). By contrast, Tilden and Prosirris hold “Senior Support Certificates” which have already incurred losses.

C. The Senior Holders’ Arguments

26. Sim and Finkel offer their interpretation of the allocation of Subsequent Recoveries according to the Intex “After Distributions” model – namely, that certificates should be written up to account for Subsequent Recoveries only after principal distributions have been made. They claim, among other things, that such an allocation would result in “under-collateralization” of the securitization trusts and permit “leakage” of cash to classes with lesser

seniority than others. Accordingly, they argue that the Trustee should instead pay Subsequent Recoveries based on Intex's "Standard Method."

27. Their claims are not accurate or relevant. Neither the "After Distributions" model or the "Standard Method" actually applies the PSAs' payment terms. The Standard Method misdefines PDA to include the write-up. The After Distributions Model performs a step that is not in the PSA (see ¶¶ 30-40, below).

28. While Intex is a valuable tool, it is no substitute for actually reading the PSAs. In my experience, responsible and prudent investors invest based on the terms of the deal language itself. That is because Intex has been known to make mistakes or failed to provide for subtleties in deal structure.

29. Because Finkel and Sim both rely on Intex's software instead of modelling the PSA payment priorities, their results are inaccurate. I discuss each of their analyses in turn.

1. *The JPMorgan Report*

30. Sim argues for a distribution for Subsequent Recoveries that is not consistent with the PSAs. He states that complying with the "strictest interpretation of the settlement agreement...results in issues such as funds being 'leaked' to the subs... or the deal being under collateralized." This is simply not the case.

31. Following the plain language of the PSA exposes the flaws in Sim's analysis: The trust is never under-collateralized when Subsequent Recoveries are paid, by and large, to the certificate classes that have suffered prior losses.

CWALT 2005-72

Example Distribution Date Jan. 25, 2016

Collateral Balance	101.5
Total Subsequent Recovery	19.1
PDA Calculation	4.1
Remaining Cash	15

JPMORGAN METHOD

	(J1)	(J2)	(J3)	(J4)	(J5)	(J6)	(J7)	(J8)	(J9)
	Starting Certificate Balance	Accum Write Down	Reverse Write Down	New Write Down Amt	PDA Payment	Write Up Amount	Written Up Balance	Write Down Amount	Ending Certificate Balance
A1	54.0	0.0	0.0	0.0	2.2	0.0	51.8	0.0	51.8
A2	23.7	3.5	3.5	0.0	1.0	0.0	22.7	0.0	22.7
A3	23.8	1.2	1.2	0.0	1.0	0.0	22.8	0.0	22.8
A4	0.0	14.8	10.3	4.5	0.0	4.6	4.6	0.5	4.1
M1	<u>0.0</u>	<u>47.1</u>	<u>0.0</u>	<u>47.1</u>	<u>0.0</u>	<u>14.5</u>	<u>14.5</u>	<u>14.5</u>	<u>0.0</u>
	101.5	66.6	15.0	51.6	4.1	19.1	116.5	15.0	101.5
(J4)=(J2)-(J3)									
(J7)=(J1)-(J5)+(J6)									
(J9)= (J7)-(J8)									

CORRECT METHOD PER PSA

	(P1)	(P2)	(P3)	(P4)	(P5)	(P6)	(P7)	(P8)
	Starting Certificate Balance	Accum Write Down	PDA Payment	Certificate Balance after PDA	URLA Payment	Write Up of Subs Rec	New Accum Write Down	Ending Certificate Balance
A1	54.0	0.0	2.2	51.8	0.0	0.0	0.0	51.8
A2	23.7	3.5	1.0	22.7	3.5	3.5	0.0	22.7
A3	23.8	1.2	1.0	22.8	1.2	1.2	0.0	22.8
A4	0.0	14.8	0.0	0.0	10.3	14.4	0.4	4.1
M1	<u>0.0</u>	<u>47.1</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>47.1</u>	<u>0.0</u>
	101.5	66.6	4.1	97.4	15.0	19.1	47.5	101.5
(P4)=(P2)-(P3)								
(P8)=(P4)-(P5)+(P6)								

32. The numbers and column headings are taken directly from Sim’s report where he evaluates the After Distributions model. I have labeled the columns (J1) through (J9) for ease of exposition.

33. Columns (J1) and (J2) are simply descriptive statistics taken from the Trustee's Remittance Report, a monthly report provided to investors that describes essentially all of the cash flows, balances and other performance metrics for the securitization trust during the prior distribution period.

34. Column (J3) is the first calculation performed by Sim (or taken from Intex), entitled "Reverse Write Down." It is unclear why Sim/Intex would have chosen to perform this calculation first, since section 4.02 clearly says that the first step in the principal waterfall is to pay the Principal Distribution Amount, or "PDA" to the extent of available funds. It is also unclear from Sim's text whether this column reflects a cash distribution or a notional write up, but since the total amount equals the cash available for distribution after payment of the PDA, we may assume it is intended to be a cash distribution. In any case, Sim's first calculation—reverse prior write downs by the amount of Subsequent Recoveries less the PDA—appears nowhere in the PSA.

35. The next column (J4) is entitled "New Write Down," and appears to be (J2) less (J3), i.e. the cumulative writedown for each certificate, after the out-of-turn write up that occurred in the prior step at (J2).

36. Finally, at (J5), Sim gives effect for the PDA distribution on a pro-rata basis as set forth in the PSA. Next at (J6), he writes up the certificates, from lowest to highest seniority, in an aggregate amount equal to the Subsequent Recovery of \$19.1 million. Having done these steps in this order, however, Sim now concludes that the trust is under-collateralized as seen in column (J7) which totals to \$116.5 million, \$15 million more than the collateral balance of \$101.5 million. In (J8), he writes down the classes from lowest to highest seniority until parity is restored, following the PSA rule for applying write-downs.

37. But the apparent under-collateralization he describes is nothing more than the result of doing calculations not specified in the PSA, namely, writing up the certificate balance in column (J3), as will now be demonstrated.³

38. In the correct method that the PSA prescribes, columns (P1) & (P2) are the same as (J1) and (J2). As set forth in the PSA, the first step taken here in column (P3) is the payment of the Principal Distribution Amount. The PDA is paid on a pro rata basis in proportion to the certificate principal balances at the prior distribution date. This results in a payment of \$2.2 million to class A1, all of which arises from the Subsequent Recovery and reduces the aggregate certificate balance to \$97.4 million, less than the \$101.5 million collateral balance (P4).

39. Next, at (P5) the payment of the Unpaid Realized Loss Amount is made from remaining available funds of \$15 million. As required by the PSA, these funds are paid only to those classes that have suffered prior losses, from most senior to least senior.⁴ In other words, the A1 class is not entitled to any recovery because it suffered no unreimbursed losses. It did, however receive its allocated portion of the Subsequent Recovery funds at (P3), earlier in the waterfall in the form of a PDA.

40. At this point, all of the cash has been disbursed to the certificates according to the priorities set forth in the PSA. The aggregate certificate balance stands at \$82.4 million, below the collateral balance of \$101.5 million. Far from being under collateralized, the deal is substantially *over* collateralized. Consequently, the next step in column (P6) is to write up the certificates that still reflect an Unpaid Realized Loss Amount. This restores the trust to parity

³ Sim recognizes that his write-up creates the under collateralization: “From our perspective, the after distributions methodology *seems to* leave the deal under collateralized...” (emphasis added) (Dkt. # 109).

⁴ Deals treat these payments in varying ways, but application of the terms of the PSA in this particular example results in a sequential allocation.

(P8). The accumulated prior write-downs have been recovered up to the limit of Subsequent Recoveries available after payment of the PDA, in a most senior to least senior priority order. At no point was the trust ever under collateralized.

2. *The Duff & Phelps Example*

41. Finkel submitted an affidavit in support of AIG's position on the allocation of settlement proceeds. Finkel's analysis is flawed because he does not correctly model the PSA's payment terms. The tables below are similar to those shown above for the JP Morgan analysis.

CWALT 2006-OA10

Example Distribution Date Jun. 25, 2016

Collateral Balance	537.2
Total Subsequent Recovery	109.5
PDA Calculation	13.9
Remaining Cash	95.6

FINKEL "AFTER DISTRIBUTIONS" METHOD

	(D1)	(D2)	(D3)	(D4)	(D5)	(D6)	(D7)	(D8)	(D9)
	Start Bal	Accum Write Down	PDA Payment	Writedown Reversal	New Accum Write Downs	Write Up Amount	Written Up Balance	Write Down Amount	Ending Balance
1A1	98.6	6.1	2.6	6.1	0.0	0.0	96.0	0.0	96.0
1A2	0.0	64.5	0.0	8.7	55.8	17.4	17.4	14.8	2.6
1A3	0.0	24.2	0.0	0.0	24.2	0.0	0.0	0.0	0.0
2A1	108.4	6.8	2.8	6.8	0.0	0.0	105.6	0.0	105.6
2A2	0.0	72.8	0.0	10.5	62.3	20.1	20.1	17.3	2.8
2A3	0.0	27.5	0.0	0.0	27.5	0.0	0.0	0.0	0.0
3A1	86.1	5.6	2.2	5.6	0.0	0.0	83.9	0.0	83.9
3A2	0.0	60.9	0.0	8.3	52.6	16.1	16.1	13.9	2.2
3A3	0.0	22.5	0.0	0.0	22.5	0.0	0.0	0.0	0.0
4A1	244.1	15.6	6.3	15.6	0.0	0.0	237.8	0.0	237.8
4A2	0.0	178.5	0.0	34.0	144.5	56.0	56.0	49.6	6.3
4A3	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
	537.2	554.7	13.9	95.6	459.1	109.5	632.8	95.6	537.2

$(D5)=(D2)-(D4)$

$(D7)=(D1)-(D3)+(D6)$

$(D9)= (D7)-(D8)$

CORRECT METHOD PER PSA

	(P1)	(P2)	(P3)	(P4)	(P5)	(P6)	(P7)	(P8)
	Starting Certificate Balance	Accum Write Down	PDA Payment	Certificate Balance after PDA	Unpaid Realized Loss Amount	Write Up of Subs Rec	New Accum Write Down	Ending Certificate Balance
1A1	98.6	6.1	2.6	96.0	6.1	6.1	0.0	96.0
1A2	0.0	64.5	0.0	0.0	10.2	11.3	53.2	1.0
1A3	0.0	24.2	0.0	0.0	0.0	0.0	24.2	0.0
2A1	108.4	6.8	2.8	105.6	6.8	6.8	0.0	105.6
2A2	0.0	72.8	0.0	0.0	11.7	13.3	59.5	1.6
2A3	0.0	27.5	0.0	0.0	0.0	0.0	27.5	0.0
3A1	86.1	5.6	2.2	83.9	5.6	5.6	0.0	83.9
3A2	0.0	60.9	0.0	0.0	9.7	10.5	50.4	0.7
3A3	0.0	22.5	0.0	0.0	0.0	0.0	22.5	0.0
4A1	244.1	15.6	6.3	237.8	15.6	15.6	0.0	237.8
4A2	0.0	178.5	0.0	0.0	29.9	40.4	138.1	10.5
4A3	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>
	537.2	554.7	13.9	523.3	95.6	109.5	445.2	537.2

(P4)=(P1)-(P3)

(P8)=(P4)-(P5)+(P6)

42. Finkel’s calculations are not consistent with the provisions of the PSA. They also contain an additional error as a result of which his cash flows and ending class balances are incorrect.

43. Columns (D1) through (D3) correctly reflect the steps set forth in the PSA for CWALT 2006-OA10, including payment of \$13.9 million in respect of the Principal Distribution Amount.⁵ However, column (D4), which Finkel labels as “Writedown Reversal,” appears to be the step the PSA defines at 4.02 (a)(6) as payment of the Unpaid Realized Loss Amount. The funds available for this payment total \$95.6 million, the remaining cash available after payment

⁵ As was the case for Sim’s CWALT 2005-72 example, all of the funds used to pay the PDA in Finkel’s example, on a most senior to less senior basis, come from Subsequent Recoveries, thereby reducing the amount that would otherwise be available to reimburse classes including those owned by Respondents.

of the PDA. Finkel allocates this amount incorrectly, however, since it is based on the percentage of the total Subsequent Recovery by group.

44. The PSA at this section requires that the Unpaid Realized Loss Amount be paid to:

to the Group 1, Group 2, Group 3 and Group 4 Senior Certificates related to Loan Group 1, Loan Group 2, Loan Group 3 and Loan Group 4, pro rata based on the aggregate *Unpaid Realized Loss Amount* for the Senior Certificates (other than the Class X Certificates) in each such Senior Certificate Group, concurrently.⁶

45. Finkel's description of this step as "Reverse Writedown" is a misreading of the PSA, because this step in the waterfall concerns cash distributions, not write up or reversal of prior write downs. In other words, Finkel misallocates the Unpaid Realized Loss Amount across the four loan groups. The magnitude of this difference can be seen by comparing the figures in column (D4) with those in (P5).

46. Column (D6) contains a more serious error. The PSA provides for the write-up of certificate balances to account for the receipt of Subsequent Recoveries. Finkel allocates these amounts only to classes with an Applied Realized Loss after giving effect to amounts paid in respect of the Unpaid Realized Loss Amounts in the current period. A careful reading of the PSA makes clear that the mechanism for reducing such cumulative losses is the write up that occurs at this point in the waterfall, not by payments of cash. Thus, rather than writing up Class 1A2 by 17.4 million in column (D6), the correct allocation is to first write up Class 1A1 by 6.1 million and then Class 1A2 by 11.3 million (17.4 million - 6.1 million) as shown in (P6), and so on through the other loan groups.

⁶ PSA at 4.0 (a)(6), emphasis added.

47. The failure to reduce the principal balance of the certificates for the receipt of the funds at (D4) creates seeming under collateralization in (D7) that is fallacious. Instead of an aggregate certificate balance of \$632.8 at the end of the waterfall, direct application of the PSA leads to an aggregate certificate balance of \$537.2 as seen in column (D9). The PSA defines the “Certificate Balance” as follows:

Certificate Balance: With respect to any Certificate (other than the Class X and Class C Certificates) at any date, the maximum dollar amount of principal to which the Holder thereof is then entitled under this Agreement, such amount being equal to the Denomination [i.e., the original Certificate Balance] of that Certificate ...minus the sum of ... all distributions of principal previously made with respect to that Certificate...

48. It is clear that Subsequent Recoveries paid at this point in the waterfall are to be treated as principal distributions because they go specifically to offset unpaid realized losses, which are exclusively losses of principal, and not interest.

IV. Losses Due to Delay

49. The delay in the distribution of the settlement has harmed Tilden Park and Prosirir, because losses have continued to accumulate since the originally scheduled February 2016 distribution date. These subsequent losses have been allocated to the Senior classes, which increase their proportionate claim on the settlement funds, and decreases the claim of Tilden Park and Prosirir. A complete analysis of the amount of damage is beyond the scope of this affidavit, but the calculations could be performed as set forth below for one of the trusts, CWALT 2006-OA10. These are the same calculations as those performed above to refute Sim’s and Finkel’s calculations, except that the calculations below also include the actual principal and interest received by the trusts in February and August.

Distribution Date	25-Feb-16
Collateral Balance	581.1
Avail Cash before SubsRecov	5.08
Total Subsequent Recovery	109.5
OC Floor	13.9
PDA Calculation	21.7
Remaining Cash	92.9

Assuming Distribution in February 2016

	(D1)	(D2)	(D3)	(D4)	(D5)	(D6)	(D7)	(D8)	
	Starting Certificate Balance	Accum Write Down	PDA Payment	Certificate Balance after PDA	URLA Payment	Write Up of Subs Rec	Accum Write Down after Write Up	Ending Certificate Balance	
	1A1	104.9	3.4	0.8	104.1	3.4	3.4	0.0	104.1
TP	1A2	0.0	64.5	0.0	0.0	12.4	13.9	50.5	1.5
	1A3	0.0	24.2	0.0	0.0	0.0	24.2	0.0	
	2A1	116.2	3.8	7.1	109.1	3.8	3.8	0.0	109.1
TP	2A2	0.0	72.8	0.0	0.0	14.1	16.3	56.5	2.2
	2A3	0.0	27.5	0.0	0.0	0.0	27.5	0.0	
	3A1	96.6	3.1	3.3	93.3	3.1	3.1	0.0	93.3
TP	3A2	0.0	60.9	0.0	0.0	11.8	12.9	47.9	1.2
	3A3	0.0	22.5	0.0	0.0	0.0	22.5	0.0	
	4A1	271.1	8.8	10.4	260.7	8.8	8.8	0.0	260.7
	4A2	0.0	178.5	0.0	0.0	35.5	47.2	131.3	11.7
	4A3	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>
		588.9	539.7	21.7	567.2	92.9	109.5	430.2	583.8

Distribution Date	25-Aug-16
Collateral Balance	525.38
Avail Cash before SubsRecov	8.53
Total Subsequent Recovery	109.5
OC Floor	13.912563
PDA Calculation	25.7
Remaining Cash	92.358131

ASSUMING DISTRIBUTION IN AUGUST 2016

	(D1)	(D2)	(D3)	(D4)	(D5)	(D7)	(D8)	(D9)
	Starting Certificate Balance	Accum Write Down	PDA Payment	Certificate Balance after PDA	URLA Payment	Write Up of Subs Rec	Accum Write Down after Write Up	Ending Certificate Balance
	1A1	98.6	6.1	8.3	90.3	6.1	6.1	90.3
<i>TP</i>	1A2	0.0	64.5	0.0	0.0	10.2	11.2	1.0
	1A3	0.0	24.2	0.0	0.0	0.0	24.2	0.0
	2A1	108.4	6.8	2.1	106.3	6.8	6.8	106.3
<i>TP</i>	2A2	0.0	72.8	0.0	0.0	11.7	13.3	1.7
	2A3	0.0	27.5	0.0	0.0	0.0	27.5	0.0
	3A1	86.1	5.6	2.9	83.2	5.6	5.6	83.2
<i>TP</i>	3A2	0.0	60.9	0.0	0.0	9.8	10.5	0.8
	3A3	0.0	22.5	0.0	0.0	0.0	22.5	0.0
	4A1	244.1	15.6	12.4	231.6	15.6	15.6	231.6
	4A2	0.0	178.5	0.0	0.0	29.8	40.4	10.5
	4A3	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>69.7</u>	<u>0.0</u>
		537.1	554.6	25.7	511.5	95.5	109.5	525.4

The highlighted rows in the two tables above show that the delay has reduced the amount of Subsequent Recovery paid to all holders of the class of Senior Support Certificates that Tilden Park owns by almost \$7 million in this one trust alone.

SUMMARY OF SETTLEMENT PAYMENT SHORTFALL TO TILDEN PARK CAUSED BY DELAY IN DISBURSEMENT (\$ MILLIONS)

CLASS	February 2016	August 2016	Difference
1A2	12.4	10.2	-2.2
2A2	14.1	11.7	-2.4
3A2	11.8	9.8	-2.0
TOTAL	38.3	31.7	-6.6

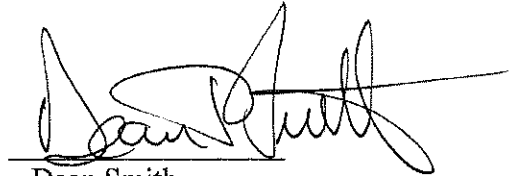
V. Conclusion

I conclude as follows, based on my experience in the structured finance markets: Investors reasonably expect the Trustee to pay the certificates in accordance with the PSAs, without modifying the definition of Principal Distribution Amount or varying the order of payments,

write-ups or write-downs of certificate balances. To alter the terms of the PSA as requested by the institutional investors would be harmful to the market for RMBS specifically and housing finance generally.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


Dean Smith

Sworn to before me this 26 day of August 2016, in Charleston, South Carolina.


Notary Public

MY COMMISSION EXPIRES OCTOBER 2, 2017

My commission expires: _____

