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

In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioner,

for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement;

-against-

WALNUT PLACE LLC; WALNUT PLACE II LLC; WALNUT PLACE III LLC; WALNUT PLACE IV LLC; WALNUT PLACE V LLC; WALNUT PLACE VI LLC; WALNUT PLACE VII LLC; WALNUT PLACE VIII LLC; WALNUT PLACE IX LLC; WALNUT PLACE X LLC; and WALNUT PLACE XI LLC (proposed intervenors),

Respondents.

Index No. 651786/2011

Kapnick, J.

AFFIRMATION OF MATTHEW D. INGBER

MATTHEW D. INGBER, an attorney admitted to practice in the courts of the State of New York, affirms under penalty of perjury as follows:

1. I am a member of the firm of Mayer Brown LLP, attorneys for Petitioner The Bank of New York Mellon ("BNY Mellon" or "Trustee"). I submit this affirmation in response to the Petition To Intervene, dated July 5, 2011 filed by eleven Walnut Place LLC entities (collectively, "Walnut Place").

2. Attached hereto as **Exhibit A** is a true and correct copy of the BNY Mellon's Verified Petition, dated June 28, 2011 (without exhibits).

3. Attached hereto as **Exhibit B** is a true and correct copy of the Court's executed Order To Show Cause, dated June 29, 2011 (the "Order").

4. Attached hereto as **Exhibit C** is a true and correct copy of a Proposed Order relating to petitions to intervene as respondents.

5. Attached hereto as **Exhibit D** is a true and correct copy of the article published in *Debtwire* on or about February 15, 2011, titled "PIMCO, BlackRock and BofA settlement could bind other CFC RMBS investors."

6. Attached hereto as **Exhibit E** is a true and correct copy of the article published in *Debtwire* on or about February 23, 2011, titled "Legacy Countrywide Mortgage Investors Rally Against Potential Settlement with Bank of America."

7. Attached hereto as **Exhibit F** is a true and correct copy of Bank of America Corporation's press release, dated December 15, 2010.

8. Attached hereto as **Exhibit G** is a true and correct copy of the Amended Complaint (without exhibits) in the action titled *Walnut Place LLC et al. v. Countrywide Home Loans, Inc. et al.*, Index No. 650497/2011 (Sup. Ct. N.Y. County).

9. Attached hereto as **Exhibit H** is a true and correct copy of the relevant excerpts of the Pooling and Servicing Agreement, dated March 1, 2006 for CWALT 2006-OA3.

10. On or about February 2, 2011, I attended a meeting with counsel for Bank of America,[1] Countrywide and Walnut Place. The meeting was scheduled because, among other reasons, Walnut Place had requested that BNY Mellon, as trustee, commence a lawsuit against Countrywide and Bank of America arising out of Countrywide's alleged breaches of representations and warranties in the agreements governing the trusts in which Walnut Place had holdings.

11. During that meeting, counsel for Walnut Place was informed that the Trustee, Bank of America, and Countrywide were actively negotiating a settlement that could resolve the issues raised by Walnut Place in a way that would be reasonable from the Trustee's perspective. Counsel for Walnut Place was offered the opportunity to be apprised on a current and ongoing basis about settlement discussions, and, subject to the execution of a confidentiality agreement, to receive confidential information that the parties were evaluating in connection with the settlement. Counsel for Walnut Place was invited to provide input on settlement discussions, and was asked to delay the filing of any lawsuit temporarily so that settlement negotiations could run their course. Rather than participate in settlement discussions as outlined in the February 2, 2011 meeting, Walnut Place instead filed a lawsuit on February 23, 2011 asserting claims against Countrywide, Bank of America and BNY Mellon (as nominal defendant) that are intended to be released by the Settlement.

Dated: July 11, 2011
New York, New York

Matthew D. Ingber

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in BNY Mellon's Verified Petition, dated June 28, 2011.

EXHIBIT A

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

In the matter of the application of THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), Petitioner, for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement.	Index No. 651786/2011 **VERIFIED PETITION**

Petitioner, The Bank of New York Mellon ("BNY Mellon" or "Trustee"), solely in its capacity as trustee of the five hundred and thirty (530) residential mortgage-securitization trusts listed on Exhibit A hereto (the "Trusts"), by its attorneys Mayer Brown LLP, for its verified petition pursuant to CPLR § 7701, alleges as follows:

INTRODUCTION

1. The Trustee has exercised its good faith judgment that a settlement of potential claims belonging to the Trusts is reasonable. This settlement requires a payment of $8.5 billion into the Trusts, and the implementation of meaningful mortgage loan servicing improvements. It takes into account, among other things, the legal and factual defenses to the Trustee's claims, the extraordinary burden and cost of a litigation that could last many years, the inability of the prospective defendant directly liable on the claims to pay a judgment in the amount of the settlement, and the strength of corporate separateness arguments that could shield that entity's parent company from having to satisfy any judgment. This proceeding is commenced by the Trustee for the purpose of seeking judicial instructions and approval of that settlement.

2. The Trusts were established during the period 2004-2008 through a process known as securitization. In the typical residential mortgage-backed securitization, a loan originator, or "Seller," sold portfolios of loans secured by mortgages on residential properties ("Mortgage Loans") to another entity, known as a "Depositor." The Depositor conveyed the Mortgage Loans to BNY Mellon, as Trustee, to hold in trust. Certificates or notes evidencing various categories of ownership interests in the Trusts were then sold through an underwriter to investors. These investors are called "Certificateholders" or "Noteholders" (referred to herein as "Certificateholders" or "Trust Beneficiaries"). A "Master Servicer" was charged with responsibility for, among other things, collecting debt service payments on the Mortgage Loans, taking any necessary enforcement action against borrowers, and distributing payments on a monthly basis to the Trustee for distribution to the Certificateholders.

3. All but seventeen of the Trusts are evidenced by separate contracts known as Pooling and Servicing Agreements (the "PSAs") under which BNY Mellon is the trustee. The remainder are evidenced by indentures and related Sale and Servicing Agreements ("SSAs") under which BNY Mellon is the indenture trustee. The PSAs, indentures, and SSAs are collectively referred to herein as the "Governing Agreements." They are governed by New York law.

4. Although the Governing Agreements for each of these securitizations are separate agreements that were individually negotiated and, in some instances, display degrees of variation from one another, the terms that are pertinent to the subject matter of the Petition are substantively similar. The Governing Agreements each contain a series of representations and warranties made by each Seller for the benefit of the Trust. These include representations that the Mortgage Loans were underwritten in all material respects in accordance with certain

underwriting guidelines; that the origination, underwriting and collection practices of the Seller and Master Servicer have been legal, prudent and customary in the mortgage lending and servicing business; that the Mortgage Loans conform in all material respects to their descriptions in the investor disclosure documents; and that the Mortgage Loans were originated in accordance with all applicable laws.

5. The Governing Agreements also impose servicing obligations on the Master Servicer, requiring, among other things, that the Master Servicer service and administer the Mortgage Loans in accordance with the terms of the Governing Agreements and the customary and usual standards of practice of prudent mortgage loan servicers.

6. A substantial dispute has arisen concerning the Sellers' alleged breaches of representations and warranties in the Governing Agreements, and the Master Servicer's alleged violations of prudent servicing obligations.

7. These allegations were made beginning in June 2010 by a group of Certificateholders that includes some of the world's largest and most sophisticated investors. This group of investors (the "Institutional Investors") included, or has grown to include, Blackrock Financial Management, Inc. and its affiliates, Pacific Investment Management Company LLC, Federal Home Loan Mortgage Corporation ("Freddie Mac"), Goldman Sachs Asset Management L.P., Maiden Lane LLC, Maiden Lane II LLC, Maiden Lane III LLC,[1] Kore Advisors, L.P., Neuberger Berman Europe Limited, Western Asset Management Company, Metropolitan Life Insurance Company, Trust Company of the West and the affiliated companies controlled by The TCW Group, Inc., Teachers Insurance and Annuity Association of America, Invesco Advisers, Inc., Thrivent Financial for Lutherans, Landesbank Baden-Wuerttemberg and

[1] The Maiden Lane entities were formed by the Federal Reserve Bank of New York, pursuant to Section 13(3) of the Federal Reserve Act, to support lending to financial institutions severely affected by the 2007-2008 economic crisis.

LBBW Asset Management (Ireland) PLC, Dublin, ING Capital LLC, ING Bank fsb, ING Investment Management LLC, New York Life Investment Management LLC, certain Nationwide Insurance entities, certain AEGON entities, Federal Home Loan Bank of Atlanta, Bayerische Landesbank, and Prudential Investment Management, Inc.

8. Collectively, the Institutional Investors' current holdings are in the tens of billions of dollars.

9. The Sellers in each of the Trusts are any or all of Countrywide Home Loans, Inc. ("CHL"), Park Granada LLC, Park Monaco, Inc., Park Sienna LLC and Countrywide LFT LLC. The Master Servicer is BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, LP ("BAC HLS"). For purposes of this Petition, CHL and its parent, Countrywide Financial Corporation ("CFC"), will be referred to collectively as "Countrywide." BAC HLS and its parent, Bank of America Corporation ("BAC"), will be referred to collectively as "Bank of America." The Institutional Investors have alleged that BAC is liable for the obligations of Countrywide with respect to the alleged breaches of the Governing Agreements.[2]

10. Since November 2010, the Institutional Investors, with the participation of the Trustee, have engaged in extensive, arm's-length negotiations with Countrywide and Bank of America in an attempt to reach a settlement for the benefit of the Trusts. These negotiations sought to avoid the enormous costs of preparing for and pursuing claims in litigation that would involve complex issues of law and fact and a review of files for 530 Trusts and hundreds of thousands of loans. The negotiations also sought to avoid the risks and costs of waiting for an uncertain – and perhaps unattainable and unrecoverable – judgment many years from now. The

[2] BAC acquired Countrywide in July 2008, months after the last of the mortgage-securitizations had closed and the last of the representations and warranties were made. At the present time, Countrywide is maintained as a separate subsidiary of Bank of America and appears to have limited remaining assets.

negotiations have culminated in a request from the Institutional Investors that the Trustee enter into a settlement (the "Settlement"), memorialized in a settlement agreement, dated June 28, 2011 ("Settlement Agreement"), that the Trustee, in the exercise of its judgment, views as advantageous to and in the best interests of the Trusts.

11. The Settlement Agreement is attached to the Petition as Exhibit B. It will be described more fully in paragraphs 37-47 below, but, in short, it requires Bank of America and/or Countrywide to pay $8.5 billion ("Settlement Payment") into the Trusts, allocated pursuant to an agreed-upon methodology that accounts for past and expected future losses associated with the Mortgage Loans in each Trust. It also requires BAC HLS to implement, among other things, servicing improvements that are intended to provide for servicing performance by BAC HLS that is at or above industry standards and will provide a mechanism for BAC HLS to transfer high-risk loans to subservicers for more individualized attention.[3]

12. The Settlement was negotiated by sophisticated parties and recognizes the seriousness of the allegations; the number of Trusts and loans at issue; the substantial defenses to the potential claims; the inability of the Trustee to recover from Countrywide a judgment that equals, exceeds or even approaches the Settlement Payment; and the strength of the corporate separateness arguments that could shield Bank of America from having to satisfy the obligations of Countrywide. It benefits far more Trust Beneficiaries now – given the substantial Settlement Payment and the nature of the servicing improvements – than could litigation involving separate trusts and separate groups of Certificateholders over the course of several years. It benefits all similarly situated Certificateholders equally. And it provides a benefit even to those

[3] Various Institutional Investors, Countrywide, Bank of America and the Trustee also entered into a separate Institutional Investor Agreement, dated June 28, 2011, which contains several provisions that memorialize their support of the Settlement. That Agreement is attached hereto as Exhibit C.

Certificateholders who have not presented, or would have difficulty presenting, any claim under the Governing Agreements.

13. Nonetheless, the Trustee recognizes the potential that some Certificateholders may disagree with the Trustee's judgment that the Settlement is reasonable. Recent news articles have described objections by a group of Certificateholders to rumored settlement discussions among the Institutional Investors, Countrywide, Bank of America and the Trustee. There are also reports that a group of Certificateholders has considered taking action against BNY Mellon for its participation in the Settlement process.

14. The Trustee also recognizes that different groups of Certificateholders may wish to pursue remedies for the alleged breaches in different ways, creating the potential for conflicts among Certificateholders and placing the Trustee squarely in the middle of those conflicts. By way of example, earlier this year, a group of Certificateholders sought to direct the Trustee to commence an action against Countrywide and Bank of America concerning two of the Trusts. That same group then filed an action against CHL, BAC and BNY Mellon (as nominal defendant) in this Court alleging, as to those two trusts, breaches of representations and warranties that are nearly identical to the breaches alleged by the Institutional Investors. *See Walnut Place LLC et al. v. Countrywide Home Loans, Inc. et al.*, Index No. 650497/2011 (Sup. Ct., N.Y. County). In early June 2011, a different Certificateholder commenced an action against BNY Mellon, as Trustee, for an accounting relating to two separate trusts that are part of the Settlement. *See Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011 (N.Y. Sup. Ct. N.Y. County). And on June 8, 2011, a group of Certificateholders sought to direct the Trustee to commence an action against, among others, Countrywide and BAC HLS for alleged loan-servicing breaches involving another overlapping trust, after having

issued a notice of an Event of Default under the Governing Agreements that is substantially similar to the notice of non performance described in paragraphs 28-34 below.

15. Absent instructions from the Court, the Trustee will continue to be subject to conflicting demands from different Certificateholders relating to the same Trusts, and to requests from different Certificateholders to pursue claims that are intended to be released by the Settlement Agreement. The Trustee also may be subject to claims by individual Certificateholders who believe that the Settlement, though benefiting thousands of Trust Beneficiaries now and in the future, may not be in their individual best interests.

16. Given these very real and substantial conflicts, the magnitude of the Settlement, the number of Trusts and loans at issue, and the number of parties whose interests may be impacted by the Settlement, the Trustee files this Petition to give Certificateholders an opportunity to be heard in opposition or in support of the Settlement, and to seek an order, among other things, (i) approving the Settlement, and (ii) declaring that the Settlement is binding on all Trust Beneficiaries and their successors and assigns.

PARTIES AND PROPOSED NOTICE PROGRAM

17. The Bank of New York Mellon is a bank organized under the laws of the State of New York having its principal place of business at One Wall Street, New York, New York 10286.

18. There currently are no adverse parties in this proceeding. To the extent that certain Certificateholders or other interested parties may wish to be heard on the subject of the Settlement or the judicial instructions sought through this Petition, those parties may become adverse.

19. In conjunction with the filing of this Verified Petition, the Trustee has sought an order from the Court ("Order to Show Cause") approving a notice program that includes notice

to all "Potentially Interested Persons," as that term is defined in paragraph 4 of the Affirmation of Matthew D. Ingber, dated June 28, 2011 ("Ingber Affirmation"), attached to the Order to Show Cause. This notice program includes:

- Mailing a copy of the notice that is attached to the Ingber Affirmation as Exhibit B ("Notice"), along with the Verified Petition, the Order to Show Cause, and the accompanying Memorandum of Law, by first class, registered mail to Potentially Interested Persons for whom the Trustee has addresses;

- Providing the Notice to the Depository Trust Company ("DTC"), which will post such Notice in accordance with DTC's established procedures;

- Publishing the Notice in *The Wall Street Journal (Global)*, *Financial Times Worldwide*, *The New York Times*, *The Times (of London)*, *USA Today, Investors Business Daily,* and *The Economist Worldwide Edition* for at least three (3) business days in each publication;

- Publishing translated versions of the Notice in *Les Echos* (France), *Die Welt* (Germany), *Il Sole 24 Ore* (Italy), *Tages Anzeiger* (Switzerland), *NRC Handelsblad* (Netherlands), *The Nikkei* (Japan), *Straits Times* (Singapore), *New Straits Times* (Malaysia), *China Business News* (China), and *Korea Economic Daily* (South Korea) for at least three (3) business days in each publication;

- Publishing the Notice to the following media distribution wire services: *PRNewswire*, *Business Wire*, and *GlobeNewswire*;

- Establishing a website, www.cwrmbssettlement.com, that will post a copy of the Notice, the Verified Petition, the Order to Show Cause, and the accompanying Memorandum of Law, and all papers subsequently filed in connection with this Article 77 proceeding (the "Article 77 Proceeding");

- Creating a hyperlink on BNY Mellon's investor reporting website, https://gctinvestorreporting.bnymellon.com/Home.jsp, to www.cwrmbssettlement. com, for information about the Settlement and the Article 77 Proceeding; and

- Seeking to purchase banner advertisements announcing the Settlement, with a hyperlink to www.cwrmbssettlement.com, on the following websites: wsj.com, MarketWatch.com, Barrons.com, AllthingsD.com, IHT.com, SmartMoney.com, investors.com, ft.com, reuters.com, economist.com, Globalcustody.net, Assetman.net, FundServices.net, and yahoo.com.

The notice program is more fully described in paragraphs 4-5 of the Ingber Affirmation.

JURISDICTION, VENUE AND GOVERNING LAW

20. This Court has jurisdiction pursuant to CPLR Articles 77 and 4 to entertain a special proceeding to determine matters relating to express trusts, such as the Trusts that are the subject matter of this proceeding.

21. The law of the State of New York governs the rights and obligations of the parties to the Governing Agreements, including the Trustee. The Trustee is domiciled, and has its principal place of business, in New York.

22. Venue is proper in this Court.

ALLEGED BREACHES OF THE GOVERNING AGREEMENTS

23. Each Trust is governed by an individual contract – the Governing Agreement – that sets forth the rights and obligations of the parties and contains representations and warranties of the Sellers, the Master Servicer and the Depositor.

24. The representations and warranties of the Seller – Countrywide – are at the core of this matter. Countrywide represented and warranted, among other things, that:

- "The origination, underwriting and collection practices used by Countrywide with respect to each Mortgage Loan have been in all respects legal, prudent and customary in the mortgage lending and servicing business."
- "Each Mortgage Loan was underwritten in all material respects in accordance with the underwriting guidelines described in the Prospectus Supplement."
- "The information set forth on [the Mortgage Loan Schedule] with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date."
- "No Initial Mortgage Loan had a Loan-to-Value Ratio at origination in excess of [...] %."
- "A lender's policy of title insurance . . . or a commitment (binder) to issue the same was effective on the date of the origination of each Mortgage Loan, each such policy is valid and remains in full force and effect, and each such policy was issued by a title insurer qualified to do business in the jurisdiction where the Mortgaged Property is located . . . ."

- "[P]rior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser . . . ."
- "The Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement."
- "The Mortgage Loans were selected from among the outstanding adjustable-rate one- to four-family mortgage loans in the portfolios of the Sellers at the Closing Date as to which the representations and warranties [as to the Mortgage Loans] can be made. Such selection was not made in a manner intended to adversely affect the interests of [the Certificateholders]."

25. Countrywide's representations and warranties are, in all material respects, similar across all of the Governing Agreements.

26. The remedy for a breach of a representation or warranty is contained in Section 2.03 of the Governing Agreements. It provides that, upon discovery and notice of a breach of a representation and warranty with respect to a Mortgage Loan that materially and adversely affects the interests of the Certificateholders, the Seller shall cure the breach within ninety days or repurchase the affected Mortgage Loan at its "Purchase Price," which is equal to the unpaid principal balance of the affected Mortgage Loan:

> Upon discovery by any of the parties hereto of a breach of a representation or warranty with respect to a Mortgage Loan made pursuant to Section 2.03(a) . . . that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties. Each Seller hereby covenants that within 90 days of the earlier of its discovery or its receipt of written notice from any party of the breach of any representation and warranty with respect to a Mortgage Loan sold by it pursuant to Section 2.03(a) . . . which materially and adversely affects the interests of the Certificateholders in the Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not cured shall . . . repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price in the manner set forth below . . . .

27. Beginning in June 2010, the Institutional Investors asserted in a letter to the Trustee that Countrywide sold a large number of Mortgage Loans into the Trusts that failed to

comply with certain representations and warranties, in breach of the Governing Agreements. This assertion was based in part on the alleged excessive early default and foreclosure rates for the Mortgage Loans, the settlements reached by Countrywide with various state Attorneys General, and publicly disclosed emails from Countrywide officials that the Institutional Investors viewed as evidence of breaches of representations and warranties. The Institutional Investors alleged that large numbers of Mortgage Loans were therefore subject to repurchase pursuant to Section 2.03 of the Governing Agreements.

28. On October 18, 2010, the Institutional Investors asserted in a separate letter – a notice of non-performance pursuant to Section 7.01(ii) of the PSA ("Notice of Non-Performance") – that BAC HLS, as Master Servicer, also breached several provisions of the PSAs. The allegations were wide-ranging and detailed.

29. The Institutional Investors alleged, for example, that BAC HLS violated Sections 2.03(c) of the Governing Agreements by failing and refusing to notify the Trustee and others of Countrywide's breaches of representations and warranties.

30. The Institutional Investors alleged that BAC HLS failed to meet its obligations under Section 3.01 of the Governing Agreements to "represent and protect the interests of the Trust Fund in the same manner as it protects its own interests in mortgage loans in its own portfolio." According to the Notice of Non-Performance, BAC HLS breached Section 3.01 by: (i) failing to maintain accurate and adequate loan and collateral files in a manner consistent with prudent mortgage servicing standards; (ii) failing to demand that the Sellers cure deficiencies in mortgage records; (iii) incurring avoidable and unnecessary servicing fees as a result of its allegedly deficient record-keeping; and (iv) overcharging by as much as 100% the costs for maintenance, inspection and other services with regard to defaulted Mortgage Loans.

31. Citing violations of Section 3.11(a)'s requirement that the Master Servicer "use reasonable efforts to foreclose upon" certain eligible properties, the Institutional Investors asserted that BAC HLS continued to keep defaulted Mortgage Loans on its books, rather than foreclose or liquidate them, in order to wrongfully maximize its fees.

32. The Institutional Investors further alleged that BAC HLS imposed on the Trusts and the Certificateholders the costs of curing allegedly predatory loans, in violation of Section 2.03(c)'s requirement that Sellers bear the costs to "cure such breach in all material respects."

33. And citing Section 3.14 in support of the assertion that the Master Servicer is entitled to recover only "customary, reasonable and necessary 'out of pocket' costs and expenses," the Notice of Non-Performance alleged that BAC HLS improperly used affiliated vendors to maximize its servicing income.

34. Each of these alleged breaches, according to the Institutional Investors, materially affected their rights under the Trusts. They warned that a failure to cure would constitute an Event of Default under the Governing Agreements.

35. Rather than commencing litigation against Countrywide and BAC HLS, and mindful of the complexity, delay and enormous costs associated with litigation that could require a loan-by-loan analysis of hundreds of thousands of loans and present significant legal and factual hurdles, in November 2010, the Institutional Investors, with participation by the Trustee, initiated settlement discussions with Countrywide and Bank of America. Those discussions continued for seven months, involved dozens of face-to-face meetings and conference calls, and involved extensive dialogue among the parties concerning the merits of the Institutional Investors' allegations and Countrywide's defenses, and extensive analysis of the Trustee's likely recovery if it commenced – and prevailed in – litigation on behalf of the Trusts.

36. It was out of those discussions that the Institutional Investors, Countrywide, Bank of America, and the Trustee have agreed to the terms of the Settlement, and that the Institutional Investors have requested that the Trustee, on behalf of the Trusts, enter into the Settlement. *See* Exhibit D.

THE SETTLEMENT

37. There are two principal components to the Settlement – the Settlement Payment and the servicing improvements. They reflect the negotiated compromise among the Institutional Investors, Bank of America, Countrywide and the Trustee of (i) the potential claims by the Trustee against Countrywide, pursuant to Section 2.03 of the Governing Agreements, that Countrywide repurchase loans as to which Countrywide allegedly has breached its representations and warranties, and (ii) the potential claims by the Trustee against BAC HLS that BAC HLS violated prudent servicing obligations under various provisions of the Governing Agreements.

38. The Settlement Payment is $8.5 billion and will be allocated among the Trusts in accordance with an agreed-upon allocation formula. An independent financial advisor ("Expert"), retained by the Trustee, will perform any calculations required in connection with the allocation formula, and those allocation calculations will be treated as final and accepted by the parties, absent bad faith or manifest error.

39. The allocations will be driven by the amount of net losses in each of the Trusts:

- The Expert will calculate the amount of net losses for each Trust (or separate loan group within each Trust) that have been or are estimated to be borne by that Trust from its inception date to its expected date of termination. That amount will be expressed as a percentage of the sum of the net losses that are estimated to be borne by *all* Trusts from their inception dates to their expected dates of termination (the "Net Loss Percentage");

- The Expert will calculate the "Allocable Share" of the Settlement Payment for each Trust by multiplying the amount of the Settlement Payment by the Net Loss Percentage for each Trust;

- If applicable, the Expert will calculate the portion of the Allocable Share that relates to principal-only certificates or notes, and the portion of the Allocable Share that relates to all other certificates or notes; and

- The Expert will calculate the Allocable Share within ninety days of the Approval Date (as defined in the Settlement Agreement).

40. The Expert has independently developed a methodology for determining existing and estimated future net losses. A narrative of the Expert's methodology is attached hereto as Exhibit E.

41. Upon completion of the Expert's calculation of Allocable Shares, each Allocable Share will be remitted to the applicable Trust. The Trusts, in turn, will distribute the Allocable Share to Certificateholders in accordance with the provisions of the Governing Agreements, as described more fully in the Settlement Agreement.

42. As part of the servicing component of the Settlement, BAC HLS has agreed to implement various servicing improvements and remedies within specified time periods set forth in the Settlement Agreement. They include, among others, the following:

- Within thirty days after the execution of the Settlement Agreement, the selection by the Institutional Investors and BAC HLS of an agreed list of 8-10 qualified subservicers to service high-risk loans. The agreed list shall be submitted to the Trustee, and the Trustee (in reliance upon an expert) may, within forty-five days of receipt of the agreed list, (i) object and thereby remove any of the selected subservicers from the agreed list, or (ii) limit the number of loans the subservicer may service at any one time. In the absence of an objection by the Trustee, all of the subservicers on the agreed list shall be deemed to be approved; if the Trustee objects to one or more subservicers, all of the subservicers on the agreed list as to which there has been no objection shall be deemed approved. The subservicers approved, or deemed approved, by the Trustee shall make up the "approved list" of subservicers;

- Beginning on the date of the Trustee's approval (or deemed approval) of at least four (4) subservicers on the agreed list, BAC HLS's negotiation of a

subservicing contract with at least one subservicer per quarter, and the synchronization of its servicing system with that of the subservicer;

- BAC HLS's agreement to initiate, after at least one subservicer is operational, the transfer of high-risk loans, selected through a priority mechanism outlined in the Settlement Agreement, to at least one subservicer per quarter (subject to a cap of 30,000 loans at any one time with any given subservicer); and

- Beginning on the date of the Trustee's approval (or deemed approval) of at least four (4) subservicers on the agreed list, and subject to the specific conditions and limitations set forth in the Settlement Agreement, BAC HLS may, at its option, sell the servicing rights on Mortgage Loans otherwise eligible for subservicing to any subservicer on the approved list.

43. The servicing component of the Settlement Agreement also applies to loans beyond those transferred to subservicing. For all loans not in subservicing, BAC HLS has agreed to, among other things, beginning on the later of five months after the Signing Date (as defined in the Settlement Agreement) or the Approval Date:

- On a monthly basis, benchmark its servicing performance against specific industry standards ("Industry Standards") set forth in the Settlement Agreement;

- Send to the Trustee on a monthly basis statistics comparing BAC HLS's performance to the Industry Standards (the "Monthly Statement"); and

- If its performance fails to meet the Industry Standards, calculate and include in its Monthly Statement a master servicing fee adjustment payable by it to the Trust, which payment would be satisfied by deducting the master servicing fee adjustment from unreimbursed advances due to BAC HLS (except that for a limited number of Trusts, BAC HLS shall wire such adjustment to the Trust) as set forth in the Settlement Agreement; provided that BAC HLS will not be liable for its failure to meet the Industry Standards until such time as eight (8) subservicers have been approved or deemed approved by the Trustee.

44. The Settlement Agreement also contains loss mitigation provisions that apply to all loans and take effect as of the Signing Date. They include, among other things, factors for BAC HLS and all subservicers to consider in deciding whether to modify a loan or to apply any other loss mitigation strategies. When BAC HLS or the applicable subservicer, in implementing a modification or other loss mitigation strategy, considers the factors set forth in the loss

mitigation improvements portion of the Settlement Agreement, or acts in accordance with policies or practices that BAC HLS is then applying to its or any of its affiliates' "held for investment" portfolios, BAC HLS will be deemed to be in compliance with the Governing Agreements.

45. The Settlement Agreement further requires – for all loans – reporting and auditing for service compliance. It mandates that, beginning on the Approval Date, BAC HLS report monthly to the Trustee concerning its compliance with the servicing improvements required by the Settlement Agreement, and pay for an annual attestation report to be completed by a qualified audit firm (whose selection is subject to the Trustee's objection based on criteria set forth in the Settlement Agreement) no later than February 15 of each year that any Trust holds Mortgage Loans. The Settlement Agreement requires the attestation report to be distributed to all Certificateholders in the Trusts as part of the Trustee's statement for April each year.

46. Finally, the Settlement Agreement includes agreed-upon procedures to cure certain document deficiencies in the loan files. In particular, BAC HLS has agreed to prepare and submit to the Trustee, no later than six weeks after the Signing Date, a schedule of loans with specified document deficiencies, and to report to the Trustee, on a monthly basis, the status of such loans until all such deficiencies have been cured. The Trustee, in turn, has agreed to determine whether reasonable evidence exists that a particular document deficiency has, in fact, been cured by BAC HLS. Without such evidence, and after consultation with BAC HLS, the Trustee shall direct BAC HLS to issue a revised monthly report.

47. All of these servicing improvements are designed to ensure that servicing performance by BAC HLS is at or above industry standards and to provide a mechanism for

BAC HLS to identify high-risk loans, to transfer them to subservicers to provide more individualized attention, and to help avoid or manage defaults.

THE SETTLEMENT SHOULD BE APPROVED

I. The Trustee Has the Ability to Commence and Settle Lawsuits on Behalf of the Trusts

48. The Governing Agreements grant to the Trustee the right to enforce the Seller's repurchase obligations and the Master Servicer's servicing obligations, and to settle any claims against those parties to the Governing Agreements.

49. Pursuant to Section 2.01(b) of the PSAs, for example, each Depositor assigned to the Trustee the Depositor's right to require the Seller to cure any breach of the Seller's representations and warranties or require a repurchase of a Mortgage Loan: "[T]he Depositor sells, transfers, assigns, sets over and otherwise conveys to the Trustee for the benefit of the Certificateholders, without recourse, *all the right, title and interest of the Depositor* in and to the Trust Fund together with the Depositor's right to require each Seller to cure any breach of a representation or warranty . . . or to repurchase or substitute for an affected Mortgage Loan . . . ." (emphasis added).

50. In Trusts governed by indentures, the Mortgage Loans are conveyed to the applicable trust itself, which is a separate legal entity. The Trust, in turn, pledges to the Trustee "all present and future claims, demands, causes and choses in action in respect of [the Mortgage Loans]."

51. The Trustee's powers under the indentures are broad. According to Section 5.03(6) of the Indentures, "*[a]ll rights of action* and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Indenture Trustee without possession of any of the Notes or the production thereof in any trial or other Proceedings relative thereto, and any

such action or proceedings instituted by the Indenture Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Indenture Trustee . . . shall be for the ratable benefit of the Holders of the Notes . . . ." (emphasis added). Pursuant to Section 2.01(b) of the PSAs and 3.03 of the SSAs, these causes of action can include, among others, claims against the Seller for breach of representations and warranties and against the Master Servicer for violations of servicing obligations.

52. Other contractual provisions support the Trustee's authority to pursue remedies for breaches of the Governing Agreements. Pursuant to Section 2.04 of the PSAs, each "Depositor hereby assigns, transfers and conveys to the Trustee *all of its rights* with respect to the Mortgage Loans including, without limitation, the representations and warranties of each Seller made pursuant to Section 2.03(a) hereof, together with all rights of the Depositor to require a Seller to cure any breach thereof or to repurchase or substitute for any affected Mortgage Loan . . . ." (emphasis added).

53. Section 3.12 of the indentures provides that "the Indenture Trustee, as pledgee of the Mortgage Loans, has the benefit of the representations and warranties made by the Seller in the Sale and Servicing Agreement concerning the Seller and the Mortgage Loans to the same extent as though such representations and warranties were made directly to the Indenture Trustee."

54. Pursuant to Section 3.03 of the PSAs, "[t]he Depositor may, but is not obligated to, enforce the obligations of the Master Servicer under this Agreement . . . ."

55. And under Section 2.03(a) of the PSAs and the SSAs, each Seller makes representations and warranties to the Trustee (among others), which then has the right to be

reimbursed promptly by the applicable Seller for any expense reasonably incurred by the Trustee "in respect of enforcing the remedies for such breach" – a reference to the Trustee's right to pursue claims against the Seller for breaches of representations and warranties.

56. With the ability to commence litigation comes the ability to settle litigation, and, in part for that reason, the Depositor's assignment to the Trustee of all "right, title and interest" to the Mortgage Loans is authorization under the PSAs for the Trustee to settle claims that it has the authority to assert.

57. Similarly, the Trust's pledge in favor of BNY Mellon of all of its "right, title and interest" to the Mortgage Loans is authorization under the indentures for BNY Mellon to take similar action for the benefit of the Trusts.

II. The Settlement is Advantageous to the Trusts and, at the Very Least, Reasonable

58. Because the decision to enter into the Settlement was made in good faith and is not outside the bounds of reasonableness – the standard of review that applies in this Article 77 Proceeding – the Settlement should be approved. Indeed, by entering into the Settlement on behalf of the Trusts, the Trustee has made an independent, good faith judgment that the Settlement is advantageous to the Trusts. At the very least, in the Trustee's judgment, it is a reasonable compromise of the Trustee's claims.

59. The Settlement was negotiated at arm's-length by sophisticated parties over an extended period of time. In the Trustee's judgment, it is a more advantageous result for the Trusts and the Trust Beneficiaries than embarking on a litigation that will be complex and hard-fought, with no certainty of obtaining a judgment in the Trustee's favor – much less a judgment exceeding the Settlement Payment. It is a settlement that takes into account the seriousness of the allegations, yet acknowledges the risk that Countrywide's key defenses (see paragraphs 68-77 below) might prevail and that the Trustee, even if it could obtain a judgment exceeding the

Settlement Payment, may not be able to recover the judgment from Countrywide or Bank of America (see paragraphs 78-92 below). It is a Settlement that mandates servicing improvements that will require specialized attention to high-risk loans and will facilitate increased focus, and therefore improved servicing, of all other loans. And it is a Settlement that, in the Trustee's judgment, benefits far more Trust Beneficiaries today than would litigation over the next several years of separate claims, on behalf of separate groups of Trust Beneficiaries, concerning individual Trusts.

60. The Trustee recognizes the difficulty in determining, with precision, the amount of any potential judgment if the Trustee instead were to proceed with and prevail in litigation against Countrywide. It also recognizes the difficulty in calculating precisely what value should be ascribed, for settlement purposes, to Countrywide's various defenses, the avoidance of lengthy, costly and uncertain litigation, and the benefit to the Trusts of receiving the Settlement Payment and servicing improvements described in the Settlement Agreement instead of an uncertain amount, if any, several years from now.

61. Because there is no precise formula for determining the proper terms of a settlement in a case of this magnitude, the Trustee has exercised its judgment – in good faith and in a manner that it believes is in the best interests of the Trusts. The Trustee has, among other things, weighed the legal and factual assertions of the Institutional Investors, Countrywide and Bank of America; considered and analyzed the competing methodologies for arriving at the Settlement Payment; considered and analyzed the servicing procedures set forth in the Settlement Agreement; and evaluated the reasonableness of the Settlement by, among other things, retaining and receiving opinions from independent experts in residential mortgage-backed securities and commercial finance, mortgage servicing, accounting and valuation. In addition, it has been

guided by counsel on the legal issues – including the viability of Countrywide's defenses and Bank of America's corporate separateness arguments – and has received separate opinions from experts in corporate and contract law on these issues.

62. As a result of this process, it is the Trustee's judgment that the Settlement, consisting of a payment of $8.5 billion and improved loan servicing, is reasonable, is in the best interests of the Trusts and Trust Beneficiaries, and outweighs the alternative of protracted litigation with no guarantee of success. At the very least, by entering into the Settlement, the Trustee is not acting in bad faith or outside the bounds of reasonableness.

A. The Settlement Payment

1. The Settlement Payment Is Reasonable

63. The Settlement Payment is $8.5 billion and will be paid by Countrywide and/or Bank of America. In the Trustee's judgment, the Trustee could have accepted this Settlement Payment as reasonable based principally on the fact that Countrywide alone would be unable to pay a future judgment in an amount exceeding – or even approaching – the Settlement Payment (see paragraphs 78-81). In other words, if the Trustee commenced litigation, overcame an inevitable motion to dismiss, proceeded through discovery relating to 530 trusts and hundreds of thousands of loans, survived a motion for summary judgment, proceeded to trial, overcame Countrywide's various defenses, and obtained a judgment against Countrywide of more than $8.5 billion, the Trusts and the Certificateholders would be far *worse* off than if the Trustee settles today. In the Trustee's judgment, the analysis could end there.

64. Nonetheless, the Trustee, with the assistance of financial experts, analyzed the various ways in which a settlement payment could be calculated, and the amount of a settlement payment that the Trustee would view as reasonable. Before agreeing to the Settlement Payment, the Trustee observed and participated in extensive discussions in which the Institutional

Investors, Countrywide and Bank of America offered quantitative and qualitative analysis of a possible settlement payment, taking into account several metrics to calculate past and expected future losses for the Mortgage Loans.

65. As part of that process, the Trustee and its financial experts considered and analyzed, in depth, the competing calculation methodologies of the Institutional Investors and Countrywide/Bank of America, and the assumptions underlying those methodologies. The Trustee and its financial experts tested these assumptions, analyzed how the Institutional Investors and Bank of America/Countrywide calculated actual and projected losses in the Trusts – a starting point for deriving a proposed settlement payment – and considered how the proposed "haircuts," or discounts, were calculated by the Institutional Investors and Countrywide/Bank of America.

66. Taking into account its own calculations of actual and projected losses, and applying its own model, the Trustee's financial experts calculated a dollar range that could serve as a starting point for assessing the reasonableness of a settlement payment, to which the Trustee would be entitled to apply discounts based on the viability of Countrywide's and Bank of America's legal defenses. The Trustee's financial experts had no prior knowledge of the amount of the Settlement Payment before issuing the opinion.

67. The Trustee's financial experts have opined that a settlement payment in the range of $8.8 billion to $11 billion would be reasonable, *without discounting for the legal defenses to the Trustee's claims*. A Settlement Payment of $8.5 billion is viewed by the Trustee as falling within a small variance of that pre-discounted settlement range.

2. Countrywide and BAC HLS May Have Viable Defenses to Any Potential Claims

68. Countrywide and BAC HLS may have a number of viable legal and factual defenses to potential repurchase and servicing claims under the Governing Agreements. One in particular, highlighted below, relates to the element of causation that Countrywide contends is essential to any repurchase claim under Section 2.03 of the Governing Agreements. The existence and viability of this defense is viewed by the Trustee as a compelling reason to discount the financial experts' settlement range, and provides an additional, equally compelling reason to enter into the Settlement.

69. Section 2.03 of the Governing Agreements requires the Trustee and others, upon discovery of a breach of a representation or warranty "that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan," to give prompt notice to the other parties, to allow the Seller to cure the breach, and, absent a cure, to enforce the Seller's obligation to repurchase the Mortgage Loan.

70. Based on this language, Countrywide has taken the position that if the Trustee brought an action to enforce Countrywide's repurchase obligations under Section 2.03 of the Governing Agreements, the Trustee would need to prove, on a loan-by-loan basis: (i) that Countrywide breached specific representations and warranties in the Governing Agreements, (ii) that the breach was material, and (iii) that the breach adversely affected the interests of the Certificateholders in the loan. With respect to the final requirement, Countrywide has taken the position that the Trustee would have to prove, on a loan-by-loan basis, that the breach caused Certificateholders to suffer a significant loss on the affected loan.

71. The Institutional Investors have taken a different position – namely, that a breach is "material and adverse" to the interests of Certificateholders if it would have affected their

investment decision because it adversely affects the credit quality of the Mortgage Loan. They also have taken the position that a loan-by-loan review may not be necessary, and that a properly structured sampling approach could be accepted by a court.

72. Countrywide's argument, if accepted by a court, could mean that the Trustee would have to bear the extraordinary burden of reviewing loan files for hundreds of thousands of loans in 530 trusts; determine as to each loan which of the dozens of Countrywide representations and warranties were breached; and then prove that the loss to Certificateholders was caused by the breach of a specific representation and warranty (such as the owner-occupancy representation) and not other factors that arguably bear no relation to the breach (such as macroeconomic factors affecting the housing market).

73. To be sure, a requirement that the Trustee establish, for each loan or even for a significant sample of loans, both a breach of representation and warranty and a causal link between the breach and the loss would not preclude the Trustee from enforcing repurchase remedies. But it would make enforcement more difficult, may result in fewer loans subject to repurchase, and would result in litigation that would be extraordinarily complex, costly and time-consuming, with the outcome dependent on fact-intensive issues that may not be susceptible to resolution short of trial.

74. In order to properly assess the strength of Countrywide's defense, the Trustee has, among other things, considered the arguments of the Institutional Investors, Countrywide and Bank of America, analyzed Section 2.03 of the Governing Agreements, and considered the case law interpreting contractual provisions similar to Section 2.03.

75. The Trustee has also sought and obtained an expert opinion from a leading law school professor who teaches, among other things, the law of contracts. That expert

independently considered the question of whether Countrywide presents a reasonable argument that the Trustee would have to prove a causal link between any breach of a representation and warranty, on the one hand, and a significant loss to Certificateholders, on the other. The expert has opined that Countrywide's argument is reasonable and could be adopted by a court considering the issue.

76. This conclusion is supported by precedent. For instance, in a recent case, the court denied summary judgment against a similarly situated trustee on the ground that an issue of fact existed as to whether the alleged breach of warranties made in the PSA "materially and adversely affected the value of the mortgage loan or the interest of the certificateholders." In another recent case, the court rejected plaintiff's attempt to exclude – on the basis that the "material and adverse affect" determination must be made as of the closing date – an expert witness who would testify that breaches of representations made in a PSA did not materially and adversely affect the interests of certificateholders because any losses were caused by the decline in the housing and real estate markets. And in the cases that have proceeded to trial, juries have been instructed, based on nearly identical PSA provisions, that trustees need to "prove by a preponderance of the evidence that the material breach of any of the Representations and Warranties involved in this case caused a material and adverse effect on the value of the loan, the value of the property, or the interests of the investors."

77. For all of these reasons, in the Trustee's judgment, Countrywide's position that Section 2.03 imposes an element of causation could be accepted by a court, and if this occurred it would present significant challenges to the Trustee in proving, for each Mortgage Loan or even a sample of Mortgage Loans, that the harm was caused specifically by a breach of representation and warranty rather than by the individual circumstances of the borrower or the various

macroeconomic events affecting the U.S. and global economy. The Trustee's judgment that this defense must be taken into account in assessing the reasonableness of the Settlement Payment was made in good faith and is within the bounds of reasonableness.

3. Countrywide Will Be Unable to Pay a Judgment in an Amount Exceeding (or Even Approaching) the Settlement Payment

78. The Trustee has considered the ability, or inability, of Countrywide to pay a judgment that would exceed the Settlement Payment. If the Trusts will be unable to recover an amount that exceeds the Settlement Payment after years of costly litigation, it is the Trustee's judgment that entering into the Settlement now, on behalf of the Trusts, is reasonable. In fact, a decision to not enter into the Settlement with knowledge that the Trusts may receive, at best, substantially *less* than the Settlement Payment if the Trustee were to prevail in litigation several years from now, would be unreasonable.

79. Countrywide has taken the position that it, standing alone, would be unable to pay a judgment in the amount of the Settlement Payment. In order to test that statement, the Trustee retained a leading valuation expert to conduct an independent valuation of Countrywide and prepare a report of his analysis. More specifically, the valuation expert was asked to opine on the maximum economic value that the Trustee could recover from Countrywide assuming that the Trustee obtained a judgment in its favor. The analysis was conducted as of March 31, 2011. This expert, too, had no prior knowledge of the amount of the Settlement Payment before issuing his opinion.

80. In estimating the economic value available to satisfy any judgment, the valuation expert estimated the value of Countrywide's assets in conformance with the fair market value standard. Without taking into account litigation costs or other losses accruing to Countrywide between March 31, 2011 and the date of any future hypothetical judgment – losses that may well

be substantial – the valuation expert opined that the Trustee's *maximum* recovery is significantly less than the Settlement Payment.

81. Based on this analysis, the Trustee has concluded that Countrywide will be unable to pay any future judgment that exceeds, equals or even approaches the Settlement Payment. Under these circumstances, the Trustee's decision to accept a Settlement Payment of $8.5 billion on behalf of the Trusts now, rather than proceed with litigation that may result in a recoverable judgment, if any, billions of dollars *less* than that amount, was made in good faith and is not outside the bounds of reasonableness.

4. The Trustee May Be Unlikely to Recover Any Future Judgment From Bank of America

82. Countrywide and Bank of America have taken the position that if Countrywide is unable to pay the full amount of any judgment against it, and the Trustee were to assert claims against Bank of America based on theories of successor liability, veil piercing or similar legal theories (collectively, "Successor Liability Theories"), Bank of America would prevail on those claims.

83. In order to assess the strength of its Successor Liability Theories, the Trustee has, among other things, considered the arguments of Countrywide and Bank of America and well-established case law addressing the Successor Liability Theories. The Trustee also sought and obtained an independent expert opinion from a law professor who holds an endowed chair in law and business at a major law school, and who teaches and writes on corporate law, corporate finance, corporate governance, mergers and acquisitions, and the law and economics of complex transactions.

84. In order to prevail on a traditional claim for successor liability, the Trustee would have to demonstrate, among other things, that Bank of America is a continuation of

Countrywide, that Countrywide has ceased operations and dissolved, and that the sale was designed to disadvantage shareholders or creditors of Countrywide.

85. There are several obstacles to this claim. Among them are that (i) Countrywide remains in existence and has not ceased operations, and (ii) the doctrine of *de facto* merger, which could be used in an effort to impose successor liability, has been used sparingly under Delaware law, which may govern the Trustee's claims.

86. It would be equally difficult for the Trustee to prevail on any veil-piercing claim. The Trustee would have to establish either (1) that Bank of America misused the corporate form to perpetrate a fraud on the Certificateholders, or (2) (i) that Bank of America dominated and controlled Countrywide such that Countrywide was an instrumentality of Bank of America, and (ii) that Bank of America further misused that control to cause harm to the Trustee and the Certificateholders.

87. The Trustee would likely have difficulty establishing a claim for veil-piercing based on fraud – even if it could meet the heightened pleading standards for that claim. Indeed, the Trustee is aware of no case that has made any credible allegation of a fraudulent scheme by Bank of America. The so-called "instrumentality" or "alter ego" theory probably would fare no better. The Trustee would have to prove that Bank of America totally dominated and controlled Countrywide at the time of the transactions at issue, a claim that is inconsistent with those entities' observance of corporate formalities and separate accounting. The Trustee then would have to prove that Bank of America misused its control to perpetrate a fraud or other similar injustice that actually harmed the Certificateholders, a difficult burden under any circumstances.

88. These conclusions are supported by the independent expert opinion that the Trustee obtained. The expert was asked to consider legal theories under which the Trustee could

potentially seek to recover money from Bank of America if Countrywide was unable to meet its obligations to pay a money judgment to the Trustee. In particular, the expert was asked to focus on certain business combination transactions between Countrywide, on the one hand, and Bank of America, on the other, in 2008, and whether such transactions could provide a basis for the Trustee to recover from Bank of America under the Successor Liability Theories.

89. It is the expert's opinion that the Trustee would have difficulty prevailing on such legal theories, and that the legal positions of Countrywide and Bank of America are, at the very least, reasonable.

90. This is also reinforced by precedent. In a number of recent cases against Countrywide, plaintiffs have sought to hold Bank of America liable for Countrywide's alleged misconduct on the basis that it is the parent of, and/or successor-in-interest to, certain Countrywide entities. Although one court has allowed this issue to proceed past the motion to dismiss stage, the Trustee is aware of no case to date that has imposed liability on Bank of America under any of the Successor Liability Theories. Most recently, a federal court in California, applying Delaware law, rejected all of the plaintiffs' successor liability claims against Bank of America and NB Holdings, a Bank of America subsidiary, in a putative class action asserting claims against Countrywide under Sections 11, 12 and 15 of the Securities Act of 1933. *See Maine State Ret. Sys. v. Countrywide Fin. Corp.*, Case No. 2:10–CV–0302, 2011 WL 1765509 (C.D. Ca. Apr. 20, 2011).

91. Given this holding, the existence of case law presenting significant obstacles to a party seeking to assert successor liability claims, to pierce the corporate veil or to apply similar legal theories, and the independent expert legal opinion obtained by the Trustee, in the Trustee's

judgment, the legal positions of Countrywide and Bank of America are viable and need to be considered in weighing the reasonableness of the Settlement Payment.

92. Accordingly, when combining (i) the likelihood that Countrywide would be unable to pay any future judgment approaching the amount of the Settlement Payment, with (ii) the obstacles to the Trustee of holding Bank of America liable for the alleged breaches by Countrywide, it is the Trustee's good faith judgment that entering into the Settlement is in the best interests of and advantageous to the Trusts, and certainly is within the bounds of reasonableness.

B. The Servicing Procedures and Improvements Are Reasonable

93. The purpose of the Settlement Agreement's servicing provisions is to outline servicing improvements that, when followed, would satisfy BAC HLS's obligation under Section 3.01 of the Governing Agreements to service and administer the Mortgage Loans in accordance with the terms of the Governing Agreements and customary and usual standards of practice of prudent mortgage loan servicers.

94. In considering the reasonableness of this component of the Settlement, the Trustee has taken into account, among other things, the respective positions of the Institutional Investors and Countrywide/Bank of America, the nature of the proposed servicing improvements, the means by which the Settlement Agreement ensures compliance with Industry Standards (including reporting and auditing requirements, and the payment of a servicing fee adjustment), and the independent opinion of mortgage servicing experts.

95. These mortgage servicing experts have concluded that the servicing and loan administration provisions of the Settlement Agreement – the subservicing and sale of master servicing rights provisions, the benchmarks and related master servicing fee adjustments for loans not in subservicing, the loss mitigation procedures, and the document deficiency cure

provisions – are reasonable, and are consistent with or exceed customary and usual standards of practice of prudent mortgage loan servicing and administration.

96. Based on all of these factors, it is the Trustee's good faith judgment that the servicing provisions of the Settlement Agreement are advantageous to the Trusts, and, at the very least, reasonable.

WHEREFORE, petitioner BNY Mellon requests that a judgment be entered, pursuant to CPLR § 7701, in the form attached hereto as Exhibit F.

Dated: New York, New York
June 28, 2011

MAYER BROWN LLP

By: _____
Jason H.P. Kravitt
Hector Gonzalez
Matthew D. Ingber

1675 Broadway
New York, New York 10019
(212) 506-2500

Attorneys for Petitioner The Bank of New York Mellon

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LORETTA A. LUNDBERG, being duly sworn, deposes and says:

1. I am a Managing Director within the Corporate Trust division at The Bank of New York Mellon (the "Petitioner").

2. I have read the foregoing Verified Petition and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief.

Loretta A. Lundberg

Sworn to before me this
28th day of June, 2011

Notary Public

CAROLINA KOLIK
Notary Public - State of New York
NO. 01K06173055
Qualified in Kings County
My Commission Expires 08/30/2011

700150637

EXHIBIT B

fee pd 6/29/11 ontwl

At IAS Part 39, of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York, New York, on the 29th day of June, 2011

PRESENT:

Hon. ~~BARBARA R. KAPNICK J.S.C.~~ J.S.C.

MOTION SEQUENCE # 001

In the matter of the application of

THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures),

Petitioner,

for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement.

Index No. 651786/2011

ORDER TO SHOW CAUSE

UPON reading and filing the annexed Verified Petition, the Affirmation of Matthew D. Ingber, dated June 28, 2011 ("Ingber Affirmation"), and the exhibits annexed thereto, and The Bank of New York Mellon's Memorandum of Law In Support Of Its Verified Petition Seeking Judicial Instructions and Approval of a Proposed Settlement ("Memorandum of Law"),

SUFFICIENT CAUSE THEREFOR ~~APPEARING~~ being alleged, IT IS

ORDERED, that anyone having an interest in the mortgage-securitization trusts listed on Exhibit A to the Verified Petition show cause before this Court at IAS Part 39, to be held at the Courthouse, 60 Centre Street, New York, New York, on the 17th day of November, 2011, at 2:15 o'clock in the afternoon ("Hearing Date"), or as soon thereafter as counsel may be heard, why an order should not be issued, pursuant to CPLR § 7701, granting judgment in favor of The Bank of New

York Mellon, as trustee or indenture trustee (the "Trustee"), on its Verified Petition as set forth in the Proposed Final Order and Judgment, attached as Exhibit I to the Ingber Affirmation.

ORDERED that the Court reserves the right to adjourn the Hearing Date or any adjournment thereof without further notice of any kind other than oral announcement on the Hearing Date or any adjournment thereof; and the Court reserves the right to approve the Settlement[1] (including with such modification(s) as may be consented to by the parties to the Settlement Agreement in accordance with its terms) without further notice of any kind beyond such notice as provided for herein.

ORDERED that notice of the commencement of this special proceeding and of the above hearing shall be given to all Potentially Interested Persons within forty-five (45) days hereof in the following manner (collectively, the "Notice Program"):

(1) by mailing notice in the form annexed as Exhibit B to the Ingber Affirmation (the "Notice") along with a copy of the Order to Show Cause, the Verified Petition, the Ingber Affirmation, and the Memorandum of Law, by first-class, registered mail to any Trust Beneficiaries whose addresses appear in the Certificate Register;

(2) by mailing the Notice, the Order to Show Cause, the Verified Petition, the Ingber Affirmation, and the Memorandum of Law, by first-class, registered mail to the parties to the Governing Agreements and all other Potentially Interested Persons identified in paragraph 4 (b)-(l) of the Ingber Affirmation;

(3) by providing the Notice to the Depository Trust Company ("DTC"), which will post such Notice in accordance with DTC's established procedures;

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[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Verified Petition or the Ingber Affirmation.

(4) by publishing the Notice in *The Wall Street Journal (Global), Financial Times Worldwide, The New York Times, The Times (London), USA Today, Investors Business Daily*, and *The Economist Worldwide Edition* for at least three (3) business days in each publication;

(5) by publishing translated versions of the Notice in *Les Echos* (France), *Die Welt* (Germany), *Il Sole 24 Ore* (Italy), *Tages Anzeiger* (Switzerland), *NRC Handelsblad* (Netherlands); *The Nikkei* (Japan); *Straits Times* (Singapore); *New Straits Times* (Malaysia); *China Business News* (China); and *Korea Economic Daily* (South Korea) for at least three (3) business days in each publication;

(6) by issuing the Notice to the following media distribution wire services: *PR Newswire, Business Wire*, and *GlobeNewswire*;

(7) by posting the Notice, the Order to Show Cause, the Verified Petition, the Ingber Affirmation, and the Memorandum of Law, to http://www.cwrmbssettlement.com, a website created by the Trustee to provide Potentially Interested Persons with notice of this proceeding;

(8) by creating a hyperlink to www.cwrmbssettlement.com on BNY Mellon's investor reporting website, https://gctinvestorreporting.bnymellon.com/Home.jsp.; and

(9) by seeking to purchase banner advertisements announcing the Settlement, with a hyperlink to www.cwrmbssettlement.com, on the following websites: wsj.com, MarketWatch.com, Barrons.com, AllthingsD.com, IHT.com, SmartMoney.com, investors.com, ft.com, reuters.com, economist.com, Globalcustody.net, Assetman.net, FundServices.net, and yahoo.com.

IT IS FURTHER ORDERED that the Notice Program is approved, is the best notice practicable, is reasonably calculated to put interested parties on notice of this action, and

constitutes due and sufficient notice of this special proceeding in satisfaction of federal and state due process requirements and other applicable law; and it is further

ORDERED that within fourteen (14) days of providing notice of this special proceeding in accordance with the Notice Program, the Trustee shall file with the Court proof of compliance with such Notice Program; and it is further

ORDERED that any Potentially Interested Person who objects to the Settlement and/or the Proposed Final Order and Judgment may appear in person or by an attorney on the Hearing Date and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no Potentially Interested Person shall be heard and nothing submitted by any Potentially Interested Person shall be considered by the Court in objection to the Settlement unless a written notice of intention to appear along with a detailed statement of such Potentially Interested Person's objection to any matters before the Court and the grounds therefor, as well as all documents such Potentially Interested Person desires the Court to consider, shall be filed with this Court and served upon Petitioner's counsel, Mayer Brown LLP, 1675 Broadway, New York, New York (attn: Matthew D. Ingber), on or before August 30, 2011; and it is further

ORDERED that any Potentially Interested Person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall forever be barred from raising such objection in this or any other action or proceeding, unless the Court orders otherwise; and it is further

ORDERED that, on or before October 31, 2011, any papers in response to any such objection, or any submissions in favor of or with respect to the Settlement, shall be filed with this

Court and served upon (i) any person who submitted any objection, and (ii) any person who has entered an appearance in this matter pursuant to CPLR § 320; and it is further

ORDERED that, except for good cause shown, no person other than Petitioner's counsel shall be heard on the Hearing Date unless such person has submitted an objection, or a submission in favor of or with respect to the Settlement, in accordance with this Order to Show Cause; and it is further

ORDERED that, during the pendency of this proceeding, all actions filed after the date of this Order to Show Cause relating to the subject matter of this proceeding shall be assigned or transferred to the Justice before whom this proceeding is pending; and it is further

ORDERED that the Court hereby retains exclusive jurisdiction over the Petitioner, the Covered Trusts and all Trust Beneficiaries (whether past, present or future) for all matters relating to the Settlement and this Article 77 Proceeding; and it is further

ORDERED that, during the pendency of this proceeding, the Trustee shall seek an instruction from the Court before responding to or taking any action with respect to assertions, allegations, notices, or directions from any Trust Beneficiary relating to the subject matter of this proceeding.

ENTER:

J.S.C.
BARBARA R. KAPNICK
J.S.C.

ORAL ARGUMENT DIRECTED

J.S.C.
BARBARA R. KAPNICK
J.S.C.

EXHIBIT C

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

In the matter of the application of THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures) et al., Petitioner, for an order, pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement.	:	Index No. 651786/2011 **[PROPOSED] ORDER**

Petitioner, The Bank of New York Mellon ("Petitioner" or "Trustee"), solely in its capacity as trustee or indenture trustee under the 530 mortgage-securitization trusts attached as Exhibit A to the Verified Petition, having applied to this Court for an order pursuant to CPLR § 7701 (the "Article 77 Proceeding") for judicial instructions and approval of a settlement entered into by and among the Trustee, Bank of America Corporation, BAC Home Loans Servicing, LP, Countrywide Financial Corporation, and Countrywide Home Loans, Inc. (the "Settlement"), such Settlement being embodied in the settlement agreement, dated June 28, 2011 (the "Settlement Agreement"); and

WHEREAS this Court entered an Order to Show Cause ("Preliminary Order") dated June 29, 2011;

WHEREAS the Preliminary Order directed that any Potentially Interested Person[1] who intends to be heard on the Hearing Date submit "a written notice of its intention to appear along with a detailed statement of such Potentially Interested Person's objection to any matters before

[1] The term Potentially Interested Person shall have the meaning ascribed to it in the Affirmation of Matthew D. Ingber, dated June 28, 2011.

the Court and the grounds therefor, as well as all documents such Potentially Interested Person desires to Court to consider" (an "Objection") on or before August 30, 2011;

WHEREAS eleven Walnut Place LLC entities ("Walnut Place") (i) filed a petition to intervene as respondents in the Article 77 Proceeding; (ii) noted in their petition their intention to "ask the Court to provide a mechanism to permit certificateholders to exclude their trusts from the proposed settlement"; and (iii) noted in their petition their intent to "seek the necessary disclosure" relating to the Settlement;

WHEREAS the Policemen's Annuity and Benefit Fund of Chicago, Westmoreland County Employee Retirement System, City of Grand Rapids General Retirement System and the City of Grand Rapids Police and Fire Retirement System (collectively, "the Policemen's Fund") filed a petition to intervene as respondents in the Article 77 Proceeding and specifically sought discovery relating to the Settlement;

WHEREAS the Trustee anticipates that other Potentially Interested Persons may seek to intervene as respondents in the Article 77 Proceeding in lieu of submitting written objections pursuant to the Order;

WHEREAS judicial economy would be best served by considering any and all requests made by intervenor-respondents and other Potentially Interested Persons, including those made or anticipated to be made by Walnut Place and the Policemen's Fund, after all such persons who intend to be heard have filed their Objection;

WHEREAS such a procedure will allow for the more efficient consideration and resolution of such requests, and for coordination among Potentially Interested Persons;

NOW, it is hereby ORDERED, ADJUDGED, and DECREED that:

a) any petition to intervene as a respondent that has been, or will be, filed with the Court shall be treated by the Court as an Objection, or other appearance pursuant to CPLR § 320, in accordance with the Preliminary Order; and

b) any and all requests for discovery made by any intervenor-respondent or other Potentially Interested Person shall be stayed until such time as the deadline for filing Objections has passed, at which time the Court will consider whether, and to what extent, coordinated discovery is appropriate and how, if at all, the Preliminary Order should be revised; and

c) no intervenor-respondent or Potentially Interested Person shall file with the Court any request for relief until such time as the deadline for filing Objections has passed.

Entered on this _____ day of ___, 2011.

ENTER

_____
Justice Barbara R. Kapnick
JSC

EXHIBIT D

15-Feb-11 18:33 PIMCO, BlackRock and BofA settlement could bind other CFC RMBS investors -- UPDATE Story

PIMCO, **BlackRock** and **Bank of America** could try to make their settlement of poor servicing allegations binding on other investors in **Countrywide** RMBS, whether the other investors agree to the terms or not, said David Grais, a partner at Grais & Ellsworth.

The parties are attempting to encompass all Countrywide RMBS into the deal - which could be finalized in as little as 30 days - two sources with knowledge of the situation said. Grais said it was too soon to speculate on the quality of the settlement, but that his firm is advising investors about how they can object to it, should the terms be meager.

Grais & Ellsworth, which represented Greenwich Financial Services in an earlier buyback case against Countrywide, is looking into the potential for recourse against the trustee for the affected deals, Bank of New York Mellon, in case it participates in the settlement, Grais said.

The settlement would coincide with BofA's plans to shift its legacy assets into a separate unit and is likely to pay out "pennies on the dollar," to RMBS investors, one of the sources with knowledge said. The agreement could include promises to change servicing practices and a one-time payment to settle representation and warrant breaches, the sources said.

Reaching a settlement will likely hinge on Bank of New York's involvement, the second source said. The trustee could agree to a pre-packaged settlement, for example, that would implicate a wide range of Countrywide trusts, on top of those the investors have standing in, said the source.

"I'm concerned this could be a sell-out," the second source with knowledge of the situation said.

A lawyer for the investors, Kathy Patrick, a partner at Houston, Texas-based firm Gibbs & Bruns, sent a notice of non-compliance to BofA's Countrywide servicing unit on 18 October. Patrick cited USD 47bn in affected RMBS (see the list below). On 2 February, the investor group agreed to extend BofA's time period to respond for a second time.

Patrick declined to comment on the timeline for the settlement, or its terms. "We don't have a deal yet," she said. Bank of America spokesperson Jerry Dubrowski said only that the bank was in ongoing discussions with the investor group.

A Bank of New York spokesperson declined to comment.

Broader implications

The settlement could be used as a roadmap for resolving similar buyback and servicing challenges pending against the nation's largest banks, the sources said. In January, GSEs Fannie Mae and Freddie Mac agreed to settle Countrywide RMBS buyback claims against BofA for under USD 3bn. The figure represents about 70%-75% of the bank's buyback exposure to the GSEs, Barclays analysts estimated at the time.

Georgetown University professor Adam Levitin suggested US banks come to a global settlement

on mortgage issues in November testimony to Congress. Such a deal would involve a restructuring of bank balance sheets, special servicing and a quieting of title on securitized properties.

Last week, BofA announced it would separate its legacy asset servicing from the rest of its operations. Similarly, JPMorgan Chase, embroiled in buyback suits involving its EMC and WaMu portfolios, today told employees that its Chief Administrative Officer Frank Bisignano would be overseeing its servicing unit, according to an internal memo.

"If they have a separate unit, they can put some money in it and hopefully get a court to say 'this is all fair and good,'" the first source with knowledge said.

Double agents

Investors hoping for a greater reimbursement of securities-gone-bad said they are concerned that light settlements for servicing wrongs – including failure to disclose breaches of representations and warranties – could stall the return of a new issue non-agency RMBS market and allow poor servicing practices to continue.

More parties are getting involved in the dispute, said Greenwich Financial Services CEO Bill Frey. A growing number of foreign investors are joining the RMBS Investors Clearing House, a consortium of investors facilitated by Talcott Franklin PC, he said.

The letter sent by the Gibbs & Bruns group was signed by BlackRock, Freddie Mac, Kore Advisors, the Federal Reserve Bank of New York (on behalf of the Maiden Lane funds), Metropolitan Life Insurance Company, Neuberger Berman Europe, PIMCO and Western Asset Management Company. The relationships the entities maintain with BofA and the US Government led some – including BofA – to question the seriousness of the buyback pursuit.

BlackRock holds an estimated USD 3.4bn in BofA equity alone. Moreover, BlackRock, PIMCO and fellow signatory Western Asset Management Co. run PPIP funds, as previously reported.

Patrick denied allegations that the firms' pursuit lacked teeth. "I don't know how anybody could look at the list of institutions that has previously been published … and conclude that they were pursuing discussions in anything other than a good faith effort," Patrick said.

Part of the group represented by Gibbs & Bruns participated in an earlier effort to displace BofA as servicer of the Countrywide RMBS but shifted gears on disagreement over how aggressively to pursue the nation's largest bank. The group is rumored to have proof that places BofA in default of its servicing duties – specifically that it modified first lien mortgages while leaving the associated second lien intact, as previously reported.

The Gibbs & Bruns letter did not prove the impact of alleged servicing wrongs on specific loans. Patrick declined to comment on whether the group had such evidence.

In order to prove a servicer default, specific loan level evidence proving a breach of contractual

duties is typically needed at the onset because it is challenging to obtain even in the course of litigation, as previously reported. Once a servicer is labeled in default, the trustee is obligated to pursue a replacement servicer and/or potential representation and warranty breaches under the "prudent person" clause of the US Trustee Act.

by Allison Pyburn

Source Debtwire

EXHIBIT E

FT.com FINANCIAL TIMES MERGERMARKET

Legacy Countrywide mortgage investors rally against potential settlement with Bank of America

Print

By Allison Pyburn, Edited by Adelene Lee

Published: February 23 2011 06:31 | Last updated: February 23 2011 06:31

A growing faction of mortgage bond investors are rallying to fight a potential "sweetheart" deal between Bank of America and a handful of friendly funds related to Countrywide Financial's mortgage buyback saga, Debtwire reports.

The investors fear talks led by some of the nation's largest fund managers, including PIMCO and BlackRock, along with Freddie Mac and the New York Federal Reserve, could bind them to pennies-on-the-dollar payouts even though contractually Countrywide's owner is required to repurchase all flawed mortgages at par, said two sources involved in the negotiations. A deal could materialise in as little as 30 days, they said.

Investors looking to be refunded for loans that don't meet the criteria they were promised accuse the bank of selling them Pintos instead of Ferraris. In Countrywide deals, the number of mortgages that differ substantially from their descriptions is estimated between 40%-45% to as high as 70% of the balance, according to one of the sources involved and a source familiar with the lender's collateral.

Attempts to reach a side-deal with BofA reflect underlying fears the US retail and investment bank could be forced to re-absorb billions of the non-conforming loans at par to settle a mounting chorus of buyback challenges, the sources said.

The US government extended the bank a multi-billion dollar lifeline in 2008 as it tee-tolled from heavy losses at Merrill Lynch. Countrywide was taken over in a USD 4.1bn stock deal in 2008, making BofA the largest US mortgage lender. Shortly after, BofA infused Countrywide with billions as it struggled against mortgage losses, securities investor lawsuits and the largest predatory lending settlement in the nation's history.

An agreement struck between the big boys could bind all non-agency mortgage backed securities issued by Countrywide, BofA and potentially Merrill Lynch, should trustees for the deals participate, said David Grais, a partner in New York law firm Grais & Ellsworth, which represented Greenwich Financial in a buyback case against Countrywide in 2007. Such a deal would likely prevent mortgage bond investors from pursuing a higher payout in the future, Grais said. Between 2004 and 2007 Merrill Lynch and Countrywide issued at least 491 deals totaling USD 414bn.

The agreement would mirror the USD 3bn deal BofA arranged with Freddie and Fannie Mae in January. Opponents say it would allow poor servicing practices to continue and hamper investor confidence in the mortgage bond market at a time when government lending is beginning to contract.

'Double agents'

All of the mortgage bond investors, including PIMCO and BlackRock, initially banded together to pursue full reimbursements for bad mortgages sold into the Countrywide mortgage deals they bought, the second source involved said. The investors compiled evidence that Countrywide was granting first lien mortgage modifications to consumers, but denying them a second lien modification when BofA stood to take a loss from the work-out, the source said. The first mortgages Countrywide services were already sold to RMBS investors, but BofA holds more than USD 100bn in second lien mortgages on its balance sheet and it would be forced to write them down following a modification, the sources said. The investors found evidence of the so-called servicer self-dealing in 200 RMBS deals holding USD 200bn in mortgages, the sources said.

The evidence would have armed bond investors with the arsenal to declare BofA in default of its Countrywide servicing contracts, stripping it of its servicing rights, while revealing information that would have resulted in untold amounts of repurchase requests, the source said. BlackRock and PIMCO, however, switched course.

The BlackRock and PIMCO-led faction turned to Kathy Patrick, a partner in Houston, Texas-based law firm Gibbs and Bruns, and employed several tactics to recover their losses – but balked at using the evidence, according to the source.

The funds eventually sent Countrywide a non-compliance notice on 18 October, demanding it cure a number of

servicing breaches, but did not provide specific evidence, according to a copy of the letter obtained by Debtwire. The funds agreed to extend the 60-day cure window twice, most recently on 2 February, according to Patrick.

In order to prove a servicer has breached its contractual duties, specific evidence is required at the onset because it becomes challenging to obtain it during litigation. Once a servicer defaults, the trustee is obligated to pursue a replacement servicer and/or potential representation and warranty breaches under the "prudent person" clause of the US Trustee Act.

Because it declined to use the allegedly damming evidence, the PIMCO group's attempts to negotiate with BofA has been labeled as "unleashing a dog with no teeth"- - partly to fulfill their fiduciary duties to their own investors while also ensuring BofA's financial strength, the two sources, a third with knowledge of the situation and a lawyer following the dispute said.

The letter dispatched by Patrick was signed by BlackRock, Freddie, Kore Advisors, the New York Fed (on behalf of the Malden Lane funds), Metropolitan Life Insurance Company, Neuberger Berman Europe, PIMCO and Western Asset Management Company.

BlackRock holds an estimated USD 3.4bn of BofA equity, and BlackRock, PIMCO and fellow signatory Western Asset Management Co. maintain significant government ties through the Public-Private Investment Program (PPIP) funds they run.

Patrick denies allegations that the firms' pursuit was for show. "I don't know how anybody could look at the list of institutions that has previously been published ... and conclude that they were pursuing discussions in anything other than a good faith effort," she said.

Bank of America spokesperson Jerry Dubrowski said the bank is still in talks with the investor group. Representatives from Bank of New York and BlackRock declined to comment. A PIMCO representative did not return a request for comment.

Majority rule

The original bond investor group, organized through the Dallas, Texas-based RMBS Investors Clearing House, now encompasses a number of anonymous investors with holdings amounting to one-third of the USD 1.5 trillion RMBS market – including foreign banks representing USD 100bn in RMBS, said Greenwich Financial CEO Bill Frey, who belongs to the Clearing House and opposes the settlement.

Winning the conflict depends on which group can accumulate like-minded investors fast enough. When it comes to exercising contractual rights to oppose servicing practices or put back a bad mortgage to the originator, at least 25% of investors of a given mortgage pool must approve.

The faction led by PIMCO and BlackRock purport to have at least that much standing in USD 47bn of Countrywide mortgage bonds. The opposition, meanwhile, is gaining momentum by soliciting more foreign banks to join the movement, Frey said.

The settlement could be used as a roadmap for resolving similar buyback and servicing challenges pending against the nation's largest banks, the sources said.

Georgetown University professor Adam Levitin suggested US banks should come to a global settlement on mortgage issues in November testimony to Congress. This would involve restructuring bank balance sheets, special servicing and perfecting titles on securitized properties.

Last week, BofA announced it would separate its legacy asset servicing from the rest of its operations. Similarly, JPMorgan Chase, embroiled in buyback law suits involving its EMC and WaMu portfolios, recently told employees that its Chief Administrative Officer Frank Bisignano would be overseeing its servicing unit, according to an internal memo. "If they have a separate unit, they can put some money in it and hopefully get a court to say 'this is all fair and good,'" the first source said.

EXHIBIT F

Bank of America

Press Release

Bank of America Issues Statement

CHARLOTTE, N.C., Dec 15, 2010 (BUSINESS WIRE) --

Bank of America today issued the following statement:

Counsel for BAC Home Loans Servicing, LP and Gibbs & Bruns LLP on behalf of certain investors including those who signed the previously reported October 18, 2010 letter with respect to private label residential mortgage-backed securitizations, as well as counsel for The Bank of New York Mellon, as trustee, have agreed to extend any time periods commenced by the October 18 letter. This extension will permit the parties to continue constructive dialogue around the concerns raised. The agreement covers all of the securitizations listed on the attached Exhibit A. The claims and defenses of all parties are preserved.

Exhibit A

CWALT 2004-14T2	CWALT 2005-24	CWALT 2006-OC8	CWALT 2007-HY5R	CWHL 2005-30	CWHL 2007-HYB2	CWL 2005-9	CWL 2006-9
CWALT 2004-29CB	CWALT 2005-32T1	CWALT 2006-14CB	CWALT 2007-J2	CWHL 2005-9	CWHL 2007-J1	CWL 2005-AB2	CWL 2006-BC2
CWALT 2004-35T2	CWALT 2005-35CB	CWALT 2006-20CB	CWALT 2007-17CB	CWHL 2005-HYB3	CWHL 2007-J3	CWL 2005-AB3	CWL 2006-BC3
CWALT 2004-J6	CWALT 2005-36	CWALT 2006-41CB	CWALT 2007-23CB	CWHL 2005-HYB9	CWHL 2007-12	CWL 2005-AB4	CWL 2006-BC4
CWALT 2004-32CB	CWALT 2005-44	CWALT 2006-HY12	CWALT 2007-OA7	CWHL 2005-R3	CWHL 2007-16	CWL 2005-BC5	CWL 2006-BC5
CWALT 2004-6CB	CWALT 2005-45	CWALT 2006-OA11	CWALT 2008-2R	CWHL 2006-14	CWHL 2008-3R	CWL 2005-IM1	CWL 2006-SD1
CWALT 2004-J1	CWALT 2005-56	CWALT 2006-OA16	CWHL 2004-13	CWHL 2006-15	CWL 2004-SD1	CWL 2006-S9	CWL 2006-SD3
CWALT 2005-16	CWALT 2005-57CB	CWALT 2006-OA17	CWHL 2004-HYB2	CWHL 2006-20	CWL 2004-SD2	CWL 2006-10	CWL 2006-SD4
CWALT 2005-19CB	CWALT 2005-64CB	CWALT 2006-OA6	CWHL 2004-HYB5	CWHL 2006-3	CWL 2004-SD3	CWL 2006-12	CWL 2006-SPS2
CWALT 2005-48T1	CWALT 2005-72	CWALT 2006-OA9	CWHL 2004-HYB6	CWHL 2006-HYB1	CWL 2004-SD4	CWL 2006-15	CWL 2007-10
CWALT 2005-53T2	CWALT 2005-73CB	CWALT 2006-OC10	CWHL 2004-22	CWHL 2006-J4	CWL 2005-12	CWL 2006-16	CWL 2007-4
CWALT 2005-59	CWALT 2005-74T1	CWALT 2006-OC2	CWHL 2004-25	CWHL 2006-OA4	CWL 2005-10	CWL 2006-19	CWL 2007-2
CWALT 2005-65CB	CWALT 2005-81	CWALT 2006-OC4	CWHL 2004-29	CWHL 2006-9	CWL 2005-11	CWL 2006-2	CWL 2007-5
			CWHL	CWHL			

CWALT 2005-6CB	CWALT 2005-AR1	CWALT 2006-OC5	2004-HYB9	2006-HYB2	CWL 2005-13	CWL 2006-20	CWL 2007-6
CWALT 2005-82	CWALT 2005-J5	CWALT 2006-OC6	CWHL 2005-J1	CWHL 2006-HYB5	CWL 2005-16	CWL 2006-22	CWL 2007-7
CWALT 2005-85CB	CWALT 2005-J9	CWALT 2006-OC7	CWHL 2005-11	CWHL 2006-J2	CWL 2005-2	CWL 2006-24	CWL 2007-9
CWALT 2005-14	CWALT 2006-21CB	CWALT 2007-15CB	CWHL 2005-14	CWHL 2006-OA5	CWL 2005-4	CWL 2006-25	CWL 2007-BC1
CWALT 2005-21CB	CWALT 2006-23CB	CWALT 2007-22	CWHL 2005-18	CWHL 2006-R2	CWL 2005-5	CWL 2006-26	CWL 2007-BC2
	CWALT 2006-39CB	CWALT 2007-5CB	CWHL 2005-19	CWHL 2007-10	CWL 2005-6	CWL 2006-3	CWL 2007-BC3
	CWALT 2006-46	CWALT 2007-7T2	CWHL 2005-2	CWHL 2007-11	CWL 2005-7	CWL 2006-5	CWL 2007-QH1
	CWALT 2006-OA21	CWALT 2007-8CB	CWHL 2005-3	CWHL 2007-14	CWL 2005-8	CWL 2006-7	CWL 2007-S3

Bank of America

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. The company provides unmatched convenience in the United States, serving approximately 57 million consumer and small business relationships with approximately 5,900 retail banking offices and approximately 18,000 ATMs and award-winning online banking with 29 million active users. Bank of America is among the world's leading wealth management companies and is a global leader in corporate and investment banking and trading across a broad range of asset classes, serving corporations, governments, institutions and individuals around the world. Bank of America offers industry-leading support to approximately 4 million small business owners through a suite of innovative, easy-to-use online products and services. The company serves clients through operations in more than 40 countries. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

www.bankofamerica.com

SOURCE: Bank of America

Investors May Contact:
Kevin Stitt, Bank of America, 1.980.386.5667
Lee McEntire, Bank of America, 1.980.388.6780
or
Reporters May Contact:
Jerry Dubrowski, Bank of America, 1.980.388.2840
jerome.f.dubrowski@bankofamerica.com

EXHIBIT G

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

WALNUT PLACE LLC; WALNUT PLACE II LLC; WALNUT PLACE III LLC; WALNUT PLACE IV LLC; WALNUT PLACE V LLC; WALNUT PLACE VI LLC; WALNUT PLACE VII LLC; WALNUT PLACE VIII LLC; WALNUT PLACE IX LLC; WALNUT PLACE X LLC; and WALNUT PLACE XI LLC, derivatively on behalf of Alternative Loan Trust 2006-OA10 and Alternative Loan Trust 2006-OA3,

Plaintiffs,

-against-

COUNTRYWIDE HOME LOANS, INC.; PARK GRANADA LLC; PARK MONACO INC; PARK SIENNA LLC; and BANK OF AMERICA CORPORATION,

Defendants,

-and-

THE BANK OF NEW YORK MELLON, in its capacity as Trustee of Alternative Loan Trust 2006-OA10 and Alternative Loan Trust 2006-OA3,

Nominal Defendant.

Index No. 650497/2011

AMENDED COMPLAINT

1. This is a derivative action for breaches of two Pooling and Servicing Agreements (PSA) under which defendant Countrywide Home Loans, Inc. and some of its affiliates sold residential mortgage loans to two securitization trusts. The trusts are Alternative Loan Trust 2006-OA10 (CWALT 2006-OA10) and Alternative Loan Trust 2006-OA3 (CWALT 2006-OA3). The trusts financed the purchase of loans by issuing certificates that were to be repaid,

with interest, from the cash flow generated by the mortgage loans. Plaintiffs are the holders of $108,084,000 original face amount of certificates in class 1-A-2 of CWALT 2006-OA10, $74,075,000 original face amount of certificates in class 2-A-1 of CWALT 2006-OA10, $10,100,000 original face amount of certificates in class 3-A-1 of CWALT 2006-OA10, $210,000,000 original face amount of certificates in class 4-A-1 of CWALT 2006-OA10 , $302,222,000 original face amount of certificates in class 4-A-2 of CWALT 2006-OA10, and $360,279,000 notional amount of certificates in class XNB of CWALT 2006-OA10. Plaintiffs are the holders of $45,000,000 original face amount of certificates in class 1-A-2 of CWALT 2006-OA3, $22,830,000 original face amount of certificates in class 2-A-1 of CWALT 2006-OA3, $25,746,000 original face amount of certificates in class 2-A-3 of CWALT 2006-OA3, $16,582,000 original face amount of certificates in class 2-A-3 of CWALT 2006-OA3, and $264,432,055 notional amount of certificates in class X of CWALT 2006-OA3. The Bank of New York Mellon is the Trustee of both of the trusts. In each PSA, Countrywide Home Loans made numerous representations and warranties about the mortgage loans. Countrywide Home Loans breached at least five of those representations and warranties in each PSA. For instance, for CWALT 2006-OA10, Countrywide Home Loans represented and warranted that no loan had a loan-to-value ratio of more than 95%, but, in fact, at least 413 mortgage loans had loan-to-value ratios of more than 95%; Countrywide Home Loans also represented that the mortgage loans were originated in accordance with its underwriting guidelines, but, in fact, at least 1,190 mortgage loans did not comply with the underwriting guidelines. For CWALT 2006-OA3, Countrywide Home Loans represented and warranted that no loan had a loan-to-value ratio of more than 95%, but, in fact, at least 196 mortgage loans had loan-to-value ratios of more than 95%; Countrywide Home Loans also represented that the mortgage loans were originated in

accordance with its underwriting guidelines, but, in fact, at least 457 mortgage loans did not comply with the underwriting guidelines. Each of these breaches of representations and warranties materially and adversely affected the interests of both the trust and Plaintiffs in those mortgage loans.

2. CWALT 2006-OA10 owned 6,531 mortgage loans as of June 30, 2006, the closing date of the PSA. Plaintiffs selected 2,166 of those 6,531 mortgage loans that were delinquent or on which the borrower had defaulted and investigated the true condition of those mortgage loans. The investigation showed that Countrywide Home Loans made false representations and warranties about at least 1,432 (or nearly 66%) of the 2,166 mortgage loans that Plaintiffs investigated. Plaintiffs are informed and believe that discovery will yield evidence that the defendants made similar misrepresentations and breached similar warranties about many of the 4,365 mortgage loans that Plaintiffs have not yet investigated.

3. CWALT 2006-OA3 owned 2,534 mortgage loans as of March 31, 2006, the closing date of the PSA. Plaintiffs selected 937 of those 2,534 mortgage loans that were delinquent or on which the borrower had defaulted and investigated the true condition of those mortgage loans. The investigation showed that Countrywide Home Loans made false representations and warranties about at least 536 (or 58%) of the 937 mortgage loans that Plaintiffs investigated. Plaintiffs are informed and believe that discovery will yield evidence that the defendants made similar misrepresentations and breached similar warranties about many of the 1,597 mortgage loans that Plaintiffs have not yet investigated.

4. Under each PSA, the defendants are required to repurchase each loan about which a representation and warranty by Countrywide Home Loans was untrue. On August 3, 2010, Plaintiffs informed the Trustee of the breaches of representations and warranties and demanded

that the defendants repurchase the loans in both trusts. On August 31, 2010, the Trustee sent the repurchase demands to the defendants. The defendants have refused to repurchase the loans despite having received the demands from the Trustee. Moreover, The Bank of New York Mellon, as Trustee, has unreasonably failed to sue the defendants to enforce their obligations to repurchase the loans. Plaintiffs are therefore suing derivatively on behalf of the trusts in order to compel the defendants to repurchase these loans.

PARTIES

5. Each of the Walnut Place entities is a limited liability company organized under the laws of Delaware. Each Walnut Place LLC owns an interest in certificates in CWALT 2006-OA10 with an original face amount of at least $10 million. Collectively, the Walnut Place LLCs own more than 25% of the Certificate Balances of all of the Certificates in CWALT 2006-OA10. Each Walnut Place LLC owns an interest in certificates in CWALT 2006-OA3 with an original face amount of at least $3.1 million. Collectively, the Walnut Place LLCs own more than 25% of the Certificate Balances of all of the Certificates in CWALT 2006-OA3. In this complaint, the Walnut Place LLCs and their predecessors in interest are referred to collectively as Plaintiffs.

6. Defendant Countrywide Home Loans, Inc. is a corporation organized under the laws of New York.

7. Defendant Park Granada LLC is a Delaware limited liability company. On information and belief, Park Granada is an affiliate of Countrywide Home Loans.

8. Defendant Park Monaco Inc. is a Delaware corporation. On information and belief, Park Monaco is an affiliate of Countrywide Home Loans.

9. Defendant Park Sienna LLC is a Delaware limited liability company. On information and belief, Park Sienna is an affiliate of Countrywide Home Loans.

10. Defendant Bank of America Corporation (referred to as **BAC**) is a corporation organized under the laws of Delaware and owns numerous subsidiaries, which will be referred to collectively as **Bank of America**. As alleged below, BAC is liable to Plaintiffs as the successor to Countrywide Home Loans, Park Granada, Park Monaco, and Park Sienna.

11. The nominal defendant, The Bank of New York Mellon, is a bank organized under the laws of New York. Plaintiffs have sued BNYM as a nominal defendant because BNYM is the Trustee of both of the trusts, and Plaintiffs are suing derivatively to enforce the rights of the trusts on behalf of themselves and all other certificateholders.

SECURITIZATION OF MORTGAGE LOANS

12. The certificates that Plaintiffs own are **mortgage-backed securities,** created in a process known as **securitization.** Securitization begins with loans (such as loans secured by mortgages on residential properties) on which the borrowers are obligated to make payments, usually monthly. The entity that makes the loans is known as the **originator** of the loans. The process by which the originator decides whether to make particular loans is known as the **underwriting** of loans. The purpose of underwriting is to ensure that loans are made only to borrowers of sufficient credit standing to repay them, and that the loans are made only against sufficient collateral. In the loan underwriting process, the originator applies its **underwriting standards.** Until the loans are securitized, the borrowers make their loan payments to the originators. Collectively, the payments on the loans are known as the **cash flow** from the loans.

13. In a securitization, a large number of loans, usually of a similar type, are grouped into a **collateral pool.** The originator of those loans sells them (and with them the right to receive the cash flow from them) to a special-purpose entity known as a **depositor**, which in turns sells the mortgage loans to a **trust.** The trust pays the originator cash for the loans. The trust raises the cash to pay for the loans by selling **bonds,** usually called **certificates,** to investors such as

Plaintiffs or their predecessors in interest. Each certificate entitles its holder to an agreed part of the cash flow from the loans in the collateral pool.

14. Because the cash flow from the loans in the collateral pool of a securitization is the source of funds to pay the holders of the certificates issued by the trust, the credit quality of those certificates is dependent upon the credit quality of the loans in the collateral pool. The most important information about the credit quality of those loans is contained in the files that the originator develops while making the loans, the so-called loan files. For residential mortgage loans, each loan file normally contains comprehensive information from such important documents as the borrower's application for the loan, credit reports on the borrower, and an appraisal of the property that will secure the loan. The loan file also includes notes from the person who underwrote the loan about whether and how the loan complied with the originator's underwriting standards, including documentation of any "compensating factors" that justified departure from those standards. To ensure that the credit quality of the loans in the collateral pool is as the parties agreed, the originator or other seller of the loans to the trust makes detailed **representations and warranties** about the loans, including many characteristics of the loans relevant to their credit quality, to the trustee for the benefit of the trust and purchasers of certificates from the trust.

ALLEGATIONS ABOUT CWALT 2006-OA10

I. The Pooling and Servicing Agreement

15. The Pooling and Servicing Agreement, or PSA, for CWALT 2006-OA10 was dated June 1, 2006. The closing date for the securitization was June 30, 2006. A true copy of the CWALT 2006-OA10 PSA is attached to this Complaint as Exhibit 1.

16. The Prospectus Supplement for CWALT 2006-OA10 as filed with the SEC was dated June 29, 2006. A true copy of the CWALT 2006-OA10 Prospectus Supplement is attached to this Complaint as Exhibit 2.

17. Defendant Countrywide Home Loans was the originator of the loans in CWALT 2006-OA10. Defendants Park Monaco, Park Granada, and Park Sienna are affiliates of Countrywide Home Loans that owned loans that Countrywide Home Loans had originated. Countrywide Home Loans and these affiliates sold loans to CWALT, Inc., the depositor of CWALT 2006-OA10, and CWALT, Inc. then sold the loans to CWALT 2006-OA10. In Schedule III-A of the CWALT 2006-OA10 PSA, Countrywide Home Loans made many representations and warranties about the loans.

18. In Schedule III-A, Countrywide Home Loans represented and warranted that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (1). Schedule I to the CWALT 2006-OA10 PSA describes, among other things, the loan-to-value ratio at origination of the loan.

19. Countrywide Home Loans also represented and warranted that "[n]o Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (3).

20. Countrywide Home Loans also represented and warranted that "[a]ll of the Mortgage Loans were underwritten in all material respects in accordance with Countrywide's underwriting guidelines as set forth in the Prospectus Supplement." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (37).

21. Countrywide Home Loans also represented and warranted that (except with respect to some loans originated under its Streamlined Documentation program) "prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (38).

22. Countrywide Home Loans also represented and warranted that the "Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (44). The CWALT 2006-OA10 prospectus supplement contains tables that described the LTVs and the occupancy status of the mortgage loans as of the cut-off date.

II. Evidence of Breaches Based on Plaintiffs' Investigation

23. Because the mortgage loans in CWALT 2006-OA10 have experienced a high number of defaults, Plaintiffs conducted an investigation to determine whether the loans were accurately described when they were sold to CWALT 2006-OA10. This investigation demonstrated that many of the loans breached one or more of the five representations and warranties described above.

A. Breach of Schedule III-A (1)

24. In Schedule III-A, Countrywide Home Loans represented and warranted that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date." CWALT

2006-OA10 PSA § 2.03 & Schedule III-A (1). Schedule I to the CWALT 2006-OA10 PSA describes, among other things, the loan-to-value ratio, or LTV, at origination of the loan.

25. LTV is the ratio of the amount of money borrowed by the borrower to the value of the property mortgaged to provide security to the lender. For example, if a borrower borrowed $300,000 and gave a mortgage on property valued at $500,000, then the LTV would be 60%.

26. LTV is one of the most crucial measures of the risk of a mortgage loan. LTV is a primary determinant of the likelihood of default. The lower the LTV, the lower the likelihood of default. For example, the lower the LTV, the less likely it is that a decline in the value of the property will wipe out the owner's equity, and thereby give the owner an incentive to stop making mortgage payments and abandon the property, a so-called strategic default. LTV also determines the severity of losses for those loans that do default. The lower the LTV, the lower the severity of losses on those loans that do default. Loans with lower LTVs provide greater "cushion," thereby increasing the likelihood that the proceeds of foreclosure will cover the unpaid balance of the mortgage loan.

27. For each of these reasons, an LTV that is reported as lower than its true value materially and adversely affects the interests of both CWALT 2006-OA10 and the Certificateholders in that mortgage loan.

28. An accurate denominator (that is, the value of the property) is essential to an accurate LTV. In particular, if the denominator is too high, then the risk of the loan will be understated, sometimes greatly understated. To use the example in paragraph 25, if the property's actual value is $500,000, but it is incorrectly valued at $550,000, then the ostensible LTV of the loan would be 54.5%, not 60%, and thus the loan appears less risky than it actually is.

29. Plaintiffs' investigation showed that the true values of the properties that secured the loans in CWALT 2006-OA10 were inaccurate by using an automated valuation model, or AVM, and by looking at subsequent sales of properties that were included in CWALT 2006-OA10.

1. Automated Valuation Model

30. Using a comprehensive, industry-standard AVM, Plaintiffs determined the true market value of many of the properties that secured loans in CWALT 2006-OA10, as of the origination date of each loan. An AVM considers objective criteria like the condition of the property and the actual sale prices of comparable properties in the same locale shortly before the specified date and is more consistent, independent, and objective than other methods of appraisal. AVMs have been in widespread use for many years. The AVM used by Plaintiffs incorporates a database of 500 million sales covering zip codes that represent more than 97% of the homes, occupied by more than 99% of the population, in the United States. Independent testing services have determined that this AVM is the most accurate of all such models.

31. There was sufficient information to determine the value of 1,574 of the properties that secured loans, and thereby to calculate the correct LTV of each of those loans, as of the date on which each loan was made. On 1,134 of those 1,574 properties, the AVM reported that the appraised value in Schedule I of the CWALT 2006-OA10 PSA was 105% or more of the true market value as determined by the model, and the amount by which the stated values of those properties exceeded their true market values in the aggregate was $119,440,958. The AVM reported that the appraised value in Schedule I of the CWALT 2006-OA10 PSA was 95% or less of the true market value on only 101 properties, and the amount by which the true market values of those properties exceeded the reported values was $9,368,841. Thus, the number of properties on which the value was overstated exceeded by more than 11 times the number on which the

value was understated, and the aggregate amount overstated was nearly 13 times the aggregate amount understated. Details of the AVM results for each loan on which the appraised value was more than 105% of the value determined by the model are given in Table 1 of Exhibit 3.

2. Subsequent Sales of Refinanced Properties

32. Some of the loans in CWALT 2006-OA10 were taken out to refinance existing mortgages, rather than to purchase properties. For those loans, the value of the property was based solely on the appraised value rather than a sale price because there is no sale price in a refinancing. Of the loans secured by refinanced properties that Plaintiffs investigated, 151 sold for much less than the appraised value of the property reported in the Schedule, even when adjusted for declines in the housing price index, resulting in a loss to CWALT 2006-OA10. Details of this analysis are given in Table 2 of Exhibit 3.

*

33. With respect to 1,134 mortgage loans, the reported appraised value of the property was significantly higher than the actual value of the property, as shown by the AVM. Because the appraised value is used as the denominator in the LTV, this evidence shows that the reported LTV in Schedule I of the CWALT 2006-OA10 PSA was materially incorrect for these 1,134 mortgage loans. With respect to 151 refinanced mortgage loans, the subsequent sale information for these loans also shows that the reported appraised value of the property was incorrect. These 151 mortgage loans also had incorrect LTVs. Eliminating duplicates, 1,190 mortgage loans had incorrect LTVs.

34. Each of these differences is material and is a breach of the warranty in Schedule III-A (1) that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date."

B. Breach of Schedule III-A (3)

35. Countrywide Home Loans represented and warranted that "[n]o Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (3).

36. For many of the mortgage loans, the value determined by the AVM was significantly lower than the actual value of the property, so the actual LTV was higher than the reported LTV because the denominator used to calculate the reported LTV was higher than the true denominator. For 413 mortgage loans, using the true value of the property as determined by the AVM, the actual LTV was more than 95%.

37. Each mortgage loan with an actual LTV of more than 95% breached Schedule III-A (3).

C. Breach of Schedule III-A (37) & (38)

38. Countrywide Home Loans represented and warranted that "[a]ll of the Mortgage Loans were underwritten in all material respects in accordance with Countrywide's underwriting guidelines as set forth in the Prospectus Supplement." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (37).

39. Countrywide Home Loans also represented and warranted that (except with respect to some loans originated under its Streamlined Documentation program) "prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (38).

40. Originators of mortgage loans have written standards for the underwriting of loans. An important purpose of underwriting is to ensure that the originator makes mortgage loans only in compliance with those standards and that its underwriting decisions are properly documented. An even more fundamental purpose of underwriting mortgage loans is to ensure that loans are made only to borrowers with credit standing and financial resources sufficient to repay the loans and only against collateral with value, condition, and marketability sufficient to secure the loans.

41. An originator's underwriting standards, and the extent to which the originator departs from its standards, are important indicators of the risk of mortgage loans made by that originator and of certificates sold in a securitization in which mortgage loans made by that originator are part of the collateral pool. A representation that a mortgage loan was originated in accordance with the originator's underwriting standards when the loan was not originated in accordance with those standards materially and adversely affects the interests of both CWALT 2006-OA10 and the Certificateholders in that mortgage loan.

42. Underwriting guidelines usually contain requirements that the property that secures the loan be appraised by an independent appraiser. A representation that a loan was secured by a property appraised by an independent appraiser when the loan was secured by a property appraised by an appraiser who was not independent materially and adversely affects the interests of both CWALT 2006-OA10 and the Certificateholders in that mortgage loan.

43. The mortgage loans were originated by Countrywide Home Loans. Countrywide Home Loans' underwriting requirements stated that, except with respect to some mortgage loans originated pursuant to its Streamlined Documentation Program, "Countrywide Home Loans obtains appraisals from independent appraisers or appraisal services for properties that are to

secure mortgage loans. . . . All appraisals are required to conform to Fannie Mae or Freddie Mac appraisal standards then in effect." Pros. Sup. S-89. Fannie Mae and Freddie Mac appraisal standards require that appraisals be independent, unbiased, and not contingent on a predetermined result. Many of the appraisals, however, were conducted by appraisers who were not independent, and so did not comply with Fannie and Freddie standards.

1. Appraisals were not conducted by independent appraisers.

44. As reported in the 2007 National Appraisal Survey conducted by October Research, around the time of this securitization, brokers and loan officers pressured appraisers by threatening to withhold future assignments if an appraised value was not high enough to enable the transaction to close and sometimes by refusing to pay for completed appraisals that were not high enough. This pressure came in many forms, including the following:

- the withholding of business if the appraisers refused to inflate values;
- the withholding of business if the appraisers refused to guarantee a predetermined value;
- the withholding of business if the appraisers refused to ignore deficiencies in the property;
- the refusal to pay for an appraisal that did not give the brokers and loans officers the property values that they wanted; and
- the black listing of honest appraisers in order to use "rubber stamp" appraisers.

45. Appraisals made under pressure of this kind are breaches of Schedule III-A (37) because such appraisals do not conform to the underwriting requirements of the originator, which require independent, unbiased appraisals that are not contingent on a predetermined result.

46. Appraisals made under pressure of this kind are breaches of Schedule III-A (38) because such appraisals are not independent, unbiased appraisals and do not conform to Fannie Mae and Freddie Mac appraisal standards.

47. As described above, the number of properties on which the value was overstated was more than 11 times the number on which the value was understated, and the aggregate amount overstated was nearly 13 times the aggregate amount understated. This lopsided result demonstrates the upward bias in appraisals of properties that secured the mortgage loans in CWALT 2006-OA10.

48. For the 1,134 mortgage loans where the AVM reported a value significantly lower than the reported appraised value and the 151 mortgage loans where the subsequent sale prices show that the initial appraisal was too high, there is strong evidence that the appraisal was biased because the appraisers were not independent. Each such loan breached the representations and warranties in Schedule III-A (37) and (38).

2. Early Payment Defaults

49. When a loan becomes 60 or more days delinquent within six months after it was made it is called an early payment default. An EPD is strong evidence that the loan did not conform to the underwriting standards in making the loan, often by failing to detect fraud in the application. Underwriting standards are intended to ensure that loans are made only to borrowers who can and will make their mortgage payments. Because an EPD occurs so soon after the mortgage loan was made, it is much more likely that the default occurred because the borrower could not afford the payments in the first place (and thus that the underwriting standards were not followed), than because of changed external circumstances unrelated to the underwriting of the mortgage loan (such as that the borrower lost his or her job). Twenty-eight loans in the collateral pool of this securitization experienced EPDs. These 28 loans are identified in Table 3 of Exhibit 3.

50. Eliminating duplicates, 1,190 loans did not comply with the stated underwriting guidelines.

3. Additional evidence of undisclosed departures from underwriting standards.

51. In addition to the evidence from the subset of loans that Plaintiffs have investigated, cited above, there is strong evidence from governmental investigations that Countrywide Home Loans made extensive, undisclosed departures from its stated underwriting standards.

52. The Securities and Exchange Commission conducted an extensive investigation of the lending practices of Countrywide. Based on the findings of its investigation, the SEC sued three former senior officers of Countrywide. In its complaint, the SEC alleged that these three senior officers committed securities fraud by hiding from investors "the high percentage of loans [Countrywide] originated that were outside its already widened underwriting guidelines due to loans made as exceptions to guidelines."

53. A pay-option adjustable-rate mortgage loan (also called an Option ARM) is a mortgage loan where the borrower has the option to make one of three payments, a minimum payment that increases the amount of principal the borrower owns on the mortgage (called negative amortization), an interest-only payment that neither increases or decreases the principal the borrower owns on the mortgage, or a full payment that decreases the amount the borrower owes on the mortgage. At a certain point in the life of an Option ARM, a "reset" occurs and the borrower must always pay the full payment. All of the mortgage loans in this securitization were Option ARMs. At an investor conference in September 2006, Countrywide stated that its underwriting guidelines required that a borrower be able to afford the full payment on the Option ARM.

54. Among the evidence for the SEC's allegations is a memorandum dated December 13, 2007, in which the enterprise risk assessment officer at Countrywide stated that "borrower

repayment capacity was not adequately assessed by the bank during the underwriting process for home equity mortgage loans. More specifically, debt-to-income (DTI) ratios did not consider the impact of principal [negative] amortization or an increase in interest [due to a payment reset]."

55. The SEC also based its allegations on an email dated April 4, 2006, in which Countrywide's Chairman and CEO Angelo Mozilo wrote that for Option ARMs "it appears that it is just a matter of time that we will be faced with much higher resets and therefore much higher delinquencies."

56. The SEC also based its allegations on an email dated June 1, 2007, in which Mozilo wrote that borrowers of Option ARMs "are going to experience a payment shock which is going to be difficult if not impossible for them to manage." The SEC also based its allegations on an email from November 3, 2007, where Mozilo recognized that Countrywide was unable "to properly underwrite" Option ARMs.

57. These facts indicate that Countrywide did not, in fact, underwrite Option ARMs so that borrowers could afford the full payment.

58. The Attorneys General of many states also investigated Countrywide's lending practices. Among these, the Attorney General of California found, and alleged in a suit against Countrywide, that Countrywide "viewed borrowers as nothing more than the means for producing more loans, originating loans with little or no regard to borrowers' long-term ability to afford them." The Attorneys General of several other states also reached the same conclusion.

- The Attorney General of Washington alleged that "[t]o increase market share, [Countrywide] dispensed with many standard underwriting guidelines . . . to place unqualified borrowers in loans which ultimately they could not afford."

- The Attorney General of Illinois alleged in a suit against Countrywide that Countrywide was "indifferen[t] to whether homeowners could afford its loans."

- The Attorney General of West Virginia alleged that "Countrywide sold West Virginia consumers loans when there was no reasonable probability of the consumers being able to pay the loan in full."

59. Countrywide did not adhere to its own underwriting standards, but instead abandoned or ignored them. According to internal Countrywide documents recently made public by the SEC, Mozilo admitted that loans "had been originated 'through our channels with disregard for process [and] compliance with guidelines.'" Similarly, the Attorney General of California alleged that "Countrywide did whatever it took to sell more loans, faster – including by . . . disregarding the minimal underwriting criteria it claimed to require."

60. Countrywide made exceptions to its underwriting standards where no compensating factors existed, resulting in higher rates of default. According to the SEC in its action against former officers of Countrywide:

> [T]he actual underwriting of exceptions was severely compromised. According to Countrywide's official underwriting guidelines, exceptions were only proper where "compensating factors" were identified which offset the risks caused by the loan being outside of guidelines. In practice, however, **Countrywide used as "compensating factors" variables such as FICO and loan to value, which had already been assessed [in determining the loan to be outside of guidelines].**

(Emphasis in original.) Such "compensating factors" did not actually compensate for anything and did not "offset" any risk.

61. Finally, Countrywide did not apply its underwriting standards in accordance with all federal, state, and local laws. Countrywide has entered into agreements to settle charges of violation of predatory lending, unfair competition, false advertising, and banking laws with the Attorneys General of at least 39 states, including Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey,

New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Attorneys General of these states alleged that Countrywide violated state predatory lending laws by (i) making loans it could not have reasonably expected borrowers to be able to repay; (ii) using high pressure sales and advertising tactics designed to steer borrowers towards high-risk loans; and (iii) failing to disclose to borrowers important information about the loans, including the costs and difficulties of refinancing, the availability of lower cost products, the existence and nature of prepayment penalties, and that advertised low interest rates were merely "teaser" rates that would adjust upwards dramatically as soon as one month after closing.

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62. This additional evidence shows that many of the loans already identified did not conform to Countrywide's underwriting standards, and that many more of the 6,531 loans in CWALT 2006-OA10 did not conform to Countrywide's underwriting standards.

D. Breach of Schedule III-A (44)

63. Countrywide represented and warranted that the "Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." CWALT 2006-OA10 PSA § 2.03 & Schedule III-A (44). The CWALT 2006-OA10 prospectus supplement contains tables that described the LTVs and the occupancy status of the mortgage loans as of the cut-off date. These tables were incorrect because the LTVs of the mortgage loans and the occupancy status of the mortgage loans were incorrect.

1. LTVs

64. With respect to the same 1,180 mortgage loans described above, the LTVs were incorrect. Each mortgage loan that had an incorrect LTV was a breach of Schedule III-A (44).

2. Occupancy Status

65. Residential real estate is usually divided into primary residences, second homes, and investment properties. Mortgages on primary residences are less likely to default than mortgages on non-owner-occupied residences and are therefore less risky.

66. Occupancy status (that is, whether the property that secures the mortgage is to be the primary residence of the borrower, a second home, or an investment property) is an important factor in determining the risk of a mortgage loan. The percentage of loans in the collateral pool of a securitization that are not secured by mortgages on primary residences is an important measure of the risk of certificates sold in that securitization. Other things being equal, the higher the percentage of loans not secured by primary residences, the greater the risk of the certificates. A representation that the property that secured a mortgage loan was owner occupied when the property was actually not owner occupied materially and adversely affects the interests of both CWALT 2006-OA10 and the Certificateholders in that mortgage loan.

67. In some states and counties, owners of a property are able to designate whether that property is his or her "homestead," which may reduce the taxes on that property or exempt the property from assets available to satisfy the owner's creditors, or both. An owner may designate only one property, which he or she must occupy, as his or her homestead. Sixteen loans in CWALT 2006-OA10 that were reported to be owner occupied in Schedule I of the PSA were not actually owner occupied because the borrower designated another property as his or her homestead. These 16 loans are identified in Table 4 of Exhibit 3.

68. The fact that an owner in one of these jurisdictions does not designate a property as his or her homestead when he or she can do so is strong evidence that the property was not his or her primary residence. With respect to 468 of the properties that were stated in Schedule I of

the PSA to be owner occupied, the owner could have but did not designate the property as his or her homestead. These 468 loans are identified in Table 4 of Exhibit 3.

69. For 195 properties that secured the mortgage loans, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself, even though the property was reported to be owner occupied in the Schedule. Such an instruction is strong evidence that the borrower did not live in the mortgaged property or consider it to be his or her primary residence. These 195 loans are identified in Table 4 of Exhibit 3.

70. With respect to 532 mortgage loans, the occupancy status of the property as reflected in the prospectus supplement was incorrect. With respect to 16 mortgage loans that were represented to be owner occupied, the borrower actually designated a different property as his or her homestead. With respect to 468 mortgage loans, the borrower could have designated the property as his or her homestead but did not. With respect to 195 mortgage loans that were represented to be owner occupied, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself. Each of these criteria indicates that the property was not actually owner occupied.

71. Each incorrect occupancy status was a breach of Schedule III-A (44).

III. Examples of Noncompliant Loans

72. By way of illustration, and without limitation, the following paragraphs highlight particular loans that Plaintiffs' investigation showed did not comply with the representations and warranties that Countrywide Home Loans made about them.

73. Loan number 119478315: This loan for $544,000 was secured by a property that had a reported appraised value of $680,000. The AVM determined that the true value of the property was $569,000. Thus the reported LTV was 80%, but the true LTV was 95.6%. This loan

defaulted five months after it was originated. This loan therefore breached the following representations and warranties: Schedule III-A (1), (3), (37), (38), and (44).

74. Loan number 119837840: This loan for $1,331,250 was secured by a property that had a reported appraised value of $1,775,000. The AVM determined that the true value of the property was $975,999. Thus the reported LTV was 75%, but the true LTV was 136.5%. The property that secured this loan was represented to be owner occupied, but in fact, another property owned by the same owner was designated as a homestead and the property tax bills were sent to another address. This loan therefore breached the following representations and warranties: Schedule III-A (1), (3), (37), (38), and (44).

75. Loan number 136202091: This loan for $523,500 was secured by a property that had a reported appraised value of $698,000. The AVM determined that the true value of the property was $462,000. Thus the reported LTV was 75%, but the true LTV was 113.3%. After the loan was securitized, the property was sold for only $375,000, even though housing prices in the area the property was located rose by 3% between the date of origination of the loan and the sale. This loan therefore breached the following representations and warranties: Schedule III-A (1), (3), (37), (38), and (44).

76. A list of each of the loans that the investigation uncovered that breached the representations and warranties is attached as in Exhibit 4.

77. Based on the 1,432 loans that breached the representations and warranties and on the publically available information described in paragraphs 52 through 61, Plaintiffs are informed and believe that many more loans breached the representations and warranties.

IV. Countrywide Has Refused to Repurchase the Loans.

78. Under section 2.03(c) of the CWALT 2006-OA10 Pooling and Servicing Agreement, each Countrywide defendant agreed that

> within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty with respect to a Mortgage Loan sold by it pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not so cured, shall . . . repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price. . . .

79. By letter dated August 3, 2010, Plaintiffs, through their attorneys, sent a letter to BNYM informing it of the breaches of representations and warranties that are described in paragraphs 18 through 22 above. This letter included an appendix that identified all loans identified in Exhibit 4. The letter from Plaintiffs dated August 3, 2010, without its appendices, is attached as Exhibit 5.

80. By letter dated August 31, 2010, BNYM sent the written notice of breaches of representations and warranties to the defendants and others. Thus, on August 31, 2010, or shortly thereafter, the Countrywide defendants received written notice from the Trustee of Countrywide's breaches of representations and warranties with respect to the mortgage loans.

81. Each Countrywide defendant is thus obligated to repurchase the loans it sold identified in Exhibit 4 that breached the representations and warranties that Countrywide made in the PSA.

82. The ninety-day period prescribed under Section 2.03(c) of the CWALT 2006-OA10 PSA expired on November 29, 2010.

83. The Countrywide defendants have not cured the breaches of representations and warranties or repurchased any of the affected mortgage loans from CWALT 2006-OA10.

V. Plaintiffs May Sue to Enforce the CWALT 2006-OA10 PSA.

84. Under the CWALT 2006-OA10 PSA, certificateholders may file a lawsuit if they meet the requirements of the limitation of suits provision. That provision states that certificateholders representing at least 25% of the Voting Rights of Certificates in CWALT

2006-OA10 must request that the Trustee sue and offer to indemnify the Trustee for the costs, expenses, and liability it incurs in connection with suing. A certificateholder may sue if the Trustee does not file suit within 60 days after receiving the request to sue and the indemnity.

85. On December 23, 2010, certificateholders of more than 25% of the Voting Rights of Certificates in CWALT 2006-OA10, including Plaintiffs, made a written request to the Trustee to sue the defendants for breach of their obligations under Section 2.03(c) of the CWALT 2006-OA10 PSA and offered to indemnify the Trustee from loss, including attorneys fees and other expenses of litigation, that may be incurred by the Trustee as a result of following the direction of the certificateholders. This written request is attached as Exhibit 6.

86. More than 60 days have elapsed since Plaintiffs and the other certificateholder sent a written request directing BNYM to file a lawsuit. BNYM has not filed a lawsuit.

87. On February 18, 2011, BNYM, through its attorneys, sent a letter informing Plaintiffs that it did not intend to sue within 60 days of receiving the demand letter dated December 23, 2010. BNYM stated that it "need[ed] additional time to evaluate this matter." BNYM refused to commit to any date certain by which it would complete its evaluation.

88. More than six weeks later, BNYM again declined to file suit in response to a virtually identical demand that Plaintiffs made on CWALT 2006-OA3, which is described in detail below. In particular, on April 5, 2011, Plaintiffs received a substantially identical letter from BNYM, and BNYM again stated that it needed additional time to evaluate the matter and again did not commit to a date certain by which it would be able to make a decision.

89. Plaintiffs have satisfied the requirements of the limitation of suits provision of the PSA and are entitled to sue to enforce breaches of the CWALT 2006-OA10 PSA.

90. The PSA authorizes the Trustee to enforce breaches of representations and warranties for the benefit of CWALT 2006-OA10.

91. BNYM's refusal to bring a lawsuit was unreasonable because Plaintiffs' investigation has produced specific evidence that gives rise to a strong inference that Countrywide breached its representations and warranties on the 1,432 loans that are the subject of this lawsuit and the other loans in CWALT 2006-OA10. BNYM's request for additional time to evaluate Plaintiff's direction was also unreasonable because BNYM refused to provide a date certain by which it would complete its evaluation and because BNYM had more than six months to evaluate whether to file suit based on the evidence of breaches of representations and warranties that Plaintiffs have identified.

92. Because BNYM has unreasonably refused to bring a lawsuit, Plaintiffs bring this action derivatively, in the right and for the benefit of the Certificateholders of CWALT 2006-OA10, to redress the defendants' breach of contract.

93. Plaintiffs are Certificateholders. Plaintiffs will fairly and adequately represent the interests of CWALT 2006-OA10 and the Certificateholders of CWALT 2006-OA10 in enforcing and prosecuting their rights, and have retained competent counsel experienced in this type of litigation to prosecute this action.

ALLEGATIONS ABOUT CWALT 2006-OA3

I. The Pooling and Servicing Agreement

94. The PSA for CWALT 2006-OA3 was dated March 1, 2006. The closing date for the securitization was March 31, 2006. A true copy of the CWALT 2006-OA3 PSA is attached to this Complaint as Exhibit 7.

95. The Prospectus Supplement for CWALT 2006-OA3 as filed with the SEC was dated March 27, 2006. A true copy of the CWALT 2006-OA3 Prospectus Supplement is attached to this Complaint as Exhibit 8.

96. Defendant Countrywide Home Loans was the originator of the loans in CWALT 2006-OA3. Defendants Park Monaco, Park Granada, and Park Sienna are affiliates of Countrywide Home Loans that owned loans that Countrywide Home Loans had originated. Countrywide Home Loans and these affiliates sold loans to CWALT, Inc., the depositor of CWALT 2006-OA3, and CWALT, Inc. then sold the loans to CWALT 2006-OA3. In Schedule III-A of the CWALT 2006-OA3 PSA, Countrywide Home Loans made many representations and warranties about the loans.

97. In Schedule III-A, Countrywide Home Loans represented and warranted that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (1). Schedule I to the CWALT 2006-OA3 PSA describes, among other things, the loan-to-value ratio at origination of the loan.

98. Countrywide Home Loans also represented and warranted that "[n]o Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (3).

99. Countrywide Home Loans also represented and warranted that "[a]ll of the Mortgage Loans were underwritten in all material respects in accordance with Countrywide's underwriting guidelines as set forth in the Prospectus Supplement." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (37).

100. Countrywide Home Loans also represented and warranted that (except with respect to some loans originated under its Streamlined Documentation program) "prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (38).

101. Countrywide Home Loans also represented and warranted that the "Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (44). The CWALT 2006-OA3 prospectus supplement contains tables that described the LTVs and the occupancy status of the mortgage loans as of the cut-off date.

II. Evidence of Breaches Based on Plaintiffs' Investigation

102. Because the mortgage loans in CWALT 2006-OA3 have experienced a high number of defaults, Plaintiffs conducted an investigation to determine whether the loans were accurately described when they were sold to CWALT 2006-OA3. This investigation demonstrated that many of the loans breached one or more of the five representations and warranties described above.

A. Breach of Schedule III-A (1)

103. In Schedule III-A, Countrywide Home Loans represented and warranted that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date." CWALT

2006-OA3 PSA § 2.03 & Schedule III-A (1). Schedule I to the CWALT 2006-OA3 PSA describes, among other things, the loan-to-value ratio, or LTV, at origination of the loan.

104. For each of the reasons listed in paragraphs 25 and 26, an LTV that is reported as lower than its true value materially and adversely affects the interests of both CWALT 2006-OA3 and the Certificateholders in that mortgage loan.

105. Plaintiffs' investigation showed that the true values of the properties that secured the loans in CWALT 2006-OA3 were inaccurate by using an automated valuation model, or AVM, and by looking at subsequent sales of properties that were included in CWALT 2006-OA3.

1. Automated Valuation Model

106. Using a comprehensive, industry-standard AVM, Plaintiffs determined the true market value of many of the properties that secured loans in CWALT 2006-OA3, as of the origination date of each loan.

107. There was sufficient information to determine the value of 633 of the properties that secured loans, and thereby to calculate the correct LTV of each of those loans, as of the date on which each loan was made. On 448 of those 633 properties, the AVM reported that the appraised value in Schedule I of the CWALT 2006-OA3 PSA was 105% or more of the true market value as determined by the model, and the amount by which the stated values of those properties exceeded their true market values in the aggregate was $31,840,702. The AVM reported that the appraised value in Schedule I of the CWALT 2006-OA3 PSA was 95% or less of the true market value on only 40 properties, and the amount by which the true market values of those properties exceeded the reported values was $2,221,500. Thus, the number of properties on which the value was overstated exceeded by more than 10 times the number on which the value was understated, and the aggregate amount overstated was nearly 15 times the aggregate

amount understated. Details of the AVM results for each loan on which the appraised value was more than 105% of the value determined by the model are given in Table 1 of Exhibit 9.

2. Subsequent Sales of Refinanced Properties

108. Some of the loans in CWALT 2006-OA3 were taken out to refinance existing mortgages, rather than to purchase properties. For those loans, the value of the property was based solely on the appraised value rather than a sale price because there is no sale price in a refinancing. Of the loans secured by refinanced properties that Plaintiffs investigated, 20 sold for much less than the appraised value of the property reported in the Schedule, even when adjusted for declines in the housing price index, resulting in a loss to CWALT 2006-OA3. Details of this analysis are given in Table 2 of Exhibit 9.

*

109. With respect to 448 mortgage loans, the reported appraised value of the property was significantly higher than the actual value of the property, as shown by the AVM. Because the appraised value is used as the denominator in the LTV, this evidence shows that the reported LTV in Schedule I of the CWALT 2006-OA3 PSA was materially incorrect for these 448 mortgage loans. With respect to 20 refinanced mortgage loans, the subsequent sale information for these loans also shows that the reported appraised value of the property was incorrect. These 20 mortgage loans also had incorrect LTVs. Eliminating duplicates, 457 mortgage loans had incorrect LTVs.

110. Each of these differences is material and is a breach of the warranty in Schedule III-A (1) that the "information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date."

B. Breach of Schedule III-A (3)

111. Countrywide Home Loans represented and warranted that "[n]o Mortgage Loan had a Loan-to-Value Ratio at origination in excess of 95.00%." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (3).

112. For many of the mortgage loans, the value determined by the AVM was significantly lower than the actual value of the property, so the actual LTV was higher than the reported LTV because the denominator used to calculate the reported LTV was higher than the true denominator. For 196 mortgage loans, using the true value of the property as determined by the AVM, the actual LTV was more than 95%.

113. Each mortgage loan with an actual LTV of more than 95% breached Schedule III-A (3).

C. Breach of Schedule III-A (37) & (38)

114. Countrywide Home Loans represented and warranted that "[a]ll of the Mortgage Loans were underwritten in all material respects in accordance with Countrywide's underwriting guidelines as set forth in the Prospectus Supplement." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (37).

115. Countrywide Home Loans also represented and warranted that (except with respect to some loans originated under its Streamlined Documentation program) "prior to the approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the originator, who had no interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan; such appraisal is in a form acceptable to FNMA and FHLMC." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (38).

116. A representation that a mortgage loan was originated in accordance with the originator's underwriting standards when the loan was not originated in accordance with those standards materially and adversely affects the interests of both CWALT 2006-OA3 and the Certificateholders in that mortgage loan.

117. Underwriting guidelines usually contain requirements that the property that secures the loan be appraised by an independent appraiser. A representation that a loan was secured by a property appraised by an independent appraiser when the loan was secured by a property appraised by an appraiser who was not independent materially and adversely affects the interests of both CWALT 2006-OA3 and the Certificateholders in that mortgage loan.

118. The mortgage loans were originated by Countrywide Home Loans. Countrywide Home Loans' underwriting requirements stated that, except with respect to some mortgage loans originated pursuant to its Streamlined Documentation Program, "Countrywide Home Loans obtains appraisals from independent appraisers or appraisal services for properties that are to secure mortgage loans. . . . All appraisals are required to conform to Fannie Mae or Freddie Mac appraisal standards then in effect." Pros. Sup. S-62. Fannie Mae and Freddie Mac appraisal standards require that appraisals be independent, unbiased, and not contingent on a predetermined result. Many of the appraisals, however, were conducted by appraisers who were not independent, and so did not comply with Fannie and Freddie standards.

1. Appraisals were not conducted by independent appraisers.

119. Appraisals made under pressure of the kind described in paragraph 44 are breaches of Schedule III-A (38) because such appraisals are not independent, unbiased appraisals and do not conform to Fannie Mae and Freddie Mac appraisal standards.

120. As described above, the number of properties on which the value was overstated was more than 10 times the number on which the value was understated, and the aggregate

amount overstated was nearly 15 times the aggregate amount understated. This lopsided result demonstrates the upward bias in appraisals of properties that secured the mortgage loans in CWALT 2006-OA3.

121. For the 448 mortgage loans where the AVM reported a value significantly lower than the reported appraised value and the 20 mortgage loans where the subsequent sale prices show that the initial appraisal was too high, there is strong evidence that the appraisal was biased because the appraisers were not independent. Each such loan breached the representations and warranties in Schedule III-A (37) and (38). Eliminating duplicates, 457 loans did not comply with the stated underwriting guidelines.

2. Additional evidence of undisclosed departures from underwriting standards.

122. In addition to the evidence from the subset of loans that Plaintiffs have investigated, cited above, the strong evidence described in paragraphs 52 and 61 from governmental investigations demonstrates that Countrywide Home Loans made extensive, undisclosed departures from its stated underwriting standards. This additional evidence shows that many of the loans already identified did not conform to Countrywide's underwriting standards, and that many more of the 2,534 loans in CWALT 2006-OA3 did not conform to Countrywide's underwriting standards.

D. Breach of Schedule III-A (44)

123. Countrywide represented and warranted that the "Mortgage Loans, individually and in the aggregate, conform in all material respects to the descriptions thereof in the Prospectus Supplement." CWALT 2006-OA3 PSA § 2.03 & Schedule III-A (44). The CWALT 2006-OA3 prospectus supplement contains tables that described the LTVs and the occupancy status of the

mortgage loans as of the cut-off date. These tables were incorrect because the LTVs of the mortgage loans and the occupancy status of the mortgage loans were incorrect.

1. LTVs

124. With respect to the same 448 mortgage loans described above, the LTVs were incorrect. Each mortgage loan that had an incorrect LTV was a breach of Schedule III-A (44).

2. Occupancy Status

125. A representation that the property that secured a mortgage loan was owner occupied when the property was actually not owner occupied materially and adversely affects the interests of both CWALT 2006-OA3 and the Certificateholders in that mortgage loan.

126. Five loans in CWALT 2006-OA3 that were reported to be owner occupied in Schedule I of the PSA were not actually owner occupied because the borrower designated another property as his or her homestead. These five loans are identified in Table 3 of Exhibit 9.

127. With respect to 173 of the properties that were stated in Schedule I of the PSA to be owner occupied, the owner could have but did not designate the property as his or her homestead. These 173 loans are identified in Table 3 of Exhibit 9.

128. For 98 properties that secured the mortgage loans, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself, even though the property was reported to be owner occupied in the Schedule. Such an instruction is strong evidence that the borrower did not live in the mortgaged property or consider it to be his or her primary residence. These 98 loans are identified in Table 3 of Exhibit 9.

129. With respect to 198 mortgage loans, the occupancy status of the property as reflected in the prospectus supplement was incorrect. With respect to five mortgage loans that were represented to be owner occupied, the borrower actually designated a different property as

his or her homestead. With respect to 173 mortgage loans, the borrower could have designated the property as his or her homestead but did not. With respect to 98 mortgage loans that were represented to be owner occupied, the borrower instructed local tax authorities to send the bills for the taxes on the property to the borrower at an address other than the property itself. Each of these criteria indicates that the property was not actually owner occupied.

130. Each incorrect occupancy status was a breach of Schedule III-A (44).

III. Examples of Noncompliant Loans

131. By way of illustration, and without limitation, the following paragraphs highlight particular loans that Plaintiffs' investigation showed did not comply with the representations and warranties that Countrywide Home Loans made about them.

132. Loan number 116668880: This loan for $219,335 was secured by a property that had a reported appraised value of $235,000. The AVM determined that the true value of the property was $184,000. Thus the reported LTV was 93.3%, but the true LTV was 119%. The property that secured this loan was represented to be owner occupied, but in fact, another property owned by the same owner was designated as a homestead, this property was not designated as a homestead, and the property tax bills were sent to another address. This loan therefore breached the following representations and warranties: Schedule III-A (1), (3), (37), (38), and (44).

133. Loan number 117403868: This loan for $348,750 was secured by a property that had a reported appraised value of $390,000. The AVM determined that the true value of the property was $214,000. Thus the reported LTV was 90%, but the true LTV was 163%. This loan therefore breached the following representations and warranties: Schedule III-A (1), (3), (37), (38), and (44).

134. Loan number 127587373: This loan for $114,950 was secured by a property that had a reported appraised value of $149,000. The AVM determined that the true value of the property was $103,000. Thus the reported LTV was 77.2%, but the true LTV was 111%. After the loan was securitized, the property was sold for only $95,000, even though housing prices in the area the property was located only declined by 10% between the date of origination of the loan and the sale. This loan therefore breached the following representations and warranties: Schedule III-A (1), (3), (37), (38), and (44).

135. A list of each of the loans that the investigation uncovered that breached the representations and warranties is attached as in Exhibit 10.

136. Based on the 536 loans that breached the representations and warranties and on the publically available information described in paragraphs 52 through 61, Plaintiffs are informed and believe that many more loans breached the representations and warranties.

IV. Countrywide Has Refused to Repurchase the Loans.

137. Under section 2.03(c) of the CWALT 2006-OA3 Pooling and Servicing Agreement, each Countrywide defendant agreed that

> within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty with respect to a Mortgage Loan sold by it pursuant to Section 2.03(a) that materially and adversely affects the interests of the Certificateholders in that Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not so cured, shall . . . repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price. . . .

138. By letter dated August 3, 2010, Plaintiffs, through their attorneys, sent a letter to BNYM informing it of the breaches of representations and warranties that are described in paragraphs 97 through 101 above. This letter included an appendix that identified all loans identified in Exhibit 10. The letter from Plaintiffs dated August 3, 2010, without its appendices, is attached as Exhibit 11.

139. By letter dated August 31, 2010, BNYM sent the written notice of breaches of representations and warranties to the defendants and others. Thus, on August 31, 2010, or shortly thereafter, the Countrywide defendants received written notice from the Trustee of Countrywide's breaches of representations and warranties with respect to the mortgage loans.

140. Each Countrywide defendant is thus obligated to repurchase the loans it sold identified in Exhibit 10 that breached the representations and warranties that Countrywide made in the PSA.

141. The ninety-day period prescribed under Section 2.03(c) of the CWALT 2006-OA3 PSA expired on November 29, 2010.

142. The Countrywide defendants have not cured the breaches of representations and warranties or repurchased any of the affected mortgage loans from CWALT 2006-OA3.

V. Plaintiffs May Sue to Enforce the CWALT 2006-OA3 PSA.

143. Under the CWALT 2006-OA3 PSA, certificateholders may file a lawsuit if they meet the requirements of the limitation of suits provision. That provision states that certificateholders representing at least 25% of the Voting Rights of Certificates in CWALT 2006-OA3 must request that the Trustee sue and offer to indemnify the Trustee for the costs, expenses, and liability it incurs in connection with suing. A certificateholder may sue if the Trustee does not file suit within 60 days after receiving the request to sue and the indemnity.

144. On February 4, 2010, certificateholders of more than 25% of the trust, including Plaintiffs, made a written request to the Trustee to sue the defendants for breach of their obligations under Section 2.03(c) of the CWALT 2006-OA3 PSA and offered to indemnify the Trustee from loss, including attorneys fees and other expenses of litigation, that may be incurred by the Trustee as a result of following the direction of the certificateholders. This written request is attached as Exhibit 12.

145. More than 60 days have elapsed since Plaintiffs and the other certificateholder sent a written request directing BNYM to file a lawsuit. BNYM has not filed a lawsuit.

146. On April 5, 2011, BNYM, through its attorneys, sent a letter informing Plaintiffs that it did not intend to sue within 60 days of receiving the demand letter dated February 4, 2010. BNYM stated that it "need[ed] additional time to evaluate this matter" because Plaintiffs' demand letter "raise[d] . . . legal, contractual and practical issues . . . that BNY Mellon, in its capacity as trustee, must in good faith consider." BNYM did not commit to any date certain by which it would complete its evaluation.

147. BNYM's letter of April 5 was substantially identical to the letter that it had sent more than six weeks earlier, refusing a virtually identical demand to sue on CWALT 2006-OA10.

148. Plaintiffs have satisfied the requirements of the limitation of suits provision of the PSA and are entitled to sue to enforce breaches of the CWALT 2006-OA3 PSA.

149. The PSA authorizes the Trustee to enforce breaches of representations and warranties for the benefit of CWALT 2006-OA3.

150. BNYM's refusal to bring a lawsuit was unreasonable because Plaintiffs' investigation has produced specific evidence that gives rise to a strong inference that Countrywide breached its representations and warranties on the 937 loans that are the subject of this lawsuit and the other loans in CWALT 2006-OA3.

151. BNYM's request for additional time to evaluate Plaintiff's direction was also unreasonable because BNYM refused to provide a date certain by which it would complete its evaluation and because BNYM had more than six months to evaluate whether to file suit based on the evidence of breaches of representations and warranties that Plaintiffs have identified.

152. Because BNYM has unreasonably refused to bring a lawsuit, Plaintiffs bring this action derivatively, in the right and for the benefit of the Certificateholders of CWALT 2006-OA3, to redress the defendants' breach of contract.

153. Plaintiffs are Certificateholders. Plaintiffs will fairly and adequately represent the interests of CWALT 2006-OA3 and the Certificateholders of CWALT 2006-OA3 in enforcing and prosecuting their rights, and have retained competent counsel experienced in this type of litigation to prosecute this action.

LIABILITY OF DEFENDANTS BANK OF AMERICA CORPORATION AND ITS SUBSIDIARIES AS SUCCESSORS TO COUNTRYWIDE FINANCIAL CORPORATION AND COUNTRYWIDE HOME LOANS

154. At all relevant times, BAC was a public company whose stock was traded on the New York Stock Exchange.

155. Before the merger of Countrywide and BAC described below, Countrywide Financial Corporation (referred to as **Old CFC**) was the publicly-traded parent of numerous subsidiaries, including Countrywide Home Loans, CWALT, Park Granada, Park Monaco, and Park Sienna.

156. On January 11, 2008, BAC and Old CFC entered into an Agreement and Plan of Merger (referred to as the **Merger Agreement**) pursuant to which Old CFC would be merged into Red Oak Merger Corporation, a wholly-owned subsidiary of BAC formed to accomplish the merger.

157. Under the Merger Agreement, Old CFC would merge into Red Oak and cease to exist, and Red Oak would continue as the surviving company.

158. Under the Merger Agreement, the shareholders of Old CFC would receive, and ultimately did receive, 0.1822 shares of BAC stock for each share of Old CFC, thereby maintaining those shareholders' ownership interest in the businesses of Old CFC.

159. After the merger, Red Oak was to be renamed Countrywide Financial LLC but was in fact renamed Countrywide Financial Corporation (referred to as **New CFC**).

160. In a Form 8-K filing also dated January 11, 2008, BAC disclosed that the Merger Agreement was between Old CFC and BAC, the public company, not any subsidiary or affiliate of BAC.

161. In a press release accompanying the 8-K, BAC stated that it intended initially to operate Countrywide separately under the Countrywide brand and that integration of Countrywide's operations with the operations of Bank of America would occur in 2009.

162. On February 22, 2008, an article appeared in the periodical *Corporate Counsel* about the litigation that Countrywide then faced and its possible implications for Bank of America. In the article, a spokesperson for Bank of America acknowledged that Bank of America had "bought the company and all of its assets and liabilities[,] . . . was aware of the claims and potential claims against the company and [had] factored these into the purchase."

163. On May 28, 2008, BAC filed a Form 8-K and issued a press release stating that Bank of America was creating a new banking management structure and that a long-time Bank of America officer would become president of the new consumer real estate operations of "Countrywide Financial Corporation and Bank of America when they are combined." The press release also stated that the president of this new consumer real estate operation would be based in Calabasas, California, the location of Old CFC's principal offices.

164. BAC and Old CFC consummated the merger on July 1, 2008. As a result, Old CFC ceased to exist. By operation of law, as a consequence of the merger, Red Oak (soon thereafter renamed Countrywide Financial Corporation, which is New CFC) assumed the liabilities of Old CFC. In a July 1, 2008 8-K and press release, the president of Bank of America's consumer real estate unit stated that it was now time to "begin to combine the two companies and prepare to introduce our new name and way of operating." The release also noted that the combined entity would be based in Calabasas, California, the former principal offices of Countrywide. Plaintiffs are informed and believe, and based thereon allege, that Bank of America's consumer real estate unit has been and remains housed in the offices formerly occupied by Countrywide, and Bank of America has retained a substantial number of former employees of Countrywide to operate its consumer real estate unit.

165. On October 6, 2008, BAC filed an 8-K announcing, among other things, that New CFC and Countrywide Home Loans would transfer all or substantially all of their assets to unnamed subsidiaries of BAC. Plaintiffs are informed and believe, and based thereon allege, that the intended effect of this transaction was to integrate further into the operations of Bank of America the assets of Old CFC and Countrywide Home Loans that had been transferred to New CFC in connection with the merger, while leaving liabilities with New CFC and Countrywide Home Loans.

166. On November 7, 2008, BAC filed an 8-K announcing, among other things, that New CFC and Countrywide Home Loans had transferred substantially all of their assets and operations to BAC. Plaintiffs are informed and believe, and based thereon allege, that, primarily as a result of this transfer of assets, New CFC and Countrywide Home Loans are now moribund organizations, with few, if any, assets or operations.

167. Plaintiffs are informed and believe, and based thereon allege, that transferees of New CFC's and Countrywide Home Loans' assets may have included other subsidiaries of BAC rather than, or in addition to, BAC. In either event, the asset sales were orchestrated and controlled by BAC.

168. As part of the consideration for New CFC's and Countrywide Home Loans' assets, BAC assumed debt securities and related guarantees of Countrywide in an aggregate amount of $16.6 billion. BAC assumed much of this debt through the amendment of indenture agreements substituting BAC (but no other Bank of America company) as the issuer and/or guarantor of the securities subject to the indentures.

169. Plaintiffs are informed and believe, and based thereon allege, that the consideration given for New CFC's and Countrywide Home Loans' assets, as dictated by BAC, was not sufficient to satisfy New CFC's and Countrywide Home Loans' liabilities.

170. On April 27, 2009, Bank of America announced the rebranding of Countrywide operations as Bank of America Home Loans. Bank of America stated that the new brand would represent the combined operations of Bank of America's mortgage and home equity business and Countrywide Home Loans.

171. By the transactions described above, BAC has moved Old CFC's and Countrywide Home Loans' businesses out of Old CFC and Countrywide Home Loans, combined them with its own business operations, and proceeded to operate them.

172. Bank of America operates its combined consumer real estate unit out of what was Old CFC's and Countrywide Home Loans' headquarters. The Plaintiffs are informed and believe, and based thereon allege, that Bank of America employs many former employees of Countrywide to operate this combined unit.

173. Plaintiffs are informed and believe, and based thereon allege, that Bank of America's rebranded consumer real estate business, Bank of America Home Loans, now operates out of over 1,000 former Countrywide Home Loans offices nationwide.

174. Public statements by Old CFC and BAC reflect that the companies intended that their business operations combine. In its press release announcing the merger, BAC declared that it planned to operate Countrywide Home Loans separately under the Countrywide brand for a limited period only, with integration to occur in 2009. In its 2008 annual report, BAC stated that as a "combined company," Bank of America would be recognized as a responsible lender. Similarly, representatives of Old CFC stated that the "combination" of Countrywide and Bank of America would create one of the most powerful mortgage franchises in the world. On a November 16, 2010, conference call Brian Moynihan, the president and CEO of BAC, stated that Bank of America "would pay for the things that Countrywide did."

175. Because Bank of America continued to operate the businesses of Old CFC and Countrywide Home Loans, it had to assume the liabilities necessary to continue those operations, and Plaintiffs are informed and believe, and based thereon allege, that Bank of America did so.

176. In general, when a corporation sells all or substantially all of its assets to another, the liabilities of the seller do not pass to the asset purchaser unless they are part of the bargained-for exchange between the parties. There are, however, a number of doctrines of successor liability that create exceptions to this general rule. The relevant facts, as alleged herein, show that as a result of the circumstances surrounding the purchase and sale of New CFC and Countrywide Home Loans assets, BAC and its unnamed subsidiaries are liable to Plaintiffs because they are the successors to the liabilities of Old CFC and Countrywide Home Loans that were transferred to New CFC by virtue of the Bank of America/Countrywide merger.

FIRST CAUSE OF ACTION: BREACH OF THE CWALT 2006-OA10 PSA

177. Plaintiffs incorporate in this paragraph by reference, as though fully set forth, paragraphs 1 through 176.

178. The CWALT 2006-OA10 PSA is a valid contract.

179. In the CWALT 2006-OA10 PSA, and for valuable consideration, Countrywide Home Loans made to CWALT 2006-OA10 representations and warranties about each of the mortgage loans that CWALT 2006-OA10 purchased from CWALT.

180. At least 1,432 of the loans that CWALT 2006-OA10 purchased breached the representations and warranties that Countrywide made about those loans.

181. Under the CWALT 2006-OA10 PSA, the Countrywide defendants must repurchase the loans. The Countrywide defendants have not repurchased the loans and have breached the CWALT 2006-OA10 PSA.

182. Countrywide's failure to repurchase the loans has caused damages to CWALT 2006-OA10 and to the Certificateholders of CWALT 2006-OA10, including Plaintiffs.

SECOND CAUSE OF ACTION: BREACH OF THE CWALT 2006-OA3 PSA

183. Plaintiffs incorporate in this paragraph by reference, as though fully set forth, paragraphs 1 through 176.

184. The CWALT 2006-OA3 PSA is a valid contract.

185. In the CWALT 2006-OA3 PSA, and for valuable consideration, Countrywide Home Loans made to CWALT 2006-OA3 representations and warranties about each of the mortgage loans that CWALT 2006-OA3 purchased from CWALT.

186. At least 536 of the loans that CWALT 2006-OA3 purchased breached the representations and warranties that Countrywide made about those loans.

187. Under the CWALT 2006-OA3 PSA, the Countrywide defendants must repurchase the loans. The Countrywide defendants have not repurchased the loans and have breached the CWALT 2006-OA3 PSA.

188. Countrywide's failure to repurchase the loans has caused damages to CWALT 2006-OA3 and to the Certificateholders of CWALT 2006-OA3, including Plaintiffs.

DEMAND FOR RELIEF

Therefore, Plaintiffs demand judgment against the defendants Countrywide Home Loans, Inc., Park Granada, Park Monaco, and Park Sienna, and their successor Bank of America Corporation, for specific performance of their obligation under Section 2.03(c) of the CWALT 2006-OA10 PSA and Section 2.03(c) of the CWALT 2006-OA3 PSA with respect to the loans identified in Exhibits 4 and 10 to this Complaint, and with respect to all other loans in the trusts as to which the defendants breached one or more of their representations and warranties under the PSAs, or in the alternative, for damages in an amount to be determined at trial, with interest. Plaintiffs also demand an award of the costs and expenses of maintaining this action on behalf of the trusts, including reasonable attorneys and expert fees.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury.

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Dated: New York, New York
April 12, 2011

EXHIBIT H

EXECUTION COPY

CWALT, INC.,
Depositor
COUNTRYWIDE HOME LOANS, INC.,
Seller
PARK GRANADA LLC,
Seller
PARK MONACO INC.,
Seller
PARK SIENNA LLC,
Seller
COUNTRYWIDE HOME LOANS SERVICING LP,
Master Servicer
and
THE BANK OF NEW YORK,
Trustee

POOLING AND SERVICING AGREEMENT
Dated as of March 1, 2006

ALTERNATIVE LOAN TRUST 2006-OA3

MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-OA3

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THIS POOLING AND SERVICING AGREEMENT, dated as of March 1, 2006, among CWALT, INC., a Delaware corporation, as depositor (the "Depositor"), COUNTRYWIDE HOME LOANS, INC. ("***Countrywide***"), a New York corporation, as a seller (a "***Seller***"), PARK GRANADA LLC ("***Park Granada***"), a Delaware limited liability company, as a seller (a "***Seller***"), PARK MONACO INC. ("***Park Monaco***"), a Delaware corporation, as a seller (a "***Seller***"), PARK SIENNA LLC ("***Park Sienna***"), a Delaware limited liability company, as a seller (a "***Seller***"), COUNTRYWIDE HOME LOANS SERVICING LP, a Texas limited partnership, as master servicer (the "***Master Servicer***"), and THE BANK OF NEW YORK, a banking corporation organized under the laws of the State of New York, as trustee (the "***Trustee***").

WITNESSETH THAT

In consideration of the mutual agreements contained in this Agreement, the parties to this Agreement agree as follows:

PRELIMINARY STATEMENT

The Depositor is the owner of the Trust Fund that is hereby conveyed to the Trustee in return for the Certificates. For federal income tax purposes, the Trust Fund (other than the Carryover Reserve Fund), will consist of six real estate mortgage investment conduits (each a "REMIC" or, in the alternative, the "REMIC 1," "REMIC 2," the "Master REMIC," "REMIC C," "REMIC 1-P," and "REMIC 2-P" respectively). Each Certificate, other than the Class C, Class 1-P, Class 2-P, Class R-X and Class A-R Certificates, will represent ownership of one or more regular interests in the Master REMIC for purposes of the REMIC Provisions. The Class C Certificates will represent ownership of the sole regular interest in REMIC C and will be entitled to, respectively, all amounts payable on the assets held by REMIC C. The Class 1-P and Class 2-P Certificates will represent, respectively, ownership of the sole regular interest in REMIC 1-P and REMIC 2-P and will be entitled to all amounts payable on the assets held by REMIC 1-P and REMIC 2-P, respectively. The Class A-R Certificate will represent ownership of the sole class of residual interest in each of the REMIC 1, REMIC 2 and the Master REMIC and the Class R-X Certificates will represent ownership of the sole class of residual interest in each of REMIC C, REMIC 1-P and REMIC 2-P. Except as described below, none of the residual interests will be entitled to any payments of interest or principal.

REMIC C, REMIC 1-P and REMIC 2-P will hold as assets, respectively, the Class C, Class 1-P and Class 2-P Interests in the Master REMIC. The Master REMIC will hold as assets the several classes of uncertificated REMIC 2 Interests (other than the Class R-2 Interests). REMIC 2 will hold as assets the several classes of uncertificated REMIC 1 Interests (other than the Class R-1 Interests). REMIC 1 will hold all the assets of Loan Group 1 and Loan Group 2 (other than the Carryover Reserve Fund). For federal income tax purposes, each REMIC Interest (other than the interests represented by the Class A-R and Class R-X Certificates) is hereby designated as a regular interest. The latest possible maturity date of all REMIC regular interests created hereby shall be the Latest Possible Maturity Date.

Master REMIC:

(viii) the Trustee shall not be deemed to have knowledge of an Event of Default until a Responsible Officer of the Trustee shall have received written notice thereof; and

(ix) the Trustee shall be under no obligation to exercise any of the trusts, rights or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of the NIM Insurer or any of the Certificateholders, pursuant to the provisions of this Agreement, unless the NIM Insurer or such Certificateholders shall have offered to the Trustee reasonable security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

SECTION 8.03. Trustee Not Liable for Certificates or Mortgage Loans.

The recitals contained in this Agreement and in the Certificates shall be taken as the statements of the Depositor or a Seller, as the case may be, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Agreement or of the Certificates or of any Mortgage Loan or related document or of MERS or the MERS® System other than with respect to the Trustee's execution and counter-signature of the Certificates. The Trustee shall not be accountable for the use or application by the Depositor or the Master Servicer of any funds paid to the Depositor or the Master Servicer in respect of the Mortgage Loans or deposited in or withdrawn from the Certificate Account by the Depositor or the Master Servicer.

SECTION 8.04. Trustee May Own Certificates.

The Trustee in its individual or any other capacity may become the owner or pledgee of Certificates with the same rights as it would have if it were not the Trustee.

SECTION 8.05. Trustee's Fees and Expenses.

The Trustee, as compensation for its activities hereunder, shall be entitled to withdraw from the Distribution Account on each Distribution Date an amount equal to the Trustee Fee for such Distribution Date. The Trustee and any director, officer, employee or agent of the Trustee shall be indemnified by the Master Servicer and held harmless against any loss, liability or expense (including reasonable attorney's fees) (i) incurred in connection with any claim or legal action relating to (a) this Agreement, (b) the Certificates or (c) in connection with the performance of any of the Trustee's duties hereunder, other than any loss, liability or expense incurred by reason of willful misfeasance, bad faith or negligence in the performance of any of the Trustee's duties hereunder or incurred by reason of any action of the Trustee taken at the direction of the Certificateholders and (ii) resulting from any error in any tax or information return prepared by the Master Servicer. Such indemnity shall survive the termination of this Agreement or the resignation or removal of the Trustee hereunder. Without limiting the foregoing, the Master Servicer covenants and agrees, except as otherwise agreed upon in writing by the Depositor and the Trustee, and except for any such expense, disbursement or advance as may arise from the Trustee's negligence, bad faith or willful misconduct, to pay or reimburse the Trustee, for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Agreement with respect to: (A) the reasonable compensation and the expenses and disbursements of its counsel not associated with

the closing of the issuance of the Certificates, (B) the reasonable compensation, expenses and disbursements of any accountant, engineer or appraiser that is not regularly employed by the Trustee, to the extent that the Trustee must engage such persons to perform acts or services hereunder and (C) printing and engraving expenses in connection with preparing any Definitive Certificates. Except as otherwise provided in this Agreement, the Trustee shall not be entitled to payment or reimbursement for any routine ongoing expenses incurred by the Trustee in the ordinary course of its duties as Trustee, Registrar, Tax Matters Person or Paying Agent hereunder or for any other expenses.

SECTION 8.06. Eligibility Requirements for Trustee.

The Trustee hereunder shall at all times be a corporation or association organized and doing business under the laws of a state or the United States of America, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal or state authority and with a credit rating which would not cause either of the Rating Agencies to reduce or withdraw their respective then current ratings of the Certificates (or having provided such security from time to time as is sufficient to avoid such reduction) as evidenced in writing by each Rating Agency. If such corporation or association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.06 the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.06, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.07. The entity serving as Trustee may have normal banking and trust relationships with the Depositor and its affiliates or the Master Servicer and its affiliates; provided, however, that such entity cannot be an affiliate of the Master Servicer other than the Trustee in its role as successor to the Master Servicer.

SECTION 8.07. Resignation and Removal of Trustee.

The Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice of resignation to the Depositor, the Master Servicer and each Rating Agency not less than 60 days before the date specified in such notice when, subject to Section 8.08, such resignation is to take effect, and acceptance by a successor trustee in accordance with Section 8.08 meeting the qualifications set forth in Section 8.06. If no successor trustee meeting such qualifications shall have been so appointed and have accepted appointment within 30 days after the giving of such notice or resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

As a condition to the effectiveness of any such resignation, at least 15 calendar days prior to the effective date of such resignation, the Trustee shall provide (x) written notice to the Depositor of any successor pursuant to this Section and (y) in writing and in form and substance reasonably satisfactory to the Depositor, all information reasonably requested by the Depositor in order to comply with its reporting obligation under Item 6.02 of Form 8-K with respect to the resignation of the Trustee.