343. Similarly, in *The Prudential Insurance Company of America v. Bank of America, National Association*, No. 13-cv-01586 (D.N.J.), the plaintiffs alleged systemic misrepresentations regarding occupancy status, LTV and CLTV ratios and chain of title representations in connection with, among other things, the underlying loans for three C-BASS-label offerings, including CBASS 2004-CB8, which is one of the Trusts. The plaintiffs also noted that at the time of bringing the suit, over 11% of the original loans for C-BASS 2004-CB8 had been written off, and nearly 34% were severely delinquent.

344. The results of litigants' loan level reviews of substantially similar C-BASS-label securitizations the faulty securitization practices of C-BASS. For example, in *FHFA v. Barclays Bank PLC*, No. 11-cv-06190 (S.D.N.Y.), performed a review of loans from the CBASS 2006-CB1 and CBASS 2007-CB2 offerings two Trusts at issue here. FHFA found that at least 83% of the reviewed loans from CBASS 2007-CB2 were not underwritten in accordance with underwriting guidelines. The FHFA further found that over 12.82% of the loans with CBASS 2006-CB1 and 29.27% of the loans within CBASS 2007-CB2 had LTV ratios exceeding 100%.

IX. BNYM KNEW THAT THE TRUSTS WERE FILLED WITH DEFECTIVE LOANS

345. There is ample evidence that beginning in 2009 and by 2011, BNYM "discovered" that each of the Trusts' loan pools contained high percentages of mortgage loans that materially breached the originators' and sponsors' representations and warranties regarding their credit quality. As discussed above, since 2009 there has been a steady stream of public disclosures regarding the originators' systemic underwriting abuses and the sponsors' faulty securitization practices. However, apart from the highly publicized government investigations, reports and enforcement actions, as well as high profile RMBS litigation involving the originators and sponsors, as explained below there is a plethora of additional evidence

demonstrating BNYM's and its responsible officers' knowledge that the Trusts' loan pools contained high percentages of mortgage loans that materially breached seller representations and warranties.

A. The Trusts' Poor Performance

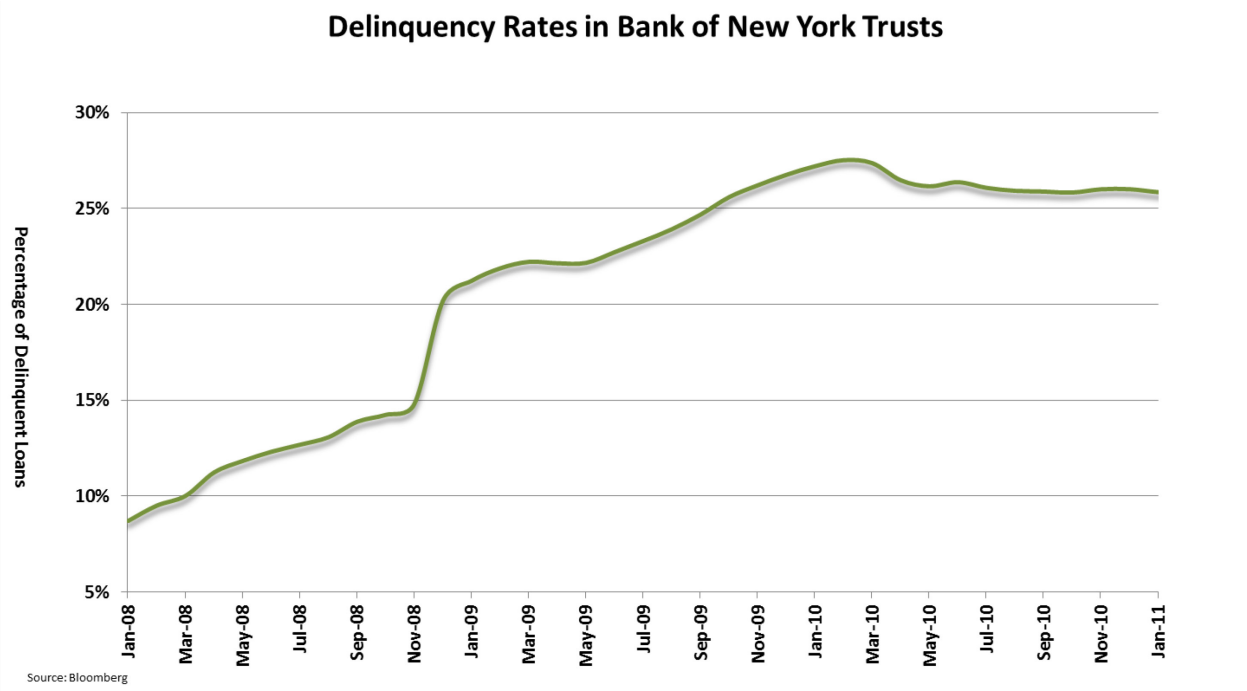
346. BNYM and its responsible officers had discovered by 2009 that the Trusts' loan pools were afflicted by severe and pervasive breaches of seller representations and warranties by virtue of the Trusts' abject performance. It was evident by January 2009 that given the extremely high mortgage loan default rates within the Trust loan pools the mortgage loans sold to the Trusts were not as the sellers had represented and warranted.

347. For example, by January 1, 2009, over 21% of the relevant mortgage collateral across all 257 of the Trusts were delinquent. Within certain RMBS sponsor labels, such as the Centex-label Trusts, over 31% of the relevant mortgage collateral were delinquent, and delinquencies in trusts sponsored by Merrill Lynch averaged more than 34%. Moreover, an astounding 25% or more of the relevant mortgage loans were delinquent in 91 of the individual Trusts. Further, approximately 28% of the Trusts had delinquency rates of above 30% for the remaining mortgage loans. Astonishingly, in 8 Trusts, over half of the collateral was delinquent, with the IXIS 2005-HE2 reaching nearly 58%.

348. Moreover, in January 2009, 67% (172) of the Trusts had double-digit mortgage loan default rates. Incredibly, over 28% (73) of the Trusts had mortgage loan default rates in excess of 30%, while at least 3% (8) of the Trusts had default rates over 50%.

349. These high default rates were no surprise to BNYM by January 2009. Among other things, BNYM, as Trustee, published monthly remittance reports, that were publicly filed with the SEC on Form 10-D, outlining the credit performance of the mortgage loans in the Trusts. Moreover, the delinquency rates had been steadily rising up to and through 2009. By

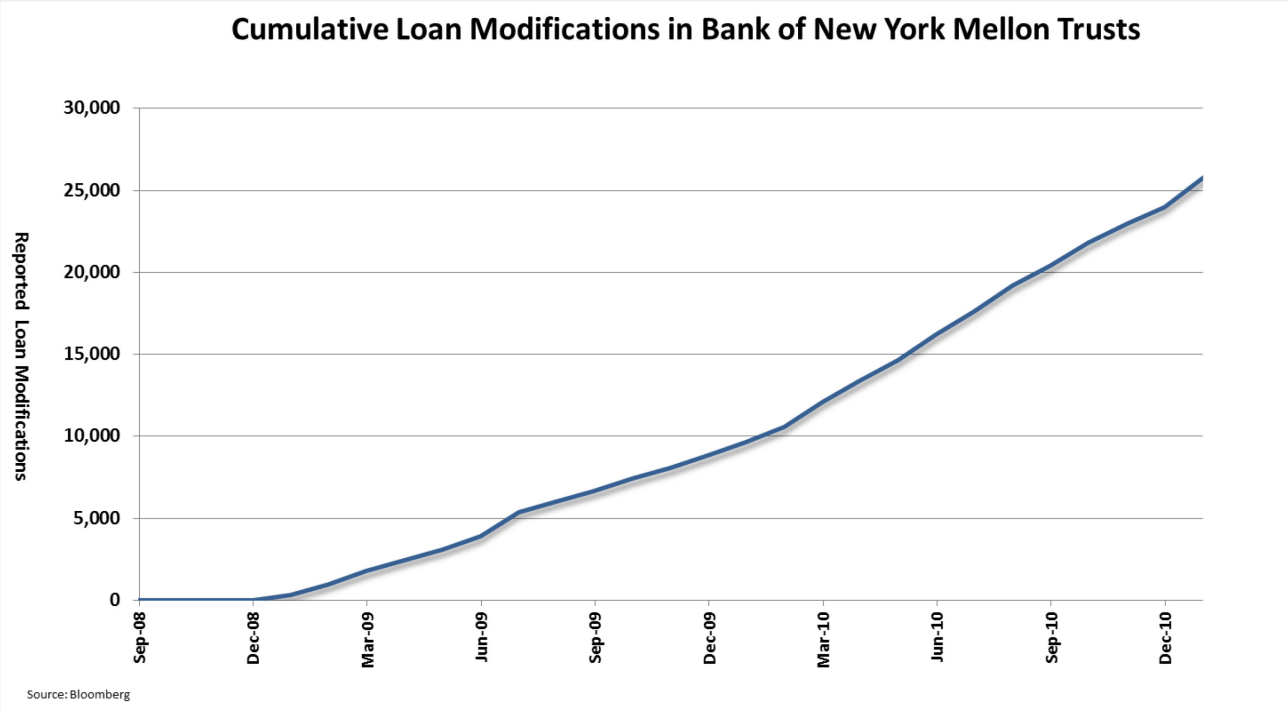
about July 2008, the first harbingers of the violations of the representations and warranties regarding the credit quality of the loans started to appear. The Trustees' monthly reports started to show increases in the trends of loan delinquencies, and by January 2009 these trends had become pronounced:



350. BNYM was also provided regular reports regarding loan modifications granted by the servicers to borrowers that failed to timely make principal and interest payments on their loans to the Trusts. In general, loan modifications change the terms of the original mortgage contract agreed to by the lender and borrower, typically to ease the borrower's monthly payment obligation so the borrower may remain current and avoid default. Loan modifications often include changes to the loan's interest rate, term and/or outstanding principal. As with delinquency rates, the extent of loan modifications is indicative of breaches of representations and warranties for at least two reasons. First, escalating loan modifications correlate to misstated borrower income and creditworthiness. Second, the servicers' decisions to modify rather than foreclose on loans indicates that the underlying collateral is not adequate security to satisfy the

outstanding balance because the original loan-to-value ratio (or combined loan-to-value ratio) was not as represented because the appraised property value was misstated and additional liens encumbered the mortgaged property.

351. As indicated below, loan modifications in the Trusts dramatically increased beginning in early 2009, providing BNYM further information regarding the systemic breaches of representations and warranties in the Trusts:



B. Credit Rating Downgrades Of The Certificates Further Supports The Sellers' Breaches

352. At the time of securitization, all of the Trusts' senior tranches were rated "investment grade." Bond rating firms, such as Standard & Poor's, use different designations consisting of upper- and lower-case letters 'A' and 'B' to identify a bond's credit quality rating. "AAA" and "AA" (high credit quality) and "A" and "BBB" (medium credit quality) generally are considered investment grade. An investment grade rating signifies that the bond has a relatively low risk of default and are judged by the rating agencies as likely to meet payment

obligations such that banks and institutional investors are permitted to invest in them. Credit ratings for bonds below investment grade designations (*i.e.*, "BB", "B", "CCC", etc.) are considered low credit quality, and are commonly referred to as "junk bonds."

353. However, as public disclosures revealed the originators' and sponsors' systemic underwriting and securitization abuses and BNYM began reporting severe collateral losses in the performance of the mortgage loans in the Trusts, the Trusts' certificates' credit ratings were drastically downgraded. By December 31, 2009, approximately 60% of the senior tranches in the Trusts had been downgraded at least once. Across all Trusts, approximately 75% of all certificates had been downgraded by at least one ratings agency. Further, over one-third of the senior certificates had been downgraded to junk bond status.

C. BNYM Pervasive And Systemic Seller Breaches Through Financial Guaranty Insurer Litigation

354. BNYM discovered that each of the Trusts' loan pools contained high percentages of mortgage loans that materially breached the originators' and sponsors' representations and warranties regarding their credit quality through their involvement in financial guaranty insurer litigation against these same originators and sponsors.

355. Financial guaranty insurers provided financial guaranty insurance for the RMBS issued from many of the Trusts. Under the governing agreements for these insured RMBS transactions, the mortgage loan sellers to the Trusts made numerous representations and warranties concerning the attributes of the loans and the practices pursuant to which they were originated. The governing agreements for the insured RMBS transactions also create a repurchase protocol pursuant to which the monoline insurers must provide notice of a breach of representation and warranty to the responsible mortgage loan seller and the parties to the

agreement (including BNYM as Trustee) in order to compel the responsible mortgage loan seller to repurchase loans that breach the representations and warranties.

356. In the aftermath of the financial crisis, several monoline insurers of RMBS issued from the Trusts have initiated numerous lawsuits against responsible mortgage loan sellers for breach of their representations and warranties. BNYM and its responsible officers gained knowledge of these suits and the allegations made against these mortgage loan sellers because BNYM was named as a defendant in these lawsuits. For example, on March 19, 2009, monoline insurer United Guaranty Indemnity Company ("United Guaranty") brought suit against Countrywide and BNYM in connection with mortgage insurance policies insuring mortgage loans originated and securitized by Countrywide in 2006 in eleven CWABS securitizations. *United Guar. Mortg. Indem. Co. v. Countrywide Fin. Corp., et al.*, No. 09-01888 (C.D. Cal. July 15, 2009). In its amended complaint, United Guaranty alleged that "Countrywide's failure to abide by any standard of care in its loan origination practice dramatically changed the risk profile" of the insured loans. In support of this contention, United Guaranty alleged that its internal review revealed that over 55% of mortgage loans audited failed to comply with Countrywide's underwriting guidelines or contained some material defect.

357. Similarly, on December 31, 2009, monoline insurers Republic Mortgage Insurance Company and Republic Insurance Company of North Carolina (collectively, "RMIC") brought an action for declaratory relief against Countrywide and BNYM in connection with mortgage insurance policies insuring mortgage loans originated, securitized and serviced by Countrywide under the 2006 CWABS shelf. *Republic Mortg. Ins. Co., et al. v. Countrywide Fin. Corp*., *et al.*, Index No. 603915/2009 (N.Y. Sup. Ct.). In its complaint, RMIC highlighted Countrywide's "notorious lending practices" and alleged that "[i]n its investigation of delinquent

loans produced through Countrywide's shoddy lending practices, RMIC has determined that, as of the filing of this lawsuit, there have been over 1500 loans where there have been material misrepresentations concerning the insured loan, in some cases by Countrywide or with its knowing participation."

358. In addition, prior to filing suit against the originators and/or sponsors, the monoline insurers (unlike certificateholders) were often able to obtain access to the specific loan files or conducted a forensic loan level review of the loans, which showed systemic and pervasive breaches of the representations and warranties. Plaintiffs are informed and believe that consistent with the repurchase protocol under the Trusts' governing documents, the monoline insurers notified both the responsible mortgage loan sellers and the parties to the PSAs (including BNYM as Trustee) of the breaching loans in the Trusts.

359. For example, on September 30, 2008, MBIA, a New York-based monoline insurer that wrote insurance on fifteen Countrywide mortgage-backed securities offerings, filed an action against Countrywide. Prior to filing the action, MBIA had access to some of the complete loan files for certain Countrywide securitizations and performed a loan level analysis. MBIA's pre-suit loan level analysis included review of loans from at least five of the Countrywide-label Trusts at issue here: CWL 2006-S8, CWL 2006-S9, CWL 2007-S1, CWL 2007-S2, and CWL 2006-S10. Many of the remaining offerings that MBIA reviewed featured the same loan products, parties structure, and timing as the mortgage loans underlying the Countrywide-label Trusts. In carrying out its review of the approximately 19,000 Countrywide loan files - including loans that were sold to the Trusts - MBIA found that 91% of the defaulted or delinquent loans in those securitizations contained material deviations from Countrywide's underwriting guidelines. MBIA also found that the defective loans spanned Countrywide's securitizations from 2004 to

2007, demonstrating the consistency of Countrywide's disregard for its own underwriting guidelines over this period, which encompasses the period of Countrywide-label Trusts at issue in this case. MBIA's analysis showed that the loan applications frequently "lack key documentation, such as verification of borrower assets or income; include an invalid or incomplete appraisal; demonstrate fraud by the borrower on the face of the application; or reflect that any of borrower income, FICO score, debt, DTI [debt-to-income,] or CLTV [combined loan-to-value] ratios, fails to meet stated Countrywide guidelines (without any permissible exception)." MBIA also found that the defective loans covered Countrywide's securitizations from 2004 to 2007. Based on the governing agreements' repurchase protocol, Plaintiffs are informed and believe that BNYM was given notice of the MBIA's findings.

360. Because these monoline insurers' findings from loan level reviews set forth both in their breach notices to BNYM and subsequent publicly available lawsuits reflected these mortgage loan sellers' systemic and pervasive violation of underwriting and securitization guidelines, BNYM knew that these same defective underwriting and securitization practices applied equally to all of the other Trusts containing loans originated and securitized by these same originators and sponsors.

D. BNYM Discovered Countrywide's Widespread Breaches Of Representations And Warranties Through The Bank Of America/Countrywide Article 77 Proceeding And Related Litigation

361. On June 29, 2011, BNYM, as trustee for 530 Countrywide-label trusts, filed a Verified Petition commencing a proceeding under Article 77 of the New York Civil Practice Law and Rules in New York Supreme Court (New York County) (the "Article 77 Proceeding") before Hon. Barbara R. Kapnick, for approval of an $8.5 billion settlement between BNYM and Bank of America resolving, among other things, Countrywide's repurchase obligations for loans in breach of representations and warranties for nearly all of its first-lien securitizations. *In the*

matter of the application of the Bank of New York Mellon, et al., Index No. 651786/2011 (N.Y. Sup. Ct.).

362. The circumstances leading to the settlement began in the Summer of 2010, when institutional investors holding certificates issued from many of these Countrywide-label trusts, sent letters to BNYM on June 17, 2010 and August 20, 2010. In those letters, the institutional investor group asserted that Countrywide had sold a large number of mortgages into the trusts that failed to comply with certain representations and warranties contained in the governing agreements. The institutional investor group cited the excessive early default and foreclosure rates for the mortgages, Countrywide's settlements with various State Attorneys General, and publicly disclosed emails from Countrywide officials as evidence of breaches of representations and warranties. The institutional investor group contended that Countrywide was obligated to repurchase the defaulting mortgage loans. Thereafter, on October 18, 2010, the institutional investor group sent Bank of America and BNYM a Notice of Non-Performance letter ("October 18 Notice") detailing the ways in which the Bank of America Master Servicer was in default of its obligations. The settlement process immediately ensued.

363. In November 2010, the institutional investor group, with the participation of BNYM, engaged in negotiations with Countrywide and Bank of America in an attempt to reach a settlement for the benefit of the trusts and to avoid litigation. Throughout the negotiations, the trustee retained various consultants to advise and prepare reports on the extent of Countrywide's repurchase liability as a result of its breach of representations and warranties. These settlement negotiations and BNYM's consultation with experts culminated in a settlement memorialized by an agreement, dated June 28, 2011, entered into by BNYM and Bank of America. The settlement agreement requires Bank of America and/or Countrywide to pay $8.5 billion 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 required Bank of America's servicer division BAC Home Loans Servicing, LP ("BAC HLS") (f/k/a Countrywide Home Loan Servicing, LP) 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 sub-servicers for more individualized attention.

364. As a condition precedent to the settlement, BNYM initiated an Article 77 Proceeding in New York Supreme Court to confirm that it had the authority to enter into the settlement under the governing trust documents and that entry into the settlement did not violate its duties under the governing trust agreements and state law. Subsequent to BNYM filing its Petition, various investors intervened in the proceeding, objecting to the settlement.

365. After jurisdictional motion practice and pre-hearing proceedings, the trustee, the institutional investors and objectors engaged in discovery, as well as motion practice concerning a variety of issues, including Countrywide's underwriting practices and its repurchase liability as a result of its breach of representations and warranties.

366. After completion of discovery, the parties attended a final evidentiary hearing commencing on June 3, 2013, which included live testimony from twenty-two witnesses over the course of thirty-six non-consecutive days, concluding on November 21, 2013. During the final evidentiary hearing, the parties adduced evidence of Countrywide's underwriting practices and its repurchase liability as a result of its breach of representations and warranties.

367. In addition to the Article 77 Proceeding, BNYM learned of Countrywide's pervasive and systemic breach of representations and warranties through certificateholder

lawsuits against BNYM for its breach of duties as trustee for the trusts that were the subject of the settlement. Indeed, BNYM has been named as a defendant in at least six certificateholder initiated cases as a result of its failure to enforce Countrywide's repurchase obligations for these trusts. *See, e.g., Walnut Place LLC, et al. v. Countrywide Home Loans, Inc.*, Index No. 650497/2011 (N.Y. Sup. Ct.); *Knights of Columbus v. The Bank of New York Mellon*, Index No. 651442/2011 (N.Y. Sup. Ct.); *Am. Fidelity Assurance Co. v. The Bank of New York Mellon*, No. 11-cv-1284 (W.D. Okla.); *Ret. Bd. of the Policemen's Annuity and Benefit Fund of the City of Chicago v. The Bank of New York Mellon*, No. 11-cv-5459 (S.D.N.Y.); *Sterling Fed. Bank, F.S.B. v. Countrywide Fin. Corp*., No. 11-cv-2012 (E.D. Ill.); and *Bankers Ins. Co., et al. v. Countrywide Fin. Corp*., *et al.*, No. 11-cv-07152 (M.D. Fla.).

368. Because the allegations and evidence in the both the Article 77 proceeding and the certificateholder suits against BNYM established Countywide's systemic and pervasive violation of underwriting and securitization guidelines, BNYM knew that these same defective underwriting and securitization practices applied equally to all of the Countrywide-label Trusts containing loans originated and securitized by Countrywide subject to the same practices.

E. BNYM And Its Responsible Officers Received Written Notice From Certificateholders Of Pervasive And Systemic Seller Breaches

369. BNYM, in its capacity as trustee to RMBS trusts that are not the subject of this action but which are secured by loans originated and sponsored by the very same entities that originated and sponsored the loans underlying the Trusts at issue herein, has repeatedly received notice from Certificateholders of pervasive and systemic violations of representations and warranties by the loan sellers. Based on the sheer volume of the defective mortgage loans identified, together with the systemic and pervasive faulty origination and securitization practices

complained of in the Certificateholders' breach notices, BNYM and its responsible officers knew that the Trusts' loan pools similarly contained high percentages of defective mortgage loans.

370. For example, on December 16, 2011, a group of major institutional mortgage investors in hundreds of RMBS trusts sponsored by JPMorgan or its affiliates issued written instructions to BNYM, as well as Wells Fargo, Deutsche Bank, HSBC and U.S. Bank, as trustees, to open investigations into large numbers of ineligible mortgages in the loan pools securing those trusts and deficient servicing of those loans (the "JPMorgan Putback Initiative"). The notices covered more than $95 billion of RMBS issued by JPMorgan from 2005 to 2007, including 57 trusts for which BNYM serves as trustee. Less than two years later, Wells Fargo and the other trustees were presented with a $4.5 billion settlement offer covering 330 JPMorgan-sponsored RMBS trusts. BNYM's approval of the JPMorgan Putback Initiative remains pending.

371. The JPMorgan Putback Initiative identified and seeks to compel the repurchase of large quantities of loans (1) originated by many of the same lenders that also originated large quantities of the loans sold to the Trusts, including Countrywide ($27.1 billion of loans sold to the Trusts) and First Horizon ($26 billion of loans sold to the Trusts); and (2) securitized by the same investment banks and financial institutions that sponsored the Trusts, including Bear Stearns and Luminent Mortgage (collectively, $17 billion of sponsored Trusts). In addition, the JPMorgan Putback Initiative identified and seeks recovery of losses relating to servicing deficiencies by many of the same major servicers of loans backing the Trusts, including Wells Fargo (original servicer to $31.4 billion of loans sold to the Trusts) and Countrywide (original servicer to $30.9 billion of loans sold to the Trusts).

372. On May 14, 2012, a group of major institutional mortgage investors in several hundred RMBS trusts sponsored by ResCap or its affiliates reached agreement with ResCap and its affiliated debtors to resolve claims for breaches of representations and warranties concerning large numbers of loans in the pools securing those trusts (the "ResCap Putback Initiative"). The settlement covered more than $320 billion of RMBS largely issued between 2004 and 2008, including 228 trusts for which BNYM serves as trustee. The trustees for these ResCap-sponsored trusts, which were aware of the repurchase and servicing claims through, among other things, the bankruptcy proceedings, are BNYM, U.S. Bank, Wells Fargo, and Deutsche Bank.

373. The ResCap Putback Initiative identified and sought to compel the repurchase of large quantities of loans (1) originated by many of the same lenders that also originated large quantities of the loans sold to the Trusts, including Wells Fargo ($3.4 billion of loans sold to the Trusts).

374. Further, BNYM received a letter dated May 10, 2012, regarding "GE-WMC Mortgage Securities Trust 2006-1 (GE-WMC 2006-1)" wherein the FHFA notified BNYM, as trustee, that at least 427 mortgage loans were identified that were in breach of one or more of the representations and warranties made by the sellers and that each such breach materially and adversely affected the value of the loans and the interests of the certificateholders. In its letter, the FHFA further informed BNYM that in light of the fact that "none of the identified breaches in the Subject Loans may be cured, FHFA on behalf of Fannie Mae hereby requests that the Trustee enforce the Original Loan Seller's obligation to repurchase the Subject Loans before the expiration of such 90-day period."

375. Similarly, other Certificateholders sent BNYM a letter dated May 21, 2012, concerning "GE-WMC Asset-Backed Pass-Through Certificates, Series 2006-1" entitled "Notice

of Breaches of Representations and Warranties and Direction to Submit a Repurchase Request." By this letter and the attachments, the certificateholders formally notified BNYM of breaches of representations and warranties by WMC, as the Originator, and/or GE Mortgage Holding, L.L.C., as the Seller, that "materially and adversely affect the value of such Mortgage Loans and the interests of Certificateholders therein and demands that Originator and/or Seller cure such breaches or repurchase the Mortgage Loans affected thereby within the time frame set out in the PSA."

376. In addition, this letter directed BNYM to request the repurchase of the loans included on the schedules attached from the originator and seller, and to provide notice to all parties of the breaches of representations and warranties. The letter included twenty schedules that list over 2,600 loans that "breach representations and warranties of Originator and/or Seller in respect of such Mortgage Loans that materially and adversely affect the value of the Mortgage Loans and the interests of Certificateholders therein."

377. Despite BNYM's actual notice of widespread loan defaults and breaches, as the two examples above illustrate, BNYM failed to act in accordance with its obligations under the governing agreements and TIA to enforce the originators' and sponsors' obligations to cure, substitute or repurchase defective mortgage loans.

F. BNYM Initiated Putback Litigation Against Sellers

378. BNYM participated in at least three actions to enforce putback rights for other RMBS trusts that involved the same originators, sponsors, sellers and servicers as the Trusts at issue here. Based on its involvement in these putback actions, which alleged pervasive and systemic breaches of representations and warranties, BNYM was aware of similarly pervasive and systemic breaches of representations and warranties in the Trusts.

379. In each of the putback actions, loan level reviews were conducted which identified breach rates as high as 99%, including those sponsored by the same sponsors as the Trusts and involving loans originated and sold by the same originators and sponsors as the Trusts. The offerings discussed below are at issue in this action.

380. In one such putback action against WMC, BNYM asserted that *of the 498 origination files reviewed thus far, 493 mortgage loans [99%] materially breach one or more of WMC's representations and warranties*. *The Bank of New York Mellon, solely as Sec. Admin. for J.P. Morgan Mortg. Acquisition Trust 2006-WMC4*, Index No. 654464/2012 (N.Y. Sup. Ct. Feb. 24, 2013) Compl. at Exhibit E. BNYM further alleged that a review of an additional 350 origination files revealed material breaches in 347 *or 99% of the WMC loans*. "The enormity of defective loans uncovered to date strongly indicates systemic breaches throughout the collateral underlying the Trust." Compl. at Exhibit F.

381. Similarly, BNYM filed a complaint which asserted 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 allegation was based on publicly disclosed emails from Countrywide officials that served as evidence of breaches of representations and warranties, as well as the alleged excessive early default and foreclosure rates for the mortgage loans, and the settlements between Countrywide and State Attorneys Generals. *See The Bank of New York Mellon Verified Petitioner For an Order Pursuant to CPLR § 7701*, Index No. 651786/2011, (N.Y. Sup. Ct. June 29, 2011) ¶27.

382. Finally, in another putback action against WMC, BNYM initial loan level review identified over 2,600 mortgage loans originated by WMC that breach representations and warranties. According to BNYM, this sample represented "just the tip of the iceberg." *The Bank*

of New York Mellon, solely as Trustee for GE-WMC Mortg. Sec. Trust 2006-1 v. WMC Mortg., LLC, et al., No. 12-cv-07096 (S.D.N.Y. May 29, 2013) First Amended Compl. at Exhibit D.

383. In short, the incredibly high rates of defaults cited by BNYM in support of its putback actions further demonstrates that BNYM was well aware of the pervasive and systemic breaches of representations and warranties of the loans at issue here as well.

X. THE TRUSTS SUFFERED FROM PERVASIVE SERVICER VIOLATIONS

384. In the aftermath of the financial crisis, the mortgage loan servicing industry has received increased scholarly, popular, regulatory and political attention as a result of rampant servicing abuses in connection with the administration of and foreclosing on mortgage loans backing private-label RMBS.

385. Much like other private-label RMBS trusts of the same vintage, each of the Trusts suffer from ongoing Events of Default caused by the servicers' failure to observe and perform, in material respects, the covenants and agreements imposed on them by the PSAs. The servicers' breach of their covenants is confirmed through several federal and state government investigations and published reports, well publicized news reports, and public and private enforcement actions that have described RMBS servicers' systemic and pervasive deviation from usual, customary and lawful servicing practices in their administration of mortgages and, more specifically, illegal and illicit servicing activities by the same servicers who service the loans held by the Trusts.

A. The Servicers Failed To Give Notice Of Seller Breaches Of Representations And Warranties And Enforce The Sellers' Repurchase Obligations

386. As with the trustee, the PSAs require the servicers to give prompt written notice to all parties to the PSAs of a breach of a representation or warranty made by a seller in respect

of the mortgage loans that materially and adversely affects the value of any mortgage loan or the interests of the Certificateholders in any such mortgage loan, upon the servicer's discovery of such breach. Moreover, the servicers are similarly required to enforce the sellers' obligation to repurchase, substitute, or cure such defective loans as required under the PSAs.

387. For the benefit of the Trusts, and pursuant to the PSAs, the sponsors acquired primary mortgage guaranty insurance ("PMI") policies for loans that had a LTV ratio in excess 80%, which served as "credit enhancements" in order to offer additional security to Certificateholders in the Trusts and to induce rating services to provide a higher credit rating for the certificates, thereby making the certificates more attractive to potential purchasers. In the aftermath of the financial crisis, servicers have tendered claims to mortgage insurers under the PMI policies on the Trusts' behalf on defaulted loans. The mortgage insurers have denied coverage, canceled or rescinded the mortgage insurance policies, or invoked policy exclusions for a high percentage of claims as a result of misrepresentations regarding the insured mortgage loans, including on the basis that the originator engaged in predatory lending or systemic fraud in the underwriting of the mortgage loans. After these mortgage insurance claim denials, the servicers failed to observe or perform in a material respect the covenants and/or agreements on their part contained in the PSAs by failing to tender the defective, defaulted loans to the sellers for repurchase. Instead, the servicers charged the over-collateralized accounts for losses, causing damage to the Trusts and their Certificateholders.

388. As noted above, the servicers have regularly modified mortgage loans held by the Trusts. Plaintiffs are informed and believe that in the process of modifying these mortgage loans, the servicers have discovered that specific loans breached applicable seller representations and warranties because the loan modification process involves scrutinizing the underlying

origination and mortgage loan files, and any supplemental information provided by the borrower to assess the borrower's ability to pay. Thus, in the process of performing loan modifications, the servicers had to have discovered breaches of representations and warranties regarding the characteristics of the loan, the creditworthiness of the borrower, the adequacy of the collateral and the title status of the mortgages. Nevertheless, the servicers systemically failed to notify the other parties of these breaches.

389. As also set forth above, there has been widespread public evidence of the originators' abandonment of underwriting guidelines and the sponsors' faulty securitization practices that made the servicers aware of material seller breaches representations and warranties within the Trusts' loan pools. Nevertheless, the servicers have not notified the other parties to the PSAs of these seller breaches.

390. Further, the servicers have been specifically notified by monoline insurers of pervasive breaches by the sellers. For instance, Countrywide is one of the leading servicers of the Trusts, administrating more than $30.9 billion in mortgage loans securitized in thirty-three of the Trusts. Countrywide has been notified in litigation by MBIA, Ambac, FGIC, Assured Guaranty, and other mortgage and monoline insurers of pervasive and systemic breaches of representations and warranties by Countrywide entities in their capacity as originators.

391. Notwithstanding the servicers' "discovery" of material breaches of representations and warranties, the servicers have not notified the other parties to the PSAs (including BNYM) of these breaches. Moreover, although aware of specific mortgage loans that breach applicable representations and warranties, the servicers have failed to enforce the seller's obligation to repurchase, substitute, or cure such defective loans as required under the PSAs.

392. The servicers' systemic and pervasive failure to give notice of the sellers' material breaches of representations and warranties and to enforce the sellers' repurchase obligations have materially affected the rights of the Trusts and all Certificateholders under the PSAs in that they have deprived the Trusts of mortgage loans of adequate credit quality as initially represented, or alternatively funds representing the "Repurchase Price" as defined by the PSAs, with respect to each defective mortgage loan.

393. The servicers' systemic and pervasive failure to give notice of the sellers' material breaches of representations and warranties and to enforce the sellers' repurchase obligations have materially affected the rights of the Trusts and all Certificateholders under the PSAs in that they have deprived the Trusts of mortgage loans of adequate credit quality as initially represented, or alternatively funds representing the "Repurchase Price" as defined by the PSAs, with respect to each defective mortgage loan.

B. The Servicers Have Violated Their Prudent Servicing Obligations

394. The PSAs require that the servicer service and administer the mortgage loans for and on behalf of the Certificateholders, and, consistent with the terms of the PSAs, (i) in the same manner in which it services and administers similar mortgage loans for its own portfolio or for other third parties, giving due consideration to customary and usual standards of practice of prudent institutional mortgage lenders servicing similar loans, (ii) with a view to maximizing the recoveries with respect to such mortgage loans on a net present value basis, and (iii) without regard to, among other things, the right of the servicer to receive compensation or other fees for its services under the PSA, the obligation of the servicer to make servicing advances under the PSA, and the servicer's ownership, servicing or management for others of any other mortgage loans.

395. Highly publicized government enforcement actions and settlements reached with the servicers demonstrate that the servicers have systemically and pervasively violated these prudent servicing obligations. For example, on June 7, 2010, the Federal Trade Commission ("FTC") filed a civil enforcement action against Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP (f/d/b/a Countrywide Home Loans Servicing, LP), a wholly-owned subsidiary of Bank of America, National Association, (collectively, "Countrywide/BAC") for their "unlawful acts and practices in servicing mortgage loans." *See Fed. Trade Comm'n v. Countrywide Home Loans, Inc., et al.*, No. CV 10-4193 (C.D. Cal.). In March 2008, prior to being acquired by Bank of America Corporation, Countrywide was ranked as the top mortgage servicer in the United States and had a servicing portfolio with a balance of over $1.4 trillion. In September 2009, after its acquisition of Countrywide, Bank of America was ranked as the nation's top mortgage servicer with a servicing portfolio of over $2.1 trillion. Countrywide/BAC are servicers for many of the Trusts. The FTC emphasized that many of the loans improperly serviced by Countrywide/BAC are the same "risky, high-cost loans that had been originated or funded by Defendants' parent company, Countrywide Financial Corporation [], and its subsidiaries []."

396. According to the FTC, when borrowers fell behind on their payments, Countrywide/BAC imposed a number of default-related services (such as property inspections and foreclosure trustee services) "by funneling the work through panoply of Countrywide subsidiaries." In its mortgage servicing operation, Countrywide/BAC follows a so-called "vertical integration strategy" to generate default-related fee income. Rather than obtain default-related services directly from third-party vendors and charge borrowers for the actual cost of these services, Countrywide/BAC formed subsidiaries to act as middlemen in the default services

process. These subsidiaries exist solely to generate revenues for Countrywide/BAC and do not operate at arms'-length with Countrywide/BAC. Countrywide/BAC and their subsidiaries – "[a]s a matter of practice" – added a substantial mark-up to their actual costs for the services and then charged the borrowers the marked-up fees. The inflated fees were both contrary to prudent servicing standards and violated the mortgage contracts, which limit fees chargeable to the borrower to actual costs of the services and as are reasonable and appropriate to protect the noteholder's interest in the property and rights under the security instrument.

397. Countrywide/BAC similarly breached servicing standards and mortgage contracts when servicing loans for borrowers who sought to save their homes through a Chapter 13 bankruptcy. According to the FTC, Countrywide/BAC made various representations to those borrowers about their mortgage loans that were false or lacked a reasonable basis, and failed to disclose to borrowers during their bankruptcy case when fees and escrow shortages and deficiencies accrued on their loan. After the bankruptcy cases have closed and borrowers no longer have the protection of the bankruptcy court, Countrywide/BAC collected those amounts, including through foreclosure actions.

398. By way of further example, in February 2012, forty-nine State Attorneys General and the federal government announced a historic joint $25 billion state-federal settlement with the country's five largest mortgage servicers and their affiliates for misconduct related to their origination and servicing of single family residential mortgages: (i) Residential Capital, LLC, Ally Financial, Inc., and GMAC Mortgage, LLC; (ii) Bank of America Corporation, Bank of America, N.A., BAC Home Loans Servicing, LP, Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Mortgage Ventures, LLC, and Countrywide Bank FSB; (iii) Citigroup Inc., Citibank, N.A., and CitiMortgage, Inc.; (iv) J.P. Morgan Chase &

Company and J.P. Morgan Chase Bank, N.A.; and (v) Wells Fargo & Company and Wells Fargo Bank, N.A. of the state and federal investigations of these mortgage servicers.

399. In their corresponding complaint filed on March 14, 2012, the State Attorneys General and the federal government alleged that these servicers had engaged in unfair, deceptive and unlawful servicing processes, including (i) failing to timely and accurately apply payments made by borrowers and failing to maintain accurate account statements; (ii) charging excessive or improper fees for default-related services; (iii) failing to properly oversee third-party vendors involved in servicing activities on behalf of the banks; (iv) imposing force-placed insurance without properly notifying the borrowers and when borrowers already had adequate coverage; (v) providing borrowers false or misleading information in response to borrower complaints; and (vi) failing to maintain appropriate staffing, training, and quality control systems.

400. Similarly, on December 19, 2013, the Consumer Financial Protection Bureau ("CFPB"), authorities in forty-nine states, and the District of Columbia filed a proposed court order requiring the country's largest nonbank mortgage loan servicer, Ocwen Financial Corporation and its subsidiary, Ocwen Loan Servicing, to provide $2 billion in first lien principal reduction to underwater borrowers in order to compensate for years of systemic misconduct at every stage of the mortgage servicing process. The consent order also covered two companies previously purchased by Ocwen, Litton Loan Servicing LP ("Litton") and Homeward Residential Holdings LLC (previously known as American Home Mortgage Servicing, Inc. or "AHMSI"). According to the CFPB and Attorneys General's complaint, Ocwen violated state consumer law in a number of ways, including (i) failing to timely and accurately apply payments made by borrowers and failing to maintain accurate account statements; (ii) charging borrowers unauthorized fees for default-related services; (iii) imposing force-placed insurance on

consumers when Ocwen knew or should have known that they already had adequate home insurance coverage; and (iv) providing false or misleading information in response to consumer complaints.

401. High profile class actions against the servicers have further revealed violations of prudent servicing violations. For example, in June 2012, nationwide class actions were brought on behalf of million homeowners against JPMorgan Chase Bank NA, Wells Fargo Bank, N.A., Bank of America, N.A., Citibank, N.A., and HSBC Bank Inc. who claimed that they were overcharged for force-placed insurance. The borrowers specifically alleged that these servicers imposed policies for force-placed insurance that were far more expensive than market rates and received hundreds of millions of dollars in clandestine commissions from the insurance companies writing the policies. The servicers' practice of imposing expensive force-placed insurance increased the borrowers' monthly payment by a large amount. As a result, homeowners who were already behind in payments or were facing financial difficulties went into foreclosure. The plaintiff borrowers have also entered into several well publicized settlements with these servicers, including settlements of $300 million settlement with JPMorgan Chase, $110 million with Citibank, $32 million with HSBC and $19.3 million with Wells Fargo.[11]

402. Notably, Countrywide, Wells Fargo, and Ocwen collectively service and administrate tens of billions of dollars in mortgage loans held by the Trusts. Plaintiffs are informed and believe that these servicers and each of the other servicers to the Trusts have

[11] *Alfred Herrick, et al. v. JPMorgan Chase Bank, N.A., et al*., 13-21107 (S.D. Fla.); *Hall v. Bank of America, N.A.*, 12-22700 (S.D. Fla.), *Lopez v. HSBC Bank USA, N.A. et al.*, 13-21104 (S.D. Fla.), and *Fladell et al. v. Wells Fargo Bank, N.A. et al.*, 13-60721 (S.D. Fla.); *Casey, et al., v. Citibank, N.A., et al.*, 12-00820 (N.D.N.Y.)

engaged in the same violations of their prudent servicing obligations in servicing and administrating the mortgage loans for the Trusts.

C. The Servicers Have Violated Their Foreclosure Obligations

403. The PSAs require the servicers to use their best efforts, consistent with accepted servicing practices, to foreclose upon or otherwise comparably convert the ownership of properties securing such of the mortgage loans as they come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments. Moreover, each of the PSAs contemplate that foreclosures and liquidations of defaulted mortgages will proceed forthwith and in accordance with applicable law, provided the documentation is in order, as a matter of fairness to all parties.

404. Highly publicized government enforcement actions and settlements reached with the servicers similarly have revealed the servicers have breached their foreclosure obligations. For example, in the fourth quarter of 2010, the Federal Reserve System, the OCC, the FDIC, and the Office of Thrift Supervision ("OTS") (collectively, the "Agencies") conducted on-site reviews of foreclosure processing at fourteen federally regulated mortgage servicers which represented more than two-thirds of the servicing market. These servicers included Ally Bank/GMAC, Aurora Bank, Bank of America, Citibank, EverBank, HSBC, JPMorgan Chase, MetLife, OneWest, PNC, Sovereign Bank, SunTrust, U.S. Bank, and Wells Fargo, many of which are servicers to the Trusts. In April 2011, the Agencies issued a joint report entitled "Interagency Review of Foreclosure Policies and Practices," summarizing the findings of their reviews and providing an overview of the potential impacts associated with instances of foreclosure processing weaknesses that occurred industrywide. Notably, the Agencies' reviews found "critical weaknesses in servicers' foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure

attorneys." Based on the deficiencies identified in these reviews and the risks of additional issues as a result of weak controls and processes, the Agencies initiated formal enforcement actions against each of the fourteen servicers subject to the review to address those weaknesses and risks. The enforcement actions detailed the weaknesses at each servicer and required each servicer, among other things, to conduct a more complete review of certain aspects of foreclosure actions that occurred between January 1, 2009, and December 31, 2010.

405. Similarly, as noted above, on March 14, 2012, following an extensive investigation of Wells Fargo, Bank of America, Citigroup, Countrywide, J.P. Morgan Chase, Ally Financial, Inc., and GMAC Mortgage, LLC – some of the same servicers for the Trusts – the Justice Department, HUD and forty-nine State Attorneys General filed a complaint against these servicers and announced the $25 billion National Mortgage Settlement of the claims set forth in the complaint. In the complaint, the Attorneys General and federal government alleged that these servicers had engaged in wrongful conduct related to foreclosures, including failing to properly identify the foreclosing party, charging improper fees related to foreclosures, preparing, executing, notarizing or presenting false and misleading documents and engaging in robosigning.

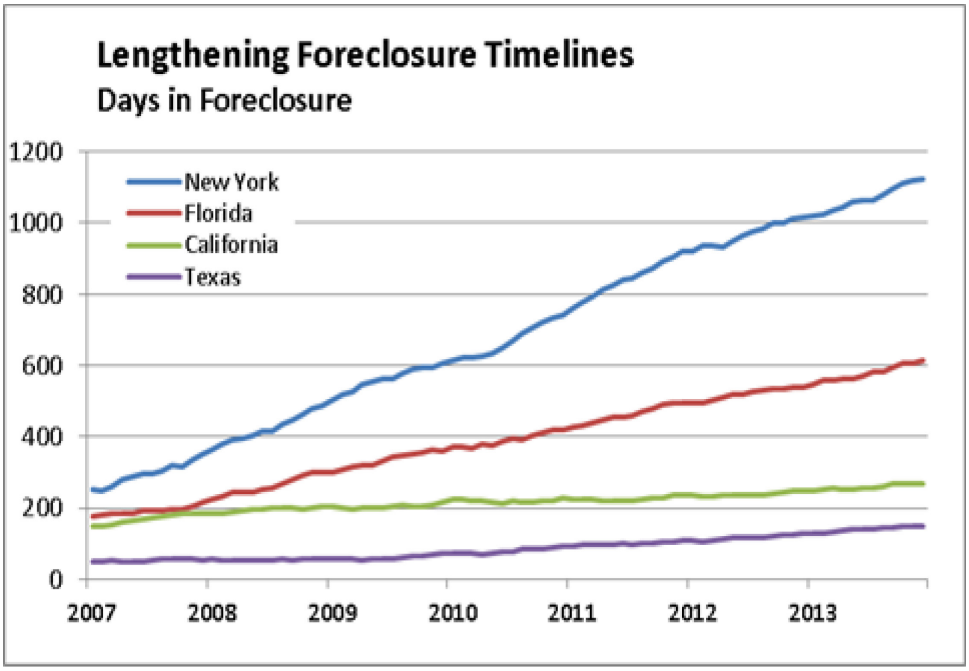
406. Likewise, as noted above, on December 19, 2013, following an extensive investigation of Ocwen and certain of its acquired entities, the CFPB, authorities in forty-nine states, and the District of Columbia filed a complaint and announced a $2 billion settlement of the claims stated in the complaint. The CFPB's and Attorneys General's complaint alleged that Ocwen engaged in same wrongful conduct related to foreclosures described in the complaint against the servicers leading to the National Mortgage Settlement.

407. In addition, private litigation has shined the light on servicers' wrongful foreclosure practices. For example, in a California class action case that has survived a motion to

dismiss, plaintiffs alleged that Aurora (the eighth largest servicer of loans in the Trusts) foreclosed on homes without any notice that loan modifications were denied and without allowing borrowers access to any "cure method" despite promises in an agreement to do so. *Mauder, et al. v. Aurora Loan Services, LLC*, No. 10-CV-03383, Class Action Compl. ¶2 (N.D. Cal. Aug. 2, 2010).

408. Servicers have also frequently wrongfully foreclosed on properties owned by military servicemembers who were protected under the Servicemembers Civil Relief Act ("SCRA"). Based on a federal government complaint accusing Countrywide Home Loans Servicing LP (the third largest servicer of loans in the Trust) of violating the SCRA on approximately 160 properties, Countrywide consented to pay $20 million to the victims. *United States v. BAC Home Loans Servicing, LP F/K/A Countrywide Home Loans Servicing, LP And Any Successors In Interest*, No. 11-cv-04534, Consent Order at ¶18. (C.D. Cal. May 26, 2011).

409. The servicers have also routinely kept defaulted mortgages on their books, rather than foreclose or liquidate them. Indeed, in several states, the average days for delinquent loans in foreclosure in the Trusts have doubled or quadrupled.



Sources: RealtyTrac, Moody's Analytics

410. The servicers' delay in foreclosing has allowed the servicers to charge unearned and unwarranted servicing fees, as well as unauthorized fees for default-related services, on mortgages that would have been liquidated but for the servicers' breach of their duties. For example, in the complaint that led to the National Mortgage Settlement discussed above, the federal government and forty-nine states accused Citigroup, Wells Fargo, Bank of America, J.P. Morgan Chase, Countrywide, and Ally Financial, Inc. (many of which were servicers of loans in the Trusts) of unfair and deceptive practices in the discharge of its loan servicing activities for, among other things, "*charging excessive or improper fees for default-related services.*" *See United States, et al. v. Bank of America Corp., et al.*, No. 12-cv-0361, Compl. ¶51 (D.D.C. Mar. 12, 2012).

411. The servicers' systemic and pervasive violation of their foreclosure obligations have materially affected the rights of the Trusts and all Certificateholders under the PSAs in that the Trusts have incurred costs of remedying procedural errors and re-filing affidavits and other foreclosure documents. The Trusts have also been forced to bear costs related to disputes over

note ownership or authority to foreclose, and to allegations of procedural violations through the use of inaccurate affidavits and improper notarizations. The Trusts have further incurred losses as a result of delays or other damages caused by the weaknesses in the servicers' foreclosure processes.

D. The Servicers Have Violated Their Modification Obligations

412. The PSAs provide that the servicers agree to a modification of any mortgage loan only in certain specified circumstances. When modifications are required to remedy predatory lending violations, the PSAs require that the seller – and not the Trusts or the Certificateholders – bear the costs to cure such breach.

413. The servicers have breached the PSAs by agreeing to modify loans held in the Trusts for the purpose of settling predatory lending claims made by various Attorneys General against their parent companies while breaching their obligation to demand that the offending mortgage seller (their parent companies) bear the costs of curing the violation, as well as the expenses reasonably incurred in enforcement of the seller's obligation to cure predatory mortgages. For instance, on October 6, 2008, Attorneys General in eleven states announced a landmark, $8.68 billion settlement with Countrywide Home Loans, Countrywide Financial Corporation and Full Spectrum Lending of predatory lending claims. The settlement enabled eligible subprime and pay-option mortgage borrowers whose loans were serviced by Countrywide to obtain loan modifications valued at up to $3.4 billion worth of reduced interest payments and, for certain borrowers, reduction of their principal balances.

414. The servicers have also breached the PSAs by agreeing to modify loans held in the Trusts for the purpose of settling claims related to their wrongful servicing and foreclosure practices made by various Attorneys General. For example, with respect to the National

Mortgage Settlement, in meeting their payment obligations, the settling servicers receive credit for writing down principal of, and providing forbearance for, mortgage loans held by the Trusts.

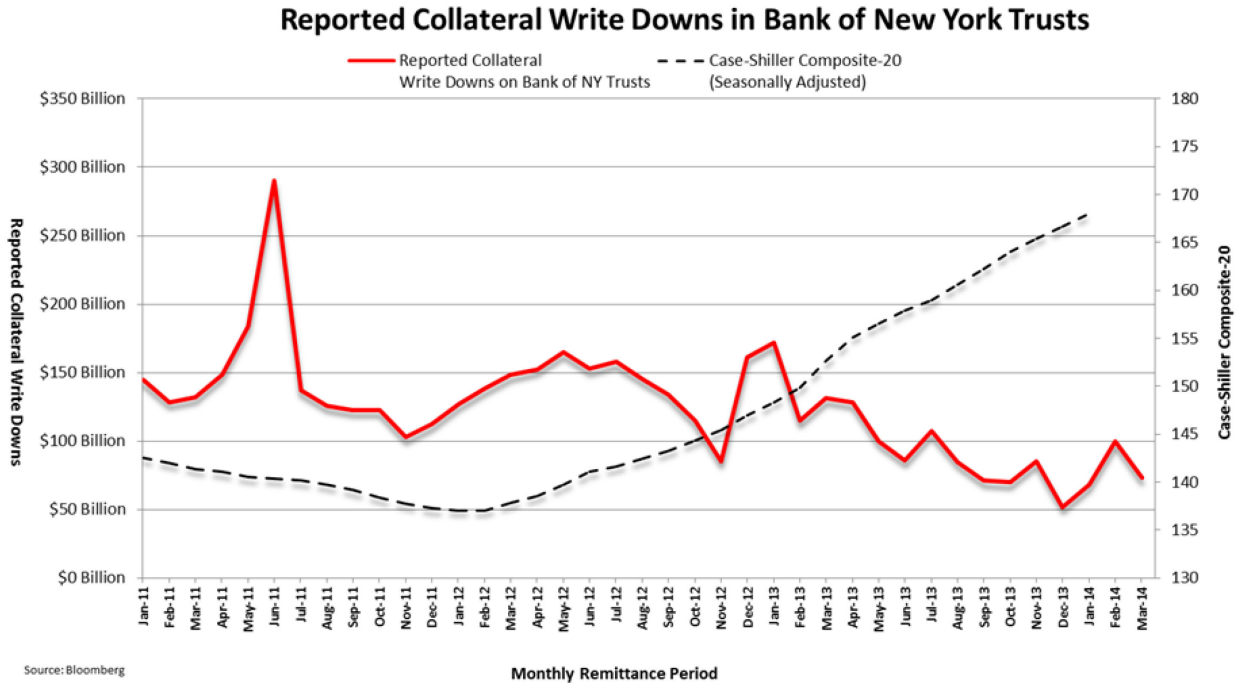
415. The servicers' violation of their modification obligations have materially affected the rights of the Trusts and all Certificateholders under the PSAs in that the servicers and their parent companies have been unjustly enriched to the detriment of the Trusts and Certificateholders by using Trust collateral to settle claims that are not, and could never be, made against the Trusts.

E. The Servicers Have Abused Their Servicing Advances Obligations

416. The PSAs provide that the servicers are to advance principal and interest on a loan only if they determine that the advance payment is recoverable. The PSAs further provide that the servicers may only recover servicing advances that are customary, reasonable and necessary out-of-pocket costs and expenses incurred in the performance by the servicers of their servicing obligations. The servicers have abused their advancing obligations to enrich themselves to the direct detriment of the Trusts. In particular, the servicers have manipulated the recoverable designation to their advantage. During low interest rate environments, the servicers have designated severely delinquent loans as recoverable so that the loans would be kept in the Trusts' loan pools and the servicers could continue to earn their servicing fees on these loans, which exceed the relatively low cost of financing the advances on these delinquent loans. However, when interest rates have increased, the servicers have strategically switched the mortgage loans' designation from recoverable to unrecoverable. The switch in designation enables the servicers to recoup all prior advances as a senior claim of the Trusts.

417. The servicers' manipulation of the recoverable designation is illustrated by their activities in 2013. The servicers' massive write downs have fluctuated greatly in line with

interest rate changes, while the mortgaged property values have been steadily rising for the past twelve months.



418. The Trusts and its Certificateholders are harmed by the servicers' manipulation of the recoverable designation because the Trusts incur more interest rate risk exposure than expected since the servicers' recoverability designations are strategically determined as a function of interest rates, as opposed to the value of the mortgaged property as required under the PSAs.

419. The servicers' abuse of their servicing advancing obligations is further illustrated by their increasing use of "unrecognized forbearances." The servicers modify delinquent mortgage loans by granting forbearances to the borrowers for extended periods of time which act to reduce the principal amount of the mortgage loan. The forbearances allow the servicers to lower their advanced principal payments on the loans. Nevertheless, the servicers do not formally write down the loan balance or make any recognition on the Trusts' accounts. Thus, the

mortgage loans remain in the Trusts at full value, thereby allowing the servicers to earn full servicing fees, which are calculated as a percentage of the total principal amount of the mortgage loans in the Trusts' loan pools, although the mortgage loans are accruing interest at a lower principal amount and without the servicers having to make any advances.

420. According to information contained in an industry study conducted by Credit Suisse, as of April 2013, Credit Suisse estimates that unrecognized forbearances in the Trusts total over $101 million.[12] At least 206 of the 257 Trusts have some amount of unrecognized forbearance, with many exceeding between 1 and 10% of the Trust's current collateral balance.

Top 10 BNYM Trusts By Share Of Current Balance Forbearance

Data as of April 2013 distributions. 1st lien only

Offering	Original Face Amount	Current Balance (June 2013)	Estimated Unrecognized Forbearance	Unrecognized Forbearance as % of Current Balance
NMFT 2006-MTA1	$1,188,600,000	$252,274,899	$24,633,193	9.76%
TBW 2007-1	$739,065,705	$313,851,072	$15,297,702	4.87%
CBASS 2006-CB3	$842,379,916	$150,658,894	$6,211,515	4.12%
CBASS 2005-CB6	$504,999,000	$71,079,426	$2,749,890	3.87%
CBASS 2005-CB8	$814,473,000	$178,724,903	$6,000,930	3.36%
ABFC 2005-HE1	$1,763,144,000	$169,672,292	$4,777,281	2.82%
FHASI 2006-AR1	$212,575,514	$66,620,206	$1,785,400	2.68%
CBASS 2005-CB4	$498,887,000	$97,352,439	$1,599,773	1.64%
CBASS 2004-CB8	$537,124,000	$51,002,839	$661,026	1.30%
BVMBS 2005-2	$449,395,184	$56,709,410	$654,607	1.15%

Source: Credit Suisse, Loan Performance

421. The servicers' pervasive use of "unrecognized forbearances" harm the Trusts and their Certificateholders since they pay higher servicing fees to the servicers and are not informed in a timely manner about impairments to mortgage loans in the underlying loan pools.

422. Despite the requirement that servicing advances were to be incurred only for reasonable and necessary out-of-pocket costs, the servicers instead utilized affiliated vendors –

[12] Credit Suisse estimates that as of April 2013 unrecognized forbearances on non-agency RMBS deals issued after 2000 (first lien only) totaled around $8.3 billion.

who marked up their services to a level 100% or more above the market price – to provide services related to the preservation, restoration, and protection of mortgaged property, in a fraudulent, unauthorized, and deceptive effort to supplement its servicing income.

XI. BNYM HAS KNOWN OF SERVICER VIOLATIONS PLAGUING THE TRUSTS

423. There is ample evidence that, since early 2009, BNYM and its responsible officers have known of the above described widespread and severe failures on the part of the servicers to observe or perform in material respects their obligations under the PSAs. Preliminarily, as discussed above, since 2009 there has been a steady stream of public disclosures regarding the servicers' violations. Nevertheless, apart from the highly publicized government investigations, reports and enforcement actions, as well as high profile litigation involving the servicers, as explained below there is a host of additional evidence demonstrating BNYM's and its responsible officers' knowledge that the servicers have materially breached their contractual obligations.

A. BNYM And Its Responsible Officers Received Written Notice From Certificateholders Of Pervasive And Systemic Servicer Breaches

424. In its capacity as trustee to other RMBS trusts that are not the subject of this action, BNYM and its responsible officers repeatedly received written notice from certificateholders of the same systemic servicing violations described above perpetrated by the very same servicers for the Trusts. Based on the systemic and pervasive practices complained of in the certificateholders' breach notices, BNYM and its responsible officers knew that servicers were engaged in the same wrongful conduct in connection with their servicing of the loans for the Trusts.

425. On June 17, 2010, a group of investors in Countrywide-issued RMBS sent a letter to Jane Sherbourne and Scott Posner of BNYM, informing BNYM that Countrywide had sold

ineligible mortgages to these trusts and had engaged in deficient servicing of these loans. Additionally, on August 20, 2010 and October 18, 2010, the same group of investors sent notices to Countrywide, as Master Servicer, and to BNYM, as trustee, identifying specific covenants that Countrywide Servicing had failed to perform. Beginning in November 2010, the investor group, with the participation of BNYM, entered in negotiations with Countrywide and Bank of America, which culminated in a settlement memorialized by an agreement, dated June 28, 2011, entered into by BNYM and Bank of America Corporation. The settlement called for the payment of $8.5 billion in cash to the 530 Countrywide-issued RMBS trusts for which BNYM serves as the trustee, as well as the implementation of comprehensive servicing changes and improvements. BNYM then filed a petition in New York state court for an order, pursuant to CPLR Section 7701, seeking judicial instructions and approval of the settlement. *In the Matter of the Application of The Bank of New York Mellon, et al*., Index No. 651786/2011 (N.Y. Sup. Ct.). During the protracted Article 77 Proceeding, additional information regarding Countrywide's systemic and pervasive servicing abuses were made public, including its failure to maintain accurate records, modification of predatory loans, and its advancing and charging of unnecessary fees and services.

426. On December 16, 2011, investors provided notice to BNYM and four other RMBS trustees of, among other things, master servicer violations by J.P. Morgan and J.P. Morgan successor entities (Bear Stearns and WaMu) in connection with $95 billion of RMBS issued by various affiliates of J.P. Morgan from 243 trusts issued between 2005 and 2007 under the BALTA, BSABS, BSARM, BSMF, CFLX, CHASE, JPALT, JPMAC, JPMMT, PRIME, SACCO, SAMI, WAMU and WMALT labels. The investors demanded that BNYM open an investigation of ineligible mortgages and deficient servicing of these loans. The December 16,

2011 notice put BNYM on notice of systemic deficient servicing practices by J.P. Morgan and its affiliates, significant servicers for the Trusts. Indeed, this same investor group has reached a preliminary agreement with J.P. Morgan, which calls for the payment of $4.5 billion in cash to the 330 trusts issued under these J.P. Morgan RMBS labels to settle mortgage repurchase and servicing claims, as well as for the implementation of substantial servicing changes to mortgage loans in the covered trusts to rectify the pervasive servicing deficiencies.

427. BNYM was further made aware of the servicers' failure to enforce the originators' and sponsors' repurchase obligations through its regular communications with the servicers, including monthly reports detailing the staggering losses, write-downs and credit rating downgrades that served to corroborate the widespread deficiencies in the mortgage loans.

428. Based on the fact that these investor communications identified pervasive deficiencies in the servicers' compliance with servicing obligations in other RMBS trusts, together with the steady stream of disclosures regarding Trusts' abject performance, BNYM was aware that these servicers were engaged in the same servicing misconduct with respect to the Trusts.

B. BNYM Had Knowledge Of The Servicers' Failures Through The Monthly Servicer And Remittance Reports

429. BNYM and its responsible officers also knew of the servicers' improper servicing practices through the servicers' servicing reports and the monthly remittance reports BNYM itself published. These reports detailed the Trusts' increasing modifications, staggering losses and write-downs due to the poor credit quality of the loans, but did not reflect the servicers' actions to enforce the sellers' repurchase obligations. The reports similarly reflected the servicers' abuse of servicing advances.

C. BNYM Had Knowledge Of The Servicers' Failures Through Highly Publicized Government Enforcement Actions And Litigation Stemming From The Servicers' Violations

430. As described above (Section X), many of the servicers for the Trusts have been the target of highly publicized government enforcement investigations, actions and settlements, as well as extensive private litigation concerning the servicers' improper servicing and foreclosure practices. These proceedings have encompassed the substantial majority of the servicing market and were well known throughout the RMBS industry, including by BNYM and the other principal financial crisis-era trustees. For example, in October 2010 Deutsche Bank – which serves as trustee for more than 1,000 RMBS trusts – issued a notice to all RMBS certificateholders in trusts for which Deutsche Bank served as trustee confirming Deutsche Bank's awareness of ongoing government investigations into improper servicing practices. Deutsche Bank's notice acknowledged that it had been "widely reported in the news media" that "several major U.S. loan servicers" had "suspended certain foreclosures in some or all states" due to allegations and investigations regarding "defects in foreclosure practices, procedures and/or documentation." Also in October 2010, Deutsche Bank sent an "urgent and time sensitive" memorandum to all servicers of mortgage loans included in any RMBS trust for which Deutsche Bank acts as trustee. In the memorandum, Deutsche Bank discussed "an urgent issue requiring your [the servicers] immediate attention" – specifically, the same "serious . . . defects in foreclosure practices, procedures and/or documentation" discussed in Deutsche Bank's notice to certificateholders. The memorandum referred to the expansive scope of the reported servicer deficiencies, and admitted that foreclosure abuses such as the execution and filing by servicers or their agents of documents containing untrue assertions of fact "would constitute a breach of that Servicer's obligations under the [PSAs] and applicable law."

XII. BNYM FAILED TO DISCHARGE ITS CRITICAL PRE- AND POST-DEFAULT DUTIES

431. Despite BNYM's knowledge of the Trusts' high default rates and poor performance, breaches of representations and warranties made by the originators, sellers, depositors, and sponsors, and servicer violations, BNYM unreasonably refused to perform its duties as trustee to protect the Trusts and Certificateholders.

A. Failure To Enforce The Trusts' Repurchase Rights

432. As set forth above, beginning in 2009, BNYM and its responsible officers discovered deficiencies in mortgage loan files, breaches of the sellers' representations and warranties regarding the credit quality and characteristics of the mortgage loans, and the harm that these seller violations caused to the Trusts and its Certificateholders.

433. BNYM breached its contractual and statutory duties under TIA and was negligent by failing to (i) provide notice to the servicers and/or the responsible sellers upon its discovery of these breaches, and (ii) take any action to enforce the sellers' repurchase of the defective mortgage loans.

B. Failure To Provide Notice To The Servicers Of Events Of Default

434. As set forth above, beginning in 2009, BNYM and its responsible officers knew of failures on the part of the servicers to observe or perform in material respects their covenants or agreements in the PSAs, including the servicers' (i) failure to give notice to the other parties of seller breaches of representations and warranties upon discovery thereof and enforce the sellers' repurchase obligations; (ii) violations of prudent servicing obligations; (iii) violations of foreclosure obligations; (iv) violations of modification obligations; and (v) improper servicing advances. These breaches by the servicers constituted "Events of Default" as defined by the PSAs.

435. BNYM breached its contractual and statutory duties under TIA and was negligent by failing to provide notice to the servicers of these Events of Default or terminating the servicers.

C. Failure To Act Prudently Subsequent To The Uncured Events Of Default

436. As set forth above the Events of Default occurred, remained uncured for the requisite period of time and are continuing. Consequently, under the PSAs, BNYM had and continues to have the obligation to exercise the rights and powers vested in it by the PSAs, and to use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

437. A prudent person would have taken action to protect the Trusts and its Certificateholders from the known seller breaches of representations and warranties by exercising all of its rights under the PSAs to enforce the sellers' repurchase obligations, including timely conducting an investigation to determine all of the materially breaching mortgage loans and suing the sellers for specific performance to compel their repurchase of those loans. BNYM breached its contractual, statutory and fiduciary duties and was negligent by failing to act prudently and taking these actions.

438. A prudent person would have also taken action to protect the Trusts and its Certificateholders from the known servicer violations by exercising all of its rights under the PSAs to enforce the servicers' prudent servicing obligations, including ensuring that all Events of Default were cured, terminating the servicers, substituting itself in as the substitute servicer or replacing the servicers, and enforcing the servicers obligations to reimburse the Trusts for losses caused as a result of their breaches through suit if necessary. BNYM breached its contractual,

statutory and fiduciary duties and was negligent by failing to act prudently and taking these actions.

D. Failure To Provide Notice To The Certificateholders Of The Uncured Events Of Default

439. As set forth above the Events of Default occurred, remained uncured for the requisite period of time and are continuing. Consequently, under the PSAs, BNYM also had and continues to have the obligation to provide all Certificateholders with notice of these Events of Default.

440. BNYM had no good faith reason for failing to provide notice of these Events of Default to the Certificateholders. Consequently, BNYM breached its contractual, statutory and fiduciary duties and was negligent by failing to provide all Certificateholders with notice of these Events of Default.

XIII. BNYM FAILED TO PROTECT THE TRUSTS DUE TO ITS CONFLICTS OF INTEREST

441. BNYM failed and unreasonably refused to discharge its critical pre- and post-default duties owed to the Trusts and the Certificateholders because acting to diligently protect the interests of the Trusts would have conflicted with its own financial interests. Specifically, such conduct would have directly impaired BNYM's profits by increasing costs and expenses while revenue remained unchanged. Indeed, rather than act pursuant to its proscribed contractual, statutory, and common law duties, BNYM failed and unreasonably refused to enforce the sellers' repurchase obligations and servicers' prudent servicing requirements in order to avoid the associated transactional costs of enforcing the Trusts' rights against these entities – or provoke the servicers to shine the light on BNYM's own wrongful conduct.

442. For example, prior to a "default" under the TIA or an "Event of Default" under the PSAs, BNYM had minimal ministerial duties to perform.[13] Following a default under the TIA or Event of Default under the PSAs, however, BNYM's obligations expand such that it must act as a prudent person. This requirement carries with it significant and more costly responsibilities, including seeking direction from the certificateholders regarding the appropriate actions it should take on behalf of the trusts. However, fulfilling these greater duties increases costs while BNYM's compensation under the PSAs – a fixed fee rate based on the unpaid principal balance of the trust (typically less than one basis point) – would remain unchanged.

443. Additionally, the occurrence of an Event of Default could lead to the termination of the master servicer, which would have profound financial implications on BNYM. If the master servicer were terminated, BNYM would have to retain a successor master servicer or substitute itself in as the master servicer. The compensation that BNYM or the successor master servicer could obtain would be heavily restricted. For example, typical – and more lucrative – servicing income, such as float, excess spread, and ancillary fees are prohibited for a successor master servicer under the PSAs. Nevertheless, BNYM or the successor master servicer would be required to hold regulatory capital against the servicing rights.

444. Further, the occurrence of a default under the TIA or an Event of Default under the PSAs requires BNYM to provide notice to the certificateholders. In addition to alerting certificateholders to seller and servicer violations, the default notice would expose BNYM's negligence in carrying out its ministerial duties, including its failure to receive, process, maintain and hold all or part of the mortgage loan files as required under the PSAs. Indeed, the State of

[13] New York common law still imposed certain non-waivable duties on BNYM both before and after a "default" under the TIA or an "Event of Default" under the PSAs.

New York and several private litigations have brought actions against BNYM for its alleged failure to ensure that complete mortgage loan documentation was transferred to the trusts, which in turn hampered the ability of the trusts to foreclose on delinquent mortgages and impaired the value of the securities backed by the mortgages.[14] Consequently, BNYM's providing notice to the certificateholders of defaults could lead to potential liability or its removal as trustee of the Trusts.

445. Accordingly, the increased duties, costs, and liability risk associated with enforcing the Trusts' rights against seller and servicer violations would make BNYM's trusteeships less profitable and possibly unprofitable. For these reasons, BNYM failed and unreasonably refused to enforce the Trusts' rights against the sellers and servicers.

XIV. CAUSATION

446. BNYM's failure and unreasonable refusal to enforce the Trusts' rights against the sellers and servicers, and its violations of its other contractual, statutory, fiduciary and independence duties, along with its negligence, have directly and proximately caused billions of dollars in Trust assets to waste away. The mortgage loans conveyed to the Trusts did not comply with seller representations and warranties, but were instead of a lower quality, which increased the risk of defaults in the principal and interest payments owed to the Trusts. Moreover, servicer violations have exacerbated the Trusts' losses. Had BNYM performed its duties as Trustee, in

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[14] *See, e.g.,* Amended Verified Pleading In Intervention of the People of the State of New York by Eric T. Schneiderman, Attorney General in *In the matter of the application of The Bank of New York Mellon,* Index No. 651786/2011 (N.Y. Sup. Ct.); *Knights of Columbus v. The Bank of New York Mellon*, No. 651442/2011 (N.Y. Sup. Ct.); *Am. Fidelity Assurance Co. v. The Bank of New York Mellon*, 11-cv-1284 (W.D. Okla.); *Ret. Board of the Policemen's Annuity and Benefit Fund of the City of Chicago v. The Bank of New York Mellon*, No. 11-cv-5459 (S.D.N.Y.); *Sterling Fed. Bank, F.S.B. v. Countrywide Fin. Corp*., No. 11-cv-2012 (E.D. Ill.); and *Bankers Ins. Co. v. Countrywide Fin. Corp*., No. 11-cv-07152 (M.D. Fla.).

particular had it adequately enforced the obligations of the sponsors and originators to cure, substitute, or repurchase mortgage loans that breached the representations and warranties as required, it would have prevented the Trusts from incurring substantial losses and Trust assets from wasting away. Had BNYM enforced the Trusts' rights against servicers for reimbursement of losses caused by their misconduct, it would have benefited the Trusts and their Certificateholders.

XV. DAMAGES

447. The Trusts have incurred substantial damages attributable to BNYM's breaches of its contractual, statutory, fiduciary, and common law duties. In particular, the Trusts' loan pools are filled with loans of inadequate credit quality, which increased the risk of delinquency. As a result of the loans' poor credit quality, the Trusts have experienced enormous delinquency rates, collateral write-downs, and losses, and have incurred and continued to incur significant losses in connection with servicer violations. Damages incurred by the Trusts and caused by the Trustee's violation of law will be the subject of expert testimony for proof at trial.

XVI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

BREACH OF CONTRACT
(On Behalf Of The Trusts Against BNYM)

448. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

449. The PSAs are valid contracts that memorialize the issuance of certificates of beneficial interests in the Trusts, and establish BNYM's contractual duties and obligations, in its capacity as trustee, to the Trusts and all their respective Certificateholders. Each of the relevant

contractual provisions is substantively similar if not identical in all of the PSAs, and imposes substantially the same if not identical duties and obligations on BNYM in its capacity as trustee.

450. Under each PSA, BNYM owed a duty to the Trusts and all Certificateholders (i) to give prompt written notice to all parties to the PSA of a breach of a representation or warranty made by the seller in respect of the mortgage loans that materially and adversely affect the value of any mortgage loan or the interests of the Certificateholders in any mortgage loan, upon BNYM's discovery of such breach; and (ii) to take such action with respect to the breach as may be necessary or appropriate to enforce the rights of the Trusts with respect to the breach.

451. As set forth above, BNYM materially breached each PSA by (i) failing to provide prompt written notice to all parties to the PSA and related responsible parties of breaches of the sellers' mortgage loan representations and warranties, upon BNYM's discovery of the breaches; and (ii) failing to enforce the sellers' obligation to repurchase, substitute, or cure the defective mortgage loans.

452. In addition, the PSAs required BNYM, upon an "Event of Default" to (i) provide written notice to all Certificateholders of the Event of Default within sixty days of its occurrence, unless the Event of Default was cured or waived; and (ii) exercise the rights and powers vested in BNYM by the PSA using the same degree of care and skill as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

453. The PSAs define an "Event of Default" to include the failure by the servicer to observe or perform in any material respect the covenants or agreements by the servicer set forth in the PSA, which continues unremedied for no more than thirty to sixty days after written notice of the failure has been given to the servicer by the trustee requiring the failure to be remedied, or actual knowledge of the failure by a "Servicing Officer" of the servicer, whichever is earlier.

454. Events of Default have occurred, remained uncured for the applicable period of time, and are continuing as a result of the servicers' failure to observe and perform, in material respects, the covenants and agreements imposed on them by the PSAs.

455. The servicers have failed and refused to do the following, each of which has materially impaired the rights of the Trusts and all Certificateholders:

(a) Breaches of Representations and Warranties. As with the trustee, the PSAs required the servicers to give prompt written notice to all parties to the PSAs of a breach of a representation or warranty made by the seller in respect of the mortgage loans that materially and adversely affects the value of any mortgage loan or the interests of the Certificateholders in any mortgage loan, upon the servicer's discovery of the breach. The servicers have failed to give notice to the other parties of the following information, which has exacerbated losses experienced by the Trusts:

(i) although servicers often modify mortgage loans, and in the process of doing so have discovered that specific loans breached applicable representations and warranties, the servicers have not notified the other parties of these breaches;

(ii) although there has been widespread public evidence of pervasive breaches of applicable representations and warranties, and although the servicers have been specifically notified by insurers and Certificateholders of these pervasive breaches, the servicers have not notified the other parties to the PSAs (including [BNYM]) of these breaches; and

(iii) although aware of specific mortgage loans that breach applicable representations and warranties, the servicers have failed to enforce the sellers' obligation to repurchase, substitute, or cure the defective loans as required under the PSAs.

(b) Violation of Prudent Servicing Obligations. The PSAs require the servicer service and administer the mortgage loans for and on behalf of the Certificateholders, and, consistent with the PSAs, (i) in the same manner in which it services and administers similar mortgage loans for its own portfolio or for other third-parties, giving due consideration to customary and usual standards of practice of prudent institutional mortgage lenders servicing similar loans, (ii) with a view to maximizing the recoveries with respect to the mortgage loans on a net present value basis, and (iii) without regard to, among other things, the servicer's right to receive compensation or other fees for its services under the PSA, the servicer's obligation to make servicing advances under the PSA, and the servicer's ownership, servicing or management for others of any other mortgage loans. In violation of their prudent servicing obligations under the PSAs, the servicers have:

(i) failed to maintain accurate and adequate loan and collateral files in a manner consistent with prudent mortgage servicing standards;

(ii) failed to timely and accurately apply payments made by borrowers and maintain accurate account statements;

(iii) failed to demand that the sellers cure deficiencies in mortgage records when deficient loan files and lien records are discovered;

(iv) imposed force-placed insurance when the servicers knew or should have known that borrowers already had adequate coverage;

(v) incurred completely avoidable and unnecessary servicing fees and servicing advances to maintain the mortgaged property; and

(vi) prejudiced the interests of the Trusts and the Certificateholders in the mortgages by fostering uncertainty as to the timely recovery of collateral.

(c) Violation of Foreclosure Obligations. The PSAs require the servicers to use their best efforts, consistent with accepted servicing practices, to foreclose upon or otherwise comparably convert the ownership of properties securing mortgage loans that come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments. Moreover, each of the PSAs contemplates that foreclosures and liquidations of defaulted mortgages will proceed forthwith and in accordance with applicable law, provided the documentation is in order, as a matter of fairness to all parties. Despite these covenants, the servicers have:

(i) continued to keep defaulted mortgage loans on their books, rather than foreclose or liquidate the loans, in order to wrongfully maximize their servicing fees, at the expense of the Trusts' and

Certificateholders' best interests, including the right to recover from pool or financial guaranty insurance policies;

(ii) failed to maintain records in an accurate, appropriate and adequate manner, which has impeded the process of foreclosure and liquidation of defaulted mortgages and caused wholly avoidable delays that have injured the Trusts and Certificateholders;

(iii) continued to charge unearned and unwarranted servicing fees on mortgages that would have been liquidated but for the servicers' breach of their duties, as well as unauthorized fees for default-related services; and

(iv) failed to place the interests of the Trusts and Certificateholders before their own interests.

(d) Violation of Modification Obligations. The PSAs provide that the servicers may agree to a modification of any mortgage loan only in specified circumstances. When modifications are required to remedy predatory lending violations, the PSAs require the seller –not the Trusts or the Certificateholders – to bear the costs to cure the violations. The servicers have breached the PSAs by agreeing to modify loans held in the Trusts to settle predatory lending claims made by various Attorneys General against their parent companies while breaching their obligation to demand that the offending mortgage sellers (their parent companies) bear the costs of curing the violations, as well as the expenses reasonably incurred in enforcing the sellers' obligation to cure predatory mortgages.

The servicers have also unjustly enriched their parent companies by using Trust collateral to settle claims that were not, and could never be, made against the Trusts, in a manner that has materially and adversely affected the interests of the Certificateholders. The servicers have therefore failed:

(i) to demand that the originators and sponsors comply with their obligation to cure or repurchase predatory and ineligible loans that the servicers agreed to modify in the Attorneys General settlements; and

(ii) to deliver to the trustees a certification of a servicing officer that all requirements have been satisfied with respect to the modified mortgage loan.

(e) Improper Servicing Advances. The PSAs provide that the servicers may recover servicing advances that are customary, reasonable and necessary out-of-pocket costs and expenses incurred in the performance by the servicer of its servicing obligations, including but not limited to the cost of the preservation, restoration, and protection of a mortgaged property. Despite the requirement that servicing advances be incurred only for reasonable and necessary out-of-pocket costs, the servicers instead utilized affiliated vendors – which marked up their services to a level 100% or more above the market price – to provide services related to the preservation, restoration, and protection of mortgaged property, in a fraudulent, unauthorized, and deceptive effort to supplement the servicers' servicing income.

456. BNYM and its responsible officers had knowledge of these and other defaults by the servicers through, among other things, public reports, lawsuits, exception reports, and the increasing delinquency and loss rates for the Trusts. Nevertheless, BNYM failed to deliver written notices to the servicers of the defaults or terminate the servicers. Similarly, BNYM failed to provide Certificateholders with notice of these Events of Default. By failing to take these actions, BNYM materially breached the PSAs.

457. These Events of Default occurred, remained uncured for the requisite period of time and are continuing. Consequently, under the PSAs, BNYM had and continues to have the obligation to exercise the rights and powers vested it by the PSAs, and to use the same degree of care and skill in their exercise as a prudent person would use under the circumstances in the conduct of the person's own affairs. A prudent person would have exercised all of the trustee's rights to recover for these Events of Default, and would have done so promptly. By failing to take this action, BNYM materially breached the PSAs.

458. BNYM's material breaches of the PSAs have directly and proximately caused damages to the Trusts in that they have deprived the Trusts of valuable remedies and allowed hundreds of billions of dollars in Trust assets to waste away. For example, had BNYM protected the rights of the Trusts by enforcing the sellers' obligation to cure, repurchase, or substitute mortgage loans affected by breaches of representations and warranties, the Trusts would have received either a cured or substitute mortgage loans of adequate credit quality or funds representing the "Repurchase Price" with respect to each defective mortgage loan. BNYM's inaction with respect to the sellers has allowed the Trusts to be filled with defective mortgage loans of poor credit quality that have increased the severity of the Trusts' losses. Similarly, had BNYM enforced the servicers' prudent servicing obligations, the Trusts would have been able to

avoid incurring unnecessary losses and expenses. BNYM's inaction with respect to the servicing violations has exacerbated losses experienced by the Trusts.

459. BNYM's material breaches of the PSAs have injured all Certificateholders, including Plaintiffs, in that they have diminished the value of the certificates held by the Certificateholders and have prevented the Certificateholders from protecting the rights of the Trusts as well as their own rights.

460. The Trusts and each of the Plaintiffs have performed all of the conditions, covenants, and promises required in accordance with each of the PSAs.

SECOND CAUSE OF ACTION

VIOLATION OF THE TRUST INDENTURE ACT OF 1939, 53 STAT. 1171 (On Behalf Of The Trusts Against BNYM)

461. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

462. Congress enacted the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa, *et seq*., to ensure, among other things, that investors in certificates, bonds, and similar instruments have adequate rights against, and receive adequate performance from, the responsible trustees.

463. Each of the PSAs is an "indenture," and BNYM is an "indenture trustee," within the meaning of the TIA. 15 U.S.C. §§ 77ccc(7), (10). As noted above, each of the PSAs is substantially similar and imposes substantially the same duties on BNYM in its capacity as trustee. Moreover, the TIA applies to and is deemed to be incorporated into each of the PSAs and the related Trusts. 15 U.S.C. § 77ddd(a)(1). BNYM has violated multiple provisions of the TIA.

464. First, the TIA requires that, before default, the indenture trustee be liable for any duties specifically set out in the indenture. 15 U.S.C. § 77000(a)(1). As set forth above, BNYM

has failed to comply, in good faith, with numerous duties specifically assigned to it by each of the PSAs, including the duties:

(a) to provide prompt written notice to all parties to the PSA and related responsible parties of breaches of the sellers' representations and warranties, upon BNYM's discovery of the breaches;

(b) to enforce the sellers' obligations to repurchase, substitute, or cure such defective mortgage loans; and

(c) to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, including requiring the originators and sponsors to perform their respective obligations and to service and administer the mortgage loans in accordance with applicable law and customary and usual standards of practice of mortgage lenders and loan servicers.

465. By failing to comply with these specific duties, BNYM violated the TIA.

466. In addition, the TIA requires that BNYM inform Certificateholders of defaults within ninety days after their occurrence. 15 U.S.C. § 77ooo(b) (citing 15 U.S.C. § 77mmm(c)). Here, there were numerous defaults, including (i) the failure of originators and sponsors to repurchase or substitute defective or nonconforming loans in the Trusts; and (ii) the failure on the part of the servicers to observe and perform covenants and agreements set forth in the PSAs, including requiring the originators and sponsors to perform their respective obligations and servicing and administering the mortgage loans in accordance with applicable law and customary and usual standards of practice of mortgage lenders and loan servicers. Given the great importance of those defaults to the Certificateholders' interests, BNYM had no good faith reason

for failing to provide notice of those defaults. Accordingly, by failing to provide this notice, BNYM violated the TIA.

467. Second, in case of default, the TIA requires BNYM to exercise its rights and powers under the PSA as a prudent person would, under those circumstances, in the conduct of the persons' own affairs. 15 U.S.C. § 77000(c). Again, given the obvious importance of the defaults set forth in the preceding paragraph, which impaired the rights of the Trusts, any prudent person under those circumstances would have exercised all of the trustee's rights to, among other things, enforce the sponsors' and originators' obligation to repurchase, substitute, or cure defective mortgage loans, and a prudent person would have exercised those rights promptly. Indeed, with the number of delinquent and defaulting mortgages in the Trusts increasing, as a result, *inter alia*, of these defects, the Trusts could only have been protected from the resulting losses through the trustee's prompt exercise of those rights, which were designed precisely to limit the number of delinquent and defaulting mortgages in the Trusts. By failing to exercise its rights in those circumstances, BNYM violated the TIA.

468. BNYM's violations of the TIA have directly and proximately caused damages to the Trusts in that they have deprived the Trusts of valuable remedies and allowed hundreds of billions of dollars in Trust assets to waste away. For example, had BNYM protected the rights of the Trusts by enforcing the originators' and sponsors' obligation to cure, repurchase, or substitute mortgage loans affected by breaches of representations and warranties, as it was contractually obligated to do under the PSAs, the Trusts would have received either cured or substitute mortgage loans of adequate credit quality or funds representing the "Repurchase Price" of the defective mortgage loans. BNYM's inaction with respect to the originators and sponsors has allowed the Trusts to be filled with defective mortgage loans of poor credit quality and

significant documentation deficiencies that have increased the severity of the Trusts' losses. Similarly, had BNYM enforced the servicers' servicing obligations, the Trusts would have been able to avoid unnecessary losses. BNYM's inaction with respect to the servicers has exacerbated losses experienced by the Trusts.

469. BNYM's violations of the TIA have injured all Certificateholders, including Plaintiffs, in that they have diminished the value of the certificates held by the Certificateholders and have prevented the Certificateholders from protecting the rights of the Trusts as well as their own rights.

THIRD CAUSE OF ACTION

NEGLIGENCE - BREACH OF PRE-DEFAULT DUTY OF INDEPENDENCE (On Behalf Of The Trusts Against BNYM)

470. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

471. Under New York law, BNYM, as Trustee, had extra-contractual, pre-default duties to the Trusts and all Certificateholders. These duties include the absolute, unwaivable duty to give the Trusts and their Certificateholders undivided loyalty, free from any conflicting self-interest. Trustees like BNYM must discharge their obligations "with absolute singleness of purpose" because of the inability of the Trusts and dispersed Certificateholders to enforce their rights. This common law duty to avoid conflicts of interest applies notwithstanding the terms of the instrument that purports to define the duties of the trustee.

472. Under each of the PSAs, BNYM holds the loans for the benefit of the Trusts and all Certificateholders, including Plaintiffs.

473. Under each of the PSAs, BNYM had the discretion to enforce the sellers' repurchase obligations and to prevent the servicers from engaging in activities outside of

customary and usual standards of practice of prudent mortgage servicers with respect to any mortgage loans that BNYM held for the benefit of the Trusts and the Certificateholders.

474. As alleged in detail above, BNYM knew of seller breaches of representations and warranties and that the servicers were engaging in activities outside of customary and usual standards of practice of prudent mortgage servicers with regard to their servicing and administration of the mortgage loans in the Trusts.

475. As alleged herein, however, BNYM failed to discharge its critical pre-default duties owed to the Trusts and all Certificateholders because acting to diligently protect the interests of the Trusts and Certificateholders would have conflicted with its own financial interests. Indeed, rather than acting pursuant to its proscribed contractual, statutory and common law duties, BNYM sought to avoid its obligations to enforce the sellers' repurchase obligations and servicers' prudent servicing requirements because it did not want to incur the associated transactional costs of exercising the Trusts' rights against these entities or shine the light on its own wrongful conduct. Doing so would have decreased BNYM's profits because its revenue did not necessarily increase as a result of the additional obligations. Because of this conflict of interest with the Certificateholders, BNYM has failed to take any action against the sellers or servicers, or even notify the Certificateholders that the sellers or servicers were engaged in misconduct.

476. BNYM's negligent breach of its pre-default duty of independence has directly and proximately caused damages to the Trusts. For example, had BNYM not been conflicted, it would have enforced the sellers' repurchase obligations and exercised its discretion to prevent the servicers from engaging in activities outside of customary and usual standards of practice of prudent mortgage servicers with respect to the mortgage loans in the Trusts. BNYM's inaction

has relieved the sellers' of their repurchase liability, and allowed the servicers to charge improper fees that have been passed along to the Trusts and to delay in foreclosing on mortgage loans, which has increased the costs of foreclosure.

477. BNYM's negligent breaches of its pre-default duty of independence have injured all Certificateholders, including Plaintiffs, in that they have diminished the value of the certificates held by the Certificateholders and have prevented the Certificateholders from protecting the rights of the Trusts as well as their own rights.

FOURTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY – DUTY OF CARE
(On Behalf Of The Trusts Against BNYM)

478. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

479. Under New York law, after the occurrence of an Event of Default, BNYM's duties expanded to include a fiduciary duty owed to the Trusts and all Certificateholders. This fiduciary duty included the obligation to exercise its contractually conferred rights and powers in good faith and to bring all available claims for the benefit of the Trusts and the Certificateholders following an Event of Default. Following the Events of Default described above, BNYM breached its fiduciary duties to the Trusts and all Certificateholders in several respects.

480. First, BNYM, in its capacity as Trustee, had standing to bring claims against the sellers of loans to the Trusts for breach of their representations and warranties under the governing agreements. At the time of the Events of Default, meritorious claims existed against the sellers for breach of their representations and warranties under the governing agreements. BNYM, however, failed to promptly enforce the sellers' obligation to cure, repurchase, or substitute mortgage loans that had defective mortgage files or were affected by breaches of the

sponsors' and originators' representations and warranties, including by filing suits on behalf of the Trusts against the sponsors and originators. Moreover, BNYM failed to provide notice to the Certificateholders of the breaches or of its intention not to enforce the originators' and sponsors' obligation to cure, repurchase, or substitute the loans with defective mortgage files and breaches of representations and warranties.

481. BNYM's failure to promptly enforce the originators' and sponsors' obligation to cure, repurchase, or substitute mortgage loans with defective mortgage files and mortgage loans affected by breaches of the originators' and sponsors' representations and warranties, as well as its failure to provide notice to the Certificateholders of its intention not to promptly enforce the originators' and sponsors' obligation to cure, repurchase, or substitute mortgage loans with defective mortgage files and mortgage loans affected by breaches of the originators' and sponsors' representations and warranties, constituted breaches of BNYM's fiduciary duty to the Trusts and to all Certificateholders.

482. Second, BNYM, in its capacity as Trustee, presently has standing to bring meritorious claims against the servicers to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, including to service and administer the mortgage loans in accordance with applicable law and customary and usual standards of practice of mortgage lenders and loan servicers. BNYM, however, has refused and continues to refuse to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, including by filing suits on behalf of the Trusts against the servicers for compensatory and injunctive relief for harm caused to the Trusts as a result of servicing violations. Moreover, BNYM failed to provide notice to the Certificateholders of the servicing violations or of its intention not to enforce the servicers' obligations to observe and perform covenants and

agreements set forth in the PSAs. BNYM's failure to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, as well as its failure to provide notice to the Certificateholders of the servicing violations or of its intention not to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, constituted breaches of BNYM's fiduciary duty to the Trusts and to all Certificateholders.

483. BNYM's breach of its fiduciary duty has directly and proximately caused damages to the Trusts. Specifically, the Trusts' injury includes the loss of verdicts, settlements, or awards, and the interest that the Trusts would have recovered against the sellers and servicers but for BNYM's breach of its fiduciary duty.

484. BNYM's breaches of its fiduciary duty have injured all Certificateholders, including Plaintiffs, in that they have diminished the value of the certificates held by the Certificateholders and have prevented the Certificateholders from protecting the rights of the Trusts as well as their own rights.

FIFTH CAUSE OF ACTION

NEGLIGENCE – DUTY OF CARE
(On Behalf Of The Trusts Against BNYM)

485. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

486. Under New York law, after the occurrence of an Event of Default, BNYM owed duties to the Trusts and all Certificateholders, which included the obligation to bring all available claims for the benefit of the Trusts and the Certificateholders. Following the Events of Default described above, BNYM breached its duties to the Trusts and to all Certificateholders in several respects.

487. First, BNYM, in its capacity as Trustee, had standing to bring claims against the sellers of the Trusts for breach of their representations and warranties under the governing agreements. At the time of the Events of Default, meritorious claims existed against the sellers for breach of their representations and warranties under the governing agreements. BNYM, however, negligently failed to promptly enforce the sellers' obligation to cure, repurchase, or substitute mortgage loans that had defective mortgage files or were affected by breaches of the sponsors' and originators' representations and warranties, including by filing suits on behalf of the Trusts against the sponsors and originators. Moreover, BNYM negligently failed to provide notice to the Certificateholders of the breaches or of its intention not to enforce the originators' and sponsors' obligation to cure, repurchase, or substitute the loans with defective mortgage files and breaches of representations and warranties.

488. BNYM's failure to promptly enforce the originators' and sponsors' obligation to cure, repurchase, or substitute mortgage loans with defective mortgage files and mortgage loans affected by breaches of the originators' and sponsors' representations and warranties, and failure to provide notice to the Certificateholders of the breaches or of its intention not to promptly enforce the originators' and sponsors' obligation to cure, repurchase, or substitute mortgage loans with defective mortgage files and mortgage loans affected by breaches of the originators' and sponsors' representations and warranties, constituted negligence.

489. Second, BNYM, in its capacity as Trustee, presently has standing to bring meritorious claims against the servicers to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, including to service and administer the mortgage loans in accordance with applicable law and customary and usual standards of practice of mortgage lenders and loan servicers. BNYM, however, has refused and continues to refuse to

enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, including by filing suits on behalf of the Trusts against the servicers for compensatory and injunctive relief for harm caused to the Trusts as a result of servicing violations. Moreover, BNYM negligently failed to provide notice to the Certificateholders of the servicing violations or of its intention not to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs. BNYM's failure to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, as well as its failure to provide notice to the Certificateholders of the servicing violations or of its intention not to enforce the servicers' obligations to observe and perform covenants and agreements set forth in the PSAs, constituted breaches of its duty to the Trusts and all Certificateholders.

490. BNYM's negligence has directly and proximately caused damages to the Trusts. Specifically, the Trusts' injury includes the loss of verdicts, settlements, or awards, and the interest that the Trusts would have recovered against the originators and sponsors but for BNYM's negligence.

491. BNYM's negligence has injured all Certificateholders, including Plaintiffs, in that it has diminished the value of the certificates held by the Certificateholders and has prevented the Certificateholders from protecting the rights of the Trusts as well as their own rights.

SIXTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY – BREACH OF POST-DEFAULT DUTY OF INDEPENDENCE (On Behalf Of The Trusts Against BNYM)

492. Plaintiffs repeat and reallege each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

493. Under New York law, BNYM, as Trustee, had extra-contractual, post-default duties to the Trusts and all Certificateholders. These duties include the absolute, unwaivable

duty to give the Trusts and their Certificateholders undivided loyalty, free from any conflicting self-interest. Trustees like BNYM must discharge their obligations "with absolute singleness of purpose" because of the inability of the Trusts and dispersed Certificateholders to enforce their rights. This common law duty to avoid conflicts of interest applies notwithstanding the terms of the instrument that purports to define the duties of the trustee.

494. Under each of the PSAs, BNYM holds the loans for the benefit of the Trusts and all Certificateholders, including Plaintiffs.

495. Under each of the PSAs, BNYM had the discretion to enforce the sellers' repurchase obligations and to prevent the servicers from engaging in activities outside of customary and usual standards of practice of prudent mortgage servicers with respect to any mortgage loans that BNYM held for the benefit of the Trusts and the Certificateholders.

496. As alleged in detail above, after Events of Default, BNYM knew of seller breaches of representations and warranties and that the servicers were engaging in activities outside of customary and usual standards of practice of prudent mortgage servicers with regard to their servicing and administration of the mortgage loans in the Trusts.

497. As alleged herein, however, BNYM failed to discharge its critical post-default duties owed to the Trusts and all Certificateholders because acting to diligently protect the interests of the Trusts and Certificateholders would have conflicted with its own financial interests. Indeed, rather than acting pursuant to its proscribed contractual, statutory and common law duties, BNYM sought to avoid its obligations to enforce the sellers' repurchase obligations and servicers' prudent servicing requirements because it did not want to incur the associated transactional costs of exercising the Trusts' rights against these entities or shine the light on its own wrongful conduct. Doing so would have decreased BNYM's profits because its revenue did

not necessarily increase as a result of the additional obligations. Because of this conflict of interest with the Certificateholders, BNYM has failed to take any action against the sellers or servicers, or even notify the Certificateholders that the sellers or servicers were engaged in misconduct.

498. BNYM's breach of its post-default fiduciary duty of independence has directly and proximately caused damages to the Trusts. For example, had BNYM not been conflicted, it would have enforced the sellers' repurchase obligations and exercised its discretion to prevent the servicers from engaging in activities outside of customary and usual standards of practice of prudent mortgage servicers with respect to any mortgage loans. BNYM's inaction has relieved the sellers' of their repurchase liability, and allowed the servicers to charge improper fees that have been passed along to the Trusts and to delay in foreclosing on mortgage loans, which has increased the costs of foreclosure.

499. BNYM's breaches of its post-default fiduciary duty of independence have injured all Certificateholders, including Plaintiffs, in that they have diminished the value of the certificates held by the Certificateholders and have prevented the Certificateholders from protecting the rights of the Trusts as well as their own rights.

XVII. RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment as follows:

(a) Determining that this action is a proper derivative action maintainable under law and demand is excused;

(b) Awarding to the Trusts money damages against BNYM for all losses suffered as a result of BNYM's breaches of contractual, statutory, common law and fiduciary duties, and BNYM's negligence;

(c) Requiring BNYM to take corrective actions, including taking all necessary actions to reform and improve its internal policies and procedures to comply with its trustee obligations under the PSAs and applicable laws, and to protect the Trusts and the Certificateholders from a repeat of the damaging events described herein;

(d) Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

(e) Granting any other and further relief that the Court deems just and proper.

XVIII. JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: July 16, 2014

BERNSTEIN LITOWITZ BERGER
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BLAIR A. NICHOLAS

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