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

PHOENIX LIGHT SF LIMITED, BLUE HERON FUNDING II LTD., BLUE HERON FUNDING V LTD., BLUE HERON FUNDING VI LTD., BLUE HERON FUNDING VII LTD., SILVER ELMS CDO PLC, SILVER ELMS CDO II LIMITED and KLEROS PREFERRED FUNDING V PLC, Plaintiffs, vs. CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (USA) LLC, DLJ MORTGAGE CAPITAL, INC., CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. and ASSET BACKED SECURITIES CORP., Defendants.	Index No. SUMMONS

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TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate New York County as the place of trial. Venue is proper because the defendants do business in or derive substantial revenue from activities carried out in this County, and many of the wrongful acts alleged herein occurred in this County.

DATED: September 9, 2013

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

<table>
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Plaintiffs,

vs.

CREDIT SUISSE AG, CREDIT SUISSE SECURITIES (USA) LLC, DLJ MORTGAGE CAPITAL, INC., CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP. and ASSET BACKED SECURITIES CORP.,

Defendants.</td><td>Index No.

COMPLAINT

<u>DEMAND FOR JURY TRIAL</u></td></tr>
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Plaintiffs Phoenix Light SF Limited ("Phoenix"), Blue Heron Funding II Ltd. ("Blue Heron II"), Blue Heron Funding V Ltd. ("Blue Heron V"), Blue Heron Funding VI Ltd. ("Blue Heron VI"), Blue Heron Funding VII Ltd. ("Blue Heron VII"), Silver Elms CDO PLC ("Silver Elms"); Silver Elms CDO II Limited ("Silver Elms II") and Kleros Preferred Funding V PLC ("Kleros V") (collectively, "plaintiffs"), by their attorneys Robbins Geller Rudman & Dowd LLP, for their complaint herein against defendants Credit Suisse AG, Credit Suisse Securities (USA) LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Securities Corp. and Asset Backed Securities Corp. (collectively, "Credit Suisse" or "defendants"), allege, on information and belief, except as to plaintiffs' own actions, as follows:

I. SUMMARY OF THE ACTION

1. This action arises out of plaintiffs' purchases of more than $362 million worth of residential mortgage-backed securities ("RMBS").[1] The specific RMBS at issue are generally referred to as "certificates." The certificates are essentially bonds backed by a large number of residential real estate loans that entitle their holders to receive monthly distributions derived from the payments made on those loans. The claims at issue herein arise from 31 separate certificate purchases made in 16 different offerings (the "Credit Suisse Offerings"), all of which were structured, marketed, and sold by defendants during the period from 2005 through 2007. *See* Appendix A.

[1] As further explained *infra*, at §II.A, some of plaintiffs' purchases consisted of purchases by plaintiffs (including their agents) directly from defendants or others. However, in other cases, plaintiffs obtained their claims through assignment. That is, for some of the certificate purchases alleged herein, the certificates were initially purchased by third parties, but all right, title, interest and causes of action in and related to the certificates were assigned to plaintiffs. Accordingly, all references herein to plaintiffs' purchases of certificates include both plaintiffs' direct purchases as well as plaintiffs' claims arising by assignment.

2. Defendants used U.S. Securities and Exchange Commission ("SEC") forms, such as registration statements, prospectuses and prospectus supplements, as well as other documents – such as pitch books, term sheets, loan tapes, offering memoranda, draft prospectus supplements, "red," "pink" and "free writing" prospectuses and electronic summaries of such materials – to market and sell the certificates to plaintiffs. In addition, defendants also disseminated the key information in these documents to third parties – such as the rating agencies (the "Credit Rating Agencies"), broker-dealers and analytics firms, like Intex Solutions, Inc. ("Intex") – for the express purpose of marketing the certificates to plaintiffs and other investors. Collectively, all of the documents and information disseminated by defendants for the purpose of marketing and/or selling the certificates to plaintiffs are referred to herein as the "Offering Documents." Each purchase at issue herein was made in direct reliance on the information contained in the Offering Documents.[2]

3. As further detailed herein, the Offering Documents were materially false and misleading at the time they were issued by defendants and relied on by plaintiffs and/or their assignors. Specifically, the Offering Documents both failed to disclose and affirmatively misrepresented material information regarding the very nature and credit quality of the certificates and their underlying loans. The Offering Documents further failed to disclose that, at the same time Credit Suisse was offering the certificates for sale to plaintiffs, the bank was privately betting that the same and similar certificates would soon default at significant rates. Defendants used these Offering Documents to defraud plaintiffs and their assignors into purchasing supposedly "investment grade" certificates at falsely inflated prices. Plaintiffs' certificates are now all rated at junk status or

[2] As further detailed *infra*, at §V.B, some of the purchase decisions at issue herein were made prior to the date of the final prospectus supplements for the offerings from which such certificates were purchased. On information and belief, however, all such purchases were made in direct reliance upon draft prospectus supplements that were distributed by defendants and were identical in all material respects to the final prospectus supplements for such offerings.

below, and are essentially worthless investments, while defendants, on the other hand, have profited handsomely from their roles in structuring, marketing and selling the certificates.

II. PARTIES

A. Plaintiffs

4. Plaintiff Phoenix is a limited liability company incorporated in Ireland, with its principal place of business in Dublin, Ireland. Phoenix brings its claims against defendants as an assignee of claims regarding certificates that were initially purchased by five separate and distinct legal entities that collapsed or nearly collapsed as a direct result of defendants' misconduct, as alleged herein. The five assignors are identified below:

(a) During the relevant time period, WestLB AG ("WestLB") was a German corporation with its principal place of business in Düsseldorf, Germany. On July 1, 2012, WestLB underwent a restructuring, pursuant to which WestLB transferred the majority of its remaining assets to a public winding-up agency known as Erste Abwicklungsanstalt. As a result of the restructuring measures, WestLB discontinued its banking business and now operates solely as a global provider of portfolio management services, under the name of Portigon AG. As further set forth *infra*, WestLB purchased certificates at issue herein, which were subsequently assigned to Phoenix, along with all associated rights, title, interest, causes of action and claims in and related to such certificates, including all claims at issue herein.

(b) During the relevant time period, Greyhawk Funding LLC ("Greyhawk") was an independent Delaware limited liability company, which maintained its principal place of business in Delaware and was controlled by an independent board of directors. Greyhawk was an asset-backed commercial paper program, which invested in RMBS and other securities, and issued commercial paper to numerous external investors. Greyhawk was subsequently liquidated and is no longer active. During the relevant time period, Greyhawk hired a professional asset manager, New

York-based Brightwater Capital Management ("Brightwater"), to manage its investments. As further set forth *infra*, Greyhawk purchased certificates at issue herein, which were subsequently assigned to Phoenix, along with all associated rights, title, interest, causes of action and claims in and related to such certificates, including all claims at issue herein.

(c) Harrier Finance Limited ("Harrier") is an independent Cayman Islands limited liability company, which maintains its principal place of business in George Town, Cayman Islands, and is controlled by an independent board of directors. Harrier is a structured investment vehicle, which invested in RMBS and other securities during the relevant time period, and issued debt and income securities to numerous external investors. Numerous external investors currently hold long-term income notes issued by the company, which are currently in defeasance due in large part to defendants' conduct. During the relevant time period, Harrier hired a professional asset manager, New York-based Brightwater, to manage its investments. As further set forth *infra*, Harrier purchased certificates at issue herein, which were subsequently assigned to Phoenix, along with all associated rights, title, interest, causes of action and claims in and related to such certificates, including all claims at issue herein.

(d) During the relevant time period, Blue Heron Funding III Ltd. ("Blue Heron III") was a Cayman Islands company with its principal place of business in George Town, Cayman Islands. Blue Heron III was organized as a fully independent special purpose vehicle, with a board of directors functioning to control its operations. During the relevant time period, Blue Heron III invested in RMBS and other securities, and hired Brightwater to manage such investments. Blue Heron III was subsequently liquidated and is no longer a legally viable entity. As further set forth infra, Blue Heron III purchased a certificate at issue herein, which was subsequently assigned to Phoenix, along with all associated rights, title, interest, causes of action and claims in and related to such certificate, including all claims at issue herein.

(e) During the relevant time period, Blue Heron Funding IV Ltd. ("Blue Heron IV") was a Cayman Islands company with its principal place of business in George Town, Cayman Islands. Blue Heron IV was organized as a fully independent special purpose vehicle, with a board of directors functioning to control its operations. During the relevant time period, Blue Heron IV invested in RMBS and other securities, and hired Brightwater to manage such investments. Blue Heron IV was subsequently liquidated and is no longer a legally viable entity. As further set forth infra, Blue Heron IV purchased a certificate at issue herein, which was subsequently assigned to Phoenix, along with all associated rights, title, interest, causes of action and claims in and related to the certificate, including all claims at issue herein.

5. Phoenix acquired the legal claims at issue in this case in exchange for rescue financing and other good and valuable consideration. The certificates at issue in this case were severely damaged on or before the day they were transferred to Phoenix, and continue to be damaged, in an amount to be proven at trial. Phoenix has standing to sue defendants to recover those damages as an assignee of all rights, title, interest, causes of action and claims regarding securities initially purchased by the five assignors identified above. As a result, use of the term "Phoenix" herein shall also refer to each of the above-identified assignors.

6. Plaintiff Blue Heron II is a Cayman Islands company with its principal place of business in George Town, Cayman Islands. Blue Heron II is a fully independent special purpose vehicle with a board of directors who controls its operations. Blue Heron II has numerous investors holding debt and income securities issued by the company. Blue Heron II was organized for the purpose of investing in RMBS and other securities. Each of the claims asserted herein by Blue Heron II relate to a certificate that was purchased by Blue Heron II in accordance with investment parameters developed by Blue Heron II's external agents and professional investors.

7. Plaintiff Blue Heron V is a Cayman Islands company with its principal place of business in George Town, Cayman Islands. Blue Heron V is a fully independent special purpose vehicle with a board of directors who controls its operations, and numerous investors holding securities issued by the company. Blue Heron V was organized for the purpose of investing in RMBS and other securities. Each of the claims asserted herein by Blue Heron V relate to a certificate that was purchased by Blue Heron V in accordance with investment parameters developed by Blue Heron V's external agents and professional investors.

8. Plaintiff Blue Heron VI is a Cayman Islands company with its principal place of business in George Town, Cayman Islands. Blue Heron VI is a fully independent special purpose vehicle with a board of directors who controls its operations, and numerous investors holding securities issued by the company. Blue Heron VI was organized for the purpose of investing in RMBS and other securities. Each of the claims asserted herein by Blue Heron VI relate to a certificate that was purchased by Blue Heron VI in accordance with investment parameters developed by Blue Heron VI's external agents and professional investors.

9. Plaintiff Blue Heron VII is a Cayman Islands company with its principal place of business in George Town, Cayman Islands. Blue Heron VII is a fully independent special purpose vehicle with a board of directors who controls its operations, and numerous investors holding securities issued by the company. Blue Heron VII was organized for the purpose of investing in RMBS and other securities. Each of the claims asserted herein by Blue Heron VII relate to a certificate that was purchased by Blue Heron VII in accordance with investment parameters developed by Blue Heron VII's external agents and professional investors.

10. Plaintiff Silver Elms is a public limited liability company incorporated under the laws of Ireland, with its principal place of business in Dublin, Ireland. Silver Elms is a fully independent company with an independent board of directors that controls its operations. Silver Elms has

numerous investors holding debt and income securities issued by the company. Silver Elms asserts its claims herein as an assignee of certificates that were initially purchased by another entity before subsequently being assigned to Silver Elms, along with all associated rights, title, interest, causes of action and claims in and related to such certificates, including all claims at issue herein. As further set forth *infra*, the certificates assigned to Silver Elms were initially purchased by an entity known as Paradigm Funding LLC ("Paradigm"). Paradigm was a Delaware limited liability company during the relevant time period but is now defunct.

11. Plaintiff Silver Elms II is a public limited company incorporated under the laws of Ireland with its principal place of business in Dublin, Ireland. Silver Elms II is a fully independent company with a board of directors who controls its operations. Silver Elms II has numerous investors holding debt and income securities issued by the company. Silver Elms II asserts its claims herein both as an initial purchaser and as an assignee of certificates that were initially purchased by other entities and were subsequently assigned to Silver Elms II, along with all associated rights, title, interest, causes of action and claims in and related to such certificates, including all claims at issue herein. As further set forth *infra*, the certificates assigned to Silver Elms II were initially purchased by WestLB and Paradigm. The certificate initially purchased by Silver Elms II was acquired in accordance with investment parameters developed by Silver Elms II's external agents and professional investors.

12. Plaintiff Kleros V is a public limited company organized under the laws of Ireland, with its principal place of business in Dublin, Ireland. Kleros V is a fully independent special purpose vehicle with a board of directors who controls its operations. Kleros V was organized for the purpose of investing in RMBS and other securities and has numerous investors holding debt and income securities issued by the company. Kleros V asserts claims herein as an assignee of certificates originally purchased by WestLB, and which were subsequently assigned to Kleros V,

along with all associated rights, title, interest, causes of action and claims in and related to such certificates, including all claims at issue herein.

13. All of these entities are collectively referred to herein as "plaintiffs," except where there are differences in the methods that they employed to make the subject investments. Moreover, unless otherwise noted, all references herein to plaintiffs' purchases of certificates include both plaintiffs' direct purchases as well as plaintiffs' claims arising by assignment.

B. The "Credit Suisse Defendants"

14. As further set forth below, each of the following defendants was actively involved with and/or liable for some or all of the Credit Suisse Offerings at issue herein. *See* §V, *infra*. Additional detailed information concerning each Credit Suisse Offering is also set forth in Appendix A, attached hereto.

15. Defendant Credit Suisse AG is a multi-national company that delivers banking and financial services throughout the world. Credit Suisse AG is the ultimate owner and controller of the other "Credit Suisse Defendants" alleged herein. Credit Suisse AG directed and controlled the complained-of conduct herein by the other Credit Suisse Defendants with respect to the Credit Suisse Offerings alleged herein.

16. Defendant Credit Suisse Securities (USA) LLC, formerly known as Credit Suisse First Boston LLC, is a Delaware limited liability company with its principal place of business in New York, New York. Unless otherwise noted, use of the term "Credit Suisse Securities" herein refers collectively to both Credit Suisse Securities (USA) LLC and Credit Suisse First Boston LLC. Credit Suisse Securities is an SEC-registered broker-dealer primarily engaged in the business of investment banking and is a wholly-owned indirect subsidiary of co-defendant Credit Suisse AG. Credit Suisse Securities acted as the lead or co-lead underwriter and broker-dealer for all of the Credit Suisse Offerings alleged herein, and plaintiffs purchased all 31 of the certificates they

purchased in the Credit Suisse Offerings directly from Credit Suisse Securities in its capacity as the underwriter for such offerings. As an underwriter, Credit Suisse Securities was intimately involved in the Credit Suisse Offerings alleged herein, as it investigated the loans at issue herein, and participated in the drafting and disseminating of the Offering Documents used to sell the certificates in such offerings to plaintiffs.

17. Defendant DLJ Mortgage Capital, Inc. ("DLJ Mortgage") is a Delaware corporation with its principal place of business in New York, New York. It is a wholly-owned indirect subsidiary of co-defendant Credit Suisse AG, and is primarily engaged in the purchase of mortgage loans. DLJ Mortgage acted as the sponsor for nine of the Credit Suisse Offerings alleged herein. In its capacity as the sponsor for such offerings, DLJ Mortgage organized and initiated the deals by acquiring the mortgage loans to be securitized, negotiating the principal securitization transaction documents and working with the securities underwriters to structure the offerings.

18. Defendant Credit Suisse First Boston Mortgage Securities Corp. ("CSFBMS") is a Delaware corporation with its principal place of business in New York, New York. It is a wholly-owned indirect subsidiary of co-defendant Credit Suisse AG. CSFBMS acted as the depositor for four of the Credit Suisse Offerings alleged herein. Accordingly, under the U.S. securities laws, CSFBMS was also an "issuer" of the certificates plaintiffs bought in such offerings.

19. Defendant Asset Backed Securities Corp. ("ABSC") is a Delaware corporation with its principal place of business in New York, New York. It is a wholly-owned indirect subsidiary of co-defendant Credit Suisse AG. ABSC acted as the depositor for six of the Credit Suisse Offerings alleged herein. As a depositor, ABSC was also an "issuer," under the U.S. securities laws, of the certificates plaintiffs bought in those Credit Suisse Offerings.

20. Defendants Credit Suisse AG, Credit Suisse Securities, DLJ Mortgage CSFBMS and ABSC are collectively referred to herein as either the "Credit Suisse Defendants" or "Credit Suisse."

III. JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action pursuant to Article VI, §7 of the New York State Constitution, which authorizes it to serve as a court of "general [and] original jurisdiction in law and equity." The amount in controversy exceeds the minimum threshold of $150,000 pursuant to §202.70(a) of the Uniform Civil Rules of the New York Supreme Court.

22. The Court's personal jurisdiction over defendants is founded upon C.P.L.R. §§301 and 302 as each defendant transacts business within the State of New York within the meaning of C.P.L.R. §302(a)(1), and each of them committed a tortious act inside the State of New York within the meaning of C.P.L.R. §302(a)(2).

23. Defendants regularly and systematically transact business within the State of New York and derive substantial revenue from activities carried out in New York. A majority of defendants' acts pertaining to the securitization of the RMBS giving rise to the causes of action alleged herein occurred in New York. Each defendant was actively involved in the creation, solicitation and/or sale of the subject certificates to plaintiffs in the State of New York. Specifically, defendants originated and/or purchased the loans at issue, prepared, underwrote, negotiated, securitized and marketed the offerings, and sold and/or marketed the certificates to plaintiffs, in substantial part, in New York County, New York.

24. Since numerous witnesses with information relevant to the case and key documents are located within the State of New York, any burdens placed on defendants by being brought under the State's jurisdiction will not violate fairness or substantial justice.

25. This Court also has personal jurisdiction over many of the defendants based on consent under C.P.L.R. §301 due to their unrevoked authorization to do business in the State of New York and their designations of registered agents for service of process in New York.

26. This Court has personal jurisdiction over any foreign defendants because they transact business within the State of New York either directly or through their wholly-owned subsidiaries, by selling securities in the State, and/or maintaining offices in the State. Any subsidiaries, affiliates and/or agents of such foreign defendants conducting business in this State are organized and operated as instrumentalities and/or alter egos of such foreign defendants. Such foreign defendants are the direct or indirect holding companies that operate through their subsidiaries, affiliates and/or agents in this State.

27. Venue is proper in this Court pursuant to C.P.L.R. §503(c) because most of the defendants maintain their principal place of business in New York County, and pursuant to C.P.L.R. §503(a) as designated by plaintiffs. Many of the alleged acts and transactions, including the preparation and dissemination of the Offering Documents, also occurred in substantial part in New York County, New York.

IV. BACKGROUND ON RMBS OFFERINGS IN GENERAL AND DEFENDANTS' INVOLVEMENT IN THE PROCESS

A. The Mortgage-Backed Securities Market

28. This case involves securities that are supported by residential mortgages. Residential mortgages are loans made to homeowners that are secured by a piece of collateral – a residence. The loans generate specific, periodic payments, and the related collateral interest gives the lender the right to "foreclose" on the loan by seizing and selling the property to recover the amount of money that was loaned.

29. The mortgage-backed securities market has existed for decades. In 1980, the market's size was about $100 billion. By 2004, the size of that market had reached over $4.2 trillion. To place this figure in context, in 2004 the total size of the U.S. corporate debt market was

$4.6 trillion. Investors from all over the world purchased mortgage-backed securities, and that demand drove down mortgage borrowing costs in the United States.

30. Creating RMBS involves a process called "securitization."

B. Organizations and Defendant Entities Involved in the Securitization Process

31. The securitization process requires a number of parties, including: (1) mortgage originators; (2) borrowers; (3) RMBS sponsors (or "sellers"); (4) mortgage depositors; (5) securities underwriters; (6) trusts that issue certificates backed by mortgages; (7) Nationally Recognized Statistical Rating Organizations ("NRSROs"), three of which are the Credit Rating Agencies; and (8) investors. Following is a description of their roles in order.

32. ***Mortgage originators*** accept mortgage applications and other information from prospective borrowers. They set borrowing standards, purport to evaluate a borrower's ability to repay, and appraise the value of the collateral supporting the borrower's obligations. This process is called "underwriting" a mortgage. The key mortgage originators at issue herein are set forth in §VI.

33. ***Borrowers*** who purport to satisfy the originators' underwriting criteria sign documentation memorializing the terms and conditions of the mortgages. Those documents typically include a promissory note and lien securing repayment – which together form what is known as the mortgage. Originators are then able to sell such mortgages to securitization sponsors in a large secondary market. Some of the specific borrowers at issue herein are described in §V.

34. ***Sponsors*** (or "sellers") typically organize and initiate the securitization aspect of the process by acquiring large numbers of mortgages, aggregating them, and then selling them through an affiliated intermediary into an issuing trust. In this case, the sponsor for most of the RMBS offerings at issue herein was defendant DLJ Mortgage. DLJ Mortgage was generally responsible for pooling the mortgage loans to be securitized by the depositors, negotiating the principal

securitization transaction documents and participating with the underwriters to structure the RMBS offerings.

35. ***Depositors*** typically buy the pools of mortgages from the sponsors (or "sellers"), settle the trusts, and deposit the mortgages into those trusts in exchange for the certificates to be offered to investors, which the depositors in turn sell to the underwriters, for ultimate sale to investors. Under the U.S. securities laws, depositors are technically considered "issuers" of the securities, and are strictly liable for material misrepresentations and omissions in any registration statement under the Securities Act of 1933. Defendants ABSC and CSFBMS acted as the depositors in most of the RMBS offerings at issue herein. A more detailed summary of the role of that ABSC and CSFBMS performed in connection with plaintiffs' certificates follows:

(a) First, ABSC and CSFBMS acquired discrete pools of mortgages from the offering's "sponsor," in most cases DLJ Mortgage. The sponsor typically transferred those mortgages to the depositor via written mortgage purchase agreements that typically contained written representations and warranties about the mortgages ("Mortgage Purchase Agreements").

(b) Second, the depositor settled the issuing trusts, and "deposited" the discrete pools of mortgages acquired from the offering sponsor, along with their rights under the Mortgage Purchase Agreements, into the issuing trusts, in exchange for the certificates, which were then transferred to the underwriter for ultimate sale to investors such as plaintiffs. The sponsor was responsible for making sure title to the mortgage loans was properly and timely transferred to the trusts and/or trustees of the trusts. The mortgages and their rights, among other things, constitute the trusts' res. The trusts – their res, trustee and beneficiaries – are defined by a written pooling and servicing agreement ("Pooling Agreement").

(c) Third, the depositor, who is technically the "issuer" under the U.S. securities laws, filed a "shelf" registration statement with the SEC, which enabled the depositor to issue

securities rapidly in "shelf take-downs." In order to be offered through this method, it was necessary for the certificates to be deemed "investment grade" quality by the NRSRO processes described herein.

36. Securities ***underwriters*** purchase the certificates from the depositors and resell them to investors, such as plaintiffs. The terms of a particular underwriter's liabilities and obligations in connection with the purchase, sale and distribution of RMBS certificates are typically set forth in a written agreement between the depositor and the underwriter ("Underwriting Agreement"). Moreover, the underwriters also have obligations and responsibilities placed upon them by U.S. securities laws, including, without limitation, that they investigate the loans and ensure representations about the loans in the offering documents are true and correct. The "underwriter defendant" at issue herein is Credit Suisse Securities, which served as underwriter in all of the RMBS offerings at issue herein.

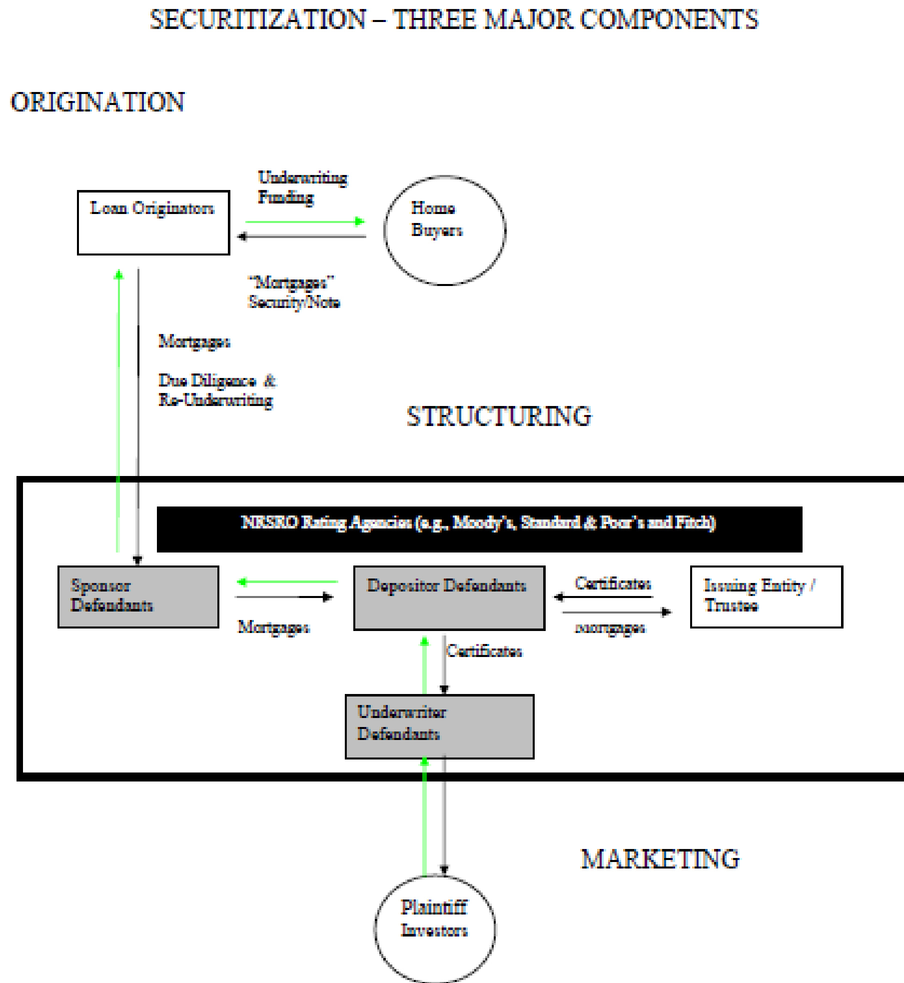
37. ***Issuing trusts*** hold the mortgages and all accompanying rights under the Mortgage Purchase Agreements. Pursuant to the terms of the Pooling Agreements, the issuing trusts issue the certificates to the depositors, for ultimate sale to investors by the securities underwriters. The certificates entitle the investors to principal and interest payments from the mortgages held by the trusts. Trustees voluntarily agree to administer the trusts and voluntarily agree to satisfy contractual and common law duties to trust beneficiaries – the plaintiff certificate investors in this case.

38. ***NRSROs***, which include the Credit Rating Agencies herein, analyze performance data on mortgage loans of every type and use that information to build software programs and models that are ultimately used to assign credit ratings to RMBS. These computer models generate various "levels" of subordination and payment priorities that are necessary to assign "investment grade" credit ratings to the certificates that the RMBS trusts issue. The rules generated by the NRSRO models are then written into the Pooling Agreements drafted by the sponsor and the securities

underwriter(s). As alleged above, in order to be issued pursuant to a "shelf take-down," the certificates must receive "investment grade" credit ratings from the NRSROs.

39. ***Investors***, like plaintiffs, purchase the RMBS certificates, and thus, provide the funding that compensates all of the securitization participants identified above.

40. The illustration below further summarizes the roles of the various parties in an RMBS securitization. In this illustration, the green arrows – moving from investors to home buyers or borrowers – illustrate funds flow, and the grey cells identify certain defendant entities in the context of their roles in the securitization process:



C. To Market the Certificates, Defendants Registered Them with the SEC on "Investment Grade" Shelves

41. Receiving strong credit ratings assigned to a particular RMBS is what enables securities dealers, like defendants, to register those securities on a "shelf" with the SEC. Issuing securities in this way involves two steps. First, an issuer must file a "shelf" registration statement with the SEC, governing potentially dozens of individual issuances of securities, or "shelf take-downs," that the issuer plans to conduct in the future. Second, to market a particular issuance, the issuer must file a prospectus "supplement" to the registration statement. The registration statement describes the shelf program in general, while the prospectus supplement and other offering documents describe in detail the particular securities offered to investors at that time.

42. Many of the securities at issue in this case were "taken down" from shelves that defendants created, in most cases, a process that never would have been possible without investment grade ratings from the Credit Rating Agencies.

V. C.P.L.R. §3016 PARTICULARITY ALLEGATIONS

As detailed immediately below, all of the Offering Documents distributed by defendants and relied on by plaintiffs and/or their assignors were materially false and misleading, as they omitted and affirmatively misrepresented material information regarding the certificates and their underlying loans. Moreover, as set forth *infra*, defendants were well aware of each of the following material misrepresentations and omissions. *See* §VII.

A. Each of the Offering Documents Omitted Material Information

43. The Offering Documents for each of the 16 offerings at issue failed to disclose critical information within defendants' possession regarding the certificates and their underlying loans. Specifically, prior to selling the certificates to plaintiffs, defendants hired Clayton Holdings, Inc. ("Clayton"), Watterson-Prime, LLC ("Watterson"), and Bohan Group ("Bohan") to re-underwrite

samples of the loans underlying each of the specific certificates purchased by plaintiffs.[3] For each of the 16 offerings, Clayton and/or the other due diligence providers determined that a significant percentage of the loans had been defectively underwritten and/or were secured by inadequate collateral, and were thus likely to default. In aggregate, during 2006 and 2007 – the time period during which the vast majority of offerings at issue here occurred – Clayton determined that ***32% of all loans it reviewed for Credit Suisse's offerings were defective***. This information was directly provided to the defendants prior to the offerings, but defendants affirmatively chose ***not*** to include it in the Offering Documents, even though Clayton expressly recommended that it be so included.

44. The Offering Documents also failed to disclose what defendants did with the material, undisclosed information they received from Clayton and their other due diligence providers. Specifically, with regard to the test samples of loans that were reviewed by Clayton, defendants actually "waived" back into the purchase pools for their offerings approximately ***33.4% of the specific loans that had been affirmatively identified as defective***. In addition, former employees of Bohan, another firm who performed due diligence of loans purchased by Credit Suisse, have confirmed that from 2005 through 2007 Credit Suisse ignored Bohan's findings that loans did not meet underwriting guidelines, exerted constant pressure to stop Bohan underwriters from removing defective loans from pools, and would even alter underwriting guidelines to allow more defective loans into loan pools. One former Bohan due diligence underwriter from 2005 through 2007 who reviewed loans purchased by Credit Suisse stated that 50% of the loans she reviewed were defective, that "you would have to be an idiot not to know that the loans were no good," and that the Wall

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[3] According to documents previously produced in this case by Credit Suisse, Clayton, Watterson and Bohan were the credit/compliance due diligence providers for all but four of the more than 190 loan pools underlying the offerings at issue herein. Based upon Clayton's re-underwriting of sampled loans, the due diligence firm was able to establish, at a 95% confidence level, the overall defect rate for the specific pool of loans underlying the offerings at issue.

Street banks – including Credit Suisse – knew they were purchasing defective loans because they received daily reports summarizing the due diligence findings.

45. Likewise, in the case titled *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*, No. 650421/2011 (N.Y. Sup. Ct., N.Y. Cty.), a former Clayton and Watterson employee was deposed, and the employee's sworn testimony revealed that Clayton and Watterson were instructed by their Wall Street bank clients (including Credit Suisse) to "***approve loans that often did not satisfy the underwriting guidelines,"*** to ignore defects in loan applications, to code defective loans as non-defective and to change many of the grades on loans that were coded as defective to reflect that they were non-defective. These instructions included ignoring appraisals which did not support the stated value of the properties and applications for which the borrower's stated income was "unreasonable" and not supported by documentation. The former employee testified that the practice of failing to follow underwriting guidelines when re-underwriting loans at both Clayton and Watterson was pervasive, and that "[d]ue diligence underwriters like myself were forced to find compensating factors for defective loans where none existed."

46. With regard to the unsampled portion of the purchase pools – *i.e.*, the vast majority of the loans – defendants simply purchased the loans in their entirety, ***sight unseen***. Moreover, on information and belief, defendants also used the significant, undisclosed material defect rates uncovered by their due diligence providers as leverage to force their loan suppliers to accept lower purchase prices for the loans, without passing the benefits of such discounts onto plaintiffs and other investors. None of the foregoing information was disclosed in the Offering Documents relied on by plaintiffs and their assignors, making such documents materially misleading.

B. Each of the Offering Documents Contained Material Misrepresentations

1. The ABSHE 2006-HE6 Certificates

47. The Asset Backed Securities Corporation Home Equity Loan Trust, Series MO 2006-HE6, Asset Backed Pass-Through Certificates, Series MO 2006-HE6 ("ABSHE 2006-HE6 Certificates") were issued pursuant to a Prospectus Supplement dated November 29, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the ABSHE 2006-HE6 Certificates: ABSC (depositor); DLJ Mortgage (sponsor); and Credit Suisse Securities (underwriter).

48. Plaintiffs and/or their assignors purchased the following ABSHE 2006-HE6 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Phoenix	WestLB	A5	04544NAR5	11/30/2006	$15,000,000	Credit Suisse Securities

49. The above purchase was made by WestLB's investment manager, Dynamic Credit Partners ("DCP"), in direct reliance upon the ABSHE 2006-HE6 Offering Documents, including draft and/or final ABSHE 2006-HE6 Prospectus Supplements. DCP's diligent investment processes are described in great detail in §VIII.E.2, *infra*.

a. Underwriting Guidelines

50. The ABSHE 2006-HE6 Offering Documents disclosed that approximately 52.84% of the ABSHE 2006-HE6 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Nationstar Mortgage LLC ("Nationstar"); and approximately 47.16% of the ABSHE 2006-HE6 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originators Argent Mortgage Company, LLC and Ameriquest Mortgage Company

(collectively, the "Ameriquest Originators"). *See* ABSHE 2006-HE6 Prospectus Supplement ("Pros. Supp.") at S-86-S-97 ("The Originators").

51. With regard to the Nationstar loans, the ABSHE 2006-HE6 Offering Documents represented that Nationstar's underwriting standards "are primarily intended to assess the creditworthiness of the mortgagor and the value of the mortgaged property and to evaluate the adequacy of the property as collateral for the mortgage loan." *See id.* The ABSHE 2006-HE6 Offering Documents also represented that "[w]hile [Nationstar's] primary consideration in underwriting a mortgage loan is the borrowers [sic] employment stability and debt-to-income ratio, the condition and value of the mortgaged property relative to the amount of the mortgage loan is another critical factor." *Id.* The ABSHE 2006-HE6 Offering Documents further represented that "[i]n addition, [Nationstar] also considers, among other things, a mortgagors [sic] credit history and repayment ability, as well as the type and use of the mortgaged property." *Id.* In addition, the ABSHE 2006-HE6 Offering Documents represented that "[u]nder each of [its] programs, [Nationstar] reviews the mortgage loan applicants [sic] source of income, calculates the amount of income from sources indicated on the loan application or similar documentation, reviews the credit history of the applicant, calculates the debt-to-income ratio to determine the applicants [sic] ability to repay the mortgage loan, reviews the type and use of the property being financed and reviews the property for compliance with [Nationstar's] standards." *Id.* Moreover, the ABSHE 2006-HE6 Offering Documents represented that "[i]t is [Nationstar's] policy for its underwriting process to consist of a thorough credit review and a thorough appraisal review on each mortgage loan by its underwriting department." *Id.* As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Nationstar had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual

repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

52. With regard to the Ameriquest Originators' loans, the ABSHE 2006-HE6 Offering Documents represented that the "Ameriquest [Originators'] Underwriting Guidelines are primarily intended to evaluate: (1) the applicants [sic] credit standing and repayment ability and (2) the value and adequacy of the mortgaged property as collateral." *See* ABSHE 2006-HE6 Pros. Supp. at S-86-S-97 ("The Originators"). The ABSHE 2006-HE6 Offering Documents also represented:

> During the underwriting process, each Ameriquest Originator reviews and verifies the loan applicants [sic] sources of income (except under the Stated Income and Limited Documentation types, under which programs such information may not be independently verified), calculates the amount of income from all such sources indicated on the loan application, reviews the credit history of the applicant, calculates the debt-to-income ratio to determine the applicants [sic] ability to repay the loan, and reviews the mortgaged property for compliance with the Ameriquest Underwriting Guidelines.

Id. The ABSHE 2006-HE6 Offering Documents further represented:

> The Ameriquest Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and requires (i) an appraisal of the mortgaged property which conforms to the Uniform Standards of Professional Appraisal Practice and are generally on forms similar to those acceptable to Fannie Mae and Freddie Mac and (ii) a review of such appraisal . . . .

Id. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Ameriquest and Argent had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.4, *infra*.

53. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, a

borrower obtained a loan for $311,183 in 2006 which was contained within the ABSHE 2006-HE6 offering. The loan was originated through Nationstar, one of the loan originators identified in the Offering Documents. ***This borrower had monthly income in 2006 of only $808***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $3,559, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation, and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

54. The ABSHE 2006-HE6 Offering Documents also made certain misrepresentations regarding the loan-to-value ("LTV") ratios associated with the loans supporting the ABSHE 2006-HE6 Certificate purchased by plaintiffs and/or their assigning entities.[4] Specifically, the ABSHE 2006-HE6 Offering Documents represented that less than 40% of the loans supporting plaintiffs' ABSHE 2006-HE6 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' ABSHE 2006-HE6 Certificate had LTV ratios over 100%.

55. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' ABSHE 2006-HE6 Certificate, which reveals that the LTV ratio percentages stated in the ABSHE 2006-HE6 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the

[4] For the reasons set forth *infra*, LTV ratios are very important to RMBS investors. *See* §§VI.B and IX.A, *infra*.

ABSHE 2006-HE6 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:[5]

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
A5	04544NAR5	Group 2	37.25%	58.86%	0.00%	16.34%

c. Owner Occupancy Rates

56. The ABSHE 2006-HE6 Offering Documents also made certain misrepresentations regarding the owner occupancy rates ("OOR" or "Primary Residence Percentages") associated with the loans supporting the ABSHE 2006-HE6 Certificate purchased by plaintiffs and/or their assigning entities.[6] Specifically, the ABSHE 2006-HE6 Offering Documents represented that a large percentage of the loans supporting plaintiffs' ABSHE 2006-HE6 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

57. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' ABSHE 2006-HE6 Certificate, which reveals that the OOR percentages stated in the ABSHE 2006-HE6 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the OOR percentages stated in the ABSHE

[5] Consistent with defendants' representations in the Offering Documents, all LTV ratio percentages herein are stated as a percentage of the aggregate outstanding loan balance of the supporting loan group or groups at issue.

[6] For the reasons set forth *infra*, OOR percentages are very important to RMBS investors. *See* §§VI.C and IX.A, *infra*.

2006-HE6 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:[7]

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
A5	04544NAR5	Group 2	98.59%	90.40%	9.05%

d. Credit Ratings

58. The ABSHE 2006-HE6 Offering Documents also represented that the ABSHE 2006-HE6 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by Standard & Poors ("S&P"), Moody's Investor Services ("Moody's") and Fitch Ratings ("Fitch"), indicating that the security was a very strong, safe investment with an extremely low probability of default.[8] Specifically, the ABSHE 2006-HE6 Offering Documents represented that plaintiffs' ABSHE 2006-HE6 Certificate had been assigned AAA/Aaa/AAA ratings – the highest, safest credit ratings available, which are in fact the same as, or even higher than, the current credit rating of U.S. Treasury debt.[9]

59. These representations, however, were false and misleading when made. In truth, plaintiffs' ABSHE 2006-HE6 Certificate should not have received AAA/Aaa/AAA credit ratings, because it was ***not*** a safe, "investment grade" security with "a less than 1% probability of incurring

[7] Consistent with defendants' representations in the Offering Documents, all Primary Residence Percentages herein are stated as a percentage of the aggregate outstanding loan balance of the supporting loan group or groups at issue.

[8] For the reasons set forth *infra*, credit ratings are very important to RMBS investors. *See* §§VI.D and IX.B, *infra*.

[9] As explained *infra*, "[t]raditionally, investments holding AAA ratings have had ***a less than 1% probability of incurring defaults***." *See* §VI.D, *infra* (citing Carl Levin & Tom Coburn, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse*, Majority and Minority Staff Report, Permanent Subcommittee on Investigations, United States Senate, 112th Congress (Apr. 13, 2011) ("Levin-Coburn Report") at 6).

defaults." Rather, as defendants were well aware, plaintiffs' ABSHE 2006-HE6 Certificate was an extremely risky, speculative grade "junk" bond, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' ABSHE 2006-HE6 Certificate was because defendants had fed them falsified information regarding the ABSHE 2006-HE6 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower debt-to-income ("DTI") ratios, and false OOR percentages.

60. The falsity of the credit ratings set forth in the ABSHE 2006-HE6 Offering Documents is confirmed by subsequent events. Specifically, ***more than 40%***[10] ***of the loans supporting plaintiffs' ABSHE 2006-HE6 Certificate are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them.[11] Moreover, plaintiffs' "investment grade" ABSHE 2006-HE6 Certificate is now rated at "junk" status. Clearly, plaintiffs' ABSHE 2006-HE6 Certificate was not the highly rated, "investment grade" security defendants represented it to be. The evidence supporting the falsity of the ABSHE 2006-HE6 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**		**Fitch's Ratings**	
				Initial	**Current**	**Initial**	**Current**	**Initial**	**Current**
A5	04544NAR5	Group 2	40.44%	Aaa	Caa3	AAA	CCC	AAA	CCC

[10] The default rates for all offerings at issue were obtained from trustee reports which were generally issued in or about May 2013.

[11] When used herein to describe the status of a loan or group of loans, the terms "in default," "into default" or "defaulted" are defined to include any loan or group of loans that is delinquent, in bankruptcy, foreclosed or bank owned.

e. Transfer of Title

61. The ABSHE 2006-HE6 Offering Documents also represented that the loans underlying the ABSHE 2006-HE6 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering.[12] Specifically, the ABSHE 2006-HE6 Offering Documents stated that "[o]n the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form to the Trustee and other related documents (collectively, the Mortgage Loan Documents), including all scheduled payments with respect to each such Mortgage Loan due after the Cut-off Date." *See* ABSHE 2006-HE6 Pros. Supp. at S-140-S-152 ("The Pooling Agreement"). This statement was false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

2. The ABSHE 2006-HE1 Certificates

62. The Asset Backed Securities Corporation Home Equity Loan Trust, Series AEG 2006-HE1, Asset Backed Pass-Through Certificates, Series AEG 2006-HE1 ("ABSHE 2006-HE1 Certificates") were issued pursuant to a Prospectus Supplement dated February 3, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the ABSHE 2006-HE1 Certificates: DLJ Mortgage (sponsor); ABSC (depositor); and Credit Suisse Securities (underwriter).

63. Plaintiffs and/or their assignors purchased the following ABSHE 2006-HE1 Certificates:

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[12] For the reasons set forth *infra*, transfer of title of the underlying loans was very important to RMBS investors. *See* §§VI.E and IX.D, *infra*.

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Phoenix	Greyhawk	M1	04541GVL3	2/2/2006	$15,000,000	Credit Suisse Securities
Phoenix	Harrier	M1	04541GVL3	2/2/2006	$15,000,000	Credit Suisse Securities
Phoenix	Harrier	M3	04541GVN9	2/2/2006	$ 5,000,000	Credit Suisse Securities

64. The above purchases were made by Harrier's and Greyhawk's investment manager, Brightwater, in direct reliance upon the ABSHE 2006-HE1 Offering Documents, including draft and/or final ABSHE 2006-HE1 Prospectus Supplements, all of which were distributed by the defendants associated with the ABSHE 2006-HE1 offering. Brightwater's diligent investment processes are described in great detail in §VIII.A, *infra*.

a. Underwriting Guidelines

65. The ABSHE 2006-HE1 Offering Documents disclosed that all of the ABSHE 2006-HE1 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Aegis Mortgage Corporation ("Aegis"). *See* ABSHE 2006-HE1 Pros. Supp. at S-27.

66. The ABSHE 2006-HE1 Offering Documents represented that "[Aegis's] underwriting of the Mortgage Loans generally consisted of analyzing . . . the creditworthiness of a borrower . . . , the income sufficiency of a borrower's projected family income relative to the mortgage payment and to other fixed obligations, . . . [and] the adequacy of the mortgaged property expressed in terms of loan-to-value ratio, to serve as the collateral for a mortgage loan." *See id.* at S-61. The ABSHE 2006-HE1 Offering Documents also represented that "[i]n determining the adequacy of the property as collateral, an appraisal is generally made of each Property considered for financing." *Id.* at S-62. The ABSHE 2006-HE1 Offering Documents further represented:

> Based on the data provided in the application, certain verifications and the appraisal or other valuation of the mortgaged property, a determination is made that the borrower's monthly income will be sufficient to enable the borrower to meet its monthly obligations on the mortgage loan and other expenses related to the property,

> including property taxes, utility costs, standard hazard insurance and other fixed obligations other than housing expenses.

Id. Moreover,

> [t]he Guidelines for mortgage loans generally specify that scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and all scheduled payments on obligations that extend beyond ten months, including those mentioned above and other fixed obligations, equal no more than specified percentages of the prospective borrower's gross income.

Id. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Aegis had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

67. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with underwriting guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $475,200 in 2005, which was contained within the ABSHE 2006-HE1 offering. The loan was originated through Aegis, the only loan originator identified in the Offering Documents. ***This borrower had monthly income of $2,667 in 2005***, according to the borrower's sworn bankruptcy filings. ***Meanwhile, the borrower's monthly debt payments were at least $7,610, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loans at issue, in 2006.

b. Loan-to-Value Ratios

68. The ABSHE 2006-HE1 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the ABSHE 2006-HE1 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE1 Offering Documents represented that less than a third of the loans supporting plaintiffs' ABSHE 2006-HE1 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' ABSHE 2006-HE1 Certificates had LTV ratios over 100%.

69. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' ABSHE 2006-HE1 Certificates, which reveals that the LTV ratio percentages stated in the ABSHE 2006-HE1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the ABSHE 2006-HE1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
M1	04541GVL3	All	32.25%	54.74%	0.00%	14.65%
M3	04541GVN9	All	32.25%	54.74%	0.00%	14.65%

c. Owner Occupancy Rates

70. The ABSHE 2006-HE1 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the ABSHE 2006-HE1 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE1 Offering Documents represented that a large percentage of the loans supporting plaintiffs' ABSHE 2006-HE1 Certificates were issued to borrowers that actually lived in the properties serving

as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

71. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' ABSHE 2006-HE1 Certificates, which reveals that the OOR percentages stated in the ABSHE 2006-HE1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the ABSHE 2006-HE1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Primary Residence Percentage Stated in the Offering Documents**	**Actual Primary Residence Percentage**	**Percent Overstatement of Actual Primary Residence Percentage**
M1	04541GVL3	All	95.66%	73.60%	29.98%
M3	04541GVN9	All	95.66%	73.60%	29.98%

d. Credit Ratings

72. The ABSHE 2006-HE1 Offering Documents also represented that the ABSHE 2006-HE1 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the ABSHE 2006-HE1 Offering Documents represented that plaintiffs' ABSHE 2006-HE1 Certificates had been assigned AA+/Aa1/AA+ and AA/Aa3/AA- credit ratings – signifying extremely safe and stable securities.

73. These representations, however, were false and misleading when made. In truth, plaintiffs' ABSHE 2006-HE1 Certificates should not have received AA+/Aa1/AA+ and AA/Aa3/AA- credit ratings because they were ***not*** safe, "investment grade" securities with a low probability of incurring defaults. Rather, as defendants were well aware, plaintiffs' ABSHE 2006-HE1 Certificates were extremely risky, speculative grade "junk" bonds or worse**,** backed by low

credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' ABSHE 2006-HE1 Certificates was because defendants had fed them falsified information regarding the ABSHE 2006-HE1 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

74. The falsity of the credit ratings set forth in the ABSHE 2006-HE1 Offering Documents is confirmed by subsequent events. Specifically, ***more than 36% of the loans supporting plaintiffs' ABSHE 2006-HE1 Certificates are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, each of plaintiffs' "investment grade" ABSHE 2006-HE1 Certificates is now rated at "junk" status or below. Clearly, plaintiffs' ABSHE 2006-HE1 Certificates were not the highly rated, "investment grade" securities that defendants represented them to be. The evidence supporting the falsity of the ABSHE 2006-HE1 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche	**CUSIP**	**Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**		**Fitch's Ratings**	
				Initial	**Current**	**Initial**	**Current**	**Initial**	**Current**
M1	04541GVL3	All	36.49%	Aa1	Caa2	AA+	CCC	AA+	CC
M3	04541GVN9	All	36.49%	Aa3	C	AA	D	AA-	D

e. Transfer of Title

75. The ABSHE 2006-HE1 Offering Documents also represented that the loans underlying the ABSHE 2006-HE1 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the ABSHE 2006-HE1 Offering Documents stated that "[o]n the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the

related mortgage note, mortgage, assignment of mortgage in recordable form to the Trustee and other related documents." *See* ABSHE 2006-HE1 Pros. Supp. at S-106. This statement was false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

3. The ABSHE 2006-HE2 Certificates

76. The Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2006-HE2, Asset Backed Pass-Through Certificates, Series NC 2006-HE2 ("ABSHE 2006-HE2 Certificates") were issued pursuant to a Prospectus Supplement dated March 2, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the ABSHE 2006-HE2 Certificates: DLJ Mortgage (sponsor); ABSC (depositor); and Credit Suisse Securities (underwriter).

77. Plaintiffs and/or their assignors purchased the following ABSHE 2006-HE2 Certificate:

Plaintiff	**Original Purchaser**	**Tranche Purchased**	**CUSIP**	**Purchase Date**	**Original Face Amount**	**Purchased From**
Silver Elms	Paradigm	M5	04541GWL2	2/28/2006	$5,000,000	Credit Suisse Securities

78. The above purchases were made by Paradigm's investment manager, Structured Finance Advisors ("SFA"), in direct reliance upon the ABSHE 2006-HE2 Offering Documents, including draft and/or final ABSHE 2006-HE2 Prospectus Supplements, all of which were distributed by the defendants associated with the ABSHE 2006-HE2 offering. SFA's diligent investment processes are described in great detail in §VIII.C.2, *infra*.

a. Underwriting Guidelines

79. The ABSHE 2006-HE2 Offering Documents disclosed that all of the ABSHE 2006-HE2 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from NC Capital

Corporation ("NC Capital"), which acquired them from its affiliate, loan originator New Century Mortgage Corporation ("New Century"). *See* ABSHE 2006-HE2 Pros. Supp. at S-5, S-26, S-60.

80. The ABSHE 2006-HE2 Offering Documents represented that "[t]he New Century Underwriting Guidelines are primarily intended to assess the borrower's ability to repay the related Mortgage Loan, to assess the value of the mortgaged property and to evaluate the adequacy of the property as collateral for the Mortgage Loan." *See id.* at S-60. The ABSHE 2006-HE2 Offering Documents also represented that:

> Under each of the programs, New Century reviews the applicant's source of income, calculates the amount of income from sources indicated on the loan application or similar documentation, reviews the credit history of the applicant, calculates the debt service-to-income ratio to determine the applicant's ability to repay the loan, reviews the type and use of the property being financed, and reviews the property.

Id. at S-61. The ABSHE 2006-HE2 Offering Documents further represented that the "[m]ortgaged properties that are to secure mortgage loans generally are appraised by qualified independent appraisers," and that "[t]he New Century Underwriting Guidelines require a review of the appraisal by a qualified employee of New Century or by an appraiser retained by New Century." *Id.* Moreover, the ABSHE 2006-HE2 Offering Documents represented that "[t]he New Century Underwriting Guidelines require . . . New Century's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal and a review of the appraisal, currently supports the outstanding loan balance." *Id.* As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that New Century had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.2, *infra*.

81. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with underwriting guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $487,200 in 2005, which was contained within the ABSHE 2006-HE2 offering. The loan was originated through New Century, the only loan originator identified in the Offering Documents. ***This borrower had monthly income of $4,167 in 2005***, according to the borrower's sworn bankruptcy filings. ***Meanwhile, the borrower's monthly debt payments were at least $7,627, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loans at issue, in 2006.

b. Loan-to-Value Ratios

82. The ABSHE 2006-HE2 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the ABSHE 2006-HE2 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE2 Offering Documents represented that approximately 40% of the loans supporting plaintiffs' ABSHE 2006-HE2 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' ABSHE 2006-HE2 Certificate had LTV ratios over 100%.

83. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' ABSHE 2006-HE2 Certificate, which reveals that the LTV ratio percentages stated in the ABSHE 2006-HE2 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the

ABSHE 2006-HE2 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
M5	04541GWL2	All	40.71%	63.29%	0.00%	20.22%

c. Owner Occupancy Rates

84. The ABSHE 2006-HE2 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the ABSHE 2006-HE2 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE2 Offering Documents represented that a large percentage of the loans supporting plaintiffs' ABSHE 2006-HE2 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

85. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' ABSHE 2006-HE2 Certificate, which reveals that the OOR percentages stated in the ABSHE 2006-HE2 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the ABSHE 2006-HE2 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M5	04541GWL2	All	88.73%	77.99%	13.77%

d. Credit Ratings

86. The ABSHE 2006-HE2 Offering Documents also represented that the ABSHE 2006-HE2 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the ABSHE 2006-HE2 Offering Documents represented that plaintiffs' ABSHE 2006-HE2 Certificate had been assigned A/A2/A credit ratings – signifying an extremely safe and stable security.

87. These representations, however, were false and misleading when made. In truth, plaintiffs' ABSHE 2006-HE2 Certificate should not have received A/A2/A credit ratings because it was ***not*** a safe, "investment grade" security with a low probability of incurring default. Rather, as defendants were well aware, plaintiffs' ABSHE 2006-HE2 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' ABSHE 2006-HE2 Certificate was because defendants had fed them falsified information regarding the ABSHE 2006-HE2 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

88. The falsity of the credit ratings set forth in the ABSHE 2006-HE2 Offering Documents is confirmed by subsequent events. Specifically, ***more than 30% of the loans supporting plaintiffs' ABSHE 2006-HE2 Certificate are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" ABSHE 2006-HE2 Certificate is now rated at below "junk" status. Clearly, plaintiffs' ABSHE 2006-HE2 Certificate was not the highly rated, "investment grade" security that defendants represented it to be. The evidence supporting the falsity of the ABSHE

2006-HE2 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche	CUSIP	Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings		Fitch's Ratings	
				Initial	Current	Initial	Current	Initial	Current
M5	04541GWL2	All	30.38%	A2	WR	A	D	A	D

e. Transfer of Title

89. The ABSHE 2006-HE2 Offering Documents also represented that the loans underlying the ABSHE 2006-HE2 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the ABSHE 2006-HE2 Offering Documents stated that "[o]n the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form to the Trustee and other related documents." *See* ABSHE 2006-HE2 Pros. Supp. at S-104. This statement was false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

4. The ABSHE 2006-HE4 Certificates

90. The Asset Backed Securities Corporation Home Equity Loan Trust, Series NC 2006-HE4, Asset Backed Pass-Through Certificates, Series NC 2006-HE4 ("ABSHE 2006-HE4 Certificates") were issued pursuant to a Prospectus Supplement dated April 25, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the ABSHE 2006-HE4 Certificates: DLJ Mortgage (sponsor); ABSC (depositor); and Credit Suisse Securities (underwriter).

91. Plaintiffs and/or their assignors purchased the following ABSHE 2006-HE4 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Silver Elms	Paradigm	M5	04544GAM1	4/25/2006	$2,000,000	Credit Suisse Securities

92. The above purchases were made by Paradigm's investment manager, SFA, in direct reliance upon the ABSHE 2006-HE4 Offering Documents, including draft and/or final ABSHE 2006-HE4 Prospectus Supplements, all of which were distributed by the defendants associated with the ABSHE 2006-HE4 offering. SFA's diligent investment processes are described in great detail in §VIII.C.2, *infra*.

a. Underwriting Guidelines

93. The ABSHE 2006-HE4 Offering Documents disclosed that all of the ABSHE 2006-HE4 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from NC Capital who acquired them from loan originator New Century. *See* ABSHE 2006-HE4 Pros. Supp. at S-5, S-29, S-68.

94. The ABSHE 2006-HE4 Offering Documents represented that "[t]he New Century Underwriting Guidelines are primarily intended to assess the borrower's ability to repay the related Mortgage Loan, to assess the value of the mortgaged property and to evaluate the adequacy of the property as collateral for the Mortgage Loan." *See id.* at S-69. The ABSHE 2006-HE4 Offering Documents also represented that "[w]hile New Century's primary consideration in underwriting a mortgage loan is the value of the mortgaged property, New Century also considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type and use of the mortgaged property." *Id.* The ABSHE 2006-HE4 Offering Documents further represented:

> New Century reviews the applicant's source of income, calculates the amount of income from sources indicated on the loan application or similar documentation, reviews the credit history of the applicant, calculates the debt service-to-income ratio to determine the applicant's ability to repay the loan, reviews the type and use of the property being financed, and reviews the property.

Id. at S-70. In addition, the ABSHE 2006-HE4 Offering Documents represented that the "[m]ortgaged properties that are to secure mortgage loans generally are appraised by qualified independent appraisers," that "[t]he New Century Underwriting Guidelines require a review of the appraisal by a qualified employee of New Century or by an appraiser retained by New Century," and that "[t]he New Century Underwriting Guidelines require . . . New Century's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal and a review of the appraisal, currently supports the outstanding loan balance." *Id.* at S-69-S-70. Moreover, the ABSHE 2006-HE4 Offering Documents represented:

> Under each of the programs, New Century reviews the applicant's source of income, calculates the amount of income from sources indicated on the loan application or similar documentation, reviews the credit history of the applicant, calculates the debt service-to-income ratio to determine the applicant's ability to repay the loan, reviews the type and use of the property being financed, and reviews the property.

Id. at S-70. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that New Century had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.2, *infra*.

95. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with underwriting guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, two borrowers obtained a loan for $346,000 in 2006, which was contained within the ABSHE 2006-HE4 offering. The loan was originated through New Century, the only loan originator

identified in the Offering Documents. ***These borrowers had monthly income of $2,094 in 2006***, according to the borrowers' sworn bankruptcy filings. ***Meanwhile, the borrowers' monthly debt payments were at least $3,462, far in excess of their monthly income***. The borrowers' monthly debt payments were in addition to their monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, these borrowers could not afford to repay their loan. This is confirmed by the fact that the borrowers declared bankruptcy shortly after obtaining the loan at issue, in 2006.

b. Loan-to-Value Ratios

96. The ABSHE 2006-HE4 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the ABSHE 2006-HE4 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE4 Offering Documents represented that less than 45% of the loans supporting plaintiffs' ABSHE 2006-HE4 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' ABSHE 2006-HE4 Certificate had LTV ratios over 100%.

97. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' ABSHE 2006-HE4 Certificate, which reveals that the LTV ratio percentages stated in the ABSHE 2006-HE4 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the ABSHE 2006-HE4 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
M5	04544GAM1	All	44.01%	62.98%	0.00%	21.28%

c. Owner Occupancy Rates

98. The ABSHE 2006-HE4 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the ABSHE 2006-HE4 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE4 Offering Documents represented that a large percentage of the loans supporting plaintiffs' ABSHE 2006-HE4 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

99. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' ABSHE 2006-HE4 Certificate, which reveals that the OOR percentages stated in the ABSHE 2006-HE4 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the ABSHE 2006-HE4 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M5	04544GAM1	All	92.38%	80.67%	14.52%

d. Credit Ratings

100. The ABSHE 2006-HE4 Offering Documents also represented that the ABSHE 2006-HE4 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the ABSHE 2006-HE4 Offering

Documents represented that plaintiffs' ABSHE 2006-HE4 Certificate had been assigned A-/A3/A- credit ratings – signifying an extremely safe and stable security.

101. These representations, however, were false and misleading when made. In truth, plaintiffs' ABSHE 2006-HE4 Certificate should not have received A-/A3/A- credit ratings because it was ***not*** a safe, "investment grade" security with a low probability of incurring default. Rather, as defendants were well aware, plaintiffs' ABSHE 2006-HE4 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' ABSHE 2006-HE4 Certificate was because defendants had fed them falsified information regarding the ABSHE 2006-HE4 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

102. The falsity of the credit ratings set forth in the ABSHE 2006-HE4 Offering Documents is confirmed by subsequent events. Specifically, ***approximately 33% of the loans supporting plaintiffs' ABSHE 2006-HE4 Certificate are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" ABSHE 2006-HE4 Certificate is now rated at below "junk" status. Clearly, plaintiffs' ABSHE 2006-HE4 Certificate was not the highly rated, "investment grade" security that defendants represented it to be. The evidence supporting the falsity of the ABSHE 2006-HE4 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche	CUSIP	Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings		Fitch's Ratings	
				Initial	Current	Initial	Current	Initial	Current
M5	04544GAM1	All	32.78%	A3	C	A-	D	A-	D

e. **Transfer of Title**

103. The ABSHE 2006-HE4 Offering Documents also represented that the loans underlying the ABSHE 2006-HE4 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the ABSHE 2006-HE4 Offering Documents stated that "[o]n the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form to the Trustee and other related documents." *See* ABSHE 2006-HE4 Pros. Supp. at S-116. This statement was false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

5. **The ABSHE 2006-HE7 Certificates**

104. The Asset Backed Securities Corporation Home Equity Loan Trust, Series AMQ 2006-HE7, Asset Backed Pass-Through Certificates, Series AMQ 2006-HE7 ("ABSHE 2006-HE7 Certificates") were issued pursuant to a Prospectus Supplement dated November 29, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the ABSHE 2006-HE7 Certificates: ABSC (depositor); DLJ Mortgage (sponsor); and Credit Suisse Securities (underwriter).

105. Plaintiffs and/or their assignors purchased the following ABSHE 2006-HE7 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Kleros V	WestLB	M5	04544QAK3	11/3/2006	$3,112,000	Credit Suisse Securities

106. The above purchase was made by WestLB's investment manager, Strategos Capital Management LLC ("Strategos"), in direct reliance upon the ABSHE 2006-HE7 Offering Documents, including draft and/or final ABSHE 2006-HE7 Prospectus Supplements. Strategos's diligent investment processes are described in great detail in §VIII.B.2, *infra*.

a. Underwriting Guidelines

107. The ABSHE 2006-HE7 Offering Documents disclosed that 100% of the ABSHE 2006-HE7 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from the Ameriquest Originators. *See* ABSHE 2006-HE7 Pros. Supp. at S-64 ("The Originators").

108. The ABSHE 2006-HE7 Offering Documents represented that the Ameriquest Originators' "Underwriting Guidelines are primarily intended to evaluate: (1) the applicants [sic] credit standing and repayment ability and (2) the value and adequacy of the mortgaged property as collateral." *See id.* at S-64-S-68 ("The Originators"). The ABSHE 2006-HE7 Offering Documents also represented:

> During the underwriting process, each Originator reviews and verifies the loan applicants [sic] sources of income (except under the Stated Income and Limited Documentation types, under which programs such information may not be independently verified), calculates the amount of income from all such sources indicated on the loan application, reviews the credit history of the applicant, calculates the debt-to-income ratio to determine the applicants [sic] ability to repay the loan, and reviews the mortgaged property for compliance with the Underwriting Guidelines.

Id. The ABSHE 2006-HE7 Offering Documents further represented:

> The Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and requires (i) an appraisal of the mortgaged property which conforms to the Uniform Standards of Professional Appraisal Practice and are generally on forms similar to those acceptable to Fannie Mae and Freddie Mac and (ii) a review of such appraisal . . . .

Id. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that the Ameriquest Originators had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.4, *infra*.

109. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, a borrower obtained a loan for $620,000 in 2006 which was contained within the ABSHE 2006-HE7 offering. The loan was originated through Argent, a unit of Ameriquest, the loan originator identified in the Offering Documents. This borrower had income in 2006 of $4,218 per month, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $8,973, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation, and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

110. The ABSHE 2006-HE7 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the ABSHE 2006-HE7 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE7 Offering Documents represented that less than 50% of the loans supporting plaintiffs' ABSHE 2006-HE7

Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' ABSHE 2006-HE7 Certificate had LTV ratios over 100%.

111. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' ABSHE 2006-HE7 Certificate, which reveals that the LTV ratio percentages stated in the ABSHE 2006-HE7 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the ABSHE 2006-HE7 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
M5	04544QAK3	All	47.87%	60.97%	0.00%	15.09%

a. Owner Occupancy Rates

112. The ABSHE 2006-HE7 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the ABSHE 2006-HE7 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ABSHE 2006-HE7 Offering Documents represented that a large percentage of the loans supporting plaintiffs' ABSHE 2006-HE7 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

113. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' ABSHE 2006-HE7 Certificate, which reveals that the OOR percentages stated in the ABSHE 2006-HE7 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the OOR percentages stated in the ABSHE

2006-HE7 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M5	04544QAK3	All	93.27%	85.56%	9.01%

b. Credit Ratings

114. The ABSHE 2006-HE7 Offering Documents also represented that the ABSHE 2006-HE7 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the ABSHE 2006-HE7 Offering Documents represented that plaintiffs' ABSHE 2006-HE7 Certificate had been assigned A/A2/A ratings – signifying an extremely safe and stable security.

115. These representations, however, were false and misleading when made. In truth, plaintiffs' ABSHE 2006-HE7 Certificate should not have received A/A2/A credit ratings, because it was ***not*** a safe, "investment grade" security. Rather, as defendants were well aware, plaintiffs' ABSHE 2006-HE7 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' ABSHE 2006-HE7 Certificate was because defendants had fed them falsified information regarding the ABSHE 2006-HE7 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

116. The falsity of the credit ratings set forth in the ABSHE 2006-HE7 Offering Documents is confirmed by subsequent events. Specifically, ***34% of the loans supporting plaintiffs' ABSHE 2006-HE7 Certificate are currently in default*** because they were made to

borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" ABSHE 2006-HE7 Certificate is now rated at below "junk" status. Clearly, plaintiffs' ABSHE 2006-HE7 Certificate was not the highly rated, "investment grade" security defendants represented it to be. The evidence supporting the falsity of the ABSHE 2006-HE7 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**		**Fitch's Ratings**	
				Initial	**Current**	**Initial**	**Current**	**Initial**	**Current**
M5	04544QAK3	All	34%	A2	WR	A	D	A	D

c. Transfer of Title

117. The ABSHE 2006-HE7 Offering Documents also represented that the loans underlying the ABSHE 2006-HE7 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the ABSHE 2006-HE7 Offering Documents stated that "[o]n the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form to the Trustee and other related documents (collectively, the Mortgage Loan Documents), including all scheduled payments with respect to each such Mortgage Loan due after the Cut-off Date." *See* ABSHE 2006-HE7 Pros. Supp. at S-107-S-118 ("The Pooling Agreement"). This statement was false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

6. The BASIC 2006-1 Certificates

118. The Basic Asset Backed Securities Trust 2006-1, Mortgage Pass-Through Certificates, Series 2006-1 ("BASIC 2006-1 Certificates") were issued pursuant to a Prospectus Supplement dated April 6, 2006. Defendant Credit Suisse Securities, as the primary underwriter, played a critical role in the fraudulent structuring, offering and sale of the BASIC 2006-1 Certificates.

119. Plaintiffs and/or their assignors purchased the following BASIC 2006-1 Certificate:

Plaintiff	**Original Purchaser**	**Tranche Purchased**	**CUSIP**	**Purchase Date**	**Original Face Amount**	**Purchased From**
Silver Elms	Paradigm	M1	06983NAD9	4/5/2006	$4,000,000	Credit Suisse Securities

120. The above purchase was made by Paradigm's investment manager, SFA, in direct reliance upon the BASIC 2006-1 Offering Documents, including draft and/or final BASIC 2006-1 Prospectus Supplements. SFA's diligent investment processes are described in great detail in §VIII.C.2, *infra*.

a. Underwriting Guidelines

121. The BASIC 2006-1 Offering Documents disclosed that approximately 54.02% of the loans underlying the BASIC 2006-1 Certificates were originated by Encore Credit Corp. ("Encore"); approximately 33.17% of the loans underlying the BASIC 2006-1 Certificates were originated by Funding America, LLC ("Funding America") or Ocwen Loan Servicing, LLC ("Ocwen"); and the remainder of the loans underlying the BASIC 2006-1 Certificates were originated by Maribella Mortgage LLC, Oak Street Mortgage LLC and FlexPoint Funding Corporation, "which have each originated less than 10% of the mortgage loans." *See* BASIC 2006-1 Pros. Supp. at S-1-S-2, S-54.

122. With regard to the Encore loans, the BASIC 2006-1 Offering Documents represented that "Encore's internal underwriting guidelines are designed to help it evaluate a borrower's credit history, capacity, willingness and ability to repay the loan, and the value and adequacy of the

collateral." *See id.* at S-49. The BASIC 2006-1 Offering Documents also represented that "Encore's guidelines are primarily intended to (1) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (2) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults." *Id.* at S-50. The BASIC 2006-1 Offering Documents further represented:

> An assessment of the adequacy of the real property as collateral for the loan is primarily based upon an appraisal of the property and a calculation of the loan-to-value ratio of the loan applied for and the combined loan-to-value ratio to the appraised value of the property at the time of origination.

Id. at S-51. Moreover, the BASIC 2006-1 Offering Documents represented that the allowable debt to income ratio under Encore's underwriting guidelines is 50% to 55%. *Id.* at S-53-S-54. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Encore had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.5, *infra*.

123. With regard to the Funding America and Ocwen loans, the BASIC 2006-1 Offering Documents disclosed that they were originated using the underwriting guidelines of Funding America. *See* BASIC 2006-1 Pros. Supp. at S-54-S-55. The BASIC 2006-1 Offering Documents represented that "Funding America's internal underwriting guidelines are designed to help it evaluate a borrower's credit history, capacity, willingness and ability to repay the loan, and the value and adequacy of the collateral." *Id.* at S-55. The BASIC 2006-1 Offering Documents also represented:

> Funding America's guidelines are primarily intended to (1) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (2) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults.

Id. at S-56. The BASIC 2006-1 Offering Documents further represented:

> An assessment of the adequacy of the real property as collateral for the loan is primarily based upon an appraisal of the property and a calculation of the loan-to-value ratio of the loan applied for and the combined loan-to-value ratio to the appraised value of the property at the time of origination.

Id. at S-57. Moreover, the BASIC 2006-1 Offering Documents represented that the allowable debt to income ratio under Funding America's underwriting guidelines is 50%. *Id.* at S-59-S-60. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Funding America and Ocwen had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

124. With regard to all of the loans underlying the BASIC 2006-1 Offering Documents, the BASIC 2006-1 Offering Documents disclosed that they "were underwritten or re-underwritten by the sponsor [BancCap Advisors, LLC] generally in accordance with its underwriting guidelines." *See* BASIC 2006-1 Pros. Supp. at S-32. The BASIC 2006-1 Offering Documents represented that "[a] four level review is performed [by the sponsor], including: [v]erification of the creditworthiness of the borrower . . . ; [and] [v]erification of the value of the mortgaged property." *Id.* at S-33. The BASIC 2006-1 Offering Documents also represented that "[the sponsor] BancCap's underwriting standards . . . evaluate the borrower's repayment ability and the adequacy of the Property as collateral." *See* BASIC 2006-1 Prospectus ("Pros.") at 26, 28. The BASIC 2006-1 Offering Documents further represented that "[i]n determining the adequacy of the Property as collateral, an appraisal is made of each Property considered for financing." *Id.* Moreover, the BASIC 2006-1 Offering Documents represented:

> Once all applicable employment, credit and Property information is received, a determination is made as to whether the prospective borrower has sufficient

> monthly income available to meet its monthly obligations on the proposed mortgage loan and other expenses related to the home, including property taxes and hazard insurance, and its other financial obligations and monthly living expenses. . . . The maximum monthly debt-to-income ratio will vary depending upon a borrower's credit grade and loan program but will not generally exceed 55%.

Id. at 27, 29. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Encore, Funding America, Ocwen, Maribella Mortgage LLC, Oak Street Mortgage LLC and FlexPoint Funding Corp. had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §§VI.A.1 and VI.A.5, *infra*.

125. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, a borrower obtained a loan for $450,000 in 2006 which was contained within the BASIC 2006-1 offering. ***This borrower had income in 2006 of between $0 and just $1,262 per month***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $5,555, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation, and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

126. The BASIC 2006-1 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the BASIC 2006-1 Certificate

purchased by plaintiffs and/or their assigning entities. Specifically, the BASIC 2006-1 Offering Documents represented that less than 30% of the loans supporting plaintiffs' BASIC 2006-1 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' BASIC 2006-1 Certificate had LTV ratios over 100%.

127. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' BASIC 2006-1 Certificate, which reveals that the LTV ratio percentages stated in the BASIC 2006-1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the BASIC 2006-1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
M1	06983NAD9	All	27.34%	53.99%	0.00%	14.48%

c. Owner Occupancy Rates

128. The BASIC 2006-1 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the BASIC 2006-1 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the BASIC 2006-1 Offering Documents represented that a large percentage of the loans supporting plaintiffs' BASIC 2006-1 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

129. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' BASIC 2006-1 Certificate, which reveals that the OOR percentages stated in the BASIC 2006-1 Offering Documents were materially false ***at the time they***

were made. The following chart summarizes the OOR percentages stated in the BASIC 2006-1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M1	06983NAD9	All	90.56%	84.03%	7.78%

d. Credit Ratings

130. The BASIC 2006-1 Offering Documents also represented that the BASIC 2006-1 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the BASIC 2006-1 Offering Documents represented that plaintiffs' BASIC 2006-1 Certificate had been assigned AA+/Aa2/AA ratings – signifying an extremely safe and stable security.

131. These representations, however, were false and misleading when made. In truth, plaintiffs' BASIC 2006-1 Certificate should not have received AA+/Aa2/AA credit ratings, because it was ***not*** a safe, "investment grade" security. Rather, as defendants were well aware, plaintiffs' BASIC 2006-1 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' BASIC 2006-1 Certificate was because defendants had fed them falsified information regarding the BASIC 2006-1 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

132. The falsity of the credit ratings set forth in the BASIC 2006-1 Offering Documents is confirmed by subsequent events. Specifically, ***approximately 30% of the loans supporting***

plaintiffs' BASIC 2006-1 Certificate are currently in default because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" BASIC 2006-1 Certificate is now rated at "junk" status or below. Clearly, plaintiffs' BASIC 2006-1 Certificate was not the highly rated, "investment grade" security defendants represented it to be. The evidence supporting the falsity of the BASIC 2006-1 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**		**Fitch's Ratings**	
				Initial	**Current**	**Initial**	**Current**	**Initial**	**Current**
M1	06983NAD9	All	29.46%	Aa2	Ca	AA+	D	AA	D

e. Transfer of Title

133. The BASIC 2006-1 Offering Documents also represented that the loans underlying the BASIC 2006-1 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the BASIC 2006-1 Offering Documents stated that "[o]n the closing date, the depositor will sell the mortgage loans and related assets to the BASIC Asset Backed Securities Trust 2006-1." *See* BASIC 2006-1 Pros. Supp. at S-1. The BASIC 2006-1 Offering Documents also stated:

> In addition, the depositor will also deliver or cause to be delivered to the trustee (or to the custodian) for each single family loan or home equity loan, the mortgage note . . . , the mortgage, deed of trust or similar instrument . . . , [and] an assignment of the Mortgage in blank . . . .

See BASIC 2006-1 Pros. at 57. The BASIC 2006-1 Offering Documents further stated that "[t]he mortgage notes will be endorsed in blank or to the trustee and assignments of the mortgages to the issuing entity will be prepared in blank or to the trustee." See Basic 2006-1 Pros. Supp. at S-35. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

7. The CSMC 2006-3 Certificates

134. The CSMC Mortgage-Backed Trust Series 2006-3, CMC Mortgage-Backed Pass-Through Certificates, Series 2006-3 ("CSMC 2006-3 Certificates") were issued pursuant to a Prospectus Supplement dated March 30, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the CSMC 2006-3 Certificates: DLJ Mortgage (sponsor); CSFBMS (depositor); and Credit Suisse Securities (underwriter).

135. Plaintiffs and/or their assignors purchased the following CSMC 2006-3 Certificates:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Silver Elms	Paradigm	1M1	225470R70	3/8/2006	$10,000,000	Credit Suisse Securities
Silver Elms II	WestLB	1M1	225470R70	11/22/2006	$ 3,000,000	Credit Suisse Securities

136. The above purchases were made by Paradigm's investment manager, SFA, and WestLB's investment manager, Eiger Capital ("Eiger"), in direct reliance upon the CSMC 2006-3 Offering Documents, including draft and/or final CSMC 2006-3 Prospectus Supplements. SFA's and Eiger's diligent investment processes are described in great detail in §§VIII.C.2 and VIII.D.2, *infra*.

a. Underwriting Guidelines

137. The CSMC 2006-3 Offering Documents disclosed that approximately 20.50% of the loans underlying plaintiffs' CSMC 2006-3 Certificates were acquired by the sponsor, DLJ Mortgage, from loan originator Credit Suisse Financial Corporation ("CSFC"); approximately 10.22% of the loans underlying plaintiffs' CSMC 2006-3 Certificates were acquired by the sponsor, DLJ Mortgage, from loan originator Resource Bank; and the remaining loans underlying plaintiffs' CSMC 2006-3 Certificates were acquired by the sponsor, DLJ Mortgage, from various other originators, none of

which "originated or acquired more than 10% of the mortgage loans." *See* CSMC 2006-3 Pros. Supp. at S-50.

138. With regard to the CSFC loans, the CSMC 2006-3 Offering Documents represented:

> Based on the data provided in the application and certain verification (if required), a determination is made by the original lender that the mortgagor's monthly income (if required to be stated) will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property such as property taxes, utility costs, standard hazard insurance and other fixed obligations other than housing expenses. Generally, scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and all scheduled payments on obligations that extend beyond ten months equal no more than a specified percentage of the prospective mortgagor's gross income.

See id. at S-52. The CSMC 2006-3 Offering Documents also represented that "[t]he adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal." *Id.* at S-53. The CSMC 2006-3 Offering Documents further represented that "[t]he depositor expects that the originator of each of the loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral." *See* CSMC 2006-3 Pros. at 28. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that CSFC had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

139. With regard to the Resource Bank loans and the loans originated by various other originators, the CSMC 2006-3 Offering Documents represented:

> Based on the data provided in the application and certain verification . . . , a determination is made by the original lender that the mortgagor's monthly income . . . will be sufficient to enable the mortgagor to meet its monthly obligations on the

> mortgage loan and other expenses related to the property such as property taxes, utility costs, standard hazard insurance and other fixed obligations other than housing expenses. Generally, scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and all scheduled payments on obligations that extend beyond ten months equal no more than a specified percentage of the prospective mortgagor's gross income.

See CSMC 2006-3 Pros. Supp. at S-51. The CSMC 2006-3 Offering Documents also represented that the "adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal in accordance with pre-established appraisal procedure guidelines." *Id.* The CSMC 2006-3 Offering Documents further represented that "[t]he depositor expects that the originator of each of the loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral." *See* CSMC 2006-3 Pros. at 28. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Resource Bank and the various originators had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

140. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with underwriting guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained three loans in 2005 for $925,000, $736,000 and $760,000, all of which were contained within the CSMC 2006-3 offering. The loans were originated through CSFC, one of the primary loan originators identified in the Offering Documents. ***This borrower had (along with his wife) monthly income of $13,795 in 2005***, according to the borrower's sworn bankruptcy

filings. ***Meanwhile, the borrower's monthly debt payments were at least $18,893, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay his loans. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loans at issue, in 2007.

b. Loan-to-Value Ratios

141. The CSMC 2006-3 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the CSMC 2006-3 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the CSMC 2006-3 Offering Documents represented that only a very small percentage of the loans supporting plaintiffs' CSMC 2006-3 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' CSMC 2006-3 Certificates had LTV ratios over 100%.

142. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' CSMC 2006-3 Certificates, which reveals that the LTV ratio percentages stated in the CSMC 2006-3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the CSMC 2006-3 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
1M1	225470R70	Group 1	6.04%	44.06%	0.00%	13.75%

c. Owner Occupancy Rates

143. The CSMC 2006-3 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the CSMC 2006-3 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the CSMC 2006-3 Offering Documents represented that a large percentage of the loans supporting plaintiffs' CSMC 2006-3 Certificates were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

144. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' CSMC 2006-3 Certificates, which reveals that the OOR percentages stated in the CSMC 2006-3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the CSMC 2006-3 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Primary Residence Percentage Stated in the Offering Documents**	**Actual Primary Residence Percentage**	**Percent Overstatement of Actual Primary Residence Percentage**
1M1	225470R70	Group 1	62.09%	52.54%	18.18%

d. Credit Ratings

145. The CSMC 2006-3 Offering Documents also represented that the CSMC 2006-3 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P and Moody's, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the CSMC 2006-3 Offering Documents represented that plaintiffs' CSMC 2006-3 Certificates had been assigned AA/Aa2 credit ratings – signifying extremely safe and stable securities.

146. These representations, however, were false and misleading when made. In truth, plaintiffs' CSMC 2006-3 Certificates should not have received AA/Aa2 credit ratings because they were ***not*** safe, "investment grade" securities with a low probability of incurring defaults. Rather, as defendants were well aware, plaintiffs' CSMC 2006-3 Certificates were extremely risky, speculative grade "junk" bonds or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P and Moody's had assigned such high ratings to plaintiffs' CSMC 2006-3 Certificates was because defendants had fed them falsified information regarding the CSMC 2006-3 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

147. The falsity of the credit ratings set forth in the CSMC 2006-3 Offering Documents is confirmed by subsequent events. Specifically, ***more than 57% of the loans supporting plaintiffs' CSMC 2006-3 Certificates are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" CSMC 2006-3 Certificates are now rated at below "junk" status. Clearly, plaintiffs' CSMC 2006-3 Certificates were not the highly rated, "investment grade" securities that defendants represented them to be. The evidence supporting the falsity of the CSMC 2006-3 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**	
				Initial	**Current**	**Initial**	**Current**
1M1	225470R70	Group 1	57.22%	Aa2	C	AA	D

e. Transfer of Title

148. The CSMC 2006-3 Offering Documents also represented that the loans underlying the CSMC 2006-3 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the CSMC

2006-3 Offering Documents stated that "[p]ursuant to the pooling and servicing agreement, on the closing date, the depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to each mortgage loan." *See* CSMC 2006-3 Pros. Supp. at S-118. The CSMCS 2006-3 Offering Documents also stated that "[i]n connection with such transfer and assignment, the depositor will deliver or cause to be delivered to the trustee, or a custodian for the trustee, a mortgage file for each mortgage loan which will consist of, among other things, the original promissory note, or mortgage note, . . . an assignment in recordable form of the mortgage." *Id.* These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

8. The ECR 2005-4 Certificates

149. The Encore Credit Receivables Trust 2005-4, Asset Backed Pass-Through Certificates, Series 2005-4 ("ECR 2005-4 Certificates") were issued pursuant to a Prospectus Supplement dated November 9, 2005. The following defendants played critical roles in the fraudulent structuring, offering and sale of the ECR 2005-4 Certificates: ABSC (depositor); and Credit Suisse Securities (underwriter).

150. Plaintiffs and/or their assignors purchased the following ECR 2005-4 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Kleros V	WestLB	M5	29256PBA1	12/13/2006	$3,825,000	Credit Suisse Securities

151. The above purchase was made by WestLB's investment manager, Strategos, in direct reliance upon the ECR 2005-4 Offering Documents, including draft and/or final ECR 2005-4 Prospectus Supplements. Strategos's diligent investment processes are described in great detail in §VIII.B.2, *infra*.

a. Underwriting Guidelines

152. The ECR 2005-4 Offering Documents disclosed that all of the ECR 2005-4 Certificates' underlying loans were originated or acquired by Encore and Bravo Credit Corporation ("Bravo"). *See* ECR 2005-4 Pros. Supp. at S-4, S-58.

153. With regard to all of the loans underlying the ECR 2005-4 Certificates, the ECR 2005-4 Offering Documents represented that "[t]he Originators' internal underwriting guidelines are designed to help them evaluate a borrower's credit history, capacity, willingness and ability to repay the loan, and the value and adequacy of the collateral." *See id.* at S-59. The ECR 2005-4 Offering Documents also represented that "[t]he Originators' guidelines are primarily intended to (1) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (2) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults." *Id.* at S-60. The ECR 2005-4 Offering Documents further represented that "[t]he underwriting of a mortgage loan to be originated or purchased by the Originators generally includes . . . a current appraisal," and that "[a]n assessment of the adequacy of the real property as collateral for the loan is primarily based upon an appraisal of the property and a calculation of the LTV ratio of the loan applied for and the combined LTV to the appraised value of the property at the time of origination." *Id.* at S-60-S-61. In addition, the ECR 2005-4 Offering Documents represented that "[t]here are various credit categories within each loan program," and that "[t]o determine if a borrower qualifies for a credit category within that specific program, the Originators consider a borrower's mortgage history, bankruptcy and foreclosure history, debt-to-income ratios and the depth of the borrower's credit background as the primary factors in determining the borrower's credit category." *Id.* at S-62. Moreover, the ECR 2005-4 Offering Documents represented that the maximum allowable DTI ratio is 50% to 55%. *Id.* at S-62-S-63. As further detailed *infra*, these representations were false and misleading at the time they were made.

Contrary to defendants' affirmative representations, the truth was that Encore and Bravo had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §§VI.A.1 and VI.A.5, *infra*.

154. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how these originators' failure to comply with underwriting guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $369,750 in 2005 that was contained within the ECR 2005-4 offering. The loan was originated through Encore, one of the primary loan originators identified in the Offering Documents. ***The borrower for this loan had a monthly income of $1,469 in 2005***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $2,924, which was approximately two times the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

155. The ECR 2005-4 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the ECR 2005-4 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ECR 2005-4 Offering Documents represented that less than 50% of the loans supporting plaintiffs' ECR 2005-4 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' ECR 2005-4 Certificate had LTV ratios over 100%.

156. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' ECR 2005-4 Certificate, which reveals that the LTV ratio percentages stated in the ECR 2005-4 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the ECR 2005-4 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
M5	29256PBA1	All	48.67%	59.45%	0.00%	18.69%

c. Owner Occupancy Rates

157. The ECR 2005-4 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the ECR 2005-4 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the ECR 2005-4 Offering Documents represented that a large percentage of the loans supporting plaintiffs' ECR 2005-4 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

158. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' ECR 2005-4 Certificate, which reveals that the OOR percentages stated in the ECR 2005-4 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the ECR 2005-4 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M5	29256PBA1	All	95.98%	91.21%	5.23%

d. Credit Ratings

159. The ECR 2005-4 Offering Documents also represented that the ECR 2005-4 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P and Moody's, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the ECR 2005-4 Offering Documents represented that plaintiffs' ECR 2005-4 Certificate had been assigned A+/A2 ratings – signifying an extremely safe and stable security.

160. These representations, however, were false and misleading when made. In truth, plaintiffs' ECR 2005-4 Certificate should not have received A+/A2 credit ratings, because it was ***not*** a safe, "investment grade" security with a low probability of default. Rather, as defendants were well aware, plaintiffs' ECR 2005-4 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P and Moody's had assigned such high ratings to plaintiffs' ECR 2005-4 Certificate was because defendants had fed them falsified information regarding the ECR 2005-4 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

161. The falsity of the credit ratings set forth in the ECR 2005-4 Offering Documents is confirmed by subsequent events. Specifically, ***more than 27% of the loans supporting plaintiffs' ECR 2005-4 Certificate are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade"

ECR 2005-4 Certificate is now rated at "junk" status or below. Clearly, plaintiffs' ECR 2005-4 Certificate was not the highly rated, "investment grade" security that defendants represented it to be. The evidence supporting the falsity of the ECR 2005-4 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche	CUSIP	Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings	
				Initial	Current	Initial	Current
M5	29256PBA1	All	27.48%	A2	C	A+	CCC

e. Transfer of Title

162. The ECR 2005-4 Offering Documents also represented that the loans underlying the ECR 2005-4 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the ECR 2005-4 Offering Documents stated that "[o]n the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, mortgage, assignment of mortgage in recordable form to the Trustee and other related documents." *See* ECR 2005-4 Pros. Supp. at S-97. This statement was false and misleading. The depositor failed to legally and properly transfer the promissory notes and security instruments to the trust. *See* §VI.E, *infra*.

9. The GEWMC 2005-2 Certificates

163. The GE-WMC Asset-Backed Pass-Through Certificates, Series 2005-2 ("GEWMC 2005-2 Certificates") were issued pursuant to a Prospectus Supplement dated December 14, 2005. Defendant Credit Suisse Securities, as a primary underwriter, played a critical role in the fraudulent structuring, offering and sale of the GEWMC 2005-2 Certificates.

164. Plaintiffs and/or their assignors purchased the following GEWMC 2005-2 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Phoenix	Greyhawk	M1	367910AW6	12/13/2005	$22,185,000	Credit Suisse Securities

165. The above purchase was made by Greyhawk's investment manager, Brightwater, in direct reliance upon the GEWMC 2005-2 Offering Documents, including draft and/or final GEWMC 2005-2 Prospectus Supplements. Brightwater's diligent investment processes are described in great detail in §VIII.A, *infra*.

a. Underwriting Guidelines

166. The GEWMC 2005-2 Offering Documents disclosed that all of the GEWMC 2005-2 Certificates' underlying loans were originated or acquired by WMC Mortgage Corp. ("WMC"). *See* GEWMC 2005-2 Pros. Supp. at S-27.

167. The GEWMC 2005-2 Offering Documents represented that "[WMC's] Underwriting Guidelines are primarily intended to (a) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (b) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults." *See id.* The GEWMC 2005-2 Offering Documents also represented that WMC

> verifies the loan applicant's eligible sources of income for all products, calculates the amount of income from eligible sources indicated on the loan application, reviews the credit and mortgage payment history of the applicant and calculates the Debt Ratio to determine the applicant's ability to repay the loan, and reviews the mortgaged property for compliance with the Underwriting Guidelines.

Id. The GEWMC 2005-2 Offering Documents further represented:

> [WMC's] Underwriting Guidelines are applied in accordance with a procedure which complies with applicable federal and state laws and regulations and requires, among other things, (1) an appraisal of the mortgaged property which conforms to Uniform Standards of Professional Appraisal Practice and (2) an audit of such appraisal by a WMC Mortgage Corp.-approved appraiser or by WMC Mortgage Corp.'s in-house collateral auditors.

Id. Moreover, the GEWMC 2005-2 Offering Documents represented that the maximum allowable DTI ratio was 50% to 55%. *Id.* at S-29-S-37. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that WMC had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.3, *infra*.

168. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with underwriting guidelines resulted in the securitization of loans issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a first-lien loan for $416,000 and a second-lien loan for $104,000 in 2005, both of which were contained within the GEWMC 2005-2 offering. ***This borrower had a monthly income of $2,598 in 2005***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $4,055, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loans. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loans at issue, in 2006.

b. Credit Ratings

169. The GEWMC 2005-2 Offering Documents also represented that the GEWMC 2005-2 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the GEWMC 2005-2 Offering Documents

represented that plaintiffs' GEWMC 2005-2 Certificate had been assigned AA+/Aa1/AA+ ratings – signifying an extremely safe and stable security.

170. These representations, however, were false and misleading when made. In truth, plaintiffs' GEWMC 2005-2 Certificate should not have received AA+/Aa1/AA+ credit ratings, because it was ***not*** a safe, "investment grade" security with a low probability of default. Rather, as defendants were well aware, plaintiffs' GEWMC 2005-2 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' GEWMC 2005-2 Certificate was because defendants had fed them falsified information regarding the GEWMC 2005-2 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false borrower FICO scores and false borrower DTI ratios.

171. The falsity of the credit ratings set forth in the GEWMC 2005-2 Offering Documents is confirmed by subsequent events. Specifically, ***more than 34%[13] of the loans supporting plaintiffs' GEWMC 2005-2 Certificate are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" GEWMC 2005-2 Certificate is now rated at "junk" status or below. Clearly, plaintiffs' GEWMC 2005-2 Certificate was not the highly rated, "investment grade" security that defendants represented it to be. The evidence supporting the falsity of the GEWMC 2005-2 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

[13] The default rate stated herein was obtained from a trustee report issued in or about June 2013.

Tranche	CUSIP	Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings		Fitch's Ratings	
				Initial	Current	Initial	Current	Initial	Current
M1	367910AW6	All	34.17%	Aa1	C	AA+	CC	AA+	C

c. Transfer of Title

172. The GEWMC 2005-2 Offering Documents also represented that the loans underlying the GEWMC 2005-2 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the GEWMC 2005-2 Offering Documents stated that "[t]he trust fund created under the pooling and servicing agreement will consist of . . . all of the depositor's right, title and interest in and to the mortgage loans, the related mortgage notes, mortgages and other related documents." *See* GEWMC 2005-2 Pros. Supp. at S-66. The GEWMC 2005-2 Offering Documents also stated:

> The depositor will deliver to the trustee (or to a custodian on the trustee's behalf) with respect to each mortgage loan included in the trust (i) the mortgage note endorsed without recourse in blank to reflect the transfer of the mortgage loan, (ii) the original mortgage with evidence of recording indicated thereon and (iii) an assignment of the mortgage in recordable form endorsed in blank without recourse, reflecting the transfer of the mortgage loan.

Id. These statements were false and misleading. The depositor failed to legally and properly transfer the promissory notes and security instruments to the trust. *See* §VI.E, *infra*.

10. The HEAT 2006-4 Certificates

173. The Home Equity Asset Trust 2006-4, Home Equity Pass-Through Certificates, Series 2006-4 ("HEAT 2006-4 Certificates") were issued pursuant to a Prospectus Supplement dated April 27, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the HEAT 2006-4 Certificates: CSFBMS (depositor); DLJ Mortgage (sponsor); and Credit Suisse Securities (underwriter).

174. Plaintiffs and/or their assignors purchased the following HEAT 2006-4 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Silver Elms	Paradigm	M6	437084VW3	3/31/2006	$2,700,000	Credit Suisse Securities

175. The above purchase was made by Paradigm's investment manager, SFA, in direct reliance upon the HEAT 2006-4 Offering Documents, including draft and/or final HEAT 2006-4 Prospectus Supplements. SFA's diligent investment processes are described in great detail in §VIII.C.2, *infra*.

a. Underwriting Guidelines

176. The HEAT 2006-4 Offering Documents disclosed that approximately 32.9% of the HEAT 2006-4 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Wells Fargo Bank, N.A. ("Wells Fargo"); approximately 17.3% of the HEAT 2006-4 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Finance America, LLC ("Finance America"); approximately 12.0% of the HEAT 2006-4 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Aames Capital Corporation ("Aames"); approximately 10.9% of the HEAT 2006-4 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Aegis; and the remainder of the loans were "originated by various originators," each of which originated or acquired no more than 10% of the mortgage loans. *See* HEAT 2006-4 Pros. Supp. at S-8, S-35.

177. With regards to the Wells Fargo loans, the HEAT 2006-4 Offering Documents represented that Wells Fargo originated the mortgage loans in accordance with underwriting guidelines "primarily intended to evaluate the prospective borrower's credit standing and ability to repay the loan, as well as the value and adequacy of the proposed mortgaged property as collateral." *See id.* at S-37. The HEAT 2006-4 Offering Documents also represented that "[g]enerally, the maximum total debt to gross income ratio for each credit level is 55%," and that an applicant's loan-

to-value ratio was also calculated, in part based on "an appraisal obtained by the originator generally no more than 120 days prior to origination." *Id.* at S-38. The HEAT 2006-4 Offering Documents further represented that "Wells Fargo Bank's underwriting of every mortgage loan submitted consists of not only a credit review, but also a separate appraisal." *Id.* at S-41. Moreover, the HEAT 2006-4 Offering Documents represented:

> All appraisals are subject to an internal appraisal review by the loan underwriter irrespective of the loan-to-value ratio, the mortgage loan amount or the identity of the appraiser. Certain loans require a third party review in the form of either a desk review or field review. At the discretion of Wells Fargo Bank, any mortgage loan is subject to further review in the form of a desk review, field review or additional full appraisal.

Id. at S-41. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Wells Fargo had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.8, *infra*.

178. With regards to the Finance America, Aames and Aegis loans as well as the loans originated by "various originators," the HEAT 2006-4 Offering Documents represented that they were originated pursuant to underwriting guidelines under which,

> [b]ased on the data provided in the [borrower's] application and certain verifications (if required), a determination will have been made by the original lender that the mortgagor's monthly income . . . should be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the mortgaged property (such as property taxes, standard hazard insurance and other fixed obligations other than housing expenses).

See HEAT 2006-4 Pros. Supp. at S-41. The HEAT 2006-4 Offering Documents also represented that "[g]enerally, scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and other fixed obligations equal no more than a specified percentage of the prospective mortgagor's gross income." *Id.* The HEAT 2006-4 Offering Documents further

represented that "[t]he adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal." *Id.* at S-42. Moreover, the HEAT 2006-4 Offering Documents stated that "[t]he depositor expects that the originator of each of the loans will have applied . . . underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral." *See* HEAT 2006-4 Pros. at 30. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Finance America, Aames, Aegis and the "various originators" had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §§VI.A.1 and VI.A.6, *infra*.

179. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $392,000 in 2006 which was contained within the HEAT 2006-4 offering. This borrower had income in 2006 of $2,900 per month, plus she received foster care payments of $2,086 per month, according to the borrower's sworn bankruptcy filings. Thus, the borrower had a total of $4,986 per month to meet her debts. ***The borrower's monthly debt payments were at least $4,152, resulting in a DTI ratio of 83%. This DTI ratio was far in excess of the 55% maximum DTI ratio allowed by the underwriting guidelines described in the Offering Documents. In addition, the borrower's DTI ratio of 83% was far in excess of the 50% DTI ratio that a Wall Street investment bank has stated "leav[es] little for the borrower to pay other expenses***." The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation, and the like. Clearly, this borrower

could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2006.

b. Loan-to-Value Ratios

180. The HEAT 2006-4 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the HEAT 2006-4 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the HEAT 2006-4 Offering Documents represented that less than 35% of the loans supporting plaintiffs' HEAT 2006-4 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' HEAT 2006-4 Certificate had LTV ratios over 100%.

181. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' HEAT 2006-4 Certificate, which reveals that the LTV ratio percentages stated in the HEAT 2006-4 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the HEAT 2006-4 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
M6	437084VW3	All	34.13%	55.51%	0.00%	17.83%

c. Owner Occupancy Rates

182. The HEAT 2006-4 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the HEAT 2006-4 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the HEAT 2006-4 Offering Documents represented that a large percentage of the loans supporting plaintiffs' HEAT 2006-4

Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

183. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' HEAT 2006-4 Certificate, which reveals that the OOR percentages stated in the HEAT 2006-4 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the OOR percentages stated in the HEAT 2006-4 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Primary Residence Percentage Stated in the Offering Documents**	**Actual Primary Residence Percentage**	**Percent Overstatement of Actual Primary Residence Percentage**
M6	437084VW3	All	94.10%	84.65%	11.16%

d. Credit Ratings

184. The HEAT 2006-4 Offering Documents also represented that the HEAT 2006-4 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the HEAT 2006-4 Offering Documents represented that plaintiffs' HEAT 2006-4 Certificate had been assigned A/A3/A ratings – signifying an extremely safe and stable security.

185. These representations, however, were false and misleading when made. In truth, plaintiffs' HEAT 2006-4 Certificate should not have received A/A3/A credit ratings, because it was ***not*** a safe, "investment grade" security. Rather, as defendants were well aware, plaintiffs' HEAT 2006-4 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such a high rating to plaintiffs' HEAT 2006-4 Certificate was because defendants

had fed them falsified information regarding the HEAT 2006-4 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

186. The falsity of the credit ratings set forth in the HEAT 2006-4 Offering Documents is confirmed by subsequent events. Specifically, ***approximately 42% of the loans supporting plaintiffs' HEAT 2006-4 Certificate are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" HEAT 2006-4 Certificate is now rated at below "junk" status. Clearly, plaintiffs' HEAT 2006-4 Certificate was not the highly rated, "investment grade" security defendants represented it to be. The evidence supporting the falsity of the HEAT 2006-4 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**		**Fitch's Ratings**	
				Initial	**Current**	**Initial**	**Current**	**Initial**	**Current**
M6	437084VW3	All	41.88%	A3	C	A	D	A	D

e. Transfer of Title

187. The HEAT 2006-4 Offering Documents also represented that the loans underlying the HEAT 2006-4 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the HEAT 2006-4 Offering Documents stated:

> On the closing date for the initial mortgage loans and on any subsequent transfer date for the subsequent mortgage loans, the depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to each mortgage loan.

See HEAT 2006-4 Pros. Supp. at S-34. The HEAT 2006-4 Offering Documents also stated:

> In connection with such transfer and assignment, . . . the depositor will deliver or cause to be delivered to the trustee, or a custodian for the trustee, a mortgage file for each mortgage loan which will consist of, among other things, the original promissory note, or mortgage note, and any modification or amendment thereto . . . , the original instrument creating a first or second, as applicable, lien on the related mortgaged property, or the mortgage, with evidence of recording indicated thereon, an assignment in recordable form of the mortgage . . . .

HEAT 2006-4 Pros. at 50. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

11. The HEAT 2006-7 Certificates

188. The Home Equity Asset Trust 2006-7, Home Equity Pass-Through Certificates, Series 2006-7 ("HEAT 2006-7 Certificates") were issued pursuant to a Prospectus Supplement dated September 29, 2006. The following defendants played critical roles in the fraudulent structuring, offering and sale of the HEAT 2006-7 Certificates: CSFBMS (depositor); DLJ Mortgage (sponsor); and Credit Suisse Securities (underwriter).

189. Plaintiffs and/or their assignors purchased the following HEAT 2006-7 Certificates:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Phoenix	WestLB	2A4	43709NAE3	10/3/2006	$11,000,000	Credit Suisse Securities
Kleros V	WestLB	M6	43709NAM5	9/25/2006	$ 4,000,000	Credit Suisse Securities

190. The above purchases were made by WestLB's investment managers, Strategos and DCP, in direct reliance upon the HEAT 2006-7 Offering Documents, including draft and/or final HEAT 2006-7 Prospectus Supplements. Strategos's and DCP's diligent investment processes are described in great detail in §§VIII.B.2 and VIII.E.2, *infra*.

a. Underwriting Guidelines

191. The HEAT 2006-7 Offering Documents disclosed that approximately 24.1% of the HEAT 2006-7 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Encore; approximately 24.0% of the HEAT 2006-7 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan underwriter OwnIt Mortgage Solutions, Inc. ("OwnIt"); approximately 20.4% of the HEAT 2006-7 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Lime Financial Services Ltd. ("Lime Financial"); and the remainder of the HEAT 2006-7 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from "various" originators "that individually did not originate or acquire more than 10% . . . of the initial mortgage loans." *See* HEAT 2006-7 Pros. Supp. at S-8.

192. With regard to the Encore loans, the HEAT 2006-7 Offering Documents represented that "Encore's internal underwriting guidelines are designed to help it evaluate a borrower's credit history, capacity, willingness and ability to repay the loan, and the value and adequacy of the collateral." *See id.* at S-38. The HEAT 2006-7 Offering Documents also represented that "Encore's guidelines are primarily intended to (1) determine that the borrower has the ability to repay the mortgage loan in accordance with its terms and (2) determine that the related mortgaged property will provide sufficient value to recover the investment if the borrower defaults." *Id.* The HEAT 2006-7 Offering Documents further represented:

> An assessment of the adequacy of the real property as collateral for the loan is primarily based upon an appraisal of the property and a calculation of the LTV ratio of the loan applied for and the combined LTV to the appraised value of the property at the time of origination.

Id. at S-40. In addition, the HEAT 2006-7 Offering Documents represented:

> Encore has implemented an appraisal review process to support the value used to determine the LTV ratio. Encore uses a variety of steps in its appraisal review process in order to attempt to ensure the accuracy of the value provided by the initial appraiser. This includes obtaining an independent automated property review on a

> majority of the loans that it originates. Encore's review process requires a written review on every appraisal report either by a qualified independent underwriter or by a staff appraiser.

Id. Moreover, the HEAT 2006-7 Offering Documents represented that the maximum allowable DTI ratio is 50% to 55%. *Id.* at S-41-S-42. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Encore had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.5, *infra*.

193. With regard to the OwnIt loans, the HEAT 2006-7 Offering Documents represented that the loans were originated according to underwriting guidelines "designed to be used as a guide in determining the credit worthiness of the borrower and his/her ability to repay." *See* HEAT 2006-7 Pros. Supp. at S-43. The Offering Documents also represented:

> Using the three components, capacity, credit and collateral, the underwriter analyzes the loan profile. Capacity, which is the borrower's ability to repay, is determined by cash flow. It must be clearly shown that the borrower has a proven, historical cash flow, which will support the requested loan amount. This approach anticipates that the loan is going to be repaid from the borrower's recurring cash inflows, not from the sale of the collateral. Job stability and length of time in current residence are also strong factors in determining a borrower's capacity. Continuity of employment is a strong factor in establishing the income used as a basis for repayment. Credit is the borrower's willingness to repay his or her debts according to the contractual agreements. . . . Collateral is defined as the asset pledged by the borrower to the lender. Collateral is a secondary source of repayment; cash flow is the primary source of repayment. OwnIt will evaluate the property by reviewing uniform residential real estate appraisal reports, along with other data sources, to determine whether the collateral is sufficient to secure the mortgage.

Id. The HEAT 2006-7 Offering Documents further represented that: "Several aspects are considered in determining the borrower's capacity or ability to repay the loan. The key factors are employment documentation, history and amount of income used to derive the debt to income ratios." *Id.*

Moreover, the HEAT 2006-7 Offering Documents represented that "[t]he collateral value and amount of equity in the subject property are important factors in assessing the risk of a particular loan." *Id.* at S-44. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was OwnIt had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

194. With regard to the Lime Financial loans, the HEAT 2006-7 Offering Documents represented that "[Lime Financial's] underwriting standards and underwriting guidelines generally are intended to evaluate the prospective borrower's credit standing and repayment ability and the value and adequacy of the mortgaged property as collateral." *See* HEAT 2006-7 Pros. Supp. at S-45. The HEAT 2006-7 Offering Documents also represented:

> In considering a prospective borrower's ability to repay a mortgage loan, the loan underwriter considers the ratio of the borrower's mortgage payments, property taxes and other monthly housing expenses to the borrower's gross income . . . and the ratio of the borrower's total monthly debt (including non-housing expenses) to the borrower's gross income . . . .

Id. The Offering Documents further represented that "[t]he adequacy of the mortgaged property as collateral is determined by a full appraisal made in accordance with pre-established appraisal guidelines." *See id.* at S-46. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was Lime Financial had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

195. With regard to the loans originated by the "various" originators, the HEAT 2006-7 Offering Documents represented that they were originated in accordance with underwriting guidelines under which:

> Based on the data provided in the [borrower's] application and certain verifications (if required), a determination will have been made by the original lender that the mortgagor's monthly income . . . should be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the mortgaged property (such as property taxes, standard hazard insurance and other fixed obligations other than housing expenses).

See HEAT 2006-7 Pros. Supp. at S-36. The HEAT 2006-7 Offering Documents also represented that "[g]enerally, scheduled payments on a mortgage loan during the first year of its term plus taxes and insurance and other fixed obligations equal no more than a specified percentage of the prospective mortgagor's gross income." *Id.* The HEAT 2006-7 Offering Documents further represented that "[t]he adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal." *Id.* at S-37. Moreover, the HEAT 2006-7 Offering Documents represented that "[t]he depositor expects that the originator of each of the loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral." *See* HEAT 2006-7 Pros. at 30. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that the "various" originators had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A, *infra*.

196. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines

resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $549,000 in 2006 which was contained within the HEAT 2006-7 offering. ***This borrower had no income in 2006***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $8,420, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

197. The HEAT 2006-7 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the HEAT 2006-7 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the HEAT 2006-7 Offering Documents represented that less than a third of the loans supporting plaintiffs' HEAT 2006-7 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' HEAT 2006-7 Certificates had LTV ratios over 100%.

198. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' HEAT 2006-7 Certificates, which reveals that the LTV ratio percentages stated in the HEAT 2006-7 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the HEAT 2006-7 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
2A4	43709NAE3	Group II	26.01%	50.76%	0.00%	15.88%
M6	43709NAM5	All	30.97%	53.84%	0.00%	16.24%

c. Owner Occupancy Rates

199. The HEAT 2006-7 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the HEAT 2006-7 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the HEAT 2006-7 Offering Documents represented that a large percentage of the loans supporting plaintiffs' HEAT 2006-7 Certificates were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

200. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' HEAT 2006-7 Certificates, which reveals that the OOR percentages stated in the HEAT 2006-7 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the HEAT 2006-7 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
2A4	43709NAE3	Group II	97.05%	84.24%	15.21%
M6	43709NAM5	All	95.47%	83.88%	13.82%

d. Credit Ratings

201. The HEAT 2006-7 Offering Documents also represented that the HEAT 2006-7 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings

by S&P, Moody's and Fitch, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the HEAT 2006-7 Offering Documents represented that plaintiffs' HEAT 2006-7 Certificates had been assigned AAA/Aaa/AAA and A/A3/A ratings – signifying extremely safe and stable securities.

202. These representations, however, were false and misleading when made. In truth, plaintiffs' HEAT 2006-7 Certificates should not have received AAA/Aaa/AAA and A/A3/A credit ratings, because they were ***not*** safe, "investment grade" securities. Rather, as defendants were well aware, plaintiffs' HEAT 2006-7 Certificates were extremely risky, speculative grade "junk" bonds or worse**,** backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' HEAT 2006-7 Certificates was because defendants had fed them falsified information regarding the HEAT 2006-7 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

203. The falsity of the credit ratings set forth in the HEAT 2006-7 Offering Documents is confirmed by subsequent events. Specifically, ***approximately 43% of the loans supporting plaintiffs' HEAT 2006-7 Certificates are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" HEAT 2006-7 Certificates are now rated at "junk" status or below. Clearly, plaintiffs' HEAT 2006-7 Certificates were not the highly rated, "investment grade" securities defendants represented them to be. The evidence supporting the falsity of the HEAT 2006-7 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings		Fitch's Ratings	
				Initial	Current	Initial	Current	Initial	Current
2A4	43709NAE3	Group II	42.75%	Aaa	C	AAA	CCC	AAA	C
M6	43709NAM5	All	43.28%	A3	WR	A	D	A	D

e. Transfer of Title

204. The HEAT 2006-7 Offering Documents also represented that the loans underlying the HEAT 2006-7 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the HEAT 2006-7 Offering Documents stated that

> on the closing date for the initial mortgage loans and on any subsequent transfer date for the subsequent mortgage loans, the depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to each mortgage loan.

See HEAT 2006-7 Pros. Supp. at S-34. The HEAT 2006-7 Offering Documents also stated:

> In connection with such transfer and assignment, . . . the depositor will deliver or cause to be delivered to the trustee, or a custodian for the trustee, a mortgage file for each mortgage loan which will consist of, among other things, the original promissory note, or mortgage note, and any modification or amendment thereto . . . , the original instrument creating a first or second, as applicable, lien on the related mortgaged property, or the mortgage, with evidence of recording indicated thereon, an assignment in recordable form of the mortgage . . . .

See HEAT 2006-7 Pros. at 50. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

12. The HEAT 2007-3 Certificates

205. The Home Equity Asset Trust 2007-3, Home Equity Pass-Through Certificates, Series 2007-3 ("HEAT 2007-3 Certificates") were issued pursuant to a Prospectus Supplement dated April 30, 2007. The following defendants played critical roles in the fraudulent structuring, offering

and sale of the HEAT 2007-3 Certificates: CSFBMS (depositor); DLJ Mortgage (sponsor); and Credit Suisse Securities (underwriter).

206. Plaintiffs and/or their assignors purchased the following HEAT 2007-3 Certificate:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Silver Elms II	Silver Elms II	M1	43710TAF4	4/20/2007	$2,000,000	Credit Suisse Securities

207. The above purchase was made by Silver Elms II's investment manager, Princeton Advisory Group ("Princeton"), in direct reliance upon the HEAT 2007-3 Offering Documents, including draft and/or final HEAT 2007-3 Prospectus Supplements. Princeton's diligent investment processes are described in great detail in §VIII.D.2, *infra*.

a. Underwriting Guidelines

208. The HEAT 2007-3 Offering Documents disclosed that approximately 33.6% of the HEAT 2007-3 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Decision One Mortgage Company, LLC ("Decision One"); approximately 20.6% of the HEAT 2007-3 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator EquiFirst Corporation ("EquiFirst"); approximately 18.3% of the HEAT 2007-3 Certificates' underlying loans were acquired by the sponsor, DLJ Mortgage, from loan originator Wilmington Finance, Inc. ("Wilmington"); and the remainder of the loans underlying the HEAT 2007-3 Offering Documents were "originated by various originators," each of which originated or acquired no more than 10% of the mortgage loans. *See* HEAT 2007-3 Pros. Supp. at S-34.

209. With regard to the Decision One loans, the HEAT 2007-3 Offering Documents represented that Decision One originated the mortgage loans in accordance with underwriting guidelines that are "primarily intended to assess the borrower's ability to repay the mortgage loan, to assess the value of the mortgaged property and to evaluate the adequacy of the property as collateral

for the mortgage loan." *See id.* at S-36. The HEAT 2007-3 Offering Documents also represented that "[w]hile Decision One Mortgage's primary consideration in underwriting a mortgage loan is the value of the mortgaged property, Decision One Mortgage also considers, among other things, a mortgagor's credit history, repayment ability and debt service to income ratio, as well as the type and use of the mortgaged property." *Id.* The HEAT 2007-3 Offering Documents further represented that "[m]ortgaged properties that are to secure mortgage loans are appraised by qualified independent appraisers." *Id.* at S-37. Moreover, the HEAT 2007-3 Offering Documents represented:

> Under each of the programs, Decision One Mortgage reviews the applicant's source of income, calculates the amount of income from sources indicated on the loan application or similar documentation, reviews the credit history of the applicant, calculates the debt service to income ratio to determine the applicant's ability to repay the loan, reviews the type and use of the property being financed, and reviews the property. The Decision One Underwriting Guidelines require . . . Decision One Mortgage's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal and a review of the appraisal, currently supports the outstanding loan balance.

Id. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Decision One had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

210. With regard to the EquiFirst loans, the HEAT 2007-3 Offering Documents represented that the loans were originated in accordance with underwriting standards "primarily intended to assess the ability and willingness of the borrower to repay the debt and to evaluate the adequacy of the mortgaged property as collateral for the mortgage loan." *See* HEAT 2007-3 Pros. Supp. at S-40. The HEAT 2007-3 Offering Documents also represented that EquiFirst "considers, among other things, a mortgagor's credit history, and repayment ability, as well as the value, type

and use of the mortgaged property." *Id.* The HEAT 2007-3 Offering Documents further represented that "EquiFirst['s] . . . guidelines . . . generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards," and that "[a]ll loans are subject to EquiFirst['s] . . . appraisal review process," which "includes steps that may require (but are not limited to) an automated valuation report, or a manual review from one of our internal staff appraisers to confirm or support the original appraiser's value of the mortgaged premises" and "[a] second independent appraisal." *Id.* at S-41-S-42. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that EquiFirst had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.9, *infra*.

211. With regards to the Wilmington loans and the loans originated by "various originators," the HEAT 2007-3 Offering Documents represented that they were originated according to guidelines under which, "[b]ased on the data provided in the [borrower's] application and certain verifications (if required), a determination will have been made by the original lender that the mortgagor's monthly income . . . should be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the mortgaged property (such as property taxes, standard hazard insurance and other fixed obligations other than housing expenses)." *See* HEAT 2007-3 Pros. Supp. at S-35. The HEAT 2007-3 Offering Documents also represented that "[t]he adequacy of the mortgaged property as security for repayment of the related mortgage loan will generally have been determined by an appraisal." *Id.* at S-36. The HEAT 2007-3 Offering Documents further represented that "[t]he depositor expects that the originator of each of the loans will have applied, consistent with applicable federal and state laws and regulations, underwriting

procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral." *See* HEAT 2007-3 Pros. at 30. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Wilmington and the "various originators" had completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A, *infra*.

212. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $356,000 in 2006 which was contained within the HEAT 2007-3 offering. This loan was originated through EquiFirst, one of the originators identified in the Offering Documents. This borrower had income in 2006 of $2,659 per month, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $5,942, far in excess of the borrower's income***. Therefore, this borrower had a DTI ratio of over 223%. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation, and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy after obtaining the loan at issue, in 2008.

b. Loan-to-Value Ratios

213. The HEAT 2007-3 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the HEAT 2007-3 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the HEAT 2007-3 Offering

Documents represented that just over one-third of the loans supporting plaintiffs' HEAT 2007-3 Certificate had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' HEAT 2007-3 Certificate had LTV ratios over 100%.

214. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' HEAT 2007-3 Certificate, which reveals that the LTV ratio percentages stated in the HEAT 2007-3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the HEAT 2007-3 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
M1	43710TAF4	All	36.55%	62.97%	0.00%	21.64%

c. Owner Occupancy Rates

215. The HEAT 2007-3 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the HEAT 2007-3 Certificate purchased by plaintiffs and/or their assigning entities. Specifically, the HEAT 2007-3 Offering Documents represented that a large percentage of the loans supporting plaintiffs' HEAT 2007-3 Certificate were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

216. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' HEAT 2007-3 Certificate, which reveals that the OOR percentages stated in the HEAT 2007-3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the OOR percentages stated in the HEAT 2007-3

Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M1	43710TAF4	All	95.36%	86.12%	10.74%

d. Credit Ratings

217. The HEAT 2007-3 Offering Documents also represented that the HEAT 2007-3 Certificate purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the security was a very strong, safe investment with an extremely low probability of default. Specifically, the HEAT 2007-3 Offering Documents represented that plaintiffs' HEAT 2007-3 Certificate had been assigned AA+/Aa1/AA+ ratings – signifying an extremely safe and stable security.

218. These representations, however, were false and misleading when made. In truth, plaintiffs' HEAT 2007-3 Certificate should not have received AA+/Aa1/AA+ credit ratings, because it was ***not*** a safe, "investment grade" security. Rather, as defendants were well aware, plaintiffs' HEAT 2007-3 Certificate was an extremely risky, speculative grade "junk" bond or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' HEAT 2007-3 Certificate was because defendants had fed them falsified information regarding the HEAT 2007-3 Certificate's underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

219. The falsity of the credit ratings set forth in the HEAT 2007-3 Offering Documents is confirmed by subsequent events. Specifically, ***approximately 38% of the loans supporting plaintiffs' HEAT 2007-3 Certificate are currently in default*** because they were made to borrowers

who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" HEAT 2007-3 Certificate is now rated at below "junk" status. Clearly, plaintiffs' HEAT 2007-3 Certificate was not the highly rated, "investment grade" security defendants represented it to be. The evidence supporting the falsity of the HEAT 2007-3 Certificate's credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**		**Fitch's Ratings**	
				Initial	**Current**	**Initial**	**Current**	**Initial**	**Current**
M1	43710TAF4	All	37.89%	Aa1	C	AA+	D	AA+	D

e. Transfer of Title

220. The HEAT 2007-3 Offering Documents also represented that the loans underlying the HEAT 2007-3 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the HEAT 2007-3 Offering Documents stated that

> on the closing date for the initial mortgage loans and on any subsequent transfer date for the subsequent mortgage loans, the depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to each mortgage loan.

See HEAT 2007-3 Pros. Supp. at S-33. The HEAT 2007-3 Offering Documents also stated:

> In connection with such transfer and assignment, . . . the depositor will deliver or cause to be delivered to the trustee, or a custodian for the trustee, a mortgage file for each mortgage loan which will consist of, among other things, the original promissory note, or mortgage note, and any modification or amendment thereto . . . , the original instrument creating a first or second, as applicable, lien on the related mortgaged property, or the mortgage, with evidence of recording indicated thereon, an assignment in recordable form of the mortgage . . . .

See HEAT 2007-3 Pros. at 50-51. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

13. The LBMLT 2005-WL3 Certificates

221. The Long Beach Mortgage Loan Trust 2005-WL3, Asset-Backed Certificates, Series 2005-WL3 ("LBMLT 2005-WL3 Certificates") were issued pursuant to a Prospectus Supplement dated November 25, 2005. Defendant Credit Suisse Securities, as a primary underwriter, played a critical role in the fraudulent structuring, offering and sale of the LBMLT 2005-WL3 Certificates.

222. Plaintiffs and/or their assignors purchased the following LBMLT 2005-WL3 Certificates:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Phoenix	Greyhawk	M1	542514PR9	11/16/2005	$32,871,000	Credit Suisse Securities
Phoenix	Harrier	M2	542514PS7	11/16/2005	$48,414,000	Credit Suisse Securities
Phoenix	Harrier	M4	542514PU2	11/17/2005	$17,000,000	Credit Suisse Securities
Phoenix	Harrier	M5	542514PV0	11/16/2005	$20,000,000	Credit Suisse Securities

223. The above purchases were made by Harrier's and Greyhawk's investment manager, Brightwater, in direct reliance upon the LBMLT 2005-WL3 Offering Documents, including draft and/or final LBMLT 2005-WL3 Prospectus Supplements. Brightwater's diligent investment processes are described in great detail in §VIII.A, *infra*.

a. Underwriting Guidelines

224. The LBMLT 2005-WL3 Offering Documents disclosed that 100% of the mortgage loans underlying plaintiffs' LBMLT 2005-WL3 Certificates were originated or acquired by loan originator and seller Long Beach Mortgage Company ("Long Beach"). *See* LBMLT 2005-WL3 Pros. Supp. at S-54.

225. The LBMLT 2005-WL3 Offering Documents represented that Long Beach's "underwriting guidelines are primarily intended to evaluate the mortgagor's credit standing and

repayment ability and the value and adequacy of the mortgaged property as collateral." *See id.* The Offering Documents also represented:

> Under Long Beach's programs, during the underwriting or re-underwriting process, Long Beach reviews and verifies the loan applicant's sources of income (only under the Full Doc residential loan program), calculates the amount of income from all such sources indicated on the loan application, reviews the credit history of the applicant and calculates the debt-to-income ratio to determine the applicant's ability to repay the loan, and determines whether the mortgaged property complies with Long Beach's underwriting guidelines.

Id. at S-54-S-55. The LBMLT 2005-WL3 Offering Documents further represented that "Long Beach . . . requires (i) an appraisal of the mortgaged property which generally conforms to Fannie Mae and Freddie Mac standards and (ii) a review of that appraisal." *Id.* at S-55. Moreover, the LBMLT 2005-WL3 Offering Documents represented that the maximum qualifying debt service-to-income ratio is 55%. *Id.* at S-56-S-57. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Long Beach had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.7, *infra*.

226. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, a husband and wife obtained a loan for $765,000 in 2005 which was contained within the LBMLT 2005-WL3 offering. The loan was originated through Long Beach, the loan originator identified in the Offering Documents. These borrowers had income in 2005 of $5,349 per month, according to the borrower's sworn bankruptcy filings. ***However, the borrowers' monthly debt payments were at least $6,460, far in excess of the borrowers' monthly income***. The borrowers' monthly debt payments were in addition to the borrowers' monthly expenses for things such as taxes, utilities,

groceries, health care, transportation and the like. Clearly, these borrowers could not afford to repay the loan. This is confirmed by the fact that the borrowers declared bankruptcy after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

227. The LBMLT 2005-WL3 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the LBMLT 2005-WL3 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the LBMLT 2005-WL3 Offering Documents represented that less than 40% of the loans supporting plaintiffs' LBMLT 2005-WL3 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' LBMLT 2005-WL3 Certificates had LTV ratios over 100%.

228. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' LBMLT 2005-WL3 Certificates, which reveals that the LTV ratio percentages stated in the LBMLT 2005-WL3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the LBMLT 2005-WL3 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
M1	542514PR9	All	39.08%	58.84%	0.00%	15.33%
M2	542514PS7	All	39.08%	58.84%	0.00%	15.33%
M4	542514PU2	All	39.08%	58.84%	0.00%	15.33%
M5	542514PV0	All	39.08%	58.84%	0.00%	15.33%

c. Owner Occupancy Rates

229. The LBMLT 2005-WL3 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the LBMLT 2005-WL3

Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the LBMLT 2005-WL3 Offering Documents represented that a large percentage of the loans supporting plaintiffs' LBMLT 2005-WL3 Certificates were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

230. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' LBMLT 2005-WL3 Certificates, which reveals that the OOR percentages stated in the LBMLT 2005-WL3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the LBMLT 2005-WL3 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
M1	542514PR9	All	82.30%	71.48%	15.14%
M2	542514PS7	All	82.30%	71.48%	15.14%
M4	542514PU2	All	82.30%	71.48%	15.14%
M5	542514PV0	All	82.30%	71.48%	15.14%

d. Credit Ratings

231. The LBMLT 2005-WL3 Offering Documents also represented that the LBMLT 2005-WL3 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the LBMLT 2005-WL3 Offering Documents represented that plaintiffs' LBMLT 2005-WL3 Certificates had been assigned AA+/Aa1/AA+, AA/Aa2/AA, A+/A1/A+ and A/A2/A ratings – indicating extremely safe and stable securities.

232. These representations, however, were false and misleading when made. In truth, plaintiffs' LBMLT 2005-WL3 Certificates should not have received AA+/Aa1/AA+, AA/Aa2/AA, A+/A1/A+ and A/A2/A credit ratings, because they were ***not*** safe, "investment grade" securities. Rather, as defendants were well aware, plaintiffs' LBMLT 2005-WL3 Certificates were extremely risky, speculative grade "junk" bonds or worse**,** backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' LBMLT 2005-WL3 Certificates was because defendants had fed them falsified information regarding the LBMLT 2005-WL3 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

233. The falsity of the credit ratings set forth in the LBMLT 2005-WL3 Offering Documents is confirmed by subsequent events. Specifically, ***more than 45%[14] of the loans supporting plaintiffs' LBMLT 2005-WL3 Certificates are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" LBMLT 2005-WL3 Certificates are now rated at "junk" status or below. Clearly, plaintiffs' LBMLT 2005-WL3 Certificates were not the highly rated, "investment grade" securities defendants represented them to be. The evidence supporting the falsity of the LBMLT 2005-WL3 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

[14] The default rate stated herein was obtained from a trustee report issued in or about April 2013.

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings		Fitch's Ratings	
				Initial	Current	Initial	Current	Initial	Current
M1	542514PR9	All	45.29%	Aa1	Ca	AA+	CCC	AA+	CC
M2	542514PS7	All	45.29%	Aa2	C	AA	CC	AA	C
M4	542514PU2	All	45.29%	A1	C	A+	D	A+	D
M5	542514PV0	All	45.29%	A2	WR	A	D	A	D

e. Transfer of Title

234. The LBMLT 2005-WL3 Offering Documents also represented that the loans underlying the LBMLT 2005-WL3 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the LBMLT 2005-WL3 Offering Documents stated:

> On the Closing Date, the Depositor will transfer to the Trust all of its right, title and interest in and to each Mortgage Loan, the related mortgage note, Mortgage, assignment of mortgage in recordable form in blank or to the Trustee and other related documents . . . , including all scheduled payments with respect to each such Mortgage Loan due after the Cut-off Date and all unscheduled collections of principal in respect of the Mortgage Loans received after the Cut-off Date . . . .

See LBMLT 2005-WL3 Pros. Supp. at S-59. This statement was false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

14. The LBMLT 2006-1 Certificates

235. The Long Beach Mortgage Loan Trust 2006-1, Asset-Backed Certificates, Series 2006-1 ("LBMLT 2006-1 Certificates") were issued pursuant to a Prospectus Supplement dated January 30, 2006. Defendant Credit Suisse Securities, as a primary underwriter, played a critical role in the fraudulent structuring, offering and sale of the LBMLT 2006-1 Certificates.

236. Plaintiffs and/or their assignors purchased the following LBMLT 2006-1 Certificates:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Blue Heron V	Blue Heron V	M1	542514RN6	1/26/2006	$10,500,000	Credit Suisse Securities
Blue Heron VI	Blue Heron VI	M1	542514RN6	1/26/2006	$ 7,500,000	Credit Suisse Securities
Phoenix	Blue Heron III	M1	542514RN6	1/26/2006	$10,000,000	Credit Suisse Securities
Phoenix	Blue Heron IV	M1	542514RN6	1/26/2006	$ 5,000,000	Credit Suisse Securities
Blue Heron VII	Blue Heron VII	M1	542514RN6	1/26/2006	$ 7,500,000	Credit Suisse Securities
Phoenix	Harrier	M2	542514RP1	1/26/2006	$24,000,000	Credit Suisse Securities
Blue Heron II	Blue Heron II	M2	542514RP1	1/26/2006	$10,000,000	Credit Suisse Securities

237. The above purchases were made by plaintiffs' investment manager, Brightwater, in direct reliance upon the LBMLT 2006-1 Offering Documents, including draft and/or final LBMLT 2006-1 Prospectus Supplements. Brightwater's diligent investment processes are described in great detail in §VIII.A, *infra*.

a. Underwriting Guidelines

238. The LBMLT 2006-1 Offering Documents disclosed that 100% of the mortgage loans underlying plaintiffs' LBMLT 2006-1 Certificates were or acquired by loan originator and sponsor Long Beach. *See* LBMLT 2006-1 Pros. Supp. at S-35.

239. The LBMLT 2006-1 Offering Documents represented that Long Beach's "underwriting guidelines are primarily intended to evaluate the prospective borrower's credit standing and repayment ability as well as the value and adequacy of the mortgaged property as collateral." *See id.* The LBMLT 2006-1 Offering Documents also represented:

> During the underwriting or re-underwriting process, [Long Beach] reviews and verifies the prospective borrower's sources of income (only under the full documentation residential loan program), calculates the amount of income from all such sources indicated on the loan application, reviews the credit history and credit

> score(s) of the prospective borrower and calculates the debt-to-income ratio to determine the prospective borrower's ability to repay the loan, and determines whether the mortgaged property complies with the sponsor's underwriting guidelines.

Id. The LBMLT 2006-1 Offering Documents further represented that "[t]he adequacy of the mortgaged property as collateral is generally determined by an appraisal of the mortgaged property that generally conforms to Fannie Mae and Freddie Mac appraisal standards and a review of that appraisal," and that "[e]very independent appraisal is reviewed by an employee of the servicer before the loan is funded or re-underwritten," which "may include an administrative review, technical review, desk review or field review of the original appraisal." *Id.* at S-36. Moreover, the LBMLT 2006-1 Offering Documents represented that the maximum debt-service-to-income ratio is 55%. *Id.* at S-37-S-39. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that Long Beach had completely abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.7, *infra*.

240. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $160,000 in 2006 which was contained within the LBMLT 2006-1 offering. The loan was originated through Long Beach, the loan originator identified in the Offering Documents. This borrower had income and child support payments in 2006 of $2,438 per month, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $2,496, in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as

taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

241. The LBMLT 2006-1 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the LBMLT 2006-1 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the LBMLT 2006-1 Offering Documents represented that less than 20% of the loans supporting plaintiffs' LBMLT 2006-1 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' LBMLT 2006-1 Certificates had LTV ratios over 100%.

242. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' LBMLT 2006-1 Certificates, which reveals that the LTV ratio percentages stated in the LBMLT 2006-1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the LBMLT 2006-1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
M1	542514RN6	All	19.21%	44.87%	0.00%	11.62%
M2	542514RP1	All	19.21%	44.87%	0.00%	11.62%

c. Owner Occupancy Rates

243. The LBMLT 2006-1 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the LBMLT 2006-1 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the LBMLT 2006-1 Offering

Documents represented that a large percentage of the loans supporting plaintiffs' LBMLT 2006-1 Certificates were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

244. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' LBMLT 2006-1 Certificates, which reveals that the OOR percentages stated in the LBMLT 2006-1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the LBMLT 2006-1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Primary Residence Percentage Stated in the Offering Documents**	**Actual Primary Residence Percentage**	**Percent Overstatement of Actual Primary Residence Percentage**
M1	542514RN6	All	89.58%	78.55%	14.04%
M2	542514RP1	All	89.58%	78.55%	14.04%

d. Credit Ratings

245. The LBMLT 2006-1 Offering Documents also represented that the LBMLT 2006-1 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P and Moody's, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the LBMLT 2006-1 Offering Documents represented that plaintiffs' LBMLT 2006-1 Certificates had been assigned AA+/Aa1 and AA+/Aa2 ratings – signifying extremely safe and stable securities.

246. These representations, however, were false and misleading when made. In truth, plaintiffs' LBMLT 2006-1 Certificates should not have received AA+/Aa1 and AA+/Aa2 credit ratings, because they were ***not*** safe, "investment grade" securities. Rather, as defendants were well aware, plaintiffs' LBMLT 2006-1 Certificates were extremely risky, speculative grade "junk" bonds

or worse, backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P and Moody's had assigned such high ratings to plaintiffs' LBMLT 2006-1 Certificates was because defendants had fed them falsified information regarding the LBMLT 2006-1 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

247. The falsity of the credit ratings set forth in the LBMLT 2006-1 Offering Documents is confirmed by subsequent events. Specifically, ***more than 42% of the loans supporting plaintiffs' LBMLT 2006-1 Certificates are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" LBMLT 2006-1 Certificates are now rated at below "junk" status. Clearly, plaintiffs' LBMLT 2006-1 Certificates were not the highly rated, "investment grade" securities defendants represented them to be. The evidence supporting the falsity of the LBMLT 2006-1 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**	
				Initial	**Current**	**Initial**	**Current**
M1	542514RN6	All	42.41%	Aa1	C	AA+	D
M2	542514RP1	All	42.41%	Aa2	C	AA+	D

e. Transfer of Title

248. The LBMLT 2006-1 Offering Documents also represented that the loans underlying the LBMLT 2006-1 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the LBMLT 2006-1 Offering Documents stated that "[o]n the closing date, the depositor will sell the mortgage loans and related assets to the Long Beach Mortgage Loan Trust 2006-1." *See* LBMLT 2006-1 Pros. Supp. at S-1. The LBMLT 2006-1 Offering Documents also stated that "[a]t the time

of issuance of any series of securities, the depositor will cause the pool of mortgage assets to be included in the related trust fund to be assigned to the trustee," and that "[t]he depositor will, with respect to each mortgage asset, deliver or cause to be delivered to the trustee, or to the custodian, the mortgage note, an assignment . . . to the trustee or in blank of the mortgage . . . , the original recorded mortgage." *See* LBMLT 2006-1 Pros. at 27. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

15. The NCHET 2006-1 Certificates

249. The New Century Home Equity Loan Trust 2006-1, Asset Backed Notes, Series 2006-1 ("NCHET 2006-1 Certificates") were issued pursuant to a Prospectus Supplement dated March 23, 2006. Defendant Credit Suisse Securities, as the primary underwriter, played a critical role in the fraudulent structuring, offering and sale of the NCHET 2006-1 Certificates.

250. Plaintiffs and/or their assignors purchased the following NCHET 2006-1 Certificates:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Silver Elms II	Paradigm	A2C	64342VQS3	3/22/2006	$10,000,000	Credit Suisse Securities
Silver Elms	Paradigm	M3	64342VQV6	3/23/2006	$ 5,000,000	Credit Suisse Securities

251. The above purchases were made by Paradigm's investment managers, SFA and Eiger, in direct reliance upon the NCHET 2006-1 Offering Documents, including draft and/or final NCHET 2006-1 Prospectus Supplements. SFA's and Eiger's diligent investment processes are described in great detail in §§VIII.C.2 and VIII.D.2, *infra*.

a. Underwriting Guidelines

252. The NCHET 2006-1 Offering Documents disclosed that 100% of the mortgage loans underlying plaintiffs' NCHET 2006-1 Certificates were originated by loan originator and sponsor New Century. *See* NCHET 2006-1 Pros. Supp. at S-57.

253. The NCHET 2006-1 Offering Documents represented that "[t]he New Century Underwriting Guidelines are primarily intended to assess the borrower's ability to repay the related mortgage loan, to assess the value of the mortgaged property and to evaluate the adequacy of the property as collateral for the mortgage loan." *Id.* at S-58. The NCHET 2006-1 Offering Documents also represented that "[w]hile the originator's primary consideration in underwriting a mortgage loan is the value of the mortgaged property, the originator also considers . . . a mortgagor's credit history, repayment ability and debt service-to-income ratio, as well as the type and use of the mortgaged property." *Id.* The NCHET 2006-1 Offering Documents further represented:

> Under each of the programs, the originator reviews the applicant's source of income, calculates the amount of income from sources indicated on the loan application or similar documentation, reviews the credit history of the applicant, calculates the debt service-to-income ratio to determine the applicant's ability to repay the loan, reviews the type and use of the property being financed, and reviews the property. In determining the ability of the applicant to repay the loan, a qualifying rate has been created under the New Century Underwriting Guidelines that generally is equal to the interest rate on that loan.

Id. at S-59. Moreover, the NCHET 2007-1 Offering Documents represented that "[m]ortgaged properties that are to secure mortgage loans generally are appraised by qualified independent appraisers" and that "[t]he New Century Underwriting Guidelines . . . require[] the originator's underwriters to be satisfied that the value of the property being financed, as indicated by an appraisal and a review of the appraisal, currently supports the outstanding loan balance." *Id.* at S-58-S-59. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that New Century had completely

abandoned its stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.2, *infra*.

254. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originator's failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $315,000 in 2006 which was contained within the NCHET 2006-1 offering. The loan was originated through New Century, the loan originator identified in the Offering Documents. ***This borrower had income in 2006 of only $364 per month***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $4,961, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

255. The NCHET 2006-1 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the NCHET 2006-1 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the NCHET 2006-1 Offering Documents represented that 41% of the loans supporting plaintiffs' NCHET 2006-1 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' NCHET 2006-1 Certificates had LTV ratios over 100%.

256. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' NCHET 2006-1 Certificates, which reveals that the LTV

ratio percentages stated in the NCHET 2006-1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the NCHET 2006-1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Stated Percentage of Loans Having LTV Ratios Over 80%**	**Actual Percentage of Loans Having LTV Ratios Over 80%**	**Stated Percentage Of Loans Having LTV Ratios Over 100%**	**Actual Percentage of Loans Having LTV Ratios Over 100%**
A2C	64342VQS3	All	41.08%	69.93%	0.00%	16.14%
M3	64342VQV6	All	41.08%	61.93%	0.00%	16.14%

c. Owner Occupancy Rates

257. The NCHET 2006-1 Offering Documents also made certain misrepresentations regarding the OOR percentages associated with the loans supporting the NCHET 2006-1 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the NCHET 2006-1 Offering Documents represented that a large percentage of the loans supporting plaintiffs' NCHET 2006-1 Certificates were issued to borrowers that actually lived in the properties serving as collateral for their loans, significantly decreasing the likelihood that those borrowers would default on their loans.

258. Plaintiffs, however, have performed an in-depth investigation of the actual borrowers, loans and properties underlying plaintiffs' NCHET 2006-1 Certificates, which reveals that the OOR percentages stated in the NCHET 2006-1 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the Primary Residence Percentages stated in the NCHET 2006-1 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' investigation:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Primary Residence Percentage Stated in the Offering Documents	Actual Primary Residence Percentage	Percent Overstatement of Actual Primary Residence Percentage
A2C	64342VQS3	All	89.99%	83.60%	7.65%
M3	64342VQV6	All	89.99%	83.60%	7.65%

d. Credit Ratings

259. The NCHET 2006-1 Offering Documents also represented that the NCHET 2006-1 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P, Moody's and Fitch, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the NCHET 2006-1 Offering Documents represented that plaintiffs' NCHET 2006-1 Certificates had been assigned AAA/Aaa/AAA and AA-/Aa3/AA- ratings – signifying extremely safe and stable securities.

260. These representations, however, were false and misleading when made. In truth, plaintiffs' NCHET 2006-1 Certificates should not have received AAA/Aaa/AAA and AA-/Aa3/AA- credit ratings, because they were ***not*** safe, "investment grade" securities. Rather, as defendants were well aware, plaintiffs' NCHET 2006-1 Certificates were extremely risky, speculative grade "junk" bonds or worse**,** backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P, Moody's and Fitch had assigned such high ratings to plaintiffs' NCHET 2006-1 Certificates was because defendants had fed them falsified information regarding the NCHET 2006-1 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false OOR percentages.

261. The falsity of the credit ratings set forth in the NCHET 2006-1 Offering Documents is confirmed by subsequent events. Specifically, ***more than 39% of the loans supporting plaintiffs' NCHET 2006-1 Certificates, are currently in default*** because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment

grade" NCHET 2006-1 Certificates are now rated at "junk" status or below. Clearly, plaintiffs' NCHET 2006-1 Certificates were not the highly rated, "investment grade" securities defendants represented them to be. The evidence supporting the falsity of the NCHET 2006-1 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Current Percentage of Outstanding Loan Balance in Default	Moody's Ratings		S&P's Ratings		Fitch's Ratings	
				Initial	Current	Initial	Current	Initial	Current
A2C	64342VQS3	All	39.46%	Aaa	Ca	AAA	CCC	AAA	CC
M3	64342VQV6	All	39.46%	Aa3	WR	AA-	D	AA	D

e. Transfer of Title

262. The NCHET 2006-1 Offering Documents also represented that the loans underlying the NCHET 2006-1 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the NCHET 2006-1 Offering Documents stated that "[o]n the closing date, the depositor will deposit the mortgage loans into the trust." *See* NCHET 2006-1 Pros. Supp. at S-5. The NCHET 2006-1 Offering Documents also stated:

> Pursuant to the mortgage loan purchase agreement . . . , the seller will transfer to the depositor all of its right, title and interest in and to each mortgage loan, the related mortgage note, mortgages and other related documents, including all payments received after the cut-off date other than payments of principal and interest on the mortgage loans due on or before the cut-off date. . . . [T]he depositor will transfer such right, title and interest to the issuing entity and pursuant to the indenture, the issuing entity will pledge such right, title and interest to the indenture trustee.

Id. at S-108. The NCHET 2006-1 Offering Documents further stated: "In addition, the depositor will, with respect to each mortgage loan, deliver or cause to be delivered to the trustee, or to the custodian hereinafter referred to: . . . the mortgage note endorsed, without recourse, to the order of the trustee or in blank, the original Mortgage with evidence of recording indicated thereon and an

assignment of the Mortgage to the trustee or in blank, in recordable form." *See* NCHET 2006-1 Pros. at 26-27. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

16. The NYMT 2005-3 Certificates

263. The New York Mortgage Trust 2005-3, Mortgage-Backed Notes ("NYMT 2005-3 Certificates") were issued pursuant to a Prospectus Supplement dated December 19, 2005. Credit Suisse Securities, as the primary underwriter, played a critical role in the fraudulent structuring, offering and sale of the NYMT 2005-3 Certificates.

264. Plaintiffs and/or their assignors purchased the following NYMT 2005-3 Certificates:

Plaintiff	Original Purchaser	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Purchased From
Phoenix	Greyhawk	M1	649603AH0	12/16/2005	$ 7,500,000	Credit Suisse Securities
Phoenix	Harrier	M2	649603AJ6	12/16/2005	$24,088,000	Credit Suisse Securities

265. Each of the above purchases was made by Greyhawk's and Harrier's investment manager, Brightwater, in direct reliance upon the NYMT 2005-3 Offering Documents, including draft and/or final NYMT 2005-3 Prospectus Supplements. Brightwater's diligent investment processes are described in great detail in §VIII.A, *infra*.

a. Underwriting Guidelines

266. The NYMT 2005-3 Offering Documents disclosed that 100% of the mortgage loans underlying plaintiffs' NYMT 2005-3 Certificates were originated by The New York Mortgage Company, LLC ("NYMC"). *See* NYMT 2005-3 Pros. Supp. at S-21.

267. The NYMT 2005-3 Offering Documents represented that NYMC's "[u]nderwriting standards are applied by or on behalf of a lender to evaluate a borrower's credit standing and repayment ability, and the value and adequacy of the related mortgaged property as collateral." *See*

id. at S-25. The NYMT 2005-3 Offering Documents also represented that "[t]he Seller's underwriting philosophy, as applied by NYMC, is to weigh all risk factors inherent in the loan file, giving consideration to the individual transaction, borrower profile, the level of documentation provided and the property used to collateralize the debt." *Id.* The NYMT 2005-3 Offering Documents further represented:

> The creditworthiness of each applicant is a primary consideration in NYMC's review of residential loan requests. Creditworthiness is determined based on the Seller's analysis of each applicant's financial statement, cash flow position and credit history. Financial information in the loan file must be analyzed to ensure that there are sufficient assets and financial resources to repay the loan. The Seller's underwriting guidelines require NYMC to examine a prospective borrower's credit report and liabilities are matched and reviewed with those reflected in the applicant's credit report. The analysis of the applicant's cash flow position requires the income to be verified.

Id. at S-26. In addition, the Offering Documents represented:

> The Seller's underwriting standards are applied by NYMC to evaluate the prospective borrower's credit standing and repayment ability, and the value and adequacy of the mortgaged property as collateral. Under those standards, a prospective borrower must generally demonstrate that the ratio of the borrower's monthly housing expenses (including principal and interest on the proposed mortgage loan and, as applicable, the related monthly portion of property taxes, hazard insurance and mortgage insurance) to the borrower's monthly gross income and the ratio of total monthly debt to the borrower's monthly gross income (the "debt-to-income ratios") are within acceptable limits. The maximum acceptable debt-to-income ratios, which are determined on a loan-by-loan basis, vary depending on a number of underwriting criteria, including the loan-to-value ratio, loan purpose, loan amount and credit history of the borrower. In addition to meeting the guidelines for debt-to-income ratios, each prospective borrower is required to have sufficient cash resources to pay the down payment, closing costs and required reserves.

Id. Moreover, the NYMT 2005-3 Offering Documents represented that "[u]nder each program, the Seller's underwriting guidelines require that NYMC obtain appraisals from independent appraisers or appraisal services for properties that are to secure mortgage loans." *Id.* at S-27. As further detailed *infra*, these representations were false and misleading at the time they were made. Contrary to defendants' affirmative representations, the truth was that NYMC had completely abandoned its

stated underwriting guidelines and was simply seeking to originate as many loans as possible, ***without*** any regard for the borrowers' actual repayment ability or the true value and adequacy of the mortgaged properties to serve as collateral. *See* §VI.A.1, *infra*.

268. The following example, based upon public bankruptcy filings and other sources, provides further specificity with respect to how the originators' failure to comply with guidelines resulted in loans being issued to borrowers who could not afford to repay them. Specifically, one borrower obtained a loan for $549,000 in 2006 which was contained within the NYMT 2005-3 offering. ***This borrower had no income in 2006***, according to the borrower's sworn bankruptcy filings. ***However, the borrower's monthly debt payments were at least $8,420, far in excess of the borrower's monthly income***. The borrower's monthly debt payments were in addition to the borrower's monthly expenses for things such as taxes, utilities, groceries, health care, transportation and the like. Clearly, this borrower could not afford to repay the loan. This is confirmed by the fact that the borrower declared bankruptcy shortly after obtaining the loan at issue, in 2007.

b. Loan-to-Value Ratios

269. The NYMT 2005-3 Offering Documents also made certain misrepresentations regarding the LTV ratios associated with the loans supporting the NYMT 2005-3 Certificates purchased by plaintiffs and/or their assigning entities. Specifically, the NYMT 2005-3 Offering Documents represented that only a very small percentage of the loans supporting plaintiffs' NYMT 2005-3 Certificates had LTV ratios over 80%, and that ***none*** of the loans supporting plaintiffs' NYMT 2005-3 Certificates had LTV ratios over 100%.

270. Plaintiffs, however, have performed an industry-accepted historical valuation analysis on the actual loans underlying plaintiffs' NYMT 2005-3 Certificates, which reveals that the LTV ratio percentages stated in the NYMT 2005-3 Offering Documents were materially false ***at the time they were made***. The following chart summarizes the LTV ratio percentages stated in the NYMT

2005-3 Offering Documents, and the actual percentages that should have been stated according to plaintiffs' industry-accepted analysis:

Tranche Purchased	CUSIP	Applicable Supporting Loan Group	Stated Percentage of Loans Having LTV Ratios Over 80%	Actual Percentage of Loans Having LTV Ratios Over 80%	Stated Percentage of Loans Having LTV Ratios Over 100%	Actual Percentage of Loans Having LTV Ratios Over 100%
M1	649603AH0	All	3.13%	43.29%	0.00%	17.38%
M2	649603AJ6	All	3.13%	43.29%	0.00%	17.38%

c. Credit Ratings

271. The NYMT 2005-3 Offering Documents also represented that the NYMT 2005-3 Certificates purchased by plaintiffs had been assigned certain high "investment grade" credit ratings by S&P and Moody's, indicating that the securities were very strong, safe investments with an extremely low probability of default. Specifically, the NYMT 2005-3 Offering Documents represented that plaintiffs' NYMT 2005-3 Certificates had been assigned AA+/Aa2 and AA/A2 ratings – signifying extremely safe and stable securities.

272. These representations, however, were false and misleading when made. In truth, plaintiffs' NYMT 2005-3 Certificates should not have received AA+/Aa2 and AA/A2 credit ratings, because they were ***not*** safe, "investment grade" securities. Rather, as defendants were well aware, plaintiffs' NYMT 2005-3 Certificates were extremely risky, speculative grade "junk" bonds or worse**,** backed by low credit quality, extremely risky loans. Indeed, one of the primary reasons that S&P and Moody's had assigned such high ratings to plaintiffs' NYMT 2005-3 Certificates was because defendants had fed them falsified information regarding the NYMT 2005-3 Certificates' underlying loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, and false borrower DTI ratios.

273. The falsity of the credit ratings set forth in the NYMT 2005-3 Offering Documents is confirmed by subsequent events. Specifically, ***approximately 21% of the loans supporting***

plaintiffs' NYMT 2005-3 Certificates are currently in default because they were made to borrowers who either could not afford them or never intended to repay them. Moreover, plaintiffs' "investment grade" NYMT 2005-3 Certificates are now rated at "junk" status or below. Clearly, plaintiffs' NYMT 2005-3 Certificates were not the highly rated, "investment grade" securities defendants represented them to be. The evidence supporting the falsity of the NYMT 2005-3 Certificates' credit ratings is set forth in further detail in §VI.D, *infra*, and summarized by the following chart:

Tranche Purchased	**CUSIP**	**Applicable Supporting Loan Group**	**Current Percentage of Outstanding Loan Balance in Default**	**Moody's Ratings**		**S&P's Ratings**	
				Initial	**Current**	**Initial**	**Current**
M1	649603AH0	All	20.96%	Aa2	B2	AA+	BBB+
M2	649603AJ6	All	20.96%	A2	C	AA	B

e. Transfer of Title

274. The NYMT 2005-3 Offering Documents also represented that the loans underlying the NYMT 2005-3 Certificates would be timely transferred to the issuing trust, so that the trust would obtain good title to the mortgage loans comprising the pool for the offering. Specifically, the NYMT 2005-3 Offering Documents stated that "[o]n the Closing Date, pursuant to the Mortgage Loan Purchase Agreement, the Seller will sell the Initial Mortgage Loans to the Depositor," and that "[p]ursuant to the Transfer and Servicing Agreement, the Depositor will, in turn, sell the Mortgage Loans to the Trust." *See* NYMT 2005-3 Pros. Supp. at S-47. The NYMT 2005-3 Offering Documents also represented:

> [The depositor] will deliver or cause to be delivered to your trustee or its custodian (a) the related original mortgage note, endorsed without recourse to the trustee, or in blank . . . , (b) the original recorded mortgage . . . , (c) . . . an original assignment of the mortgage to the trustee or in blank in recordable form . . . .

See NYMT 2005-3 Pros. at 28-29. These statements were false and misleading. Defendants failed to legally and properly transfer the promissory notes and security instruments to the trusts. *See* §VI.E, *infra*.

VI. DEFENDANTS' STATEMENTS AND OMISSIONS WERE MATERIALLY FALSE AND MISLEADING

A. Defendants' Statements that the Loan Underwriting Guidelines Were Designed to Assess a Borrower's Ability to Repay the Loan and to Evaluate the Adequacy of the Property as Collateral for the Loan Were Materially False and Misleading

275. As set forth above in §V, *supra*, the Offering Documents for each Credit Suisse Offering represented that the underlying loans were originated pursuant to specific, prudent, underwriting guidelines, which the Offering Documents represented were generally intended to: (1) assess the borrowers' creditworthiness and/or ability to repay the loans; and/or (2) evaluate the adequacy of the underlying properties to serve as security for the loans.

276. These representations were incredibly material to plaintiffs because they confirmed that, regardless of the technical guidelines being applied, the certificates' underlying loans were generally being originated on the basis of a valid determination that the borrower would be able to repay his or her loans and that the property serving as collateral would provide adequate security in the event of a default. In other words, these representations assured plaintiffs that the loans supporting their investments were unlikely to default, and further, unlikely to incur a loss in the unlikely event of default. As such, they were material to plaintiffs' investment decision.

277. Unfortunately for plaintiffs, however, defendants' material representations regarding the underwriting guidelines purportedly being used to originate the certificates' underlying loans were false and misleading at the time defendants made them. As set forth immediately below, the originators of the certificates' underlying loans had, in fact, completely abandoned their stated underwriting guidelines and were simply seeking to originate as many loans as possible, ***without*** any regard for borrowers' actual repayment ability or the true value and adequacy of mortgaged properties to serve as collateral.

1. The Loan Originators Had Systematically Abandoned the Underwriting Guidelines Set Forth in the Credit Suisse Offering Documents

278. The representations in the Offering Documents for the Credit Suisse Offerings concerning the loan originators' underwriting guidelines were false and misleading when made. In reality, the loan originators at issue herein were ***not*** originating loans in accordance with their stated underwriting guidelines and were ***not*** evaluating the borrowers' true repayment ability or assessing the actual value of the properties serving as collateral. Instead, during the relevant time period, 2004-2007 – when the loans underlying the offerings at issue herein were originated – the loan originators identified herein had abandoned their stated underwriting guidelines, and were simply making loans to nearly anyone they could, without regard for the borrowers' repayment ability or the adequacy of the mortgaged properties to serve as collateral. These lenders made loans as fast as they possibly could and ignored the borrowers' true repayment ability because they knew defendants would purchase the loans ***regardless*** of whether the lenders had given any consideration to the borrowers' ability to repay, and ***regardless*** of whether the loans otherwise complied with the lenders' stated underwriting guidelines. This was the case because the demand for RMBS was skyrocketing during the relevant time period and defendants were making billions of dollars by satisfying that demand. Thus, defendants were scrambling to buy as many loans as they could, as fast as they could, so that they could quickly bundle the loans into RMBS offerings like those at issue herein, and sell them to unsuspecting investors like plaintiffs.

279. Defendants knew that, contrary to their affirmative representations in the Offering Documents, the certificates' underlying loans had not been originated pursuant to underwriting guidelines that were designed to evaluate the borrowers' ability to repay or assess the adequacy of the mortgaged properties to serve as collateral. Defendants also knew, as a result, that the loans were not likely to be repaid. Defendants, however, failed to disclose any of this information.

Instead, they simply packaged the defective loans as quickly as they could, concealed them within the offerings, and passed the risk of their repayment on to plaintiffs.

280. Contrary to their affirmative representations in the Offering Documents, defendants knew that the loan originators had, in fact, implemented loan underwriting policies that were simply designed to extend mortgages to as many borrowers as possible, regardless of whether those borrowers could actually repay the loans. These policies included, among other things:

- Falsifying borrowers' incomes and/or coaching borrowers to misstate their incomes on loan applications to qualify them for loans they could not afford to repay, while making it appear the loans complied with the stated underwriting guidelines;
- Coaching borrowers to omit or understate debts and expenses on loan applications to qualify them for loans they could not afford to repay, while making it appear the loans complied with the stated underwriting guidelines;
- Steering borrowers to loans that exceeded their borrowing capacity;
- Approving borrowers based on "teaser rates" for loans, despite knowing that the borrowers would not be able to afford the fully indexed rates when the loan rates adjusted; and
- Approving non-qualifying borrowers for loans under "exceptions" to the originators' underwriting standards based on purported "compensating factors," when no such compensating factors ever existed.

281. Further, the loan originators and their agents had become so aggressive at improperly approving and funding mortgage loans that many of the loans at issue herein were made to borrowers who had either not submitted required documents or had falsely altered the required documentation. In many instances, required income/employment verifications were improperly performed because the lenders' clerical staff either did not have adequate verification skills or did not care to exercise such skills, and oftentimes verifications were provided by inappropriate contacts at a borrower's place of employment (*e.g.*, a friend of the borrower would complete the verification instead of the human resources department at the borrower's employer). In this way, many suspect and false income verifications and loan applications were accepted by the originators at issue herein.

282. In addition, borrowers who submitted "stated income" loan applications were routinely approved on the basis of stated income levels that were inflated to extreme levels relative to their stated job titles, in order to give the appearance of compliance with stated underwriting guidelines. In many cases, the loan originators herein actually coached the borrowers to falsely inflate their stated incomes in order to qualify under the originators' underwriting guidelines. Inflation of stated income was so rampant that a study cited by Mortgage Asset Research Institute later found that almost ***all*** stated income loans exaggerated the borrower's actual income by 5% or more, ***and more than half overstated income by at least 50%***.

283. This type of income inflation was a direct result of the loan originators' abandonment of their stated underwriting guidelines and their complete disregard for the borrowers' true repayment ability. For instance, many "stated income" borrowers were actually wage earners who could have supplied Internal Revenue Service ("IRS") Forms W-2 or other income-verifying documentation, but were not required to do so. Instead, they were steered to stated income loans by the lenders at issue herein, who then helped the borrowers "state" falsely inflated incomes. Originators also routinely issued loans without requiring the borrowers to execute an IRS Form 4506, which would have allowed the lenders to access such borrowers' tax returns from the IRS, because the originators simply did not want to know that the borrowers' true income levels were less than the income levels reported on the loan applications. In other cases, lenders removed documentation of a borrower's income from loan files, because such documentation revealed that the borrower's stated income was falsely inflated. The falsification of income levels by the borrowers and the loan originators at issue herein was rampant.

284. The originators at issue herein also routinely violated their stated underwriting guidelines by using falsely inflated appraisals and other valuations – which, in turn, resulted in falsely understated LTV ratios – in order to approve loans that otherwise would have never been

made. The U.S. Government's Financial Crisis Inquiry Commission ("FCIC") investigation confirmed that, during the time the loans underlying plaintiffs' certificates were originated, the lenders at issue herein were regularly pressuring appraisers to falsely inflate their appraisals in order to meet or exceed the amount needed for the subject loans to be approved. This was especially true for loans, such as those at issue here, which were originated by lenders with the intention of being pooled and sold to defendants for eventual re-sale to investors like plaintiffs, who would ultimately bear the risk of default.

285. The constant pressure appraisers routinely faced from originators such as those at issue herein was described by Jim Amorin, President of the Appraisal Institute, who stated in his April 23, 2009 FCIC testimony that "***[i]n many cases, appraisers are ordered or severely pressured to doctor their reports and to convey a particular, higher value for a property, or else never see work from those parties again***. . . . ***[T]oo often state licensed and certified appraisers are forced into making a 'Hobson's Choice***.'" This complete lack of independence by appraisers was also noted by Alan Hummel, Chair of the Appraisal Institute, in his testimony before the U.S. Senate, where Hummel noted that the dynamic between lenders and appraisers created a "terrible conflict of interest" by which ***appraisers "experience[d] systemic problems with coercion" and were "ordered to doctor their reports" or else they would never "see work from those parties again" and were placed on "'exclusionary appraiser lists***.'" Testimony on "Legislative Proposals on Reforming Mortgage Practices" presented by Alan E. Hummel before the House Committee on Financial Services, at 5 (Oct. 24, 2007).

286. As a result of such pressures, appraisers routinely provided the originators at issue herein with falsely inflated appraisals that had no reasonable basis in fact, in direct contravention of the Offering Documents' false and misleading representations that the certificates' underlying loans had been originated pursuant to underwriting guidelines that required the lenders to evaluate the

adequacy of the mortgaged properties to serve as collateral for the loans. Moreover, the falsely inflated property values also resulted in artificially understated LTV ratios, which caused the loans and certificates to appear to plaintiffs to be of much higher credit quality and to be much less risky than they actually were.

287. Following below are detailed allegations demonstrating that the loan originators for the offerings at issue herein did not comply with the loan underwriting guidelines stated in the Offering Documents, thereby rendering the Offering Documents false and misleading. While the allegations concerning these originators cover most of the offerings, plaintiffs have not provided such allegations for every originator at issue herein in an attempt to streamline the allegations. Nonetheless, on information and belief, plaintiffs allege that ***all*** of the loan originators at issue herein engaged in similar conduct, and that such allegations are factually supported by both the investigations of the FCIC and the U.S. Senate, each of which concluded, after extensive investigations, that the breakdown in residential loan underwriting standards alleged herein was systemic in the lending industry during the relevant time period (2004-2007). *See* The Financial Crisis Inquiry Report ("FCIC Report") at 125 ("***Lending standards collapsed, and there was a significant failure of accountability and responsibility throughout each level of the lending system***."); Levin-Coburn Report at 12 (One of four major causes of worldwide financial collapse was that "***[l]enders introduced new levels of risk into the U.S. financial system by selling . . . home loans with . . . poor underwriting***."); *id.* at 50 ("***The Subcommittee investigation indicates that" there were "a host of financial institutions that knowingly originated, sold, and securitized billions of dollars in high risk, poor quality home loans***.").

288. In fact, in 2005, federal examiners and agencies conducted a "confidential . . . study of mortgage practices at six companies that together had originated . . . almost half the national total" of mortgages in that year. ***The study "'showed a very rapid increase in the volume of these***

irresponsible, very risky loans,'" according to Sabeth Siddique, then head of credit risk at the Federal Reserve Board's Division of Banking Supervision and Regulation. ***For "[a] large percentage of the[] loans" reviewed, "the underwriting standards . . . had deteriorated***." FCIC Report at 172.

289. In addition, on December 30, 2007, *The Kansas City Star* published an article titled "American Dreams Built on a Shaky Foundation of Subprime Loans," analyzing the Nation's mortgage meltdown and the reasons behind it. The news article painted a picture of systematic abandonment of underwriting guidelines by lenders during the relevant time period (2004-2007). Kurt Eggert, a law professor and member of the Federal Reserve's Consumer Advisory Panel was quoted: "'***Originators were making loans based on quantity rather than quality. . . . They made loans even when they didn't make sense from an underwriting standpoint***.'" The news article further stated: "Mark Duda, a research affiliate at Harvard University's Joint Center for Housing Studies, said that because ***brokers were so intent to quickly sell off loans to investors, they had little incentive to make sure the loans were suitable for borrowers. 'They were setting people up to fail***,' Duda said." A news article in the *San Diego Union-Tribune* on November 16, 2008 echoed these sentiments, stating: "Bankruptcy specialists say part of what led to the housing market collapse ***was systemic. Lenders set themselves up for problems by not requiring buyers to prove they could afford the loans*** . . . ."

290. At a March 11, 2009 hearing of the U.S. House of Representatives Subcommittee investigating the Nation's mortgage meltdown, Representative Jeb Hensarling from the State of Texas was even more blunt about the pervasive abandonment of underwriting guidelines: "***Mortgage fraud ran rampant for a decade, on the lenders' side and on the borrower side . . . . We know that mortgage fraud ran rampant*** . . . ."

291. The systemic abandonment of stated underwriting guidelines by all of the originators identified herein during the period 2004-2007, which included the originators' complete failure to evaluate borrowers' repayment ability, is further corroborated by the following allegations, which demonstrate that the abandonment of loan underwriting guidelines was rampant, pervasive and commonplace in the residential lending industry during 2004-2007.

2. The Offering Documents Misrepresented the New Century Originators' Underwriting Guidelines

292. New Century Mortgage Corporation and NC Capital Corporation are two affiliated companies that acquired or originated loans for the offerings at issue herein. Both companies were subsidiaries of New Century Financial Corporation. New Century Mortgage Corporation originated and/or acquired loans directly and sold them to the sponsors for the offerings at issue herein. For the offerings at issue herein identifying NC Capital Corporation as an originator, NC Capital Corporation acquired the loans from New Century Mortgage Corporation and then transferred the loans to the sponsors for such offerings. Because New Century Mortgage Corporation and NC Capital Corporation operated under the dominion and control of New Century Financial Corporation, and because the loans they contributed to the trusts at issue herein were all products of the same dubious loan origination practices, these originators are collectively referred to herein as "New Century."

293. As detailed *supra*, defendants' Offering Documents purported to describe the underwriting guidelines that were supposedly used by New Century in originating loans underlying plaintiffs' certificates. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, New Century had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard

for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

294. The U.S. Senate investigation found that New Century "w[as] known for issuing poor quality subprime loans," but "[d]espite [its] reputation[] for poor quality loans, leading investment banks [such as the Credit Suisse Defendants] continued to do business with [New Century] and helped [it and other lenders] sell or securitize hundreds of billions of dollars in home mortgages." Levin-Coburn Report at 21.

295. In 2007, New Century went into bankruptcy. An examiner was appointed by the bankruptcy court to investigate New Century and its collapse. After reviewing "a large volume of documents" from numerous sources, including New Century, and interviewing over 100 fact witnesses, the bankruptcy examiner filed a detailed report concerning New Century. *See* Final Report of Michael J. Missal, *In re: New Century TRS Holdings, Inc.*, No. 07-10416 (D. Del. Feb. 29, 2008) ("Examiner's Report") at 14, 16. The examiner confirmed that New Century routinely failed to follow its stated underwriting guidelines when originating loans during the relevant time period. The examiner, after his comprehensive fact-gathering process, "conclude[d] that New Century engaged in a number of significant improper and imprudent practices related to its loan originations." *Id.* at 2. Among other things, the examiner found that:

- "***New Century had a brazen obsession with increasing loan originations, without due regard to the risks associated with that business strategy . . . and trained mortgage brokers to originate New Century loans in the aptly named 'CloseMore University***.'" *Id.* at 3.

- "***The increasingly risky nature of New Century's loan originations created a ticking time bomb that detonated in 2007***." *Id.*

- "***New Century . . . layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers***." *Id.*

- ***A New Century employee had informed the company's senior management in 2005 that, under New Century's underwriting guidelines, "'<u>we are unable to actually determine the borrowers' ability to afford a loan</u>.'"*** *Id.*

- "***New Century also made frequent [unmerited] exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan," so much so that a senior officer of New Century warned internally that the "'number one issue is exceptions to guidelines***.'" *Id.* at 3-4.

- ***New Century's Chief Credit Officer had noted as early as 2004 that New Century had "'no standard for loan quality***.'" Id. at 4 ***"'[L]oan quality'" referred to "New Century's loan origination processes, which were supposed to ensure that New Century loans met its own internal underwriting guidelines . . . .***" *Id.* at 109.

- "***Instead of focusing on whether borrowers could meet their obligations under the terms of the mortgages, a number of members of [New Century's] Board of Directors and Senior Management told the Examiner that their predominant standard for loan quality was whether the loans New Century originated could be sold or securitized . . . .***" *Id.* at 4.

- ***A large number of New Century's loans did not meet its underwriting guidelines, suffering from defects such as "defective appraisals, incorrect credit reports and missing documentation***." *Id.* at 109.

- ***From 2003 forward, New Century's Quality Assurance and Internal Audit departments identified "significant flaws in New Century's loan origination processes***." *Id.* at 110.

- ***Notwithstanding all the foregoing facts, New Century's Board of Directors and Senior Management did little to nothing to remedy the company's abandonment of its stated underwriting guidelines***. *Id.*

296. The FCIC found that New Century "ignored early warnings that its own loan quality was deteriorating and stripped power from two risk-control departments that had noted the evidence." FCIC Report at 157. The FCIC reported that New Century's Quality Assurance staff "had found severe underwriting errors," while New Century's Internal Audit department had "identified numerous deficiencies in loan files," with seven out of nine reviews of the company's loan production department resulting in "'unsatisfactory'" ratings. *Id.* New Century's senior management's reaction to the revelation of this information – establishing that New Century was not complying with its underwriting guidelines – was not what one would expect. Instead of making

efforts designed to bring the company into compliance with its underwriting guidelines, New Century's management directed that the negative results be removed from the company's loan tracking performance, that the Quality Assurance department be dissolved, and that the Internal Audit department's budget be cut. *Id.*

297. New Century thereafter continued making numerous loans in violation of the company's stated underwriting guidelines, and then sold them to defendants. Indeed, New Century had a practice during the relevant time period whereby if a loan it attempted to sell to one securitizer was rejected because it was found not to comply with New Century's underwriting guidelines, New Century would put that defective loan into a subsequent pool of loans and sell it to another RMBS securitizer.

298. Patricia Lindsay ("Lindsay"), a former fraud specialist for New Century, told the FCIC that New Century's definition of a "good" loan changed during the relevant time period: "'The definition of a good loan changed from "one that pays" to "one that could be sold."'" FCIC Report at 105. The import of this statement was that New Century no longer cared if the loan met its stated underwriting guideline of determining whether the borrower could afford to repay the loan. Rather, the guideline was ignored, as it only mattered if defendants would purchase the loan. As will become more evident, defendants did buy huge quantities of such loans – even when the borrowers could not afford to repay them – and defendants did so knowingly. In fact, Lindsay pointed out that Credit Suisse, *i.e.*, "'Wall Street[,] was very hungry for our product. We had loans sold three months in advance, ***before they were even made at one point***.'" FCIC Report at 117. Given that defendants bought New Century's defective loans ***before*** they were even made, and thus could not possibly have determined whether the loans met the stated underwriting guidelines, it is evident that defendants did not bother to determine whether the statements in the Offering Documents were true.

In any event, as alleged more fully below, ***defendants did in fact know that the Offering Documents were false***.

299. Lindsay also confirmed to the FCIC that New Century subjected its appraisers to the pressures described above. Specifically, Lindsay stated that New Century's appraisers "fear[ed]" for their "livelihoods," and therefore cherry picked data "that would help support the needed value rather than finding the best comparables to come up with the most accurate value." Written Testimony of Patricia Lindsay to the FCIC, April 7, 2010, at 5.

300. The Attorney General for the Commonwealth of Massachusetts ("Attorney General") similarly found that New Century originated numerous loans to borrowers who could not afford them, and which were illegal and not in compliance with New Century's purported underwriting guidelines. On June 24, 2010, the Attorney General announced a settlement with Morgan Stanley related to its purchase, financing and securitization of New Century loans. Morgan Stanley agreed to pay $102 million to settle charges that it assisted New Century in making and securitizing awful loans to borrowers who could not afford to repay them. In announcing the settlement, the Attorney General also released the findings of its investigation. The Attorney General found the following with respect to New Century's loans:

- The Attorney General found that ***New Century was making unfair and illegal loans to borrowers in Massachusetts who could not afford to repay them***. The Attorney General found that New Century unlawfully qualified borrowers for adjustable rate mortgages by using "teaser" rates, instead of using the "fully indexed rates," as required by law. By using teaser rates, New Century was able to calculate artificially low DTI ratios to qualify borrowers for loans they could not afford. The Attorney General found that if the borrowers' DTI ratios had been properly calculated, 41% of the loans Morgan Stanley purchased from New Century were to borrowers who could not afford them. Assurance of Discontinuance at 13, *In re: Morgan Stanley & Co. Incorporated*, No. 10-2538 (Mass. Super. Ct., Suffolk Cty. June 24, 2010).

- The Attorney General found that, by late 2005, New Century engaged in "***sloppy underwriting for many loans and stretching of underwriting guidelines to encompass or approve loans not written in accordance with the guidelines***." *Id.* at 9.

- The Attorney General found that ***New Century successfully pressured Morgan Stanley into buying loans which both parties knew did not comply with the underwriting guidelines***. In March 2006, New Century complained to Morgan Stanley that it was rejecting too many loans and further pressured Morgan Stanley to buy more loans, by suggesting that it would begin shifting its business to other buyers if Morgan Stanley did not buy more loans. ***The very next month, in April 2006, Morgan Stanley's senior bankers purchased hundreds of New Century loans that Morgan Stanley's due diligence team had rejected***. In addition, "Morgan Stanley's due diligence teams began to be more responsive to New Century's desire to include additional [defective] loans in the purchase pools." *Id*. at 10.

- The Attorney General found that ***the majority of loans Morgan Stanley purchased from New Century and securitized in 2006 and 2007 did not comply with the underwriting guidelines***. According to the Attorney General, Clayton was hired to determine whether samples of New Century's loans "complied with the originator's underwriting guidelines and whether the loans were in compliance with applicable laws. When Clayton's examination uncovered loans that were in violation of guidelines or law in any respect, it graded the loans as 'exceptions.'" ***The Attorney General's investigation found that "[i]n Morgan Stanley's 2006-2007 New Century [loan] pools, the large majority of the loans reviewed by Clayton were identified by Clayton as having some type of exception. Most loans had multiple exceptions." The Attorney General further found that "[d]uring 2006 and 2007, Morgan Stanley waived exceptions on and purchased a large number of the loans found by Clayton to violate guidelines without sufficient compensating factors. In the last three quarters of 2006, Morgan Stanley waived more than half of all material exceptions found by Clayton . . . and purchased a substantial number of New Century loans found by Clayton to violate guidelines without sufficient compensating factors***." *Id*.

- The Attorney General also found that New Century "***loans with certain exceptions such as high DTI ratios or high LTV or CLTV ratios that were in excess of underwriting guidelines but within a tolerance found acceptable to Morgan Stanley were purchased without a review by Clayton for compensating factors***." *Id*.

- ***The Attorney General found that large numbers of New Century's loans had LTV ratios exceeding 100%, contrary to representations in the offering documents***. In the offering documents, defendants represented that pursuant to the underwriting guidelines, almost none of the loans had LTV ratios over 100%. However, the Attorney General found that "***31% of the New Century loans on properties checked via BPOs . . . and securitized by Morgan Stanley in 2006 and 2007 had []LTV ratios . . . that were greater than 100%***." *Id*. at 13.

- The Attorney General found that ***New Century's "stated income" loans contained falsely inflated borrower incomes***. The Attorney General found that "***[a]s early as October 2005, Morgan Stanley's diligence team determined . . . that the stated income on a number of New Century loans was unreasonable. In early 2006, a Morgan Stanley employee commented that stated income credit was not adequately***

evaluated by New Century. . . . On average, the stated income of these borrowers was approximately 42% higher than the income of fully documented borrowers." *Id*. at 13-14.

- ***The Attorney General found that New Century's deficient and illegal lending practices went on unabated throughout the relevant time period***. The Attorney General found that "***[n]otwithstanding the problems identified above, Morgan Stanley continued to . . . purchase and securitize New Century's subprime mortgages through 2006 and the first half of 2007***." *Id*. at 14.

301. New Century also made the U.S. Government's Office of the Comptroller of the Currency's ("OCC") "Worst Ten in the Worst Ten" list of lenders, which identified the lenders with the highest number of foreclosures in the ten metropolitan areas with the highest foreclosure rates. ***Indeed, New Century was the worst of all the lenders – New Century's loans had more foreclosures than any other lender's loans originated during the 2005-2007 time period***. This corroborates the fact that New Century did not determine whether borrowers could afford to repay the loans, thereby rendering the Offering Documents false and misleading.

3. The Offering Documents Misrepresented WMC's Underwriting Guidelines

302. As detailed *supra*, defendants' Offering Documents purported to describe the underwriting guidelines that were supposedly used by WMC in originating loans underlying plaintiffs' certificates. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, WMC had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

303. Like many other lenders during the relevant time period (2004-2007), WMC had a culture of deception and fraud as the basis of its lending operations. According to a news article published by *iWatch News* in January 2012, which was based on interviews of eight former WMC

employees, ***WMC's mantra was "Fraud pays***." The article described a company, during the period from 2004-2007 (the timeframe when the loans at issue herein were originated), that routinely disregarded its purported underwriting guidelines and instead "***embraced fraud as a tool for pushing through loans that borrowers couldn't afford***." Sales managers were making upwards of $1-$2 million a year and were incentivized to make as many loans as possible. ***Therefore, they ignored WMC's underwriting guidelines and "used falsified paperwork, bogus income documentation and other tricks to get loans approved and sold off to Wall Street investors," i.e., defendants***.

304. The *iWatch News* article quoted former WMC Compliance Manager Dave Riedel ("Riedel"), who worked at WMC from 2004 until it was closed by its parent company, General Electric, Inc. ("GE"), in 2007. Riedel was a quality control manager for WMC and was responsible for detecting fraud in the company's loan applications. Riedel started working for WMC immediately after it was acquired by GE in 2004. Riedel had previously worked as a real estate appraiser, loan underwriter, and most recently, as a mortgage fraud investigator manager for Washington Mutual Bank, another originator that was similarly engaged in fraudulent lending practices that ignored company lending guidelines.

305. Riedel supervised a team of people at WMC who watched over WMC's lending activities in southern California. *iWatch News* reported that Riedel's team "found ***many examples of fraud committed by in-house staffers or the independent mortgage brokers who helped bring in customers to the lender. These included faking proofs of loan applicants' employment and faking verifications that would-be home buyers had been faithfully paying rent for years rather than, say, living with their parents." It also included "creating bogus W-2 tax forms," with some employees doing it the "old-school" way, by "cutting and pasting numbers from one photocopy to another," while the more modern fraudsters "had software on their computers that allowed them to create***

***W-2s from scratch*.**" Such widespread practices obviously did not comply with WMC's stated underwriting guidelines.

306. Riedel told *iWatch News* that in 2005 he investigated a WMC sales manager who oversaw hundreds of loan originations per month. Riedel's audit of these loans "found that many of the deals showed evidence of fraud or other defects such as missing documents." Riedel reported the discrepancies to a GE compliance officer. Rather than reprimanding the sales manager or disciplining him, according to Riedel, "'nothing changed.'" However, GE's/WMC's response to Riedel was swift and sure – Riedel was stripped of his title and staff and given nothing more to do. According to a former WMC executive, Riedel was thereafter "'branded as a whistleblower and not a team player. . . . They just marginalized him and he really didn't have anything to do'" subsequently.

307. Notwithstanding the above, in 2006 Riedel was trying to rebuild his career within WMC. He was involved in meetings with GE officials, trying to give GE a sense of how serious WMC's fraud problems were. Riedel recalled an audit of a group of loans during that time period that indicated 78% of the loans were fraudulent, containing either falsified incomes or employment. Moreover, Riedel was also working on a computer program designed to detect fraud in WMC's loans. Riedel told *iWatch News* that the program detected fraudulent loans but that WMC never regularly used the program. It was at a meeting about this computer program that Riedel attended where a WMC executive declared "Fraud pays."

308. Riedel's experience was not an isolated incident. The *iWatch News* article also quoted Gail Roman, a former WMC loan auditor in New York. ***iWatch News reported that Roman revealed that she and her colleagues "dug up persuasive evidence of inflated borrower incomes and other deceptions on loan applications," but that WMC's "[m]anagement ignored their reports and approved the loans anyway." Roman stated: "'They didn't want to hear what you found . . .***

[e]ven if you had enough documentation to show that there was fraud or questionable activity.'" Roman further reported that such fraudulent activity occurred the entire time she was at WMC during the period from 2004-2006.

309. Former WMC risk analyst Victor Argueta confirmed to *iWatch News* the complete abandonment of WMC's underwriting guidelines taking place at the company during the relevant time period. Argueta reported that ***one of WMC's top salespersons was never reprimanded or disciplined for using his computer to create fake documents to get borrowers' loans approved, even though this salesperson's fraudulent activities were well known within the company. Argueta stated the following concerning this salesperson's fabrication of documents: "'Bank Statements, W-2s, you name it, pretty much anything that goes into a file, . . . [a]nything to make the loan look better than what was the real story'" was created by this salesperson***.

310. Glen Pizzolorusso was interviewed for a National Public Radio broadcast. Pizzolorusso, a former WMC Area Sales Manager, discussed the horrible loans WMC made to borrowers: "'We looked at loans, these people didn't have a pot to piss in. . . . [T]hey could barely make the car payment, and now we're giving them a $300,000 to $400,000 house."

311. WMC's conduct led to having a Statement of Charges filed against it by the Washington State Department of Financial Institutions, Division of Consumer Services, in 2008 for deceptive and unfair lending practices. *See* Statement of Charges, No. C-07-557-08-SC01, June 4, 2008. The Statement of Charges alleged that the Washington State regulator reviewed 86 loans extended by WMC and found that 76 of them were defective or otherwise violated Washington State law. WMC subsequently entered into a consent order with the State of Washington. In addition, according to the *Los Angeles Times*, the Federal Bureau of Investigation and the Department of Justice were looking into potentially criminal business practices at WMC. The government was investigating the very conduct at issue in this case: whether WMC used falsified paperwork,

overstated income and other tactics to push through questionable loans, according to sources cited by the *Los Angeles Times*. The probe focused on whether senior managers condoned improper practices that enabled fraudulent loans to be sold to investors, according to the *Los Angeles Times*.

312. Further proof that WMC did not comply with the underwriting guidelines stated in the Offering Documents is found in a lawsuit against WMC and EquiFirst, another originator of loans underlying the certificates at issue here. *See* Complaint, *MASTR Asset Backed Securities Trust 2006-HE3 v. WMC Mortgage Corp., et al.*, No. 11-CV-02542-PAM-TNV (D. Minn. Sept. 2, 2011) ("*WMC* Complaint"). In that action, the trustee of an RMBS trust alleged that loans within that trust acquired from WMC and EquiFirst were fraudulent, did not comply with the stated underwriting guidelines, and did not determine properly whether the borrowers could afford to repay their loans. A sample of 200 loans within the trust were reviewed and it was found that 150 of those loans were either fraudulent, not originated pursuant to the underwriting guidelines, and/or did not have a proper determination made of whether the borrower could afford to repay the loan. ***In other words, a stunning 75% of the loans did not comply with the underwriting guidelines***. Given WMC's culture, as described above, such a statistic is understandable. The complaint in the action gave examples of loans that were made even though they did not comply with the underwriting guidelines. For example, WMC extended a loan to a borrower that claimed in his loan application that he earned $14,782 per month performing "account analysis," when in fact his tax returns showed he actually earned $1,548 per month driving a taxi. The borrower also did not disclose in his loan application thousands of dollars per month in debt payments that he had, thus concealing his true DTI ratio, which was in violation of the lending guidelines. He further misrepresented that he would occupy the property as his primary residence when in fact he did not. *WMC* Complaint, ¶24.

313. Another loan was extended by WMC to a borrower that claimed in her loan application that she made $9,200 per month as a billing manager when in fact she made only $2,405

per month as an optometric technician. This borrower also did not disclose all of her debts, thus concealing that she had an unacceptable DTI ratio. Her co-borrower also misrepresented his income and occupation to be $8,800 per month earned as a "grade check" rather than the actual $2,843 per month he earned as a laborer. *Id.*, ¶25. These examples are stunningly similar to the examples of borrowers alleged herein at §V.

314. In addition, the U.S. Government's Federal Housing Finance Agency ("FHFA") sued GE and others in 2011 concerning the ***exact*** type of conduct at issue herein. *See FHFA v. General Electric Company, et al.*, No. 652439/2011 (N.Y. Sup. Ct., N.Y. Cty.). In the *FHFA* action, FHFA sued GE and others for misrepresentations in offering documents for other RMBS offerings, and alleged, as here, that there were misrepresentations in the offering documents that WMC originated loans pursuant to underwriting guidelines designed to assess the borrowers' repayment ability and the adequacy of the properties to serve as collateral for the loan. In the *FHFA* action, as here, it is alleged that WMC did not originate loans pursuant to such guidelines but instead abandoned its guidelines.

315. Further corroborating that WMC did not comply with its purported guidelines is the fact that WMC made the OCC's "Worst Ten in the Worst Ten" list of lenders with the most foreclosures on loans originated between 2005 and 2007. WMC was not the worst lender, but it was close – WMC was fourth "worst" of all lenders. Such high foreclosure rates further demonstrate that, contrary to defendants' representations, WMC was not actually attempting to determine whether borrowers could afford to repay their loans.

4. The Offering Documents Misrepresented Ameriquest's Underwriting Guidelines

316. As detailed *supra*, defendants' Offering Documents purported to describe the underwriting guidelines that were supposedly used by Ameriquest in originating loans underlying

plaintiffs' certificates. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, Ameriquest had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

317. The FCIC documented how Ameriquest has long been one of the worst lenders in the United States. Rampant fraudulent lending practices occurred at Ameriquest both before and during the relevant time period. The FCIC obtained testimony from the former Attorney General from Illinois, Lisa Madigan, who, along with a coalition of 49 states and the District of Columbia, investigated and sued Ameriquest for its abusive lending practices, ultimately settling with the company in 2006 for $325 million. Madigan's FCIC testimony revealed that Ameriquest routinely disregarded the borrowers' true repayment ability and violated its own stated underwriting guidelines by, among other things, "inflating home appraisals" and using other "fraudulent [lending] practices." FCIC Report at 12.

318. Ed Parker, the former head of Ameriquest's Fraud Investigations Department, told the FCIC that he detected lending fraud at the company within one month of joining it in January 2003. He sent reports to Ameriquest's senior management but they did nothing. He also heard that other company departments were complaining that he "'looked too much'" into the loans. *Id*. His efforts to point out fraudulent lending practices at Ameriquest eventually led first to a demotion and then subsequently to him being laid off by Ameriquest in May 2006. ***Parker reported that "fraudulent loans were very common at the company***" during his tenure at Ameriquest. *Id.* at 161. Ameriquest's dubious lending practices were so bad that the former president of the National Association of Mortgage Brokers told the FCIC that Ameriquest was "'***absolutely' corrupt***." *Id.* at 14.

319. The FCIC further found that "Ameriquest . . . originated vast numbers of high-risk, nontraditional mortgages that were . . . often beyond borrowers' ability to repay." FCIC Report at 418. The FCIC also found that Ameriquest made loans "that would probably never be repaid." *Id.* at 424.

320. Other former Ameriquest employees have confirmed that the company had a culture of deception that ignored the underwriting guidelines even before the relevant time period. For example, Tyson Russum ("Russum"), a former Ameriquest Loan Officer, told a news reporter for National Public Radio in May 2007 that when he began work at Ameriquest in 2003, his first day consisted of watching a training video: "I think when I showed up for my first day there was three of us that were all new hires that came together and told us to go into the conference room and watch a couple of videos. Well, the first video they threw in was a movie called "'Boiler Room.'" Boiler Room was a movie about corrupt stockbrokers selling stock in bogus companies. Russum stated that "[t]he impression I got was that they were trying to get across to us that it's basically ***make the sale at any cost***. And that kind of set the, I guess, set the mood for the next 11 to 12 months that I was with the organization."

321. Russum revealed that Ameriquest employees would white out income numbers on borrowers' Forms W-2 and bank statements and then fill in larger amounts to qualify borrowers for loans they could not afford. He stated that the practice was known within the company as taking the loan documents to the "art department." Russum also witnessed the forging of signatures on loan documents. In addition, he witnessed the use of "bait-and-switch tactics," such as having borrowers unwittingly sign fake fixed-rate loan documents, thereby making the borrower believe he or she was obtaining a fixed-rate loan, but also including in the stack of papers the borrower was signing adjustable rate loan documents which the borrower then unknowingly signed. After the loan was

extended, the faked fixed-rate loan documents were thrown away, locking the borrower into an adjustable rate loan that he or she did not want.

322. In addition, in other cases, Russum reported that Ameriquest managers encouraged loan officers to conceal from borrowers the actual cost and interest rates on loans and to lie to borrowers, putting the borrowers into loans they could not afford. For some loans made by Ameriquest, which had fixed payments for the first two years and then adjusted sharply upwards thereafter, managers instructed Russum to lie to the borrowers and tell them that the payments would be "fixed for as long as they need[ed] it to be," when in fact that was not true.

323. Ameriquest borrower Dianna Quartelli confirmed that such practices occurred, and also that Ameriquest put borrowers into loans they could not afford. She stated that Ameriquest initially told her that her loan payments would not increase. Subsequently, however, she received a letter advising her that her monthly payment of $849 was increasing to $1,200. Quartelli stated: "***[The letter] said now the mortgage [payment] was going to go up to $1,200. And also in that same letter, in six months, it was going up again, guaranteed not to go down. Well, we couldn't afford the $849 we were dealing [with]***."

324. Russum reported that Ameriquest personnel also routinely lied to borrowers by telling them that prepayment penalties on the loans would be waived, when in fact they were not. Some borrowers were required to pay more than $10,000 when they refinanced their loans early. Borrower Quartelli confirmed that Ameriquest had lied to her in this way also. Russum reported that one borrower got so mad when he had been deceived in this way that he "threatened to come up and shoot us all in the head."

325. Russum confirmed that Ameriquest ignored its purported underwriting guidelines through the following statement that was reported by the American News Project in May 2009:

"***[T]he entire system [at Ameriquest] [wa]s built to do whatever you can to close as many loans at the highest fee amount as possible***."

326. Former Ameriquest Loan Officer Omar Khan confirmed that the company falsified borrower incomes to qualify borrowers for loans they could not afford. In a news report from the American News Project in May 2009, Khan recalled situations where "***the borrower felt uncomfortable about signing the stated income letter***" – the portion of the loan application where the borrower was to report his income – "***because they didn't want to lie." Nonetheless, "the stated income letter would be filled out later on by the processing staff" at Ameriquest, and the loan was thereafter funded***. Khan also recalled "bait-and-switch" tactics at Ameriquest and said they occurred "because you could never get them [the borrowers] to the table if you were honest."

327. Ameriquest's systemic abandonment of its stated underwriting guidelines, and its use of fraudulent loan practices, has led to the filing of numerous lawsuits against the company by its borrowers. The borrowers alleged that Ameriquest used faked documents, forged signatures, and falsified incomes to put borrowers into loans they did not want and which they could not afford.

328. That Ameriquest did not originate loans pursuant to its stated underwriting guidelines is corroborated by the fact that the company made the OCC's "Worst Ten in the Worst Ten" list of lenders with the highest numbers of foreclosures on loans originated between 2005 and 2007. Had Ameriquest actually followed its underwriting guidelines of determining whether borrowers could repay their loans, it would not have incurred so many foreclosures.

5. The Offering Documents Misrepresented Encore's Underwriting Guidelines

329. As detailed *supra*, defendants' Offering Documents purported to describe the underwriting guidelines that were supposedly used by Encore in originating loans underlying plaintiffs' certificates. *See* §V. For the reasons set forth immediately below, these representations

were false and misleading at the time defendants made them. In truth, Encore had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

330. During the relevant period, Bear Stearns acquired or held an ownership interest in at least three residential mortgage lenders, in order to ensure that it had a steady supply of mortgage loans to securitize. Those three lenders were EMC Mortgage, Bear Stearns Residential Mortgage Corporation ("Bear Stearns Residential") and Encore, which was acquired by Bear Stearns Residential in October 2006, and incorporated into Bear Stearns' "origination platform." Numerous sources have confirmed that Encore did ***not*** originate loans that complied with their stated underwriting guidelines, and in fact, did ***not*** evaluate their prospective borrowers' true repayment ability. Bear Stearns Residential hired Clayton to test samples of the loans they were originating and/or purchasing to determine whether the loans complied with their underwriting guidelines. During 2006 and 2007, Clayton found that large numbers of loans that Bear Stearns Residential originated, or purchased from other lenders, did not comply with Bear Stearns Residential's underwriting guidelines. Nonetheless, Bear Stearns Residential and EMC Mortgage "waived" large percentages of such defective loans into the RMBS sold by Bear Stearns. ***In the third quarter of 2006, Bear Stearns Residential waived 56% of the defective loans identified by Clayton into offerings sold to the investing public. Finally, in the fourth quarter of 2006, Bear Stearns Residential waived 25% of the defective loans into the offerings***.

331. Like Clayton, Watterson was also hired by Bear Stearns to test samples of the loans it was originating or purchasing and identify the loans which did not comply with the underwriting guidelines. In a National Public Radio interview in May of 2008, former Watterson employee Tracy Warren stated that Watterson's largest customer was Bear Stearns. She recounted obvious

fraudulent loan applications where hotel workers claimed $15,000 per month in income. She stated that whenever she would reject deficient loan files, her supervisors would usually overrule her and approve the loans. She recalled loans to borrowers with terrible credit scores and falsified incomes which she rejected, only to be overruled by her supervisors who would say "'Oh, it's fine. Don't worry about it.'" Warren stated that about 75% of the loans which should have been rejected were purchased nonetheless.

332. A former underwriter for both Clayton and Watterson was deposed and testified under oath in *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*, No. 650421/2011 (N.Y. Sup. Ct., N.Y. Cty.), that Bear Stearns instructed both Clayton and Watterson to "approve loans ***that often did not satisfy the underwriting guidelines***," to ignore defects in loan applications, to code defective loans as non-defective and to change many of the grades on loans that were coded as defective to reflect that they were non-defective. For example, the former underwriter testified:

- During the due diligence process, Clayton and Watterson underwriters were directed to overlook defects and to grade defective loans as non-defective. These instructions came from Bear Stearns and were conveyed to underwriters by their supervisors.
- Clayton and Watterson underwriters were directed by Bear Stearns not to look for fraud in the loan files and to overlook any fraudulent documents.
- Clayton and Watterson underwriters were directed by Bear Stearns to grade loans as non-defective, even where the underwriters determined the borrowers' incomes listed on loan applications were unreasonable.
- Clayton and Watterson performed "1003/1008 underwriting," a practice whereby an underwriter does not verify the information on the borrower's loan application, when reviewing loans for Bear Stearns.
- Clayton and Watterson were instructed by Bear Stearns to grade defective loans as non-defective by utilizing "compensating factors" that were not supported by the data in the loan files.
- Clayton underwriters used the phrase "Bear don't care" to describe Bear Stearns' attitude towards the due diligence underwriting review process.

333. Various lawsuits by insurers, trustees and investors have been filed, all claiming that Bear Stearns Residential and/or Encore misrepresented that they originated loans pursuant to their stated underwriting guidelines. *See, e.g.*, *Deutsche Zentral-Genossenschaftsbank AG, et al. v. JPMorgan Chase & Co., et al.*, No. 650293/2012 (N.Y. Sup. Ct., N.Y. Cty.); *Sealink Funding Limited v. Bear Stearns & Co. Inc., et al.*, No. 652681/2011 (N.Y. Sup. Ct., N.Y. Cty.); *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*., No. 650421/2011 (N.Y. Sup. Ct., N.Y. Cty.); *Syncora Guarantee Inc. v. J.P. Morgan Sec. LLC*, No. 651566/2011 (N.Y. Sup. Ct., N.Y. Cty.); *Assured Guaranty Corp. v. EMC Mortgage LLC et al.*, No. 10-CV-5367-NRB (S.D.N.Y.); *Federal Housing Finance Agency v. JPMorgan Chase & Co., et al.*, No. 11-CV-06188 (S.D.N.Y.); *Fort Worth Emps. Ret. Fund v. JPMorgan Chase & Co., et al.*, No. 09-CV-03701-JPO (S.D.N.Y.); *Syncora Guarantee Inc. v. EMC Mortgage Corp.*, No. 09-CV-03106-PAC (S.D.N.Y.).

334. As illustrated in a news article published in *The Oregonian* on February 5, 2008, Encore ignored its stated underwriting guidelines, falsified incomes, did not determine whether the borrowers could afford to repay their loans, forged documents, and put borrowers into loans they obviously could not afford to repay. *The Oregonian* recounted the story of borrower Paul Hoffhine Jr., a mentally disabled man who subsisted on Social Security payments of $624 per month. Hoffhine had inherited a house from his parents in the 1980s that was completely paid for. In February 2004, Encore cold-called Hoffhine and talked him into taking out a loan on the property so that Hoffhine could take equity out of the property in the form of cash. The loan had monthly payments of $489.46. Thus, Hoffhine's DTI ratio was over 78% based ***solely*** on the mortgage loan extended by Encore (the $489.46 loan payment divided by Hoffhine's monthly $624 Social Security payment equals 78.4%). Hoffhine's other debts were not used to calculate the 78+% DTI ratio above, and therefore, if he had other debts, his DTI ratio would have been even higher. However, in the offering documents describing Encore's underwriting guidelines, it was stated that the maximum

DTI ratios allowed under Encore's guidelines were only 50%-55%. Clearly, Encore did not follow its underwriting guidelines for DTI ratios.

335. Even worse, according to *The Oregonian*, a few months later, in December 2004, Encore persuaded Hoffhine to refinance and take out a new loan. The monthly payment on the new loan increased to $617 per month, just $7 less than Hoffhine's entire monthly income, thus generating a DTI ratio of over 98%. Thus, on the second loan, Encore again ignored its stated underwriting guidelines requiring DTI ratios of 55% or less, and gave Hoffhine a loan which generated a DTI ratio of over 98%, far in excess of the stated DTI ratio maximums under Encore's underwriting guidelines, and far beyond Hoffhine's ability to repay.

336. Even more disturbing was the fact that Encore engaged in fraudulent activity related to the loan. *The Oregonian* reported that, in Hoffhine's loan file, there was "a document claiming that Hoffhine was earning $3,500 a month as a handyman . . . '[u]nderneath [which was] a scrawled signature – Paul Hauck Hoffhine Jr.'" The news article reported that Hoffhine denied making the statement or signing the document, which was an obvious forgery containing fraudulent information. The article quoted Hoffhine as follows on the document: "'***They forged my signature, [and] they inflated my income***.'" After being threatened with a lawsuit, Encore quickly and quietly settled with Hoffhine.

337. The sheer number of lawsuits and news reports, coupled with internal Bear Stearns documents, establishes that the Offering Documents were false. In addition, the nearly identical nature of the allegations in every lawsuit – that Encore simply ignored its underwriting guidelines and routinely failed to evaluate the borrowers' true repayment ability – further corroborates that the Offering Documents contained misrepresentations regarding this originator's underwriting practices.

6. The Offering Documents Misrepresented Aames's Underwriting Guidelines

338. As detailed *supra*, defendants' Offering Documents purported to describe the underwriting guidelines that were supposedly used by Aames in originating loans underlying plaintiffs' certificates. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, Aames had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

339. Aames was a California-based lender that originated loans for one of the offerings at issue herein. In May 2006, Aames was acquired by Accredited Home Lenders, Inc. ("Accredited"), another California-based lender. As a result of these lenders' consolidation during the period at issue herein, plaintiffs' allegations regarding Aames's and Accredited's conduct are discussed together in this section.

340. Accredited faced stiff competition from other lenders in a market that was rapidly expanding. As a result, in order to gain market share, the company deviated from its stated underwriting guidelines and disregarded both the borrowers' true repayment ability and the adequacy of properties to serve as collateral. According to a former Accredited Regional Manager, who worked for the company from 2003 through 2005, the constant refrain that he heard from Accredited's account executives was "if we don't do [the loan] somebody else will." He stated that the mortgage market "was screaming for new loans," and that Accredited's competitors, such as Argent and New Century, "were ready to fund the deal" no matter the quality of the loan. This created great pressures on Accredited's account executives to find ways to have their loans approved.

341. As a result, Accredited engaged in lending fraud. According to a former Senior Underwriter, who worked at Accredited's Austin, Texas branch from July 2006 through March 2007, the company originated numerous stated income loans with falsified incomes. According to the former Senior Underwriter, ***Accredited had a pattern and practice, on stated income loan applications, of falsely adjusting borrowers' incomes upward so that the borrowers would appear to qualify for the loans under the company's underwriting guidelines.*** This Senior Underwriter's manager routinely asked the Senior Underwriter to falsely increase borrowers' incomes. In fact, the Senior Underwriter's manager hosted a tour for visiting outside mortgage brokers at Accredited's Austin branch. The purpose of the tour was to attempt to have these independent mortgage brokers do business with Accredited, that is, to bring borrowers to Accredited. According to the former Senior Underwriter, during this tour, ***the Senior Underwriter's manager told the brokers that "unlike other originators [Accredited] will adjust stated incomes if necessary***." In addition, on another occasion, at a branch meeting for the operations team, the former Senior Underwriter recalled that a new employee had questioned the practice of allowing Accredited employees to adjust stated incomes. ***Accredited Operations Manager Will Shipp publicly responded: "It is common practice to change the stated income, but we will talk about that later***." The former Senior Underwriter found Accredited's practices involving stated income to be so objectionable that she resigned from the company.

342. The underwriting system at Accredited allowed loan processors, account executives and underwriters to adjust loan applications. Thus, according to the former Senior Underwriter, the underwriting system lacked any security feature, and therefore any employee was allowed to view and adjust loan applications. This left Accredited's loan applications open to being manipulated, which was frequently done. The Senior Underwriter recalled situations where she had rejected a loan only to later learn her rejection had been overridden and the loan approved.

343. According to a former Accredited Regional Manager, account executives would often bypass him and go over his head to seek approval for rejected loans and loans with unmet conditions from Lance Burt, Accredited's Divisional Manager for Southern California. The former Regional Manager stated that Burt had the final authority to approve loans and in fact "made the final approval of all loans." He described Burt's authority as "carte blanche" to approve any loans that he (Burt) wanted. The former Regional Manager joked that Burt had "the magic pen" and could make loans happen. He stated that Burt "routinely signed off" on rejected loans, approving them. The former Regional Manager also stated that he believed that Burt also approved non-compliant loans from high-producing independent mortgage brokers in order to maintain the business relationship between the company and the brokers. In other words, the decision to approve defective loans in these circumstances became a "business decision," according to the former Regional Manager.

344. The former Regional Manager recalled a situation where an Accredited account executive was terminated because the account executive had committed fraud with at least 10-15 funded loans. However, Accredited never reported the incident to law enforcement or anyone else, in order to avoid negative publicity and a potential decline in the company's stock price. He noted that the fired account executive began working at Countrywide within a few days.

345. According to a former Corporate Underwriter in Accredited's Orange, California, office, who worked for the company from 1995 until 2007, there were many problems in Accredited's loans. For example, the former Corporate Underwriter saw issues such as stated "income[s] [that were] out of whack" with the stated profession, and paystubs that appeared to be fraudulent. In other cases, she questioned whether or not the applicant actually "lived in the house" listed on the application as the current residence. ***This former Corporate Underwriter reported that Divisional Manager Burt also routinely overrode her rejections of loans, as he had done with the***

former Regional Manager. This former Corporate Underwriter stated that "[a] lot of loans" were approved by Burt which she believed lacked any credible basis for approval.

346. According to the former Corporate Underwriter, there were instances of account executives manipulating closing documents after loan approval with the assistance of document "drawers." She recalled an account executive "paying off" a document drawer "to turn the other way" while the account executive manipulated and falsified the loan documents on the document drawer's computer.

347. Further corroboration that Accredited routinely ignored its stated underwriting guidelines comes from a former Accredited Underwriter who worked in one of Accredited's Florida offices, from 2005 until 2006. The former Underwriter stated that, rather than following its stated underwriting guidelines, ***if the borrower came close to meeting the guidelines, Accredited approved the loan application***. Moreover, the former Underwriter reported that his Operations Manager regularly issued overrides for loans that did not comply with the underwriting guidelines, and approved them anyway.

348. A lawsuit filed against Accredited in late August 2007 confirms the accounts of the foregoing former Accredited employees that Accredited ignored its underwriting guidelines. In late August 2007, shareholders of Accredited's parent company, Accredited Home Lenders Holding Co., filed a complaint against the company and its officers and directors, alleging that they committed securities fraud by lying about the company's financial condition. *See* Corrected Consolidated Class Action Complaint, *Atlas v. Accredited Home Lenders Holding Co., et al.*, No. 07-cv-488-H (RBB) (S.D. Cal. Aug. 24, 2007) (the "*Atlas* Complaint"). In the *Atlas* Complaint, the plaintiffs cited to reports from at least 12 former Accredited and Aames employees. Those former employees reported a pervasive and systematic disregard by Accredited of its underwriting guidelines, including the following:

- ***According to a former Corporate Underwriter who worked at Accredited between June 2004 and March 2005, "the Company approved risky loans that did not comply with its underwriting guidelines"; his rejections of loans "were frequently overridden by managers on the sales side of the business"; and his overridden loan rejections involved loans containing improper "'straw borrower[s],'" employment that could not be verified, inflated incomes, and violations of Accredited's DTI, credit score, LTV and employment history requirements***. *Id*., ¶¶48-49.

- ***According to a former Accredited employee from 1998 until December 2006, pressure to approve loans, regardless of quality, was especially bad from mid-2005 until the time she left the company at the end of 2006, and Accredited's growing issues with problem loans was due to management's overrides of the underwriting and appraisal processes***. *Id*., ¶¶50-51.

- ***According to a former Corporate Underwriter at Accredited from August 2003 until February 2006, her decisions to reject loans were constantly overridden by management, and such overrides "were rampant***." *Id*., ¶¶56-57.

- ***According to a former Accredited Regional Manager who worked at the company throughout 2005, "the Company's underwriting guidelines were frequently overridden by senior management***." *Id*., ¶¶58-60.

- ***According to other former Accredited employees who worked at the company during the relevant time period (2004-2007), management frequently overrode underwriters' decisions to reject loans that did not comply with the underwriting guidelines. According to one underwriter, when underwriters challenged the overrides they were told by management: "'"You have to go forward with it.'" If you made a big stink about it, they would raise their eyebrows and say "'Do you want a job?'"" Other former employees recounted loan applications that were approved with inflated incomes, inflated appraisals, and suspicious verifications of employment***. *Id*., ¶67.

- ***Several former Accredited employees who worked with appraisals reported that the company management overrode licensed appraisers' decisions and approved many loans based on inflated appraisals***. *Id*., ¶77.

- ***A former Aames and Accredited employee reported that both Aames and Accredited frequently made exceptions to their underwriting guidelines. According to this former employee, while Aames' violations of the underwriting guidelines were limited to one exception per loan, at Accredited it was common to see multiple exceptions per loan***. *Id*., ¶83.

349. Accredited ultimately paid $22 million to settle the shareholders' lawsuit in 2010.

7. The Offering Documents Misrepresented Long Beach's Underwriting Guidelines

350. As detailed *supra*, the supposed underwriting guidelines used by Long Beach were described by defendants in the Offering Documents. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, Long Beach had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

351. Long Beach originated loans for two of the offerings at issue herein. Long Beach was a subsidiary of Washington Mutual Bank ("WaMu"), and given that WaMu owned and controlled Long Beach during the relevant time period and was also an originator that engaged in the same type of dubious lending practices, WaMu and Long Beach are sometimes discussed together in this section.

352. The U.S. Senate's Permanent Subcommittee on Investigations performed a "case study" on WaMu's and Long Beach's lending practices in connection with its investigation of the worldwide financial collapse. The investigation was based on the Subcommittee's collection and review of millions of documents from WaMu and others, including the review of internal e-mails, reports and memoranda, as well as interviews of at least 30 former WaMu employees and regulatory officials.

353. The U.S. Senate's investigation of WaMu and Long Beach conclusively established that, during 2004-2007 and before, WaMu and Long Beach ignored their stated underwriting and appraisal guidelines and made loans to borrowers who could not afford them. The Senate investigation expressly found, based on the interviews of former WaMu and Long Beach employees, as well as on the review of numerous internal company documents, that:

> ***WaMu and Long Beach engaged in a host of shoddy lending practices that contributed to a mortgage time bomb. Those practices included qualifying high risk borrowers for larger loans than they could afford; steering buyers to higher risk loans; accepting loan applications without verifying the borrower's income; . . . and authorizing loans with multiple layers of risk. In addition, WaMu and Long Beach failed to enforce compliance with their lending standards; allowed excessive loan error and exception rates; exercised weak oversight over the third party mortgage brokers who supplied half or more of their loans; and tolerated the issuance of loans with fraudulent or erroneous borrower information. They also designed compensation incentives that rewarded loan personnel for issuing a large volume of higher risk loans, valuing speed and volume over quality***.

Levin-Coburn Report at 49.

354. The U.S. Senate Report, based on an extensive investigation of the facts, further concluded that "WaMu and . . . Long Beach . . . used shoddy lending practices riddled with credit, compliance, and operational deficiencies to make tens of thousands of high risk home loans that too often contained excessive risk, fraudulent information, or errors." Id. at 50. The U.S. Senate investigation further found that "WaMu and Long Beach too often steered borrowers into home loans they could not afford," *id*. at 51, and also "securitized not just poor quality loans, but also loans that [their] own personnel had flagged as containing fraudulent information. That fraudulent information included, for example, misrepresentations of the borrower's income and of the appraisal value of the mortgaged property." Id. at 125.

355. The U.S. Senate Report detailed numerous instances where WaMu and Long Beach ignored their underwriting guidelines and engaged in outright lending fraud. *Id.* at 48-160.

356. The U.S. Senate investigation found that Long Beach was "known for issuing poor quality subprime loans [and that] [d]espite [its] reputation[] for poor quality loans, leading investment banks [such as defendants herein] continued to do business with [Long Beach] and helped [it and other lenders] sell or securitize hundreds of billions of dollars in home mortgages." Levin-Coburn Report at 21.

357. During the relevant period, Long Beach was overrun with loans that had not been originated pursuant to its underwriting guidelines. In 2004, Dave Griffin, a WaMu risk officer, was asked to review Long Beach. He prepared an internal memorandum concerning his findings and stated: "'***[In] 2004: I conducted an informal but fairly intensive market risk audit of Long Beach . . . . We found a total mess***.'" *Id.* at 77. In 2005, a large number of Long Beach loans experienced early payment defaults, or EPDs, meaning the borrowers failed to make a payment within three months of the loans being sold to investors. EPDs "typically indicate[d] that ***there was a problem in the underwriting process***." *Id.* A review of the EPD loans was undertaken, and an internal company memorandum was prepared on November 11, 2005 detailing numerous violations of Long Beach's underwriting guidelines and/or fraudulent lending practices. The memorandum noted the following issues about the loans:

- "***High incident rate of potential fraud . . . .***"
- "***Underwriting guidelines are not consistently followed . . . .***"
- "***Stated Income should be reviewed more closely ([fraud] incidence rate of 35%) . . . .***"
- "***Signatures should be checked – 14% Borrowers signature vary[.]***"
- "***Altered documents are usually detectable – 5% White-out on documentation[.]***"

Id. at 78.

358. In addition, on April 17, 2006, WaMu's General Auditor conducted another audit of Long Beach's EPD loans and found that Long Beach had "'***breakdowns in manual underwriting processes***.'" *Id.* Other internal WaMu documents established that Long Beach was also engaging in a number of illegal predatory lending practices, also violations of its underwriting guidelines. *See* Levin-Coburn Report at 79. Things were so bad at Long Beach that ***WaMu's president sent an e-***

mail to WaMu's CEO on September 14, 2006 describing Long Beach as "'terrible, in fact negative right now.'" Id. at 80.

359. On January 2, 2007, WaMu's Chief Risk Officer, Ron Cathcart, forwarded an e-mail to colleagues concerning the "top five priority issues" at Long Beach. All of them dealt with failures at Long Beach to comply with its underwriting guidelines:

> "***Appraisal deficiencies that could impact value and were not addressed[;] Material misrepresentations relating to credit evaluation were confirmed[;] Legal documents were missing or contained errors or discrepancies[;] Credit evaluation or loan decision errors[; and] Required credit documentation was insufficient or missing from the file.***"

Id. at 82.

360. The Senate investigation uncovered several internal communications repeatedly documenting that Long Beach was not complying with its underwriting guidelines and/or was engaged in outright lending fraud. A sample of those documents contained the following quotes concerning Long Beach's underwriting (or more accurately the lack thereof):

- "'***[The review] confirmed fraud on 115 [loan applications] . . . .***'"
- "'***[U]nderwriting deficiencies is a repeat finding . . . .***'"
- "'***(71%) [of] stated income loans were identified for lack of reasonableness of income[.]***"
- "'***(71%) had credit evaluation or loan decision errors . . . .***'"
- "'***(31%) had appraisal discrepancies or issues that raised concerns that the value was not supported.***'"
- "'***[T]he overall system . . . has deficiencies related to multiple, critical origination and underwriting processes . . . .***'"
- "'***Underwriting guidelines established to mitigate risk of unsound underwriting decisions are not always followed . . . .***'"
- "'***[A]ccurate reporting and tracking of exceptions to policy does not exist.***'"

Levin-Coburn Report at 84-85.

361. At a hearing before the U.S. Senate Subcommittee held on April 13, 2010, former WaMu Chief Risk Officer Jim Vanasek was asked if it was fair to say that WaMu was not worried about the risk associated with Long Beach's loans because it sold those loans and passed the risk of such loans onto investors. Mr. Vanasek's answer was "'***Yes, I would say that was a fair characterization***.'" *Id.* at 85. This statement confirmed that neither WaMu nor Long Beach was worried about complying with their underwriting guidelines; instead they were only concerned with being able to sell their defective loans to defendants, which they were successful in achieving.

362. Because Long Beach was systematically abandoning its underwriting guidelines, it faced millions of dollars in loan repurchase demands from Goldman Sachs. *See* Levin-Coburn Report at 487 & n.2053. This is further evidence that the Offering Documents misrepresented that Long Beach originated loans pursuant to underwriting guidelines.

363. That the Offering Documents for offerings containing Long Beach loans were false is confirmed by the fact that Long Beach made the OCC's "Worst Ten in the Worst Ten" list of lenders with the highest numbers of foreclosures on loans it originated during 2005-2007. ***Only New Century – another originator at issue herein – had more foreclosures than Long Beach***. Long Beach's high foreclosure rate further corroborates the fact that, contrary to defendants' representations in the Offering Documents, it did ***not*** actually determine – or care – whether borrowers could afford to repay their loans.

8. The Offering Documents Misrepresented Wells Fargo's Underwriting Guidelines

364. As detailed *supra*, Wells Fargo's supposed underwriting guidelines were described by defendants in the Offering Documents. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, Wells Fargo had completely abandoned its stated underwriting guidelines and was routinely originating loans

without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

365. Wells Fargo was well aware that it was extending loans to borrowers whose applications contained falsified information (be it from the borrowers themselves or Wells Fargo loan underwriters). Darcy Parmer, a former quality assurance and fraud analyst for Wells Fargo, reported to the FCIC that she was aware of "'***hundreds and hundreds and hundreds of fraud cases***'" in Wells Fargo's home equity loan division. FCIC Report at 162. She also told the FCIC that "'***at least half of the loans she flagged for fraud were nevertheless funded, over her objections***.'" *Id.*

366. In fact, a former Wells Fargo loan wholesaler admitted to *Bloomberg Businessweek* that "he regularly used the copiers at a nearby Kinko's to alter borrowers' pay stubs and bank account statements. He would embellish job titles – turning a gardener, for instance, into an owner of a landscaping company – and inflate salaries." This former Wells Fargo employee told the news outlet: "'I knew how to work the system.'"

367. Wells Fargo's abandonment of its underwriting standards and its fraudulent loans are the subject of substantial litigation. For example, there is the lawsuit styled *Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A. et al.*, No. 08-cv-00062-JFM (D. Md. 2008). There, like here, the City of Baltimore alleged that Wells Fargo extended loans without regard to "the borrower's ability to repay." Third Amended Complaint, *City of Baltimore*, ¶3. Also, there, like here, it is alleged that falsified borrower incomes are at issue.

368. In addition, in April 2010, the City of Memphis filed its First Amended Complaint in *City of Memphis v. Wells Fargo Bank N.A.*, No. 09-cv-02857-STA-CGE (W.D. Tenn. Dec. 30, 2009), alleging that Wells Fargo "fail[ed] to underwrite African-American borrowers properly." *Id.*, ¶7.

369. The *City of Memphis* and *City of Baltimore* complaints include sworn declarations from many former Wells Fargo employees which provide evidence of predatory lending and abandonment of underwriting guidelines. For instance, Camille Thomas, a loan processor at Wells Fargo from January 2004 to January 2008, stated under oath that loans were granted based on inflated appraisals, which allowed borrowers to get larger loans than they could otherwise qualify for due to the inflated appraisals' impacts on the LTV ratio calculations. Thomas also stated that some loans were granted based on falsified income documents. Similarly, another affidavit by Doris Dancy, a credit manager at Wells Fargo from July 2007 to January 2008, stated that managers put pressure on employees to convince people to apply for loans, even if the person could not afford the loan or did not qualify for it. She was also aware that loan applications contained false data, used to qualify customers for loans.

370. In addition, in a lawsuit styled *Wells Fargo Bank, N.A. v. Quicken Loans Inc.*, No. 08-cv-12408-SJM-SDP (E.D. Mich. 2008), it is alleged that Wells Fargo expected that its borrowers would overstate their income on "stated income" loan applications and that these borrowers would not have the ability to make their monthly mortgage loan payments.

371. Moreover, in an action alleging similar activities by Wells Fargo with regard to its loan underwriting practices, styled *In re Wells Fargo Mortg. Backed Certificates Litig.*, No. C 09-01376 SI (N.D. Cal.) ("*Wells Fargo*"), on April 22, 2010, the court denied defendants' motion to dismiss the complaint, which alleged a company-wide series of reckless lending practices at Wells Fargo, which, as here, were not disclosed in the offering documents.

372. As the court found:

> Plaintiffs allege that the Offering Documents contained numerous false and misleading statements and omissions. First, plaintiffs state that the documents misstated Wells Fargo's underwriting process and loan standards. According to plaintiffs, Wells Fargo often extended loans to borrowers who did not meet its creditworthiness standards, resulting in a low-quality mortgage pool. *Id.*, ¶¶70, 76.

> Plaintiffs cite statements by several confidential witnesses ("CWs") who assert that Wells Fargo placed "intense pressure" on its loan officers to close loans, including by coaching borrowers to provide qualifying income information, accepting blatantly implausible or falsified income information, and lowering its standards near the end of the calendar year. *Id.*, ¶¶83-88. Plaintiffs allege that the third-party loan originators disregarded Wells Fargo's stated underwriting standards "in order to approve as many mortgages as possible." *Id.*, ¶94.
>
> . . . One of plaintiff's CWs states that approximately 70% of the loans he signed off on while working as a Wells Fargo underwriter involved mortgages worth more than 95% of the home's value. *Id.*, ¶108.
>
> * * *
>
> Plaintiffs allege, in other words, that the true loan-to-value ratio frequently exceeded 100% because the homes were actually worth far less than their stated appraisal value. *Id.*, ¶100.
>
> Plaintiffs again support their allegations primarily with statements from confidential witnesses. *Id.* ¶103 ("CW 2 confirmed that, at Wells Fargo Home Mortgage, representatives constantly pushed the appraisers they worked with to inflate the value of the real estate underlying the mortgage loans"); ¶107 ("CW 1 remarked that 'appraisals were very inflated,' and observed that the retail officers 'always managed to get the value they wanted'"); ¶108 (CW7, a former Senior Underwriter with Wells Fargo Home Mortgage, "estimated that 70% of the loans CW7 worked with had an LTV over 95%"). Plaintiffs additionally cite to a 2007 survey which "found that 90% of appraisers reported that mortgage brokers and others pressured them to raise property valuations to enable deals to go through," and to congressional testimony in which Alan Hummel, Chair of the Appraisal Institute, stated that loan appraisers had "experience[d] systemic problems of coercion." *Id.* ¶¶104-05. Plaintiffs' allegations concerning the allegedly improper appraisal practices are sufficiently specific to state a claim with respect to the securities at issue in this case. In particular, plaintiffs have alleged that Wells Fargo's practices permitted the pervasive and systematic use of inflated appraisals, affecting all types of mortgages.

Order Granting in Part and Denying in Part Defendants' Motions to Dismiss, *Wells Fargo*, at 2-3, 16-17. In May 2011, Wells Fargo agreed to pay $125 million to settle the claims alleged in the case.

373. A separate lawsuit filed against Wells Fargo, *Sound Appraisal and Savage Appraisal Services, Inc. v. Wells Fargo Bank, N.A.*, No. 09-CV-01630 CW (N.D. Cal. Apr. 14, 2009) ("*Sound Appraisal*"), further confirms the Offering Documents' false and misleading statements regarding Wells Fargo's purported underwriting practices, by confirming Wells Fargo's regular practice of

pressuring and intimidating appraisers into providing falsely inflated appraisals that met the bank's objectives. Specifically, the complaint in that action alleges:

> As part of its corporate objective to abandon underwriting standards in order to maximize market share and profits, Wells Fargo and Rels Valuation have together engaged in a practice of pressuring and intimidating appraisers into using appraisal techniques that produce appraisals that meet Wells Fargo's business objectives even if the use of such appraisal techniques is improper and in violation of industry and regulatory standards. If appraisers fail to "play ball" as Wells Fargo demands, Wells Fargo, through Rels Valuation, removes the appraiser from the list of approved appraisers, which essentially "blacklists" the appraiser. Once an appraiser is blacklisted, Wells Fargo and Rels Valuation will no longer request appraisals or accept appraisals from these persons and companies.

Complaint, *Sound Appraisal*, ¶7.

374. In fact, Wells Fargo acknowledged its deficient loan underwriting practices in its 2007 Annual Report. In a section entitled "Credit Quality: What We Did Wrong," Wells Fargo admitted:

> ***We made some mistakes*****. . . .** ***Too many of our home equity loans had 'loan-to-value' ratios*** that ***were too high*** . . . . Sometimes we did not require full documentation for these home equity loans we purchased from brokers because these were prime borrowers who had high credit scores with lower expected risk of default. . . .
>
> ***We should not have offered such lenient loan terms . . . , and we made the mistake of taking on too much risk***. We should have known better.

375. Corroborating the fact that Wells Fargo failed to comply with its underwriting guidelines, thereby rendering the Offering Documents false and misleading, is the fact that Wells Fargo appeared on the OCC's list of lenders with the highest numbers of foreclosures on loans it originated between 2005 and 2007. If Wells Fargo was actually attempting to determine whether its borrowers could afford to repay their loans, it would not have had so many foreclosures.

9. The Offering Documents Misrepresented EquiFirst's Underwriting Guidelines

376. As detailed *supra*, EquiFirst's supposed underwriting guidelines were described by defendants in the Offering Documents. *See* §V. For the reasons set forth immediately below, these representations were false and misleading at the time defendants made them. In truth, EquiFirst had completely abandoned its stated underwriting guidelines and was routinely originating loans without any regard for the borrowers' true repayment ability or the actual adequacy of the mortgaged properties to serve as collateral.

377. EquiFirst ignored its stated underwriting guideline of limiting borrower DTI ratios to 55%, and instead routinely made loans to borrowers with DTI ratios far higher. For example, as set forth in §V, *supra*, EquiFirst originated loans to borrowers in the HEAT 2007-3 offering where the borrower's DTI ratio exceeded 223%, indicating that the borrower's debts exceeded his/her income by a factor of over two. *See* §V.12.a, *supra*. In fact, the HEAT 2007-3 offering had a default rate of over 37%, obviously because, among other things, DTI ratios were ignored. This evidences the fact that important credit criteria such as DTI ratios were systematically ignored by EquiFirst.

378. The Offering Documents' representations that EquiFirst's underwriting guidelines prohibited the making of any loan with an LTV ratio in excess of 100% were also false and misleading, because EquiFirst routinely ignored this guideline too. This is demonstrated by the fact that the HEAT 2007-3 offering in which EquiFirst originated loans contained numerous loans with LTV ratios in excess of 100%. *See,* §V.12.b, *supra*.

379. The LTV ratios in the Offering Documents were all fraudulently understated. EquiFirst had fraudulently understated those LTV ratios by using falsely inflated appraisals, the effect of which was to make the LTV ratios appear to be lower and in compliance with the stated underwriting guidelines. The use of inflated appraisals, however, was also a violation of the

underwriting guidelines, as EquiFirst thereby failed to properly evaluate whether the mortgaged properties were adequate collateral for the loans.

380. The foregoing demonstrates that EquiFirst abandoned its stated underwriting guidelines during the relevant time period (2004-2007). However, further corroboration follows.

381. In September 2011, a lawsuit was filed against EquiFirst, alleging that EquiFirst's loans were not originated pursuant to its stated underwriting guidelines, were fraudulent, and that no proper determination was made concerning whether the borrowers could afford to repay their loans. *See* Complaint, *MASTR Asset Backed Securities Trust 2006-HE3 v. WMC Mortgage Corp., et al.*, No. 0:11-cv-02542-JRT-TNL (D. Minn. Sept. 2, 2011). In that case, a sample of 200 loans was reviewed and it was found that 150 of the loans were either fraudulent, not originated pursuant to EquiFirst's underwriting guidelines, and/or not consistent with any actual determination being made regarding the borrowers' true repayment ability. The lawsuit described a loan extended by EquiFirst that was fraudulent and not in compliance with its underwriting guidelines. In allegations that are eerily similar to those herein, the borrower claimed to be a defense contract "program director" making $13,250 per month, when in fact he was actually earning $9,019 per month as an "associate." In addition, over $15,000 per month in debts were not disclosed, concealing an unacceptable DTI ratio of 244.1% for the borrower. Finally, the borrower misrepresented that the loan was for a primary residence, when in fact it was used as a rental. *Id.*, ¶26.

10. Clayton Holdings Confirmed that the Offering Documents Were False and Misleading

382. As previously alleged, from at least January 1, 2006 through June 30, 2007, defendants hired Clayton to test samples of the loans defendants were placing into their offerings to determine whether the loans met the stated underwriting guidelines or had compensating factors meriting approval; were supported by valid appraisals/valuations; and had other valid characteristics.

Clayton tested small samples of loans and provided written reports (daily reports in most cases) to defendants with the testing results. This was first made public in late September 2010, when the FCIC released testimony and documents from Clayton.

383. In September 2010, Clayton provided to the FCIC trending reports it created, which summarized its work for various Wall Street banks, including defendants herein. These reports established that, during the period from January 1, 2006 through June 30, 2007, when most of the loans at issue herein were being originated, and when most of the certificates were being sold to plaintiffs, ***32.0% of the mortgage loans Clayton tested for the Credit Suisse Defendants did not comply with the stated underwriting guidelines and did not have compensating factors that would merit approval. The trending reports also revealed that defendants "waived" back in 33.4% of the defective loans; that is, defendants included 33.4% of those defective loans into the RMBS offerings defendants sold to plaintiffs***! *See* Clayton Trending Reports, *available at* http://fcic.law.stanford.edu/hearings/testimony/the-impact-of-the-financial-crisis-sacramento#documents (last visited June 24, 2013).

384. The forgoing information from Clayton undisputedly establishes that defendants' representations in the Offering Documents – namely that the certificates' underlying loans complied with the stated underwriting guidelines – were false and misleading at the time defendants made them.

385. Not only did defendants knowingly include in the offerings loans that had been affirmatively identified as defective, they also did no further testing on the vast majority of unsampled loans, even in the face of Clayton's reports indicating – at a 95% confidence level – that the unsampled loans possessed the same defect rate. In fact, defendants, fully aware of the situation, turned a blind eye to the information, did no further testing, and then ***included these defective loans into the offerings***, thereby rendering the Offering Documents materially false and misleading. As

the FCIC later pointed out, "***one could reasonably expect [the untested loans] to have many of the same deficiencies, and at the same rate, as the sampled loans,***" and that defendants' failure to do any further testing or disclose Clayton's findings "***rais[ed] the question of whether" the Offering Documents "were materially misleading, in violation of the securities laws***." FCIC Report at 170.

386. Moreover, recently discovered evidence establishes that the above Clayton defect rates and numbers of defective loans that were "waived" into defendants' offerings were actually ***understated***. In a lawsuit entitled *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*, No. 650421/2011 (N.Y. Sup. Ct., N.Y. Cty.), excerpts of a deposition transcript of a former Clayton employee were recently filed. The former Clayton employee (whose identity was redacted) testified that ***all*** of Clayton's Wall Street clients (including Credit Suisse, a client of Clayton's) ***instructed Clayton to ignore defective loans, to code defective loans as non-defective, and to change loans that had been graded as defective to non-defective***. The essence of the former Clayton employee's testimony was that defendants instructed Clayton to fraudulently change defective, non-complying loans into compliant loans. The effect of such efforts was that Clayton's reports ***understated*** the number of loans that were defective and which were included in defendants' offerings.

B. Defendants Made Material Misrepresentations Regarding the Underlying Loans' LTV Ratios

387. As set forth *supra*, defendants' Offering Documents affirmatively misrepresented the LTV ratios associated with the certificates' underlying loans. *See* §V. For the reasons set forth immediately below, these misrepresentations were material to plaintiffs' investments in the certificates.

388. An LTV ratio is calculated by dividing the loan amount into the value of the mortgaged property. LTV ratios are extremely important to both investors and the Credit Rating Agencies, because they are indicative of the credit quality and safety of a particular loan or group of

loans. Generally speaking, a lower LTV ratio indicates a higher credit quality, safer loan. Conversely, a higher LTV ratio indicates a lower quality, riskier loan.

389. To explain, the mortgaged property serves as collateral and security for the repayment of the loan. If the borrower defaults on the loan, foreclosure occurs and the property is sold, with the proceeds of the sale going toward paying the outstanding loan balance, but only after all other expenses are paid. If there is insufficient collateral, *i.e.*, the sale proceeds (minus all expenses) are less than the outstanding loan balance, the investor suffers a loss. A low LTV ratio indicates that there is more collateral, or security, for the loan in the event of a foreclosure. In other words, the investor is less likely to face a situation where the sale proceeds net of expenses are less than the outstanding loan amount, and therefore the investor is less likely to suffer a loss. In addition, a lower LTV ratio indicates that the borrower has more "equity" committed to the property, and is thus less likely to default on the loan compared to a borrower with little or less equity, who consequently has less financial incentive to avoid defaulting on the loan. As a result, the lower the LTV ratio, the more likely it is the borrower will repay the loan, and the more likely it is that there will be sufficient security to make the investor whole, and avoid a loss, in the event of a default and/or a decline in real estate values.

390. In any case, an investor ***never*** wants a group of loans with a large number of loans with LTV ratios over 100%, as that implies a ***certain loss*** in the event of foreclosure. Moreover, a group of loans with a high number of loans with LTV ratios over 100% is highly susceptible to default, because the borrowers have little financial incentive to continue making payments if their financial circumstances change or the value of the properties decline. An understanding of the true LTV ratios associated with the loans underlying a given RMBS is thus essential to an investor, as it allows the investor to properly gauge the risk associated with the investment.

391. Because LTV ratios are critically important to the risk analysis for a given RMBS, they also constitute one of the critical pieces of information used by the Credit Rating Agencies' computerized rating models to determine what credit ratings should be assigned to RMBS certificates. Generally, the lower the LTV ratios, the higher the ratings the Credit Rating Agencies assign to the certificates. Moreover, the lower the LTV ratios, the less credit enhancement the Credit Rating Agencies generally require to obtain "investment grade" credit ratings. And the less credit enhancement that is required, the less costly, and more profitable, the RMBS offering is to the entities structuring, marketing and selling the RMBS (*i.e.*, defendants here).[15]

392. Defendants were very aware of the foregoing. Accordingly, defendants affirmatively misrepresented the actual percentages of the certificates' underlying loans that had LTV ratios in excess of 80% and 100%. These representations were intended to convey that there was sufficient protection against losses in the event of defaults, and that the loans (and therefore the certificates) were of high credit quality, and were safe, solid investments. Unfortunately for plaintiffs, defendants' representations concerning the LTV ratios associated with the certificates' underlying loans were false and misleading when made. *See* §V, *supra*.

393. Defendants accomplished their deception by using false and inflated appraisals and valuations for the relevant properties, as alleged above. Because false and inflated appraisals were used, defendants were able to generate artificially understated LTV ratios, which were then included in the Offering Documents.

[15] "Credit enhancements" can take numerous forms, but one common form is to require the sellers (defendants in this case) to include additional collateral, *i.e.*, additional loans or better credit quality loans, in the offering to help ensure the expected cash flow. Either way, the practical effect is that additional credit enhancements represent additional costs and/or decreased profit margins to the entities responsible for the offering.

394. The appraisers knew that their appraisals were false and inaccurate, and did not believe them to be true. The appraisers, and others providing valuations, were being strong-armed into providing inflated valuations by the lenders, who threatened the appraisers with being black-balled in the industry and excluded from future work unless the inflated valuations were provided. In other instances, appraisers were being bribed into providing inflated valuations by lenders who paid the appraisers above-market fees for inflated valuations and/or rewarded appraisers with substantial additional work for inflated appraisals. In yet other instances, lenders intentionally provided appraisers with false sales information designed to generate inflated appraisals and valuations. Lenders also required appraisers to rely on information outside the relevant market to support inflated valuations. Lenders and some appraisers further retaliated against any appraisers that questioned or criticized their corrupt practices.

395. Defendants were well aware that the appraisal valuation process was being actively manipulated by loan originators and appraisers, and therefore also knew that the reported property valuations and LTV ratios for the loans did not reflect accurate information. Defendants learned such facts when they performed due diligence on the loans, as well as through Clayton, and by virtue of their participation in originating the loans, and through their ownership and control of lenders and their close relationships with them. Defendants had little incentive to correct the inflated appraisals – and did not – because inflated appraisals led to larger loan amounts, thereby increasing the size of defendants' RMBS offerings, and decreased credit enhancement requirements, all of which, in turn, increased defendants' compensation and profits. Accordingly, defendants knew that the LTV ratios reported in the Offering Documents were not accurate or reliable indicators of the credit quality of the loans, and that such LTV ratios had no reasonable basis in fact.

C. Defendants Made Material Misrepresentations Regarding the Underlying Loans' Owner Occupancy Rates

396. As set forth *supra*, the Offering Documents misrepresented the OOR percentages, or Primary Residence Percentages, associated with the loan groups supporting plaintiffs' certificates. *See* §V. For the reasons set forth immediately below, these misrepresentations were material to plaintiffs' investments in the certificates.

397. The purpose behind disclosing the OOR percentages associated with a particular group of loans supporting RMBS is to identify the percentage of such loans that are owner occupied or primary residences – that is, the percentage of loans issued to borrowers who purportedly lived in the mortgaged properties. Primary Residence Percentages are extremely important to investors like plaintiffs, because borrowers are much less likely to default on loans secured by their primary homes, as opposed to loans secured by investment properties or second homes. Accordingly, higher Primary Residence Percentages indicate safer loans, and thus safer RMBS certificates, while lower Primary Residence Percentages indicate riskier loans, and thus lower credit quality certificates.

398. Because Primary Residence Percentages are critically important to the risk analysis for a given RMBS, they also constitute one of the critical pieces of information used by the Credit Rating Agencies' computerized rating models to determine what credit ratings should be assigned to RMBS certificates. Generally, the higher the Primary Residence Percentages, the higher the ratings the Credit Rating Agencies assign to the certificates. Moreover, the higher the Primary Residence Percentages, the less credit enhancement the Credit Rating Agencies generally require to obtain "investment grade" credit ratings. And the less credit enhancement that is required, the less costly, and more profitable, the RMBS offering is to the entities responsible for structuring, marketing and selling the RMBS (*i.e.*, defendants here).

399. Well aware of this dynamic, defendants systematically overstated the Primary Residence Percentages associated with plaintiffs' certificates, as set forth *supra*. As a result, defendants created the false impression that the loans and certificates were of higher credit quality than they in fact were. Indeed, in most instances, defendants materially overstated the actual Primary Residence Percentages by double-digit percentages. *See* §V, *supra*.

400. Defendants knew, based on their due diligence of the loans, Clayton's reports and their own active role in the loan origination process, that the Primary Residence Percentages for the certificates' underlying loans were being actively manipulated by loan originators and borrowers. Specifically, defendants were well aware that borrowers were misrepresenting their residency status in order to obtain lower interest rates and/or eligibility for higher LTV or DTI ratio loans. Defendants were further aware that the originators were also actively manipulating the Primary Residence Percentages in order to receive higher prices when selling their loans. Even though defendants were aware that the Primary Residence Percentages were falsely inflated, they did not challenge them or change them to reflect the true OORs because defendants knew that higher Primary Residence Percentages for the loans would result in higher credit ratings from the Credit Rating Agencies and less additional credit enhancement requirements for their offerings, thereby increasing defendants' profits in selling the certificates. As a result of the foregoing, defendants knew that the Primary Residence Percentages stated in the Offering Documents were false and had no reasonable basis in fact.

D. Defendants Made Material Misrepresentations Regarding the Credit Ratings for the Certificates

401. As set forth *supra*, in each of the Offering Documents at issue herein, defendants represented that the certificates plaintiffs were purchasing had or would have certain high, safe, "investment grade" credit ratings from at least two of the three major Credit Rating Agencies (S&P,

Moody's and/or Fitch). *See* §V, *supra*. For the reasons set forth *supra* and immediately below, these representations were both material and false.

402. Credit ratings are extremely important to investors in assessing the quality and safety of RMBS certificates. Credit ratings on such securities indicate how reliable and safe the investments are, and are used to predict the likelihood that they will perform, *i.e.*, pay, as expected and return the investor's principal at the end of the lending term. The credit ratings of the certificates were very important to plaintiffs, as they were required to purchase only certificates that were rated "investment grade" by the Credit Rating Agencies. Indeed, many of the certificates purchased by plaintiffs received the highest, safest credit ratings available – "Aaa" by Moody's or "AAA" by S&P and Fitch. These credit ratings indicated that the certificates were the "safest of the safe," as such ratings were ***the same as, or even higher than, the current credit rating of U.S. Treasury debt***. Indeed, "[t]raditionally, investments holding AAA ratings have had a ***less than 1% probability of incurring defaults***." Levin-Coburn Report at 6. Below is a chart setting forth the Credit Rating Agencies' credit grading systems, denoting the various investment grade and speculative grade ratings they provided:

Moody's Grades	**S&P's Grades**	**Fitch's Grades**
Aaa	AAA	AAA
Aa1	AA+	AA+
Aa2	AA	AA
Aa3	AA-	AA-
A1	A+	A+
A2	A	A
A3	A-	A-
Baa1	BBB+	BBB+
Baa2	BBB	BBB
Baa3	BBB-	BBB-
↑Investment Grade		
Speculative Grade↓		
Ba1	BB+	BB+
Ba2	BB	BB
Ba3	BB-	BB-
B1	B+	B+

B2	B	B
B3	B-	B-
Caa1	CCC+	CCC+
Caa2	CCC	CCC
Caa3	CCC-	CCC-
Ca	CC	CC
C	C	C
	D	D

403. As previously discussed, the certificates never should have received the safe, "investment grade" ratings touted by defendants in the Offering Documents. In truth, the certificates were anything but safe, "investment grade" securities, as defendants well knew. In fact, the certificates were exactly the opposite – extremely risky, speculative grade "junk" bonds or worse, backed by low credit quality, extremely risky loans. As defendants were well aware, each of the certificates was backed by numerous loans that had not been originated pursuant to their stated underwriting guidelines, with many loans being made without any regard for the borrowers' true repayment ability, and/or on the basis of falsely inflated incomes and property values, as alleged above. Moreover, as also alleged above, the LTV ratios and Primary Residence Percentages for the loans had been falsified so as to make the loans (and thus, the certificates) appear to be of much higher credit quality than they actually were.

404. In order to obtain "investment grade" credit ratings for the certificates, defendants were required to work with the Credit Rating Agencies. Specifically, defendants were required to provide the Credit Rating Agencies with information concerning the underlying loans, which the Credit Rating Agencies then put into their computerized ratings models to generate the credit ratings. In order to procure the falsely inflated ratings defendants desired for the certificates, defendants fed the Credit Rating Agencies falsified information on the loans, including, without limitation, false loan underwriting guidelines, false LTV ratios, false borrower FICO scores, false borrower DTI ratios, and false Primary Residence Percentages. Among other things, defendants falsely represented

to the Credit Rating Agencies that virtually none of the loans in any of the offerings had LTV ratios in excess of 100%. Defendants also misrepresented and underreported the numbers of loans that had LTV ratios in excess of 80% in many cases. Defendants further misrepresented that the loans had much higher Primary Residence Percentages than they actually did. Defendants also concealed from the Credit Rating Agencies that most of the loans were not originated pursuant to the underwriting guidelines stated in the Offering Documents and/or were supported by falsely inflated incomes, appraisals and valuations. Defendants also never informed the Credit Rating Agencies that Clayton had detected defect rates of 32% in the samples of loans it tested for defendants, or that defendants had put 33.4% of those identifiably defective loans into the offerings. Defendants also never told the Credit Rating Agencies that defendants did no further testing on the vast majority of loans, despite their awareness that there were significant numbers of defective loans detected by the test samples.

405. That the credit ratings stated in the Offering Documents were false and misleading is confirmed by subsequent events, as set forth *supra*. Specifically, after the sales of the certificates to plaintiffs were completed, staggering percentages of the loans underlying the certificates began to go into default because they had been made to borrowers who either could not afford them or never intended to pay them. Indeed, ***in a majority of the loan groups at issue herein, at least 40% of the loans currently in the trusts are in default***.

406. ***The average default rate for all the offerings at issue herein currently hovers at around 40.6%***. In other words, approximately four in ten loans currently in the trusts are in default. It is also important to understand that these reported default rates are for loans that are ***currently*** still in the trusts. Any ***prior*** loans that were in default and which had been previously liquidated or sold, and thus written off and taken out of the trusts, have not been included in the calculations. Therefore, the foregoing default rates do not include earlier defaults, and thus ***understate*** the cumulative default rates for all of the loans that were originally part of the trusts.

407. Further proving that the credit ratings stated in the Offering Documents were false and misleading is the fact that ***all*** of the certificates have since been downgraded to reflect their true credit ratings, now that the true credit quality (or more accurately, lack of quality) and riskiness of their underlying loans is known. Indeed, ***all of the 31 certificates plaintiffs bought have now been downgraded to speculative "junk" status or below***. Moreover, ***25 of the 31 certificates plaintiffs bought now have a credit rating of "D," by S&P and/or "C" by Moody's, indicating that they are in "default***," and reflecting that they have suffered losses and/or writedowns, and/or have completely stopped paying. In other words, approximately ***80% of plaintiffs' certificates are in default***. This is strong evidence that defendants lied about the credit ratings. This is so because the high, "investment grade" credit ratings assigned to plaintiffs' certificates had a probability of default of between "less than 1%" (Levin-Coburn Report at 6) for the highest rated certificates and 2.6% (according to Moody's) for certificates rated even lower than plaintiffs'. The huge discrepancy in the actual default rates (80%) and the historically expected default rates (less than 2.6%) demonstrates the falsity of defendants' statements regarding the credit ratings.

408. These massive downgrades – in many cases, from "safest of the safe" "AAA" ratings to "junk" (anything below Baa3 or BBB-) – show that, due to defendants' knowing use of bogus loan data, the initial ratings for the certificates, as stated in the Offering Documents, were false. Indeed, the fact that ***all*** of the certificates are now rated at "junk" status or below, and ***more than 80% of the certificates are now in default***, is compelling evidence that the initial high ratings touted by defendants in the Offering Documents were grossly overstated and false.

E. Defendants Materially Misrepresented that Title to the Underlying Loans Was Properly and Timely Transferred

409. An essential aspect of the mortgage securitization process is that the issuing trust for each RMBS offering must obtain good title to the mortgage loans comprising the pool for that

offering. This is necessary in order for plaintiffs and the other certificate holders to be legally entitled to enforce the mortgage and foreclose in case of default. Accordingly, at least two documents relating to each mortgage loan must be validly transferred to the trust as part of the securitization process – a promissory note and a security instrument (either a mortgage or a deed of trust).

410. The rules for these transfers are governed by the law of the state where the property is located, by the terms of the pooling and servicing agreement ("PSA") for each securitization, and by the law governing the issuing trust (with respect to matters of trust law). Generally, state laws and the PSAs require that the trustee have physical possession of the original, manually signed note in order for the loan to be enforceable by the trustee against the borrower in case of default.

411. In addition, in order to preserve the bankruptcy-remote status of the issuing trusts in RMBS transactions, the notes and security instruments are generally not transferred directly from the mortgage loan originators to the trusts. Rather, the notes and security instruments are generally initially transferred from the originators to the sponsors of the RMBS offerings. After this initial transfer to the sponsor, the sponsor in turn transfers the notes and security instruments to the depositor. The depositor then transfers the notes and security instruments to the issuing trust for the particular securitization. This is done to protect investors from claims that might be asserted against a bankrupt originator. Each of these transfers must be valid under applicable state law in order for the trust to have good title to the mortgage loans.

412. Moreover, the PSAs generally require the transfer of the mortgage loans to the trusts to be completed within a strict time limit – three months – after formation of the trusts in order to ensure that the trusts qualify as tax-free real estate mortgage investment conduits ("REMICs"). In order for the trust to maintain its tax free status, the loans must have been transferred to the trust no later than three months after the "startup day," *i.e.*, the day interests in the trust are issued. *See*

Internal Revenue Code §860D(a)(4). That is, the loans must generally have been transferred to the trusts within at least three months of the "closing" dates of the offerings. In this action, all of the closing dates occurred in 2005, 2006 or 2007, as the offerings were sold to the public. If loans are transferred into the trust after the three-month period has elapsed, investors are injured, as the trusts lose their tax-free REMIC status and investors like plaintiffs may face several adverse draconian tax consequences, including: (1) the trust's income becoming subject to corporate "double taxation"; (2) the income from the late-transferred mortgages being subject to a 100% tax; and (3) if late-transferred mortgages are received through contribution, the value of the mortgages being subject to a 100% tax. *See* Internal Revenue Code §§860D, 860F(a), 860G(d).

413. In addition, applicable state trust law generally requires strict compliance with the trust documents, including the PSAs, so that failure to strictly comply with the timeliness, endorsement, physical delivery, and other requirements of the PSAs with respect to the transfers of the notes and security instruments means the transfers would be void and the trust would ***not*** have good title to the mortgage loans.

414. To this end, all of the Offering Documents relied upon by plaintiffs stated that the loans would be timely transferred to the trusts. *See* §V, *supra.* For example, in the HEAT 2006-4 offering materials, the Credit Suisse Defendants represented:

> On the closing date for the initial mortgage loans and on any subsequent transfer date for the subsequent mortgage loans, the depositor will sell, transfer, assign, set over and otherwise convey without recourse to the trustee in trust for the benefit of the certificateholders all right, title and interest of the depositor in and to each mortgage loan.

HEAT 2006-4 Pros. Supp. at S-34. The Offering Documents for each of the offerings at issue herein contained either the same or very similar language, uniformly representing that defendants would ensure that the proper transfer of title to the mortgage loans to the trusts occurred in a timely fashion. *See* §V, *supra.*

415. However, defendants' statements were materially false and misleading when made. Contrary to defendants' representations that they would legally and properly transfer the promissory notes and security instruments to the trusts, defendants in fact systematically failed to do so. This failure was driven by defendants' desire to complete securitizations as fast as possible and maximize the fees they would earn on the deals they closed. Because ensuring the proper transfer of the promissory notes and mortgages hindered and slowed defendants' securitizations, defendants deliberately chose to disregard their promises to do so to plaintiffs.

416. Defendants' failure to ensure proper transfer of the notes and the mortgages to the trusts at closing has already resulted in damages to investors in securitizations underwritten by defendants. Trusts are unable to foreclose on loans because they cannot prove they own the mortgages, due to the fact that defendants never properly transferred title to the mortgages at the closing of the offerings. Moreover, investors are only now becoming aware that, while they thought they were purchasing "***mortgaged-backed***" securities, in fact they were purchasing ***non***-mortgaged-backed securities.

417. In fact, Attorneys General from 49 states have investigated foreclosure practices after the discovery that mortgage servicers used faulty or falsified paperwork to improperly seize homes from borrowers. The investigation culminated in a huge settlement of $25 billion with five large banks.

418. Facts disclosed in recent news reports and uncovered through government investigations and home owner foreclosure litigation over defendants' securitizations confirm widespread problems with defendants' failure to ensure proper transfer of the required mortgage documents, and highlight the damage that failure has caused to plaintiffs' investments. In an interview on *60 Minutes*, Lynn Szymoniak, a lawyer and fraud investigator who has uncovered

instances in which banks appear to have manufactured mortgage documentation, explained the issue as follows:

> "When you could make a whole lotta money through securitization. And every other aspect of it could be done electronically, you know, key strokes. This was the only piece where somebody was supposed to actually go get documents, transfer the documents from one entity to the other. And it looks very much like they just eliminated that stuff all together."

419. As part of its exposé, *60 Minutes* interviewed Chris Pendley, a temporary employee of a company called Docx. Pendley was paid $10 per hour to sign the name "Linda Green," who, on paper, purportedly served as vice president of at least 20 different banks at one time, to thousands of mortgage documents that were later used in foreclosure actions. Pendley said he and other employees of Docx were expected to sign at least 350 documents per hour using the names of other individuals on documents used to establish valid title. Asked if he understood what these documents were, Pendley said, "[n]ot really." He then explained that he signed documents as a "vice president" of five to six different banks per day. Purported transfers bearing the signature of "Linda Green" were used to transfer mortgages from major originators to the depositors.

420. Further illustrating the falsity of defendants' representations in the Offering Documents regarding proper transfer of the mortgage documents to the issuing trusts is attorney Szymoniak's letter to the SEC (the "SEC Letter"). In the SEC Letter, Szymoniak detailed the fraudulent alteration and manufacture of mortgage documents by employees of Lender Processing Services, Inc. ("LPS"). LPS is a mortgage default company located in Jacksonville, Florida that, according to Szymoniak, "produced several missing Mortgage Assignments, using its own employees to sign as if they were officers of the original lenders." Szymoniak observed instances of mortgage transfers prepared by LPS employees that contained forged signatures, signatures of individuals as corporate officers on behalf of a corporation that never employed the individuals in

any such capacity, and signatures of individuals as corporate officers on behalf of mortgage companies that had been dissolved by bankruptcy years prior to the transfers, among other things.

421. The fabrication of the mortgage transfers appears to have been intended to conceal the actual date that interests in the properties were acquired by the RMBS trusts. The fraudulent transfers uncovered in foreclosure litigation often show that the transfers were prepared and filed in 2008 and 2009, when, in reality, the mortgages and notes were intended and should have been transferred prior to the closing date of the trusts, in 2005, 2006 and 2007, as stated in the Offering Documents relied on by plaintiffs. Moreover, Szymoniak published an article on *Phil's Stock World* on July 20, 2011, setting forth the huge numbers of "trusts that closed in 2005, 2006 and 2007 [that have] repeatedly filed mortgage assignments signed and notarized in 2011," years after the closing dates. These late transfers of mortgages are an obvious improper attempt by defendants to untimely transfer the mortgage loans to the trusts after-the-fact. As discussed above, even if such transfers are valid, plaintiffs have been severely damaged because of defendants' failure to timely transfer the loans, as the trusts have potentially lost their tax-free status and the payments to investors might now be subject to various forms of draconian taxation.

422. Other public reports corroborate the fact that the loans were not properly transferred. For example, Cheryl Samons, an office manager for the Law Office of David J. Stern – a "foreclosure mill" under investigation by the Florida Attorney General for mortgage foreclosure fraud that was forced to shut down in March 2011 – signed tens of thousands of documents purporting to establish mortgage transfers for trusts that closed in 2005 and 2006 in 2008, 2009 and 2010 from Mortgage Electronic Registration Services, an electronic registry that was intended to eliminate the need to file transfers in the county land records. In depositions in foreclosure actions, Samons has admitted that she had no personal knowledge of the facts recited on the mortgage transfers that were used in foreclosure actions to recover the properties underlying the mortgages

backing RMBS. *See, e.g.*, Deposition of Cheryl Samons, *Deutsche Bank Nat'l Trust Co., as Trustee for Morgan Stanley ABS Capital 1 Inc. Trust 2006-HE4 v. Pierre*, No. 50-2008-CA-028558-XXX-MB (Fla. Cir. Ct., 15th Jud. Cir., Palm Beach City, May 20, 2009).

423. The need to fabricate or fraudulently alter mortgage assignment documentation provides compelling evidence that, in many cases, title to the mortgages backing the certificates plaintiffs purchased was never properly or timely transferred. This fact is confirmed by an investigation conducted by plaintiffs concerning one of the specific offerings at issue herein, which revealed that the vast majority of loans underlying the offering were not properly or timely transferred to the trust.

424. Specifically, plaintiffs performed an investigation concerning the mortgage loans purportedly transferred to the trust for the Credit Suisse Defendants' HEAT 2007-3 offering. The closing date for this offering was on or about May 1, 2007. Plaintiffs reviewed the transfer history for 272 loans that were supposed to be timely transferred to this trust. Thirty-five (35) of the loans were not and have never been transferred to the trust. In addition, several other loans that were supposed to be transferred to the trust were transferred to entities other than the trust, but not to the trust. The remainder of the loans (approximately 217) were eventually transferred to the trust, but all such transfers occurred between late 2007 and the present, well beyond the three-month time period required by the trust documents and far after the three-month period for the trust to maintain its tax-free REMIC status. ***In other words, none of the reviewed mortgage loans were timely transferred to the trust, a 100% failure rate***.

425. The foregoing example, coupled with the public news, lawsuits and settlements discussed above, plainly establishes that defendants failed to properly and timely transfer title to the mortgage loans to the trusts. Moreover, it shows that defendants' failure to do so was widespread and pervasive. In fact, the specific example discussed above shows that defendants utterly and

completely failed to properly and timely transfer title. Defendants' failure has caused plaintiffs (and other RMBS investors) massive damages. As noted by law professor Adam Levitin of Georgetown University Law Center on November 18, 2010, in testimony he provided to the a U.S. House Subcommittee investigating the mortgage crisis, "[i]f the notes and mortgages were not properly transferred to the trusts, then the mortgage-backed securities that the investors[] purchased were in fact ***non-mortgaged-backed securities***" (emphasis in original), and defendants' failure "ha[d] profound implications for [R]MBS investors" like plaintiffs. Indeed, Professor Levitin noted in his testimony that widespread failures to properly transfer title would appear to provide investors with claims for rescission that could amount to trillions of dollars in claims.

VII. THE CREDIT SUISSE DEFENDANTS KNEW THAT THE REPRESENTATIONS IN THE OFFERING DOCUMENTS WERE FALSE AND MISLEADING

426. Defendants' representations in the Offering Documents were not only false and misleading, but defendants also ***knew***, or were at least reckless in disregarding, that the misrepresentations identified herein were false and misleading at the time defendants made them.

427. Indeed, as set forth above and further detailed immediately below, defendants were explicitly informed by their own independent due diligence firms, such as Clayton and Bohan, that substantial percentages of the loans underlying plaintiffs' certificates either did not comply with their stated guidelines, had been issued without regard for the borrowers' true repayment ability or were secured by inadequate collateral.

428. In addition, as further detailed below, defendants' undeniable awareness of the Offering Documents' misrepresentations is further established by several other publicly available sources of information, including governmental investigations and documents disclosed in other civil litigations.

A. The Credit Suisse Defendants' Due Diligence Process Revealed to Them that the Loans Underlying the Credit Suisse Offerings Did Not Comply with the Stated Underwriting Guidelines and Had Falsified Statistics

429. Credit Suisse, through defendant Credit Suisse Securities, was an underwriter for all of the Credit Suisse Offerings alleged herein. As an underwriter, Credit Suisse was required under U.S. securities laws to "perform a review of the pool assets underlying the [certificates]," *i.e.,* the loans, and ensure that the offering documents were "accurate in all material respects." 17 C.F.R. §230.193. As such, Credit Suisse's legal duty was two-fold: first, to investigate the loans underlying its offerings, and second, to ensure that the statements in the Offering Documents about such loans were true and accurate.

430. As the Financial Industry Regulatory Authority ("FINRA") has found, Credit Suisse was very actively involved in performing due diligence on the loans underlying its RMBS offerings.[16] *See* FINRA Letter of Acceptance, Waiver and Consent, No. 2008012808901, signed by Credit Suisse on May 16, 2011 ("Credit Suisse FINRA Letter"). In the Credit Suisse FINRA Letter, FINRA fined defendant Credit Suisse Securities $4.5 million because it provided RMBS investors with inaccurate information about delinquent loans underlying 21 of its offerings, including several of the Credit Suisse Offerings at issue herein. *See id.* In the Credit Suisse FINRA Letter, FINRA made the following findings concerning the due diligence performed by Credit Suisse Securities on the loans supporting Credit Suisse's RMBS offerings:

> ***As underwriter, Credit Suisse was involved both in preparing the offering documents for subprime RMBS [offerings] and in selling the securities to institutional investors [such as plaintiffs]. Credit Suisse employees in the Firm's RMBS Group assisted in the underwriting and securitization process for subprime RMBS. This group gathered all the pertinent information regarding the***

[16] FINRA is Credit Suisse's private regulator. FINRA is an independent regulator of securities firms doing business in the United States. Its mission is to protect investors by making sure the securities industry operates fairly and honestly.

> ***residential mortgage loans pooled in connection with subprime RMBS [offerings]*** ***as of the cut-off date, including the loan tapes, which set forth data related to the type of collateral, location of the homes, borrowers' FICO scores, and payment status. Credit Suisse employees then coordinated with outside counsel to draft the prospectus materials and provided outside accountants with the delinquency numbers calculated to verify the data contained in the prospectus supplement. Credit Suisse employees reviewed all offering materials for completeness and accuracy prior to its issuance to institutional investors [such as plaintiffs]***.

Credit Suisse FINRA Letter at 3.

431. Credit Suisse consented to and accepted FINRA's characterization of its due diligence activities on loans underlying its offerings. *Id.* at 1. As the foregoing demonstrates, Credit Suisse was not only intimately involved in investigating the loans and collecting detailed credit information and data for such loans, it was also the drafter and final editor of the Credit Suisse Offering Documents. Given the detailed due diligence Credit Suisse admittedly performed, coupled with the repetitive nature and large magnitude of the misstated underwriting guidelines, appraisals, LTV ratios, and Primary Residence Percentages in the Credit Suisse Offerings (§V, *supra*), Credit Suisse undoubtedly became aware during its due diligence that its statements in the Offering Documents were false and misleading when made. This is particularly true because Credit Suisse first "***gathered all the pertinent information regarding the residential mortgage loans,"*** thereby obtaining the misstated information above, and then also specifically checked the "***offering materials for completeness and accuracy prior to [their] issuance to [the plaintiffs]***." Credit Suisse FINRA Letter at 3. In light of these concessions by Credit Suisse, it clearly obtained knowledge that its statements in the Offering Documents were false.

432. In fact, evidence adduced in a lawsuit filed by MBIA Insurance Corporation ("MBIA") against three Credit Suisse entities – Credit Suisse Securities, DLJ Mortgage (two of the defendants sued herein) and Select Portfolio Servicing, Inc. – ***demonstrates that Credit Suisse knew that borrowers of the loans it was securitizing were falsely overstating their incomes in violation***

of the underwriting guidelines. *See MBIA Insurance Corporation v. Credit Suisse Securities (USA) LLC, et al.*, No. 603751/2009 (N.Y. Sup. Ct., N.Y. Cty.) ("*MBIA* Action"). In the case, MBIA insured a Credit Suisse RMBS offering and, after numerous loans in the offering went into default, MBIA was required to pay over $296 million in insurance claim payments. MBIA sued, alleging in a ***verified*** complaint that Credit Suisse had fraudulently represented that all the loans had been originated pursuant to strict underwriting guidelines. MBIA alleged in its verified complaint that Credit Suisse had fraudulently concealed that loans were made to borrowers who could not afford to repay them, and that borrowers falsely inflated their incomes, in violation of the underwriting guidelines.

433. In support of its allegations, MBIA filed with the court an internal Credit Suisse e-mail it had obtained. In the e-mail, Credit Suisse employees conducting due diligence on the loans were discussing the stated income loans Credit Suisse purchased and securitized. In an e-mail dated January 10, 2007, Credit Suisse Director Rob Sacco made the following comments to other Credit Suisse due diligence employees about the loans Credit Suisse purchased and securitized:

> As a side note – Of all Alt A loans we purchased in 2006, 1.0% of the full doc loan[s] have gone 60+ days delinquent. 5.56% of the Stated doc loans have gone 60+. 5 1/2 times worse ***because they are overstating their income on their application***.

This unequivocally establishes that Credit Suisse ***knew*** that stated income loans that it was buying and securitizing – such loans constituted a large portion of the securitized loans – had falsely inflated incomes in violation of the underwriting guidelines.

434. That Credit Suisse was aware that the loans it bought and securitized were not originated pursuant to the stated underwriting guidelines is further supported by the ***verified*** allegations made in the *MBIA* Action. As noted above, in its verified complaint, MBIA alleged that Credit Suisse fraudulently represented that the loans at issue had been originated pursuant to certain

prudent underwriting guidelines. MBIA demonstrated that Credit Suisse lied by not only citing the above internal Credit Suisse e-mail, ***but by also obtaining and reviewing the actual loan files for 1,798 loans underlying the offering at issue***. MBIA ***verified*** that it found an astounding 87% of the defaulted loans in the offering did not comply with the stated underwriting guidelines, and that for another sample of 477 randomly selected loans, 79% did not comply with the stated underwriting guidelines. The evidence adduced from the *MBIA* Action demonstrates that Credit Suisse conducted due diligence and learned through that process that loans it sold to investors did not comply with the underwriting guidelines set forth in the Offering Documents.

435. The Credit Suisse Defendants also hired Clayton, Bohan and Watterson to test samples of loans they were going to put into the Credit Suisse Offerings, to determine whether the loans met the stated underwriting guidelines, had compensating factors meriting approval, and/or to determine whether the properties at issue had been properly and appropriately appraised/valued. These due diligence firms tested small samples of the loans, and provided Credit Suisse with written reports of the results.

436. During the period from at least January 1, 2006 through June 30, 2007 –when nearly all of the Credit Suisse Offerings were sold to plaintiffs – Clayton tested loans and provided reports of the results to the Credit Suisse Defendants. During that time period, Clayton found that 32% of the loans it tested for Credit Suisse did not meet the stated underwriting guidelines, did not have compensating factors meriting approval, and/or had defective appraisals. In other words, one-third of the loans Credit Suisse submitted for testing were defective. ***Nonetheless, the Credit Suisse Defendants knowingly and deliberately "waived" 33.4% of those defective loans into the Credit Suisse Offerings and then sold them to plaintiffs. This undisputedly establishes that the Credit Suisse Defendants intentionally and knowingly put a large numbers of defective, non-compliant loans into their offerings, which clearly contradicted their representations in the Offering***

Documents that all of the loans underlying their offerings complied with the stated underwriting guidelines. This in itself establishes that the Credit Suisse Defendants intentionally lied.

437. Recently uncovered evidence in the action titled *Ambac Assurance Corp. v. EMC Mortgage LLC, et al.*, No. 650421/2011 (N.Y. Sup. Ct., N.Y. Cty.), further supports the fact that the Credit Suisse Defendants acted fraudulently. In that case, a former employee of Clayton and Watterson was deposed and excerpts of his deposition were recently filed with the court. The deposition transcript revealed that the former Clayton employee testified under oath that both Clayton and Watterson were instructed by ***all*** of their Wall Street bank clients to "approve loans ***that often did not satisfy the underwriting guidelines***," to ignore defects in loan applications, to code defective loans as non-defective and to change many of the grades on loans that were coded as defective to reflect that they were non-defective. According to the former Clayton employee, these instructions included ignoring appraisals which did not support the stated value of the properties and applications for which a borrower's stated income was "unreasonable" and not supported by documentation. The former Clayton employee testified that the practice of failing to follow underwriting guidelines when re-underwriting loans at Clayton was pervasive, and that "[d]ue diligence underwriters like myself were forced to find compensating factors for defective loans where none existed." This indicates that the Clayton reports discussed above actually ***understated*** the numbers of defective loans that were "waived" into the Credit Suisse Offerings, because the Credit Suisse Defendants were instructing Clayton to re-designate defective loans as non-defective and telling Clayton to ignore such defective loans. More importantly, it clearly shows fraudulent intent, as the Credit Suisse Defendants instructed Clayton to essentially conceal the defective loans by either ignoring them or changing loans designated as defective to non-defective.

438. Moreover, while the high defect rates in the tiny test samples would cause "one [to] reasonably expect" that the much larger, untested, population of loans would "have many of the

same deficiencies, and at the same rate, as the sampled loans," FCIC Report at 170, the Credit Suisse Defendants did absolutely no further testing of the loans, and instead used the Clayton reports to negotiate lower purchase prices for the loans. Indeed, D. Keith Johnson, former president of Clayton, told the FCIC in September 2010 that investment banks, such as Credit Suisse, used Clayton's loan defect reports as leverage to force lower sales prices from loan originators, thereby leaving more room for defendants to profit. After purchasing the defective loans from originators at the discounted prices, the Credit Suisse Defendants then securitized the risky loans, hiding them within their offerings, thereby passing them on to the unsuspecting investors like plaintiffs, while defendants never said a word about the defective loans. As the FCIC later concluded:

> [M]any prospectuses indicated that the loans in the pools either met guidelines outright or had compensating factors, even though Clayton's records show that only a portion of the loans were sampled, and that of those that were sampled, a substantial percentage of [defective] loans were waived in.

Id. at 167. The FCIC found that such actions "rais[ed] the question of whether [the] disclosures [in the Offering Documents] were materially misleading." *Id.* at 170.

439. The foregoing unequivocally establishes that the Credit Suisse Defendants intentionally lied when they represented in the Offering Documents that the loans underlying their offerings were originated pursuant to the underwriting guidelines stated in those Offering Documents. The Clayton reports clearly establish that the loans were not so originated, and that the Credit Suisse Defendants knew it at the time they made their statements.

B. The Statistical Evidence Is Itself Persuasive Evidence that the Credit Suisse Defendants Knew or Recklessly Disregarded the Falsity of Their Representations

440. As discussed above, plaintiffs' certificates have significantly underperformed, and an analysis of the underlying loans shows seriously misrepresented LTV ratios and Primary Residence Percentages. For instance, plaintiffs' loan-level analysis shows that the Credit Suisse Defendants

frequently overstated the percentage of loans secured by owner-occupied properties by more than 10%. *See* §V, *supra*. Because borrowers are less likely to "walk away," *i.e.*, default on, properties they live in, the Credit Suisse Defendants' repeated overstatements of the Primary Residence Percentages materially understated the risk of each of the Credit Suisse Offerings.

441. Plaintiffs' loan-level analysis also revealed that the Credit Suisse Defendants consistently understated the percentage of loans with high LTV ratios, sometimes by staggering amounts. *See, e.g.*, §V.16.b, *supra* (Credit Suisse NYMT 2005-3 offering – LTV ratios of loans over 80% represented to be only 3.13% when actual percentage of such loans was 43.29%). Even more strikingly, the Credit Suisse Defendants uniformly represented that ***none*** of the loans in their offerings had LTV ratios greater than 100%, yet plaintiffs' analysis revealed that ***all*** of their offerings had loans with LTV ratios over 100%, and in some Credit Suisse Offerings a substantial percentage of the loans – up to 21% – were already "underwater." *See* §V, *supra*. This meant that many of the borrowers had no equity cushion to protect against a default, and in fact guaranteed a loss upon foreclosure.

442. The remarkable default rates, grossly understated LTV ratios, and materially overstated owner occupancy statistics are not only evidence that the loans underlying the Credit Suisse Offerings were defective – they are themselves strong evidence that the Credit Suisse Defendants knew the loans underlying the Credit Suisse Offerings were defective when they made contrary representations to plaintiffs. Simply put, through their detailed loan-level reviews of the loans they were purchasing, the Credit Suisse Defendants could not have pooled these loans without knowing that, contrary to their representations, the loans were widely defective. Indeed, the Credit Suisse Defendants' own insurer – MBIA – found, in reviewing the ***actual*** loan files (which, as investors, plaintiffs do not have access to) that the "rampant and obvious nature of the breaches confirms that Credit Suisse made intentional misrepresentations concerning its mortgage loans and

the due diligence that Credit Suisse purported to perform regarding the quality of those loans." *MBIA* Action, Verified Complaint, ¶11.

443. That the loans could have made it to the securitization market without the Credit Suisse Defendants' knowledge of their problems is made all the less probable by the fact that the Credit Suisse Defendants' affiliates, such as Lime Financial, which Credit Suisse owned, originated many of the loans in-house. This vertical integration between originators and issuers heighted the already perverse incentives created by the Credit Suisse Defendants' "originate and distribute" business model. The originator, secure with a pipeline to the market, would have even more incentive to loosen its guidelines. Those responsible for the securitization, focused on volume, would push them to do so even more. And once the loans were issued, they would have significant incentives to ignore problem loans because rejecting a loan would saddle an affiliated company with a toxic loan. This process gave the Credit Suisse Defendants yet another source of actual knowledge of the falsity of the representations they made to plaintiffs. Defendants had a direct window into the lax practices that led to the creation of the toxic pools of loans from the outset.

444. The significance of the Credit Suisse Defendants' systematic underwriting problems is magnified when one considers the size of these defendants' operations. It is conceivable that problems on the scale at issue here, occurring within one of the world's largest and most sophisticated finance entities, could be anything but the result of knowing or reckless conduct with regard to the true risk profiles of the mortgage loans underlying the Credit Suisse Defendants' securitizations. Indeed, as previously alleged, the misrepresentations always made the loans look safer and less risky than was true. The reason for this was simple – the Credit Suisse Defendants always made more money when they slanted the information in this way.

C. Credit Suisse Engaged in a Pattern and Practice of Consistent and Intentional Misrepresentations Concerning Loan Underwriting Guidelines, Appraisals, LTV Ratios, OORs, and Credit Ratings

445. The foregoing demonstrates that the Credit Suisse Defendants conducted due diligence on the loans underlying their offerings and learned of information contradicting their statements in the Offering Documents, at or before the time they wrote those documents. Subsequent events demonstrate that the Credit Suisse Defendants also engaged in a pattern and practice of serial misrepresentations and omissions concerning their RMBS offerings, defrauding plaintiffs, other investors, and others, over and over in the same way.

446. For example, as alleged above, MBIA sued Credit Suisse, claiming it made fraudulent misrepresentations concerning the underwriting guidelines used to originate the loans, and alleged that borrowers were given loans they could not afford to repay, just as plaintiffs allege here. MBIA ***verified*** that the Credit Suisse Defendants had lied about the loans, as MBIA reviewed the ***actual loan files*** for numerous Credit Suisse loans and discovered that 79% to 87% of the loans were ***not*** originated pursuant to the relevant underwriting guidelines, contrary to Credit Suisse's representations. ***In fact, as revealed in that litigation, Credit Suisse employee Rob Sacco confirmed that Credit Suisse knew and concealed that borrowers "[we]re overstating their income[s] on their [loan] application[s]***" in violation of the underwriting guidelines, yet bought and securitized the loans anyway. Although MBIA was not an investor purchasing RMBS certificates like plaintiffs, and a different Credit Suisse offering was at issue there, Credit Suisse engaged in an identical pattern of making the same types of misrepresentations to both MBIA and plaintiffs concerning the underwriting guidelines purportedly used to originate the loans.

447. Similarly, several Allstate Insurance Company entities ("Allstate") sued the Credit Suisse Defendants in February 2011, alleging that Credit Suisse had fraudulently lied to them in connection with the sale of 11 RMBS certificates. *See Allstate Insurance Company, et al. v. Credit*

Suisse Securities (USA) LLC, et al., No. 650547/2011 (N.Y. Sup. Ct., N.Y. Cty). In that case, Allstate alleged that in each of the eight Credit Suisse offerings at issue therein, none of which are at issue in this case, Credit Suisse had systematically and materially misrepresented the loans and loan data, including, like here, the underwriting guidelines purportedly used, the appraisals, the LTV ratios, the Primary Residence Percentages, and the credit ratings. Allstate conducted analyses of the loans much like the plaintiffs did here and confirmed that such data was consistently misrepresented by Credit Suisse throughout its offerings just as it was in this action. The LTV ratios were falsely understated and the Primary Residence Percentages were overstated. The Allstate lawsuit corroborates the fact that the Credit Suisse Defendants' *modus operandi* was consistent throughout its offerings – misstating the underwriting guidelines, the appraisals, the LTV ratios, the Primary Residence Percentages, and the credit ratings.

448. Further corroborating the pattern and practice of the Credit Suisse Defendants' serial misrepresentations about loan underwriting guidelines, appraisals, LTV ratios, Primary Residence Percentages and credit ratings, is the 2011 lawsuit against Credit Suisse by the FHFA. *See Federal Housing Finance Agency v. Credit Suisse Holdings (USA), Inc., et al.,* No. 11-cv-6200-DLC (S.D.N.Y.). In that case, the FHFA sued Credit Suisse over the sale of over $1.4 billion in certificates ***from 43 different Credit Suisse-sponsored or Credit Suisse-underwritten RMBS offerings***, including nine of the Credit Suisse Offerings at issue herein. The FHFA undertook a review of the loans underlying the 43 different offerings at issue therein (much the like analysis the instant plaintiffs have undertaken with respect to the offerings at issue herein), and found that Credit Suisse had systematically misrepresented the same information that is alleged to have been misrepresented here. Indeed, the FHFA's analysis concerning the LTV ratios and owner occupancy statistics for the 43 offerings at issue there show a remarkable pattern of consistent and uniform misrepresentations of the underwriting guidelines, along with serial understatements of the LTV

ratios and repetitive overstatements of the Primary Residence Percentages by the Credit Suisse Defendants.

449. Several high-ranking Credit Suisse employees also engaged in criminally fraudulent activities related to RMBS, further demonstrating the Credit Suisse Defendants' pattern and practice of fraud in connection with their RMBS. On February 1, 2012, Kareem Serageldin, Credit Suisse's Global Head of Structured Credit Trading; David Higgs, Credit Suisse's Managing Director and Head of Hedge Trading; Faisal Siddiqui, Vice President of Credit Suisse's CDO Trading Group in New York; and Salmaan Siddiqui, another Vice President of Credit Suisse's CDO Trading Group in New York; were sued by the SEC for violating federal securities laws. *See* Complaint, *SEC v. Serageldin, et al.,* No. 1:12-cv-00796-LTS (S.D.N.Y. Feb. 1, 2012). The SEC charged these Credit Suisse employees with fraudulently manipulating and overstating the prices of over $3 billion of RMBS and other securities owned by Credit Suisse, causing the company to falsely and materially misstate its financial results. The SEC complaint alleged that these Credit Suisse employees knew that the prices of RMBS and other mortgage-backed securities were falling, yet intentionally inflated the values of such securities carried on Credit Suisse's books. The SEC cited to telephone conversations by these employees which were taped, wherein they openly discussed how and by how much they would falsely inflate the values of the securities. The SEC cited to defendant Serageldin's "senior role in Credit Suisse's structured products group," *id.*, ¶81, and how the defendants knew of the steep price declines and impending demise of RMBS as early as the fall of 2007. It further chronicled how the Credit Suisse employees engaged in a course of fraudulent conduct designed to falsely report the values of Credit Suisse's RMBS and other securities. The SEC's complaint also detailed how these defendants sold RMBS short, via CDSs, obtaining a short position of $1 billion during October of 2007. Moreover, at or about the same time as the SEC filed its complaint in February 2012, the United States Attorney for the Southern District of New York

and a Grand Jury filed a criminal indictment against Serageldin, charging him with conspiracy to falsify books and records and wire fraud, based on the same conduct described above. *See* Indictment, *United States v. Serageldin,* No. 1:12-cr-00090-AKH (S.D.N.Y. Feb. 1, 2012). This shows that the Credit Suisse Defendants' conduct was not only civilly fraudulent, but also criminal. It also further establishes a pattern and practice of fraudulent behavior by Credit Suisse in connection with its RMBS.

450. The fact that MBIA, Allstate, the FHFA, the SEC, a U.S. Attorney, a Grand Jury, and the plaintiffs herein, have all been subject to or observed either the same or similar fraudulent conduct by the Credit Suisse Defendants, over numerous different Credit Suisse offerings and situations, demonstrates that those defendants had a pattern and practice of fraud and deceit that they repeated over and over. This is strong evidence that the Credit Suisse Defendants acted fraudulently, particularly since the misrepresented information was always presented such that it concealed the true risk profiles of the loans, or the true value of the securities, which not so coincidentally resulted in the Credit Suisse Defendants profiting more.

451. Credit Suisse ***knew***, based on its due diligence, its comprehensive involvement in all phases of the securitization process, its receipt of the Clayton reports, its motive and opportunity, its knowledge of the systemic breakdown in prudent lending practices by the residential mortgage industry, and its status as a repeat offender/serial misrepresenter, that the statements it made in the Credit Suisse Offering Documents were intentionally false and misleading.

1. The Credit Suisse Defendants' Scienter with Respect to the Certificates' Credit Ratings

452. Others have described the manner in which defendants used the false information in the Offering Documents to obtain investment grade and even "AAA" credit ratings, which were

essential for marketing the certificates to plaintiffs. As Susan Barnes, the North American Practice Leader for RMBS at S&P from 2005 to 2008, explained:

> The securitization process relies on the quality of the data generated about the loans going into [the offerings]. ***S&P relies on the data produced by others and reported to both S&P and investors about those loans***. At the time that it begins its analysis of a[n offering], S&P receives detailed data concerning the loan characteristics of each of the loans in the pool – up to 70 separate characteristics for each loan in a pool of, potentially, thousands of loans. ***S&P does not receive the original loan files for the loans in the pool. Those files are reviewed by the arranger or sponsor of the transaction, who is also responsible for reporting accurate information about the loans in the deal documents and offering documents to potential investors***.

Testimony of Susan Barnes Before the Senate Permanent Subcommittee on Investigations, Apr. 23, 2010.

453. Defendants met with the Credit Rating Agencies prior to having the certificates rated, to discuss the proposed guidelines the Credit Rating Agencies would use to determine the ratings and how the Credit Rating Agencies would treat the loans in question. Defendants did this to ensure that they understood how the Credit Rating Agencies would determine the ratings. Defendants learned from these meetings – as well as from their prior knowledge of Fitch's, Moody's and S&P's ratings software from earlier RMBS securitizations – that using accurate information would not yield the required ratings. Accordingly, defendants fed the Credit Rating Agencies the same false loan-level data regarding LTV ratios, Primary Residence Percentages, home values, DTI ratios, FICO scores, underwriting guidelines and repayment ability that they provided to plaintiffs in aggregate form in the Offering Documents. The Credit Rating Agencies then put this false data into their quantitative models to assess the supposed credit risk associated with the certificates, project likely future defaults, and ultimately, determine the credit ratings to be assigned to the certificates. Defendants essentially pre-determined the ratings by putting false data into the ratings system. In essence, defendants engaged in the maxim "garbage in, garbage out" – they fed the Credit Rating Agencies

"garbage," in the form of falsified property valuations, borrower credit information, LTV ratios, OOR percentages, and the like, and the Credit Rating Agencies put "garbage out," in the form of inaccurate credit ratings that were based on defendants' falsified data. Unfortunately, as a former Wall Street insider revealed to the U.S. Senate in testimony concerning the mortgage crisis, "***most people believed in the ratings***." Levin-Coburn Report at 340.

454. Because data supplied by defendants to the Credit Rating Agencies was already false and made the loans appear to be of higher credit quality, and safer and less risky than they actually were, the credit ratings were similarly affected – the Credit Rating Agencies' credit ratings always made the certificates appear safer and of higher credit quality than they actually were. But far from being the safe, high quality, investment grade securities their credit ratings depicted, the undisclosed truth was that the certificates were junk bonds, or worse. Because of defendants' knowing use of false data, the credit ratings contained in the Offering Documents had no reasonable basis in fact. As a result, the RMBS securities at issue in this case should never have been registered, marketed or sold by way of the SEC filings and other Offering Documents alleged herein.

2. The Credit Suisse Defendants Knowingly Misrepresented that Title to the Certificates' Underlying Loans Was Properly and Timely Transferred

455. As previously alleged, defendants represented in the Offering Documents that they would properly and timely transfer title to the mortgage loans to the trusts that issued plaintiffs' certificates. The Offering Documents represented that the depositor defendants would ensure that all right, title and interest in the mortgage loans would be transferred to the trusts at or about the "closing" or "cut-off" dates of the offerings, to ensure that plaintiffs' certificates would be "mortgage-backed," as opposed to "***non***-mortgaged-backed" securities, as well as to ensure the trust maintained its tax-free status as a REMIC mortgage pass-through conduit.

456. However, as is now evident, defendants, notwithstanding their promises, did not timely and/or effectively transfer title to the mortgage loans. This is evidenced by the news reports and lawsuits concerning the problems trustees are having with foreclosing on defaulting loans, the news reports of large scale forgeries and bogus assignments of loans after-the-fact, the mega-settlement with the Attorneys General of 49 states for $25 billion over such practices, and plaintiffs' representative investigation concerning the loans in at least one of the trusts at issue herein, which revealed that nearly all of the loans were never properly or timely transferred to the trusts. *See* §VI.E, *supra*.

457. The foregoing shows that defendants did not timely or effectively transfer title to the mortgage loans to plaintiffs' trusts. Of course, defendants were aware of this failure, as it was they, themselves, who were responsible for carrying out such conduct. Defendants obviously know what they did or did not do – here, it is obvious they did nothing, and equally obvious that they are aware of that fact. This is evidenced by the fact that years after the offerings closed, defendants attempted to scramble and create assignments after-the-fact, once they realized the implications of their earlier failures to act. The mass of late assignments, forged assignments, and bogus assignment documents, is just further evidence of defendants' attempts to cover up their fraudulent scheme.

VIII. DEFENDANTS' MISREPRESENTATIONS AND OMISSIONS WERE MADE FOR THE PURPOSE OF INDUCING PLAINTIFFS TO RELY ON THEM AND PLAINTIFFS ACTUALLY AND JUSTIFIABLY RELIED ON DEFENDANTS' MISREPRESENTATIONS AND OMISSIONS

458. Plaintiffs and their assigning entities actually and justifiably relied upon the false information that defendants knowingly wrote into the Offering Documents and that were used to market the certificates.

459. The Offering Documents contained detailed descriptions of the mortgage pools underlying the certificates. The Offering Documents provided the specific terms of the particular

offering. They included data concerning the loans underlying the offering, including, without limitation: the type of loans; the number of loans; the mortgage rate; the aggregate scheduled principal balance of the loans; the LTV ratios; the OOR percentages, including the Primary Residence Percentages; credit enhancement; and the geographic concentration of the mortgaged properties. The Offering Documents also contained a description of the loan originators' underwriting and appraisal/valuation standards, guidelines and practices. The Offering Documents further contained the investment grade credit ratings assigned to the certificates by the Credit Rating Agencies, and a promise that the relevant mortgage loans would be properly and timely transferred to the trusts.

460. In deciding to purchase the certificates, plaintiffs and the assigning entities actually relied on defendants' false representations and omissions of material fact in the prospectuses, pitch books, term sheets, loan tapes, "free writing" prospectuses, "red" and "pink" prospectuses, prospectus supplements and other Offering Documents alleged herein that defendants provided to plaintiffs, including the representations regarding the loan underwriting guidelines, the characteristics of the underlying mortgage loans (such as the LTV ratios and OOR percentages, including the Primary Residence Percentages), the credit ratings assigned by the Credit Rating Agencies, and the transfer of title to the mortgage loans. But for defendants' misrepresentations and omissions in the Offering Documents, plaintiffs and the assigning entities would not have purchased the certificates.

461. Plaintiffs and the assigning entities reasonably and justifiably relied upon the information that defendants wrote into the Offering Documents and could not have discovered that defendants – the most sophisticated and then-respected commercial actors in the world – were omitting and misrepresenting material information exclusively within their possession, custody and control. Plaintiffs and the assigning entities performed a diligent investigation concerning the

offerings, certificates and the underlying loans before they purchased the certificates and could not have learned that defendants were making material misrepresentations and omissions about the offerings, certificates and loans.

462. Each of the plaintiffs or their assignors hired skilled, experienced, professional asset managers who diligently conducted their investment activities. They could not and did not detect defendants' misrepresentations and omissions.

A. The Brightwater-Managed Entities Actually and Justifiably Relied on the False Information that Defendants Used to Sell the Subject Certificates

463. Assignors Greyhawk, Harrier, Blue Heron III and Blue Heron IV and plaintiffs Blue Heron II, Blue Heron V, Blue Heron VI, Blue Heron VII each hired a professional asset investment manager, Brightwater, to conduct their investment activities. Brightwater, in turn, employed highly qualified, conscientious, and experienced investment professionals to make investments on behalf of its clients. The process involved screening and testing the quality of potential investments, which included portfolio and RMBS-level analyses. This process was diligently followed by Brightwater and eminently reasonable.

1. Portfolio-Level Screening

464. Before any Brightwater-managed entity was even permitted to purchase a particular security, that security had to conform to numerous investment parameters. For example, the security had to be a debt security, which, unlike equity, requires the obligor to return 100% of the invested principal amount by a date certain. Further, each debt security must have passed the major Credit Rating Agencies' own tests, qualifying as an "investment grade" security under those tests and analyses. In addition, each debt security had to be rated "investment grade" by at least two of the Credit Rating Agencies. Only if the particular security satisfied such portfolio-level criteria could it be considered for further review. Any security affected by defendants' misrepresentations and

omissions would have been rejected at this first screening ***if*** defendants' misrepresentations and omissions ***could have*** been detected.

2. RMBS-Level Screening

465. Even after putting in place reasonable screens to weed out bad investments, Brightwater conducted further analyses. Specifically, Brightwater reviewed term sheets or similar summary materials (sometimes called "pitch books") provided regarding a particular RMBS, analyzed the RMBS's yield and price relative to similar securities in the market, and made an initial recommendation about whether to purchase the RMBS. After this step, Brightwater conducted even deeper analyses into the proposed RMBS.

466. The next step in Brightwater's investment process involved conducting further credit analyses on the proposed RMBS. In that process, a credit analyst read marketing materials, including prospectus supplements and other offering documents. The process also involved using an expensive database and software system to detect any anomalies in a particular offering and to model the particular offering under various economic assumptions. This credit analysis further considered the level of structural subordination (or credit enhancement) supporting the proposed RMBS, and how sensitive the particular RMBS security was to various cashflow assumptions. The credit analysis focused on underwriting criteria, LTV ratios, FICO scores, OOR percentages, geographic dispersion, and the quality of the loan servicer supporting the transaction, among other pertinent credit characteristics.

467. Following its credit analysis, Brightwater subjected a proposed RMBS purchase to even more screening. Brightwater gathered the foregoing portfolio-level data, pricing information and credit analysis data, and subjected all of that information to review by a seasoned investment committee. If the investment committee did not unanimously approve the particular RMBS for one of its client's portfolios, then the RMBS was rejected.

468. In fact, there were at least four different screens that Brightwater employed that would have rejected defendants' "junk" securities that were falsely masquerading as investment grade bonds. ***First***, the certificates at issue in this case never should have been rated "investment grade," because, as defendants knew, those ratings were based on "garbage in" the Credit Rating Agencies' rating models, resulting naturally in "garbage out" of those models. Thus, the certificates would have failed Brightwater's portfolio-level screening had the truth about defendants' misrepresentations been known. ***Second***, the subject certificates would have failed the initial RMBS-level screening, because the true qualitative and quantitative data would have exposed the certificates as being massively mispriced had it been accurately set forth in the certificates' Offering Documents. ***Third***, the subject certificates would have been thoroughly rejected by Brightwater's robust credit analysis, which, as noted, served to double check prior analyses and dive even deeper into the credit characteristics of the particular bond. ***Fourth***, if Brightwater's personnel had detected defendants' use of phony data, they would have rejected the certificates at every stage noted above and would have rejected the certificates at the investment committee phase of the investment process.

469. In the end, none of Brightwater's expertise, databases, software, investment personnel, quality control checks or substantial investment in all of these processes really mattered. Indeed, where highly sophisticated commercial actors like defendants have material non-public information about a security and a premeditated plan to commit fraud, such as was the case here, even the most sophisticated systems in the world are insufficient to detect those misrepresentations and omissions. That is one of the many reasons why it has taken the full force of the U.S. Government and its agencies, exercising their subpoena power, through the U.S. Senate and the FCIC, to alert investors to the fact that defendants received reports from Clayton showing that the

loans they were selling to investors – including plaintiffs – via the certificates were ***defective on the day they were made***.

B. Plaintiff Kleros V Actually and Justifiably Relied on the False Information that Defendants Used to Sell the Subject Certificates

470. Similar to the Brightwater-managed entities, plaintiff Kleros V actually and reasonably relied on the false data that defendants used to sell the subject certificates. Kleros V invested most of its capital in RMBS and other securities tied to RMBS. Kleros V had sound investment processes in place that would have avoided fraudulent junk bonds like the ones defendants sold in this case, ***if*** defendants' fraud could have been detected. Kleros V's sound investment processes focused on its portfolio and RMBS-level screening processes.

1. Portfolio-Level Screening

471. To avoid junk bonds like the ones defendants sold to Kleros V in this case, Kleros V had 37 different tests that every potential security had to pass before it could even be eligible for Kleros V to buy. For example, every potential security had to be a debt or fixed-income bond, which, unlike equity investments, require the obligor to repay an investor's entire principal plus stated interest during the period in which the borrower holds the investor's funds. Kleros V could not even consider buying a bond that was not rated by the two major Credit Rating Agencies, Moody's and S&P. Nor could it buy a bond that was not rated at least "Baa1" by Moody's or "BBB+" by S&P (both "investment grade" ratings). Moody's quantifies the probability of default associated with a bond that it rates as Baa1 as having a 2.6% chance of defaulting over a ten-year period. As such, even the "riskiest" bonds that Kleros V was permitted to purchase were supposed to have at least a 97.4% likelihood of repaying Kleros V its principal investment.

472. All of Kleros V's proposed investments had to satisfy even more quality control tests. Kleros V used computer software called the Standard & Poor's CDO Monitor to make certain that

the proposed RMBS would not inhibit Kleros V from repaying its own investors. This computer software provided another layer of investment screening.

2. RMBS-Level Screening

473. To further strengthen Kleros V's investment processes, it hired an experienced external asset manager to help select RMBS that satisfied the portfolio-level screening described above, and to subject the proposed RMBS to additional investment screens. The manager was Strategos.

474. Strategos followed a systematic approach to purchasing RMBS for Kleros V. Among other things, Strategos analyzed three major components of each RMBS and considered distinct pieces of information within each of those components. First, it analyzed the originator and servicers supporting each RMBS. The types of information that Strategos considered in this review category included originators' financial strength, management experience, business strategy, underwriting experience and historical loan performance.

475. Second, with respect to each RMBS, Strategos analyzed the characteristics of the collateral underlying the RMBS. Specifically, it relied upon the LTV ratios, the occupancy status of the loan (*i.e.*, whether the borrower owned the property or was an investor in it) and the underwriting criteria that the originator followed to make the loan (*i.e.*, the type of documentation program, such as full, stated or no-doc criteria). In addition to these data points, Strategos relied upon many others, such as the purpose of the loan, the borrower's FICO score, and the DTI ratio associated with the loan.

476. Third, with respect to each RMBS, Strategos analyzed the structural features of the bond. For example, among other things, it analyzed the principal and interest "waterfall" supporting the bond, the level of credit enhancement or subordination beneath the particular certificate issued by the subject RMBS issuing trust, and how the particular certificate would perform under a break-even

cash flow analysis. All of these factors were part of Strategos's investment process and complemented the portfolio-level analysis that Strategos conducted, which depended upon the ratings assigned to the various RMBS in the Kleros V portfolio, as well as their correlation and concentration levels. Strategos, like other investors, reviewed the data that defendants wrote in the relevant RMBS Offering Documents, such as term sheets, pitch books, loan tapes, various prospectuses and prospectus supplements, and electronic summaries of information in those documents, and other Offering Documents, that defendants provided to industry investment platforms, including Intex.

477. To execute the tasks described above, Strategos made substantial investments in information technology and personnel. Some of the software programs that Strategos used to make and manage Kleros V's investments included CDOnet (to perform portfolio analysis) and a program called "Synergy" that provided collateral-level information on RMBS. Strategos conducted surveillance of the RMBS it purchased on behalf of Kleros V by subscribing to expensive data services such as Intex, Bloomberg, Realpoint and Lewtan Technologies, and by monitoring ratings assigned to the RMBS by the Credit Rating Agencies. Strategos likewise invested in skilled professionals, experienced in credit analysis, finance and economics.

478. Due to the fact that WestLB's New York branch sponsored and provided funding to Kleros V, Kleros V had yet another quality control screen in place. WestLB employed a skilled professional who – in advance of Kleros V committing to purchase an RMBS – reviewed documents that defendants wrote and filed with the SEC for the purpose of describing the relevant RMBS. WestLB reviewed such materials, including the various prospectuses and prospectus supplements, as an additional credit check on each bond that Kleros V wished to purchase. This analysis focused on RMBS collateral data such as the LTV ratios, OOR percentages (such as the Primary Residence Percentages) and FICO scores of the borrowers supporting the RMBS. Through this process, Kleros

V again relied upon the credit ratings assigned to the RMBS, as reflected in the Offering Documents that defendants wrote. This final screen did not detect and could not have detected defendants' misrepresentations and omissions.

479. If a proposed RMBS failed to pass any one of the diligent investment screening processes described above, then that RMBS would have been rejected and Kleros V would not have bought it. Short of conducting a government-sponsored investigation backed by the full subpoena power of the U.S. Government, Kleros V could not have discovered – and did not discover – the fraud alleged herein at any time before late September 2010, when the government released the Clayton documents to the public. Kleros V justifiably relied upon the false data that defendants used to market the certificates. Defendants cannot blame Kleros V for their own misconduct in corrupting the data and ratings that defendants used to market and sell the RMBS that Kleros V purchased.

C. Plaintiff Silver Elms Actually and Justifiably Relied on the False Information that Defendants Used to Sell the Subject Certificates

480. Plaintiff Silver Elms – through its assignor and warehousing entity, Paradigm, who essentially acquired securities on Silver Elms' behalf, generally in accordance with the procedures set forth below – actually and reasonably relied on the false data that defendants used to sell the subject RMBS certificates. Silver Elms invested a material amount of capital in RMBS and other securities tied to RMBS. Silver Elms acted prudently to attempt to avoid junk bonds filled with defective, misrepresented loans, such as those at issue here. Similar to other plaintiffs in this case, Silver Elms built safeguards into its investment program to avoid such junk bonds.

1. Portfolio-Level Screening

481. Silver Elms had approximately 37 portfolio-level tests that it applied to any bond that it even considered purchasing. To provide one example, Silver Elms would not even consider purchasing a bond unless it was of "investment grade" caliber in general, and in particular, had a

Credit Rating Agency rating of at least "A-" (in the case of S&P and Fitch) or "A3" (in the case of Moody's). Over a ten-year period, the odds of an A3 bond defaulting are 1.8%, according to Moody's data. Thus, the "riskiest" bonds that Silver Elms was permitted to carry were supposed to have at least a 98.2% likelihood of repaying Silver Elms its principal investment.

482. Quantifying default probabilities using standard industry metrics, Silver Elms would only purchase bonds that, on an aggregated weighted average basis, had even higher ratings and lower probabilities of default than any particular bond was permitted to have – at most a 0.55% probability of default over a ten-year period. These ratings-based metrics are standard industry measures that were used during the relevant time period by the most sophisticated investors in the world to communicate quality and pricing information to one another. Defendants at all times had actual knowledge of these facts and actual knowledge of the fact that investors like Silver Elms hardwired such standard industry metrics into their portfolio modeling and bond management programs. Defendants had actual knowledge of these facts because they created investment programs that were very similar to Silver Elms' program. There was no way Silver Elms could have known that defendants corrupted the ratings processes, and results, with phony LTV, OOR and other data.

483. All of Silver Elms' proposed investments had to satisfy even more quality control tests. It used computer software called the Standard & Poor's CDO Monitor to make certain that the proposed RMBS would not inhibit it from repaying its own investors. This computer software provided another layer of investment screening.

2. RMBS-Level Screening

484. Although none of the junk bonds at issue in this case would have survived Silver Elms' initial screening ***if*** the truth about them had been detectable, Silver Elms had in place additional screens that were designed to keep such bonds out of its portfolio. Silver Elms and its

agents hired an experienced asset manager, SFA, to further assist Silver Elms in buying and managing its RMBS.

485. SFA was an experienced structured asset manager with significant analytical expertise in RMBS. SFA employed a robust and thorough investment process to ensure that the RMBS Silver Elms purchased were free of fraud and were prudent investments. SFA reviewed the LTV ratios, OORs, FICO scores and underwriting guidelines used by the loan originators for the offerings at issue herein before the certificates were purchased. SFA further employed a proprietary and unique database system to screen the RMBS before purchase. SFA also reviewed and analyzed the term sheets defendants' provided containing the loan data – loan data such as the underwriting guidelines, LTV ratios, OORs and credit ratings – before proceeding with purchases for Silver Elms. In addition, SFA had discussions with the defendant underwriters and issuers prior to making a decision on whether Silver Elms should purchase the certificates. Only after SFA's Credit Committee reviewed all of the above data and found that the RMBS was a prudent investment did the purchase then occur.

486. Similar to other plaintiffs, due to the fact that WestLB's New York branch sponsored and provided funding to Silver Elms, Silver Elms had yet another quality control screen in place. WestLB employed a skilled professional who – in advance of Silver Elms committing to purchase an RMBS – reviewed documents that defendants wrote and filed with the SEC for the purpose of describing the relevant RMBS. WestLB reviewed such materials, including the various prospectuses and the prospectus supplements described herein, as an additional credit check on each bond that Silver Elms wished to purchase. This analysis focused on RMBS collateral data, such as the LTV ratios, OORs, and FICO scores associated with the loans supporting the RMBS. Through this process, Silver Elms again relied upon the credit ratings assigned to the proposed RMBS, as reflected in the prospectuses, prospectus supplements and other Offering Documents that defendants

wrote. This final screen did not detect and could not have detected defendants' fraud because defendants actively concealed their misconduct.

487. The revelation that defendants actively and intentionally "waived" known defective loans into their RMBS and knowingly misrepresented some of the key characteristics supporting the RMBS at issue in this case was not known until late September 2010, at the earliest. That is when Clayton's former President, D. Keith Johnson, testified that Clayton's loan reports showed "huge" numbers of defects and that many of the defective loans were included in the offerings, but that this was concealed from investors and the Credit Rating Agencies. In September 2010, the FCIC asked Johnson to clarify whether any of Clayton's data was disclosed publicly, noting "from what I can tell, it doesn't look like your [Clayton's] information ever migrated to disclosure." Johnson agreed, testifying: "We are not aware of – and we looked at a lo[t] [of] prospectuses – of any of our information . . . going through the prospectus."

488. In the end, it never really mattered how much intellectual capital, time, or money Silver Elms or any of the other plaintiffs spent on data, professionals and systems to analyze defendants' RMBS, because only defendants could access the data that revealed the truth about the certificates. Only defendants had access to the loan files for the RMBS they sold, and only defendants received Clayton's summaries detailing how defective the loans truly were.

D. Plaintiff Silver Elms II Actually and Justifiably Relied on the False Information that Defendants Used to Sell the Subject Certificates

489. Plaintiff Silver Elms II actually and reasonably relied on the false data that defendants used to sell the subject RMBS certificates. Silver Elms II invested a material amount of capital in RMBS and other securities tied to RMBS.

1. Portfolio-Level Screening

490. Silver Elms II had over 60 portfolio-level tests that it applied to any bond that it even considered purchasing and holding. Approximately 25 of these tests focused on the types and percentages of securities that Silver Elms II would consider purchasing.

491. For example, none of defendants' certificates in this case would have passed Silver Elms II's rating screens ***if*** it was possible to determine that defendants had corrupted the Credit Rating Agencies' computer models with "garbage" data. Moody's models never accounted for this "garbage" data, according to Moody's former President, Brian Clarkson, at the time it rated the RMBS certificates at issue in this case.

492. This is significant because Silver Elms II required every bond in its portfolio to possess an "investment grade" rating of at least "A-" (in the case of S&P) or "A3" (in the case of Moody's). Over a ten-year period, the odds of an A3-rated bond defaulting are 1.8%, according to Moody's data. Thus, the "riskiest" bonds that Silver Elms II would even consider purchasing were supposed to have at least a 98.2% likelihood of repaying Silver Elms II its principal investment. For the reasons already stated, defendants at all times knew exactly how ratings metrics impacted pricing and modeling techniques that were used by investors like Silver Elms II during the relevant time period.

493. All of Silver Elms II's proposed investments had to satisfy even more quality control tests. It used computer software called the Standard & Poor's CDO Monitor to make certain that the proposed RMBS would not inhibit it from repaying its own investors. This computer software provided another layer of investment screening.

2. RMBS-Level Screening

494. Silver Elms II also hired seasoned asset manager Princeton to ensure that all of the RMBS that Silver Elms II purchased satisfied all of the credit and quality control steps outlined

above. Princeton, like other asset managers, invested in technology and personnel to make prudent investment decisions and to make every effort to avoid bonds that were tainted by fraud. To start, Princeton never would have permitted Silver Elms II to buy any bonds that did not satisfy the portfolio-level screens summarized above. Princeton's investment processes were regimented, and involved selectively choosing assets for inclusion in the portfolio based on disciplined asset selection.

495. Among other things, Princeton's investment process involved credit due diligence focusing on originators, RMBS collateral, the structure of each RMBS and cash flow analyses of RMBS. Princeton would not have allowed a bond into Silver Elms II's portfolio if it had known that defendants knowingly used inaccurate LTV, OOR, or underwriting information to describe the bond's credit characteristics and credit ratings. Princeton analyzed RMBS and relied upon these and other data that defendants wrote and disseminated, including pitch books, the various prospectuses and prospectus supplements.

496. The personnel whom Princeton employed to conduct these tasks were experienced and had skills in analyzing the credit quality of RMBS. Most of Princeton's employees held graduate or postgraduate certifications, such as being Chartered Financial Analysts ("CFA"), a prestigious and difficult certification to obtain. Princeton required all individuals involved in giving any investment advice to have the highest ethical standards and technical abilities necessary to meet its clients' – including Silver Elms II's – needs. In addition to hiring skilled personnel, Princeton also invested in computer software and technology to help manage Silver Elms II's portfolio.

497. Moreover, Silver Elms II's RMBS were also screened by another seasoned investor, Eiger. Eiger was an investment management company specializing in RMBS, whose members came from top investment banks, institutional investors, and accounting or consulting firms. Eiger employed a "bottoms-up" investment approach through its Investment Group, consisting of 17

persons with Masters or Post Graduate degrees and who were CFAs or CFA candidates. Eiger's review of the RMBS before being purchased by Silver Elms II consisted of a rigorous credit review of the RMBS, *i.e.*, a review of the credit characteristics of the loans, such as LTV ratios, OORs and credit ratings, as well as a review of the structure of the RMBS and a relative value assessment. A complete analysis of the underlying collateral pool of an RMBS was conducted by Eiger before purchase by Silver Elms II. Further, purchases were made only after Eiger's Investment Policy Committee thoroughly reviewed and approved the RMBS for purchase. Notwithstanding Eiger's exhaustive review, defendants' well-concealed fraud could not be detected.

498. Silver Elms II also had a WestLB professional review defendants' documents that they filed with the SEC, along with the other Offering Documents, before Silver Elms II purchased any of the certificates at issue herein. Similar to other plaintiffs, due to the fact that WestLB's New York branch sponsored and provided funding to Silver Elms II, Silver Elms II had yet another quality control screen in place. WestLB employed a skilled professional who – in advance of Silver Elms II committing to purchase an RMBS – reviewed documents that defendants wrote and filed with the SEC for the purpose of describing the relevant RMBS. WestLB reviewed such materials, including the various prospectuses and the prospectus supplements described herein, as an additional credit check on each bond that Silver Elms II wished to purchase. This analysis focused on RMBS collateral data, such as the LTV ratios, OORs, and FICO scores associated with the loans supporting the RMBS. Through this process, Silver Elms II again relied upon the credit ratings assigned to the proposed RMBS, as reflected in the prospectuses, prospectus supplements and other Offering Documents that defendants wrote. This final screen did not detect and could not have detected defendants' fraud because defendants actively concealed their misconduct.

499. In the end, it never really mattered how much intellectual capital, time, or money Silver Elms II or any of the other plaintiffs spent on data, professionals and systems to analyze

defendants' RMBS, because only defendants could access the data that revealed the truth about the certificates. Only defendants had access to the loan files for the RMBS they sold, and only defendants received Clayton's summaries detailing how defective the loans truly were. None of these persons and entities hired by the plaintiffs and the entities that originally purchased the certificates that were assigned to plaintiffs received the loan files or the Clayton summaries that defendants received.

E. WestLB Actually and Justifiably Relied on the False Information that Defendants Used to Sell the Subject Certificates

500. Assignor WestLB actually and reasonably relied on the false data that defendants used to sell the subject certificates. WestLB invested in RMBS and other securities tied to RMBS via sound investment processes that would have avoided fraudulent junk bonds like the ones defendants sold in this case, ***if*** defendants' fraud could have been detected. WestLB's sound investment processes focused on its portfolio and RMBS-level screening processes.

1. Portfolio-Level Screening

501. To avoid junk bonds like the ones defendants sold to WestLB in this case, WestLB had numerous different tests that every potential security had to pass before it could even be eligible to buy. For example, every potential security had to be a debt or fixed-income bond, which, unlike equity investments, require the obligor to repay an investor's entire principal plus stated interest during the period in which the borrower holds the investor's funds. WestLB could not even consider buying a bond that was not rated by the two major Credit Rating Agencies, Moody's and S&P. Nor could it buy a bond that was not rated at least "Aa2" by Moody's or "AA" by S&P (both "investment grade" ratings).

2. RMBS-Level Screening

502. To further strengthen WestLB's investment processes, it hired an experienced external asset manager to help select RMBS that satisfied the portfolio-level screening described above, and to subject the proposed RMBS to additional investment screens. The manager that assisted in the purchase of the securities at issue here was DCP.

503. DCP followed a systematic approach to recommending RMBS for WestLB. Among other things, DCP's review of the RMBS before being purchased by WestLB consisted of a rigorous credit review of the RMBS, *i.e.*, a review of the credit characteristics of the loans, such as LTV ratios, OORs and credit ratings, as well as a review of the structure of the RMBS, the performance of the issuer and the servicer, and a relative value assessment. A complete analysis of the underlying collateral pool of an RMBS was conducted by DCP before purchase by WestLB, including review of all offering documents, risk statistics, and structural protections. Moreover, purchases were further made only after DCP's investment committee (made up of DCP principals) thoroughly reviewed and unanimously approved the RMBS for purchase. Notwithstanding DCP's exhaustive review, defendants' well-concealed fraud could not be detected.

504. WestLB also employed skilled professionals who – in advance of WestLB committing to purchase an RMBS – reviewed offering documents for the relevant RMBS. WestLB reviewed such materials, including the various prospectuses and prospectus supplements, as an additional credit check on each bond that WestLB wished to purchase. This analysis focused on RMBS collateral data such as the LTV ratios, OOR percentages (such as the Primary Residence Percentages) and FICO scores of the borrowers supporting the RMBS. Through this process, WestLB again relied upon the credit ratings assigned to the proposed RMBS, as reflected in the Offering Documents that defendants wrote. This final screen did not detect and could not have detected defendants' misrepresentations and omissions.

505. If a proposed RMBS failed to pass any one of the diligent investment screening processes described above, then that RMBS would have been rejected and WestLB would not have bought it. Short of conducting a government-sponsored investigation backed by the full subpoena power of the U.S. Government, WestLB could not have discovered – and did not discover – the fraud alleged herein at any time before late September 2010, when the government released the Clayton documents to the public. WestLB justifiably relied upon the false data that defendants used to market the certificates. Defendants cannot blame WestLB for defendants' own misconduct in corrupting the data and ratings that defendants used to market and sell the RMBS on which WestLB relied.

F. All of the Assignors and Plaintiffs Were Reasonable and Could Not Have Discovered the Fraud Alleged Herein

506. Plaintiffs and the assigning entities did not learn that the defendants were making the misrepresentations and omissions alleged herein prior to purchasing the certificates because such information about the certificates and loans was peculiarly within defendants' knowledge and control, and defendants did not allow plaintiffs and the assigning entities access to such information. The only way for plaintiffs or the assigning entities to learn that defendants were making misrepresentations and omissions about the certificates and the underlying loans was to have access to the actual loan files or Clayton's due diligence reports analyzing those loan files. Defendants had such access, but did not share it with plaintiffs, the assigning entities, or other investors.

507. At the time they purchased the certificates, plaintiffs and the assigning entities could not determine from available information that defendants had made misrepresentations and omissions in the Offering Documents. The information that would have revealed defendants' misrepresentations and omissions – the loan files – was private information in the complete control and possession of defendants. Moreover, information such as "loan tapes," and the like, and other

information defendants supplied to plaintiffs before they purchased the certificates, would not have revealed borrowers' names or property addresses so that plaintiffs could conduct an investigation. Such information also would not have revealed defendants' misrepresentations and omissions because the "loan tapes" and the other information defendants provided to plaintiffs ***contained*** the falsified appraisal values, LTV ratios, OOR percentages, FICO scores and DTI ratios upon which defendants' scheme was premised, and thus, revealed nothing concerning the loans' true nature, characteristics and risks.

508. In addition, at the time plaintiffs bought the certificates – 2005 through 2007 – there were no loan databases available that contained sufficient data to conduct analyses concerning the LTV ratios and OOR percentages like the ones plaintiffs were able to conduct before filing this complaint. In short, there was no information available to plaintiffs at the time they bought the certificates – other than the loan files, which defendants did not share – that would have allowed plaintiffs or the assigning entities to conduct an investigation that would have revealed that defendants were making misrepresentations and omitting material information in the Offering Documents.

509. Indeed, plaintiffs could not have learned, and did not learn, that defendants were defrauding them until late September 2010, when the FCIC investigation revealed for the first time that defendants: (1) were told by Clayton in 2006 and 2007 that significant portions of the loans within the offerings did not comply with the underwriting guidelines stated in Offering Documents; and (2) ***defendants then knowingly included large numbers of those defective loans into the offerings***. It was only at that time that plaintiffs and the public first learned that defendants were intentionally defrauding investors in connection with RMBS offerings. Specifically, the information disclosed by the FCIC in September 2010 revealed, for the first time, that defendants were expressly aware that their RMBS offerings were filled with defective loans, and that defendants knew so:

(a) ***before*** marketing the RMBS;

(b) ***before*** describing the collateral underlying the RMBS;

(c) ***before*** writing the prospectuses, prospectus supplements and other Offering Documents they used to market the certificates;

(d) ***before*** "structuring" the RMBS with the Credit Rating Agencies' data-sensitive models;

(e) ***before*** "pricing" the subject RMBS; and

(f) ***before*** conveying the false information to plaintiffs or their agents.

510. Moreover, it was not until late 2010, when the FCIC and U.S. Senate revealed that defendants were shorting investments like the certificates at the same time that defendants were selling the certificates to plaintiffs and others, that the investing public first learned that defendants were profiting from their inside knowledge about the defective nature of their own RMBS offerings, at plaintiffs' and other investors' expense.

511. This information only came to light in late September 2010, and only after the U.S. Government compelled defendants, Clayton, and others to produce documents and testimony that finally revealed defendants' fraud. Only the unique power of the government to compel people, documents and testimony without bringing a legal action revealed defendants' fraud. Obviously, plaintiffs do not and did not have such power or unique abilities. This further serves to demonstrate that plaintiffs and the assigning entities could not have uncovered defendants' misconduct by any means available to them.

IX. DEFENDANTS' MATERIAL MISREPRESENTATIONS AND OMISSIONS CAUSED INJURY TO PLAINTIFFS

512. Defendants' material misrepresentations and omissions relate directly to plaintiffs' economic losses. Sophisticated securities dealers like defendants have long known about the

relationship between LTV ratios, OORs, credit ratings, title and ownership, and underwriting criteria on the one hand, and the price and performance of an RMBS certificate on the other hand. Defendants' misrepresentations were the actual and proximate causes of plaintiffs' injuries.

A. The Relationship Between Original LTV Ratios, Owner Occupancy Data and RMBS Performance

513. Original LTV or "OLTV" metrics are among the most important variables indicating whether a loan will default. Studies conducted by one industry participant, Smith Barney, demonstrate that there is a strong correlation between the likelihood of default of a mortgage loan and the loan's OLTV ratio. When home prices decrease, borrowers with lower OLTV ratios are more likely to retain more equity in their homes ***even if*** housing prices generally decline. Retaining such equity provides borrowers a powerful incentive to make loan payments, which reduces the propensity of a loan to default. Retaining such equity also enables the borrower to sell the property, repay the loan and recover value in the event of default.

514. Conversely, if a borrower has a higher OLTV ratio, like those that were concealed in this case, there is much less incentive for the borrower to repay the loan if home prices decline or a borrower's financial condition changes, because such borrower would have little equity at risk of loss and therefore far less economic incentive to pay the loan. As a consequence, from an investor's perspective, a loan with a higher OLTV ratio is a much riskier investment, as there is a much higher chance of default and a much higher risk of incurring a loss because of insufficient collateral for the loan.

515. When defendants misrepresented the OLTV ratios associated with the RMBS at issue in this case, they knew that they were also misrepresenting both the propensity of the loans to default ***and*** their propensity to recover any value and avoid a loss in the event of default.

516. The relationship between the false OLTV ratios, and the related inflated appraisals they used to sell the certificates, and plaintiffs' harm is immediate and clear. Just as industry literature shows a direct relationship between OLTV ratios, defaults and loss severity, that literature shows the same relationship between OOR percentages and default probabilities. Under every market condition, the OLTV ratios and OOR percentages drive the probability of a loan defaulting. Under every market condition, OLTV ratios and OOR percentages also drive the degree of loss that will be suffered in the event of a loan default. As illustrated above, defendants say as much in their own Offering Documents.

517. But that is not the full extent of defendants' fraud as it relates to OLTV ratios and OOR percentages in this case. Defendants further inflated the prices of the RMBS in this case by entering inaccurate OLTV and OOR numbers into the Credit Rating Agencies' computerized ratings models to secure artificially inflated ratings. This misconduct also relates to plaintiffs' losses.

B. The Relationship Between Credit Ratings and RMBS Performance

518. It is already clear that defendants used "garbage" data to get overrated, inflated credit ratings assigned to the certificates at issue in this case. These false credit ratings, based on false facts, also contributed directly to plaintiffs' damages.

519. When the Credit Rating Agencies began downgrading the certificates at issue in this case to speculative or "junk" grade levels and below because of escalating default rates, it became apparent that the certificates did not have the creditworthiness defendants had portrayed. As a result, the market value of the certificates plummeted. Because of defendants' misrepresentations and omissions, plaintiffs and the assigning entities suffered damages in the form of overpaying for the certificates in the first instance. Plaintiffs and the assigning entities also suffered damages as a result of defendants' misrepresentations and omissions when the risky loans defaulted, causing plaintiffs to

lose principal and interest payments and incur writedowns to the loan pools underlying the certificates. Twenty-five of the 31 certificates are now in default.

520. Industry executives have explained how false credit ratings relate to losses on RMBS products like those defendants sold in this case. According to Charles Prince, the former CEO of Citigroup, the largest bank in the world, the Credit Rating Agencies' downgrades were "the precipitating event in the financial crisis."

521. Defendants had actual knowledge on the day they wrote falsified credit ratings into the Offering Documents at issue in this case that there was an immediate and direct relationship between credit ratings and market values. Defendants clearly foresaw the harm they would inflict on plaintiffs by misrepresenting those ratings. When the credit ratings were downgraded, the certificates' market values predictably dropped – just as defendants said they would. Yet defendants elected not to balance their "risk" factor about credit ratings with a "reality" factor disclosing the truth that they had intentionally misrepresented those ratings in this case.

522. Defendants warped those ratings so that they could sell the subject certificates at inflated values, and pocket a larger profit or "spread" between the amount of money they paid their originators for defective loans and the amount of money they received by selling those defective loans to plaintiffs, via securitizations. Quite simply, defendants used inaccurate data to make and market the certificates so that they could make more money.

523. Downgrades to junk revealed the truth that the original ratings – like the OLTV and OOR data – were based on false and inaccurate information on the day they were issued. It is not possible to ascribe this inaccurate information to mistakes in the origination or structuring processes outside of defendants' control. Rather, as revealed by the government's disclosure of the Clayton data in September 2010, defendants were well aware of reports detailing the inaccurate OLTV, OOR and ratings data used to structure the RMBS at issue in this case ***before*** making, structuring and

selling their RMBS to plaintiffs, and defendants nonetheless deliberately decided to misrepresent that data to plaintiffs, the Credit Rating Agencies, and other investors, so that they could profit.

C. The Relationship Between Underwriting and RMBS Performance

524. Defendants also concealed rampant, systematic violations of stated loan underwriting standards to maximize their profits at plaintiffs' expense. Underwriting, by definition, refers to the process of determining a borrower's ability and willingness to repay a loan. As with LTV ratios, OORs and credit ratings, defendants' decision to misrepresent underwriting standards relates directly to plaintiffs' economic damages.

525. Government investigations demonstrate the direct link between defendants' misrepresentations about underwriting standards and plaintiffs' economic harm. On or about March 13, 2008, for example, after a seven-month investigation requested by the President of the United States, a working group led by the Secretary of Treasury and including the chairmen of the Federal Reserve, the SEC, and the Commodities Futures Trading Commission, issued a report finding that: (i) "a significant erosion of market discipline by those involved in the securitization process, including originators, underwriters, credit rating agencies and global investors, related in part to failures to provide adequate risk disclosures"; and (ii) "[t]he turmoil in financial markets clearly was triggered by a dramatic weakening of underwriting standards for U.S. subprime mortgages."

526. Indeed, contrary to defendants' expected efforts to claim that plaintiffs' certificates declined in value because of this Nation's economic collapse, in fact the opposite is true – defendants' systemic misrepresentations in the Offering Documents caused plaintiffs' and many other investors' certificates to plummet in value, which in turn caused this Nation's financial collapse. Defendants' systemic misrepresentations and omissions concerning the loans at issue caused plaintiffs' damages, and thereafter "***the high risk loans [defendants] issued became the fuel that ignited the financial crisis***." Levin-Coburn Report at 50; *see also id*. at 475 ("***The widespread***

losses caused by . . . RMBS securities originated by investment banks [which contained "poor quality assets"] are a key cause of the financial crisis that affected the global financial system in 2007 and 2008.").

527. When it became known that the loans in the offerings were much riskier than represented, through skyrocketing default rates that led to major credit downgrades to the certificates, it also became apparent that the loans had not been originated pursuant to the underwriting standards represented in the Offering Documents. It became apparent then that the loans had been originated in a slipshod fashion, with little regard to the most basic underwriting guideline of all – determining whether the borrower could repay the loan. This fact too was a cause of the plummeting value of plaintiffs' certificates, and a contributing cause of plaintiffs' damages. Therefore, defendants' misrepresentations about underwriting standards directly and proximately caused plaintiffs' injuries.

D. The Relationship Between Proper and Timely Transfer of Title and Plaintiffs' Damages

528. Defendants' misrepresentations that the loans would be properly and timely transferred to the trusts were also a proximate cause of plaintiffs' economic damages. Plaintiffs believed they were purchasing mortgage-***backed*** securities. Given that the certificates are lacking much of the backing or collateral that was supposed to be providing security, and guaranteeing a source of funds if the loans defaulted, the certificates have lost value as it has become known that the RMBS might actually be ***non***-mortgage-backed securities. In other words, the lack of collateral underlying the certificates has caused an understandable and logical diminution in the value of the certificates. As Professor Levitin noted in his testimony to Congress in November 2010, the failure to properly or timely transfer title would have "profound implications for [R]MBS investors," and

would cause trillions of dollars in damages. Defendants' misrepresentations concerning the transfer of title proximately caused plaintiffs' damages.

FIRST CAUSE OF ACTION

(Common Law Fraud Against All Defendants)

529. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

530. As alleged above, in the Offering Documents, defendants made false and misleading statements of material fact, and omitted material facts necessary in order to make their statements, in light of the circumstances under which the statements were made, not misleading.

531. As corporate parent of its wholly-owned subsidiaries, Credit Suisse AG, directed and controlled the activities of its co-defendants, and used them as conduits to conduct the RMBS offerings alleged herein.

532. Defendants knew at the time they sold and marketed each of the certificates that the foregoing statements were false and misleading or, at the very least, were made recklessly.

533. Defendants made these materially false and misleading statements and omissions for the purpose of inducing plaintiffs (and the assigning entities) to purchase the certificates. Furthermore, these statements related to these defendants' own acts and omissions.

534. Defendants knew or recklessly disregarded that investors like plaintiffs (and the assigning entities) were relying on defendants' expertise, and defendants encouraged such reliance through the Offering Documents, as described herein. Defendants knew or recklessly disregarded that investors like plaintiffs (and the assigning entities) would rely upon defendants' representations in connection with their decisions to purchase the certificates. As alleged herein, defendants were in a position of unique and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

535. It was only by making such misrepresentations and omissions that defendants were able to induce plaintiffs (and the assigning entities) to buy the certificates. Plaintiffs (and the assigning entities) would not have purchased or otherwise acquired the certificates but for defendants' fraudulent representations and omissions about the quality of the certificates and the underlying loans.

536. Plaintiffs (and the assigning entities) actually, justifiably, reasonably, and foreseeably relied upon defendants' false and misleading representations and omissions regarding the certificates and the underlying loans.

537. As a result of defendants' false and misleading statements and omissions, as alleged herein, plaintiffs (and the assigning entities) have suffered substantial damages.

538. The Credit Suisse Defendants also defrauded plaintiffs (and the assigning entities) by concealing from plaintiffs (and the assigning entities) that such defendants were "shorting" RMBS like the certificates sold to plaintiffs (and the assigning entities) at the same time those defendants sold the certificates at issue to plaintiffs (and the assigning entities).

539. Because defendants committed these acts and omissions maliciously, wantonly and oppressively, and because the consequences of these acts knowingly affected the general public, including, but not limited to, all persons with interests in the RMBS, plaintiffs (through themselves and the assigning entities) are entitled to recover punitive damages.

SECOND CAUSE OF ACTION

(Fraudulent Inducement Against All Defendants)

540. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

541. As alleged above, in the Offering Documents defendants made fraudulent, false and misleading statements of material fact, and omitted material facts necessary in order to make their statements, in light of the circumstances under which the statements were made, not misleading.

542. This is a claim for fraudulent inducement against all of the defendants. As a corporate parent, defendant Credit Suisse AG directed the activities of its co-defendant subsidiaries and used them as conduits to conduct the RMBS offerings alleged herein.

543. Defendants knew at the time they sold and marketed each of the certificates that the foregoing statements were false and misleading or, at the very least, made recklessly.

544. Defendants made these materially false and misleading statements and omissions for the purpose of inducing plaintiffs (and the assigning entities) to purchase the certificates. Furthermore, these statements related to defendants' own acts and omissions.

545. Defendants knew or recklessly disregarded that investors like plaintiffs (and the assigning entities) were relying on defendants' expertise, and defendants encouraged such reliance through the Offering Documents, as described herein. Defendants knew or recklessly disregarded that investors like plaintiffs (and the assigning entities) would rely upon defendants' representations in connection with their decisions to purchase the certificates. As alleged herein, defendants were in a position of unique and superior knowledge regarding the true facts concerning the foregoing material misrepresentations and omissions.

546. It was only by making such misrepresentations and omissions that defendants were able to induce plaintiffs (and the assigning entities) to buy the certificates. Plaintiffs (and the assigning entities) would not have purchased or otherwise acquired the certificates but for defendants' fraudulent representations and omissions about the certificates and the underlying loans.

547. Plaintiffs (and the assigning entities) actually, justifiably, reasonably, and foreseeably relied upon defendants' false and misleading representations and omissions regarding the certificates and underlying loans.

548. By virtue of defendants' false and misleading statements and omissions, as alleged herein, plaintiffs (and the assigning entities) have suffered substantial damages and are also entitled to rescission or rescissory damages.

549. In addition, because defendants acted maliciously, wantonly and oppressively, and defendants' acts affected the general public, plaintiffs are entitled to recover punitive damages.

THIRD CAUSE OF ACTION

(Aiding and Abetting Fraud Against All Defendants)

550. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

551. This is a claim against each of the defendants for aiding and abetting the fraud by their co-defendants. Specifically, each of the Credit Suisse Defendants aided and abetted each of the other Credit Suisse Defendants.

552. Each of the defendants knew of the fraud perpetrated by the each of their co-defendants on plaintiffs (and the assigning entities). As alleged in detail above, each of the defendants knew that the certificates were not backed by loans of the quality represented by defendants, and were not underwritten according to the originators' stated underwriting standards. In fact, defendants owned originators and/or conducted due diligence on the loan pools securitized into the offerings purchased by plaintiffs (and the assigning entities) and identified the originators' deviations from the loan underwriting and appraisal standards set forth in the Offering Documents and knew that the LTV ratios, OOR percentages (including the Primary Residence Percentages) and credit ratings in the Offering Documents were false. Each of the defendants also knew that their

representations that they had timely and properly transferred title to the mortgage loans were false. Each of the defendants participated in those violations of their co-defendants, and had actual knowledge of their own acts and participated in and had actual knowledge of their co-defendants' fraudulent acts alleged herein.

553. Furthermore, each of the defendants provided their co-defendants with substantial assistance in advancing the commission of their fraud. As alleged in detail above, each of the defendants participated in the following acts constituting the fraud with their co-defendants: making false and misleading statements and omissions in the Offering Documents about the originators' loan underwriting and appraisal standards, the loans' LTV ratios, the loans' OOR percentages (including the Primary Residence Percentages), the certificates' credit ratings, and the transfer of title of the mortgage loans; providing false information about the loans underlying the certificates to the Credit Rating Agencies; providing false information for use in the Offering Documents; concealing from plaintiffs (and the assigning entities) the originators' deviations from their stated mortgage loan underwriting and appraisal standards.

554. It was foreseeable to each of the defendants at the time they actively assisted in the commission of their co-defendants' frauds that plaintiffs (and the assigning entities) would be harmed as a result of each of the defendants' assistance of their co-defendants.

555. As a direct and natural result of the frauds committed by each defendant, and each defendant's knowing and active participation in each fraud committed by such defendant's co-defendants, plaintiffs (and the assigning entities) have suffered substantial damages.

556. In addition, because defendants acted maliciously, wantonly and oppressively, and defendants' acts affected the general public, plaintiffs are entitled to recover punitive damages.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation Against All Defendants)

557. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein, except any allegations that defendants made any untrue statements and omissions intentionally or recklessly. For the purposes of this cause of action, plaintiffs expressly disclaim any claim of fraud or intentional or reckless misconduct.

558. This is a claim for negligent misrepresentation against all defendants.

559. Plaintiffs (and the assigning entities) made 31 separate investments in 16 offerings of RMBS that the defendants securitized and sold.

560. It is a required industry practice for underwriters of RMBS offerings to perform an investigation of the loans backing the certificates to ensure that the quality of the loans is as represented in the offering documents provided to investors. In fact, U.S. securities laws require defendants to "***perform a review of the pool assets underlying the asset-backed security***" and ensure that such information shall be disclosed in the offering documents and "***is accurate in all material respects***." 17 C.F.R. §230.193. In addition, "[p]rospective investors look to the underwriter – a fact well known to all concerned and ***especially to the underwriter*** – to pass on the soundness of the security and the correctness of the [offering documents]." *Chris-Craft Indus. v. Piper Aircraft Corp.*, 480 F.2d 341, 370 (2d Cir. 1973).

561. Because of the foregoing, defendants conducted due diligence and investigated the loans that backed their RMBS offerings. The purpose and effect of defendants' legal obligations as underwriters to conduct due diligence and ensure the correctness of the statements in the Offering Documents, as well as the investing public's understanding that the RMBS underwriters perform such due diligence to ensure the accuracy of statements made in the Offering Documents, was to assure plaintiffs (and the assigning entities) that they could reasonably rely upon the Offering

Documents. Moreover, by virtue of the due diligence defendants performed, and their extensive role in originating, purchasing, securitizing and selling the certificates that plaintiffs (and the assigning entities) purchased, defendants had extremely unique and special knowledge and expertise regarding the loans backing those certificates, including the loans' quality, the nature of their underwriting, their value and adequacy as collateral, their LTV ratios, their OOR percentages, and the title to such loans.

562. In particular, because plaintiffs (and the assigning entities) did not have access to the loan files for the mortgage loans, or defendants' due diligence and valuation reports, while only defendants did, and because plaintiffs (and the assigning entities) could not examine the underwriting quality of the mortgage loans underlying the offerings on a loan-by-loan basis, plaintiffs (and the assigning entities) were heavily dependent on defendants' unique and special knowledge and expertise regarding the loans that backed the certificates at issue herein when determining whether to invest in each certificate. Plaintiffs (and the assigning entities) were entirely dependent on defendants to provide accurate and truthful information regarding the loans because plaintiffs (and the assigning entities) had no access to the loan files, which were completely within defendants' control. Moreover, as alleged above, at the time plaintiffs (and the assigning entities) purchased the certificates, plaintiffs (and the assigning entities) had no ability to test the veracity of defendants' representations in the Offering Documents concerning the loans because there were no loan databases available in the 2005 to 2007 time period which would allow plaintiffs (or the assigning entities) to conduct sufficient analyses, like the analyses plaintiffs performed just prior to filing this complaint. Accordingly, defendants were uniquely situated to evaluate the safety and economics of each certificate sold to plaintiffs (and the assigning entities) and the loans underlying them.

563. Because plaintiffs (and the assigning entities) were without access to critical information regarding the loans backing the certificates, and defendants had a legal obligation to perform due diligence on the loans and ensure any statements made about the loans in the Offering Documents were truthful and accurate, and plaintiffs (and the assigning entities) had the understanding that RMBS underwriters performed due diligence to ensure the accuracy of the Offering Documents, defendants had a duty to plaintiffs (and the assigning entities) to verify the "accuracy" and truthfulness of the Offering Documents.

564. Over the course of over three years, for 31 separate investments, plaintiffs (and the assigning entities) relied on defendants' unique and special knowledge regarding the quality of the underlying mortgage loans, and defendants' underwriting when determining whether to invest in the certificates. This longstanding relationship, coupled with defendants' unique and special position of knowledge about the underlying loans, created a special relationship of trust, confidence, and dependence between defendants and plaintiffs (and the assigning entities).

565. Defendants were aware that plaintiffs (and the assigning entities) relied on defendants' unique and special position, expertise and experience, and depended upon defendants for accurate and truthful information. Defendants also knew that the actual true statistics regarding the loans and the loans' compliance with the stated underwriting standards were exclusively within defendants' knowledge.

566. Based on defendants' expertise, superior knowledge, legal duties, and relationship with plaintiffs (and the assigning entities), defendants owed a duty to plaintiffs (and the assigning entities) to provide complete, accurate, truthful and timely information regarding the mortgage loans and the certificates. Defendants breached their duty to provide such information to plaintiffs (and the assigning entities).

567. Defendants likewise made misrepresentations which they knew, or were negligent in not knowing at the time, to be false and misleading in order to induce plaintiffs' (and the assigning entities') investment in the certificates. Defendants provided the Offering Documents to plaintiffs (and the assigning entities) in connection with the sale of the certificates, for the purpose of informing plaintiffs (and the assigning entities) of material facts necessary to make an informed judgment about whether to purchase the certificates in the offerings. In providing these documents, defendants knew that the information contained and incorporated therein would be used for a serious purpose, and that plaintiffs (and the assigning entities), like other reasonably prudent investors, intended to rely on the information contained in the Offering Documents.

568. As alleged above, the Offering Documents contained materially false and misleading information and omissions, including, without limitation, misrepresentations concerning the underwriting guidelines, appraisals, LTV ratios, Primary Residence Percentages, credit ratings, and the transfer of title to the loans.

569. Defendants acted negligently in making the materially false and misleading statements and omissions to plaintiffs (and the assigning entities).

570. Unaware that the Offering Documents contained materially false and misleading statements and omissions, plaintiffs (and the assigning entities) reasonably relied on those false and misleading statements and omissions when deciding to purchase the certificates.

571. Plaintiffs (and the assigning entities) purchased certificates from defendant Credit Suisse Securities in the offerings, and are therefore in privity with them.

572. Based on defendants' expertise and specialized knowledge, and in light of the false and misleading representations and omissions in the Offering Documents, defendants owed plaintiffs (and the assigning entities) a duty to provide them with complete, accurate, truthful and timely

information regarding the quality of the certificates and underlying loans, and their title, and defendants breached their duty to provide such information to plaintiffs (and the assigning entities).

573. Plaintiffs (and the assigning entities) reasonably relied on the information provided by defendants and have suffered substantial damages as a result of defendants' misrepresentations.

FIFTH CAUSE OF ACTION

(Rescission Based upon Mutual Mistake Against Credit Suisse Securities)

574. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs, as if fully set forth herein.

575. Based on the representations in the Offering Documents, both the underwriter defendant Credit Suisse Securities, which sold the certificates, and the plaintiffs (and the assigning entities), which purchased them, believed that the mortgages and notes described in the Offering Documents had been validly assigned to the trusts and/or trustees at the time the certificates were purchased.

576. As alleged above, however, the vast majority of the mortgages and notes were, in fact, not timely or properly assigned to the trusts and/or trustees at the time the certificates were purchased by plaintiffs (and the assigning entities).

577. Therefore, a mutual mistake existed at the time that plaintiffs (and the assigning entities) contracted for the sale of the certificates.

578. The assignment of the mortgages and notes to the trusts and/or trustees was a crucial fact that went to the heart of each of the offerings at issue here. Without proper assignments, the trustees for the trusts have no legal right to foreclose on the collateral in the event a borrower defaults, the trusts do not own the mortgages and the notes, and the trusts do not qualify for REMIC tax classification. Without proper and timely assignments, the trusts bear a substantial risk of being

subjected to heavy tax assessments and penalties which are ultimately borne by investors such as plaintiffs.

579. These were significant risks that were undisclosed due to the misrepresentations in the Offering Documents, and were neither part of plaintiffs' (or the assigning entities') investment objectives, nor defendants' purported investment offer. Had plaintiffs (and the assigning entities) known that the mortgages and notes had not been properly and timely assigned to the trusts, they would not have purchased the certificates.

580. Because a mutual mistake of a material fact existed at the time plaintiffs (and the assigning entities) contracted for the sale of the certificates, the transactions are void and plaintiffs are therefore entitled to rescission.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for relief and judgment, as follows:

(a) Awarding compensatory damages in favor of plaintiffs against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(b) Awarding punitive damages for plaintiffs' common-law fraud claims;

(c) Alternatively, awarding plaintiffs the right to rescission and/or rescissory damages, as to all defendants, sustained as a result of defendants' wrongdoing and/or mutual mistake;

(d) Awarding plaintiffs their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(e) Such other relief, including equitable relief, as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

DATED: September 9, 2013

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APPENDIX A

Credit Suisse Offerings

Offering	Issue Date	Depositor	Sponsor	Defendant Underwriter	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Plaintiff	Original Purchaser	Seller
ABSHE 2006-HE1	2/6/2006	ABSC	DLJ Mortgage	Credit Suisse Securities	M1	04541GVL3	2/2/2006	$15,000,000	Phoenix	Greyhawk	Credit Suisse Securities
					M1	04541GVL3	2/2/2006	$15,000,000	Phoenix	Harrier	Credit Suisse Securities
					M3	04541GVN9	2/2/2006	$5,000,000	Phoenix	Harrier	Credit Suisse Securities
ABSHE 2006-HE2	3/24/2006	ABSC	DLJ Mortgage	Credit Suisse Securities	M5	04541GWL2	2/28/2006	$5,000,000	Silver Elms	Paradigm	Credit Suisse Securities
ABSHE 2006-HE4	4/28/2006	ABSC	DLJ Mortgage	Credit Suisse Securities	M5	04544GAM1	4/25/2006	$2,000,000	Silver Elms	Paradigm	Credit Suisse Securities
ABSHE 2006-HE6	11/30/2006	ABSC	DLJ Mortgage	Credit Suisse Securities	A5	04544NAR5	11/30/2006	$15,000,000	Phoenix	WestLB	Credit Suisse Securities
ABSHE 2006-HE7	11/30/2006	ABSC	DLJ Mortgage	Credit Suisse Securities	M5	04544QAK3	11/3/2006	$3,112,000	Kleros V	WestLB	Credit Suisse Securities
BASIC 2006-1	4/7/2006	Banccap Asset	Banccap Advisors	Credit Suisse Securities	M1	06983NAD9	4/5/2006	$4,000,000	Silver Elms	Paradigm	Credit Suisse Securities
CSMC 2006-3	3/30/2006	CSFBMS	DLJ Mortgage	Credit Suisse Securities	1M1	225470R70	11/22/2006	$3,000,000	Silver Elms II	WestLB	Credit Suisse Securities
					1M1	225470R70	3/8/2006	$10,000,000	Silver Elms	Paradigm	Credit Suisse Securities
ECR 2005-4	11/10/2005	ABSC	Encore	Credit Suisse Securities	M5	29256PBA1	12/13/2006	$3,825,000	Kleros V	WestLB	Credit Suisse Securities
GEWMC 2005-2	12/19/2005	GE-WMC Mortg. Secs.	GE Mortgage	Credit Suisse Securities	M1	367910AW6	12/13/2005	$22,185,000	Phoenix	Greyhawk	Credit Suisse Securities
HEAT 2006-4	5/1/2006	CSFBMS	DLJ Mortgage	Credit Suisse Securities	M6	437084VW3	3/31/2006	$2,700,000	Silver Elms	Paradigm	Credit Suisse Securities
HEAT 2006-7	10/3/2006	CSFBMS	DLJ Mortgage	Credit Suisse Securities	2A4	43709NAE3	10/3/2006	$11,000,000	Phoenix	WestLB	Credit Suisse Securities
					M6	43709NAM5	9/25/2006	$4,000,000	Kleros V	WestLB	Credit Suisse Securities
HEAT 2007-3	5/1/2007	CSFBMS	DLJ Mortgage	Credit Suisse Securities	M1	43710TAF4	4/20/2007	$2,000,000	Silver Elms II	Silver Elms II	Credit Suisse Securities
LBMLT 2005-WL3	11/30/2005	Long Beach Secs.	Long Beach	Credit Suisse Securities	M1	542514PR9	11/16/2005	$32,871,000	Phoenix	Greyhawk	Credit Suisse Securities
					M2	542514PS7	11/16/2005	$48,414,000	Phoenix	Harrier	Credit Suisse Securities
					M4	542514PU2	11/17/2005	$17,000,000	Phoenix	Harrier	Credit Suisse Securities
					M5	542514PV0	11/16/2005	$20,000,000	Phoenix	Harrier	Credit Suisse Securities
LBMLT 2006-1	2/7/2006	Long Beach Secs.	Long Beach	Credit Suisse Securities	M1	542514RN6	1/26/2006	$10,500,000	Blue Heron V	Blue Heron V	Credit Suisse Securities
					M1	542514RN6	1/26/2006	$7,500,000	Blue Heron VI	Blue Heron VI	Credit Suisse Securities
					M1	542514RN6	1/26/2006	$10,000,000	Phoenix	Blue Heron III	Credit Suisse Securities
					M1	542514RN6	1/26/2006	$5,000,000	Phoenix	Blue Heron IV	Credit Suisse Securities
					M1	542514RN6	1/26/2006	$7,500,000	Blue Heron VII	Blue Heron VII	Credit Suisse Securities
					M2	542514RP1	1/26/2006	$24,000,000	Phoenix	Harrier	Credit Suisse Securities
					M2	542514RP1	1/26/2006	$10,000,000	Blue Heron II	Blue Heron II	Credit Suisse Securities
NCHET 2006-1	3/30/2006	New Century Mortg.	New Century	Credit Suisse Securities	A2C	64352VQS3	3/22/2006	$10,000,000	Silver Elms II	Paradigm	Credit Suisse Securities
					M3	64352VQV6	3/23/2006	$5,000,000	Silver Elms	Paradigm	Credit Suisse Securities

Offering	Issue Date	Depositor	Sponsor	Defendant Underwriter	Tranche Purchased	CUSIP	Purchase Date	Original Face Amount	Plaintiff	Original Purchaser	Seller
		Secs.									
NYMT 2005-3	12/20/2005	NYMT Secs.	NYMT	Credit Suisse Securities	M1	649603AH0	12/16/2005	$7,500,000	Phoenix	Greyhawk	Credit Suisse Securities
					M2	649603AJ6	12/16/2005	$24,088,000	Phoenix	Harrier	Credit Suisse Securities

General Information

Case Name	Phoenix Light SF Limited v. Credit Suisse AG
Docket Number	653123/2013
Status	Open
Court	New York Supreme Court, New York County

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