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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered

DEBTORS' OBJECTION TO MOTION OF THE FEDERAL HOUSING FINANCE AGENCY FOR RELIEF FROM THE AUTOMATIC STAY

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Residential Capital, LLC and its affiliated debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the "Debtors") hereby submit this objection (the "Objection") to the *Motion of the Federal Housing Finance Agency Pursuant to the July 11, 2012 Order of the Honorable Denise L. Cote Seeking Limited Discovery from the Debtors and, If Necessary to That Purpose, Relief from the Automatic Stay*, dated July 17, 2012 (Docket No. 806) (the "Initial Motion") and the *Supplement to July 17, 2012 Motion of the Federal Housing Finance Agency Pursuant to the July 11, 2012 Order of the Honorable Denise L. Cote Seeking Limited Discovery from the Debtors and, If Necessary to That Purpose, Relief from the Automatic Stay* (Docket No. 859) (the "Supplemental Motion").[1] In support of this opposition, the Debtors submit the Declaration of Jeffrey A. Lipps, dated August 7, 2012 (the "Lipps Declaration"), attached as Exhibit 1, the Declaration of John G. Mongelluzzo, dated August 7, 2012 (the "Mongelluzzo Declaration"), attached as Exhibit 2, and respectfully represent:

PRELIMINARY STATEMENT

1. The Federal Housing Finance Agency ("FHFA") seeks relief from the automatic stay in order to force the production of documents from the Debtors. Because of the high cost and significant burden that such production would pose, FHFA cannot establish cause sufficient to truncate the statutorily imposed breathing spell to which the Debtors are entitled under section 362 of title 11 of the United States Code (the "Automatic Stay").

2. Should FHFA's motion be granted, the Debtors will incur millions of dollars in expenses, and employees necessary for the restructuring and preservation of estate assets will be distracted during this critical period. All of this expense and interference with the Debtors will not benefit them or any other creditor, and the sought discovery will most certainly

[1] The Initial Motion and the Supplemental Motion are referred to together as the "Motion."

be used against the Debtors and their interests by FHFA. In essence, FHFA is seeking to do nothing more than put itself ahead of all other creditors by demanding the production of documents at the expense of the estates so that it can pursue claims against Debtors' corporate affiliates, and ultimately the Debtors. For these reasons, the Motion should be denied.

BACKGROUND

3. On the May 14, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). No trustee has been appointed in the Chapter 11 cases.

4. On May 16, 2012, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed a nine-member official committee of unsecured creditors (the "Creditors' Committee").

5. On July 3, 2012, the U.S. Trustee appointed the Honorable Arthur T. Gonzalez, former Chief Judge of this Court, as examiner (the "Examiner").

6. On July 17, 2012, FHFA filed the Initial Motion, seeking the production of "loan tapes" and "originator information" and arguing that the discovery it was seeking was "extremely limited" and "consist[s] of just 21 data files . . . ." (Initial Motion at 13.)

7. On July 20, 2012, FHFA filed the Supplemental Motion seeking access to "Loan Files" on the "same [legal bases] as those set forth in the [Initial] Motion with respect to the loan tapes and originator information." (Supplemental Motion at 3.) FHFA did not indicate in its Supplemental Motion how many loan files it is seeking. The number could be as high as 105,000 loan files or potentially "only" 42,700 loan files if it seeks only the loan files in the

"supporting loan groups."[2] FHFA makes no mention of the lack of burden *this* request would have on the Debtors because it is well aware how massive that burden would be. Instead, it coyly relies on the "same" bases in the Supplemental Motion as it does in the Initial Motion, though the scope and nature of the requests in each are completely different.

8. The Loan Files and Loan Tapes that FHFA is seeking relate to its case against, among others, Ally Securities, Ally Financial, Inc., and GMAC Mortgage Group, Inc. (together, the "Non-Debtor Affiliates"), corporate affiliates of the Debtors, captioned *FHFA v. Ally Financial Inc.,* 11-civ-07010 (S.D.N.Y.) (the "FHFA Litigation"). (Initial Motion at 3; Supplemental Motion at 3.) Debtors had initially been named as defendants in that case, but were dismissed after the filing of these bankruptcy cases. (Lipps Decl. ¶ 5.) The allegations against the Non-Debtor Affiliates are based on the same alleged conduct that was previously alleged against the Debtors. (*Id.*) The Debtors, now inarguably third parties to the FHFA Litigation, have received no formal request for the discovery FHFA is seeking other than the Motion. Although the Debtors are third parties to the FHFA Litigation, as fully discussed in their motion to extend the automatic stay, the Debtors still face significant harm from the FHFA Litigation including threats of res judicata, their indemnification obligations, depletion of their shared insurance proceeds, and most relevant here—burdensome and costly discovery. (Motion to Extend the Automatic Stay Or, In the Alternative, for Injunctive Relief Enjoining Prosecution of Certain Litigation Against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates, *Residential Capital LLC et al. v. Allstate Ins. Co. et al.*, Adv. No. 12-ap-01671 (MG), ECF No. 4 (Bankr. S.D.N.Y. May 25, 2012).)

[2] FHFA has informally indicated it may seek a smaller number of loan files, but it has not formally indicated whether it will do so, what that number of files will be, or which files it is seeking.

OBJECTION

9. The discovery sought by FHFA is onerous, expensive, and will interfere with the Debtors' restructuring efforts. Dismissing these incredible and very real burdens out of hand, FHFA rests its argument on two premises: first, that the automatic stay does not apply to third-party discovery against a debtor, and second, that even if it did, FHFA has shown sufficient cause to lift the automatic stay. Both premises are wrong and the Debtors should not be subjected to the costly and burdensome discovery that FHFA demands.

I. THE DISCOVERY SOUGHT BY FHFA IS EXTREMELY COSTLY AND BURDENSOME TO THE DEBTORS

10. The discovery that FHFA is seeking from the Debtors through the Motion is significant. Although FHFA glosses over the huge burden and costs, as described below and in the Mongelluzzo and Lipps declarations, the burden and costs cannot be ignored and the Motion must be denied.

11. The discovery that FHFA seeks can be broken down into two parts. First, it seeks "loan tapes" and "originator information" (together, the "Loan Tapes"). (Initial Motion at 3.) Second, and most troublingly, it requests "Loan Files," and although it does not specify how many, it may be seeking 42,700 or even 105,000 of them. (Lipps Decl. ¶ 14b.) Producing these documents would be extremely costly and burdensome to the Debtors.[3]

A. Debtors' Loan Files and Loan Tapes

12. The Loan Files sought by FHFA are composed of two parts, an "origination file" and a "servicing file." (Supplemental Motion ¶ 5.)

[3] Debtors have only considered producing Loan Files in response to third-party subpoenas where (1) the number of sought documents is very small, (2) the requesting party agrees to pay all of the Debtors' expenses, and (3) none of the discovery will be used to the detriment of the Debtors.

13. Loan Files of the vintage sought by FHFA are stored in a combination of hard-copy form and electronic form. (Mongelluzzo Decl. ¶ 13.) And not even all portions of a single Loan File are stored together. For all of the Loan Files sought by the FHFA, a portion of either or both the origination file and servicing file is likely stored in hard copy. (*Id.* ¶ 40.) Even as to a single Loan File, hard-copy portions could be stored in more than one place. (*Id.* ¶ 28.)

14. The Debtors' "Fulfillment Group," within Capital Markets Operations, is responsible for tracking down Loan Files and other such documents. (*Id.* ¶ 5.) Tracking down Loan Files is a regular part of the Debtors' business, and is necessary for a variety of other obligations the Debtors are facing in this bankruptcy case including requests from the Creditors' Committee seeking thousands of Loan Files. (*Id.* ¶ 60b.) The Fulfillment Group has only nine employees who handle requests such as the one FHFA makes here, and they are already at capacity, searching for, locating, and processing tens of thousands of Loan Files a month for the Debtors' business operations and other obligations further described below. (*Id.* ¶ 5.)

15. Loan Tapes are stored separately from Loan Files. Loan Tapes, which are data files, are located on one or more of the Debtors' shared drives or in the historical email of the employees who worked on the securitizations when they were issued. However, as described in further detail below, they are incredibly hard to find because of the sheer volume of such files that the Debtors maintain, and can only be effectively searched in historic email folders or by having a few select of the Debtors' employees who are knowledgeable about historic securitizations and the Debtors' systems scour old servers.

B. Producing the Discovery Sought by FHFA Will Pose a Substantial Burden on the Debtors and Interfere with Their Reorganization

16. The collection and production of the documents sought by FHFA will require huge amounts of time from the Debtors and distract Debtors' employees from key tasks related to the restructuring and preserving their business.

(i) Burdens of Loan File Production

17. The process of finding, collecting, and preparing Loan Files for production is exceptionally laborious and time consuming. (*Id.* ¶ 12.) And Fulfillment Group employees responsible for these tasks are trained on the Debtors' systems, are familiar with its storage systems, and cannot be replaced or supplemented by temporary workers. (*Id.* ¶ 59)

18. To simply identify the location of a Loan File—or the various locations in which its constituent parts might be located—a Fulfillment Group employee must search for the loan in each of ResCap's fourteen loan databases. (*Id.* ¶ 20.) Although the Fulfillment Team can search for Loan Files in "bulk," simply identifying the location of 105,000 would alone take approximately two weeks. (*Id.* ¶¶ 22, 24.) Even locating "just" 42,700 Loan Files would take at least a week. (*Id.*) And, importantly, while the databases are running such massive searches, they cannot be used for other functions, so the searches must be run overnight or the Debtors' regular business operations must be put on hold while the bulk searches are running. (*Id.* ¶ 24.)

19. Even after all 14 databases have been searched, the task of locating Loan Files is not complete. The search results invariably include erroneous outputs, including missing Loan Files, parts of Loan Files shown as being in more than one location, among others. (*Id.* ¶¶ 26-27.) The Fulfillment Group must then work to rectify these "exceptions" manually. (*Id.*) Simply put, just finding the Loan Files that FHFA is seeking is a time-consuming and laborious task.

20. Once a loan has been researched and the Fulfillment Group knows where each part of the Loan File is, a lot of work is still necessary to gather and process those Loan Files for production. For Loan Files (or portions of Loan Files) that are stored in hard copy, the Debtors must contact one of their storage vendors to find the physical files. (*Id.* ¶ 29.)

21. The Debtors have two primary storage vendors among several other smaller vendors. (*Id.*) Those vendors store and track the Loan Files they maintain for the Debtors among innumerable additional documents stored for their other clients. After receiving the request from the Fulfillment Group for a Loan File, the storage vendor must then locate the box in which each Loan File resides, and then pull that box. (*Id.* ¶ 32.)

22. The storage vendors have only so much capacity. Contractually, Debtors can ask each of their primary vendors to pull 250 boxes per week at a specified price. However, beyond that contractual limitation, the vendors charge several multiples of those fees (described below) and, in many cases, can simply not fulfill requests fast enough regardless of expense. (*Id.*) A request of 105,000 loan files or even 42,700 loan files required on a short time frame could overwhelm the vendors and impede their ability to get the documents to the Debtors that they need to operate their business and comply with restructuring obligations.

23. After one of the storage vendors locates and pulls the correct Loan File, it sends it to the Debtors' imaging vendor. (*Id.* ¶ 43.) After the imaging vendor—Affiliated Computer Systems ("ACS")—receives the documents, it images them for a per-page cost. (*Id.* ¶ 45.) Once the imaging is complete, ACS uploads the Loan File directly to the Debtors' FileNet system. (*Id.*) ACS then returns the file to the storage vendor for reshelving. (*Id.*) This process can take several days. (*Id.* ¶ 47.) In addition, ACS is responsible for imaging a wide variety of documents necessary for the Debtors' business, including newly originated loans,

loans in foreclosure, and the like. (*Id*. ¶ 44.) In order not to interfere with these important requests (which are typically very time sensitive), ACS has to spread out "bulk" requests, meaning that they simply cannot be turned around quickly. (*Id*.) And these volume limitations cannot be solved by simply adding more imaging vendors. Because of the extremely sensitive nature of the data contained within the Loan Files—including social security numbers and other credit information—vendors must be pre-cleared for rigorous privacy requirements, requirements that are time consuming to comply with and can simply not be met by many vendors. (*Id.*)

24. The process of searching, locating, and producing documents takes a huge amount of time. In one case, in which the Debtors produced 64,000 Loan Files to certain plaintiffs, it took nine months from beginning to end to produce them. (*Id*. ¶ 48.)

25. If a Loan File, or a portion of a Loan File, is stored electronically by the Debtors, it is easier and less expensive to track down than a hard-copy file. (*Id*. ¶¶ 37-38.) That said, it still takes time and effort from the Fulfillment Group and impinges on its ability to process other pressing requests. (*Id*. ¶ 39.) To produce a Loan File that is electronically stored, the Fulfillment Team must still search for it among the fourteen loan databases. (*Id*. ¶ 20.) Once the file is located, it can be brought up for review to confirm it is the correct and complete file. Then, it can be prepared for production. (*Id*. ¶ 38.) In addition, certain portions of the servicing file may be stored on a separate database—MortgageServ—maintained by the Debtors' servicing group. For that information, the Fulfillment Group must pull that data from MortgageServ and combine it with the other portions of the Loan File that they collect. (*Id.* at ¶ 14.) Notably, the time and cost benefits of producing Loan Files that are stored electronically will not likely have a meaningful impact on the burdens and cost of discovery overall because the vast majority of the Loan Files sought by FHFA are likely to be at least partially in hard-copy format. (*Id*. ¶ 40.)

(ii) The Employees Necessary for Producing Loan Files Have Substantial and Important Duties Related to the Restructuring and Preserving the Assets of the Estates

26. All of the costs and burdens that producing Loan Files will impose on the Debtors is not, of course, the only issue facing the Debtors. Indeed, the very reason the automatic stay exists is because of the tremendous number of complicated obligations that the Debtors are dealing with while they restructure.

27. The Debtors, among innumerable other issues, are currently dealing with the following: (i) due diligence and other issues with respect to the proposed sales of the Debtors' servicing operations and legacy loan portfolios, (ii) producing documents and responding to requests for information in connection with investigations by the Creditors' Committee and the Examiner (including potentially thousands of Loan Files), (iii) compliance with the April 13, 2011 Consent Order with the Board of Governors of the Federal Reserve System, and (iv) operating their business and preserving its value during the sale process, among many others. (*Id.* ¶ 60.) All of these tasks involve tracking down large numbers of Loan Files, and the Fulfillment Group—i.e., the same people who would be collecting FHFA's Loan Files—is responsible for searching for, collecting, and processing them. (*Id.* ¶ 61.)

28. Those tasks are already overburdening the Fulfillment Group (*id.* ¶ 62.), and adding tens of thousands of Loan File searches to its load will further strain, if not prevent altogether, the Debtors' ability to meet those critical obligations.

(iii) Burdens of Loan Tape Production

29. Locating and producing the Loan Tapes is also a very labor intensive process.

30. The original Loan Tapes are stored either (1) on various shared drive servers maintained by the Debtors or (2) in the archived email boxes of individuals involved with the securitizations at issuance. (Lipps Decl. ¶ 15.)

31. To track down those original Loan Tapes on the shared drives, an employee with historical knowledge of the Debtors' securitizations—such as Heather Anderson—will have to search through the shared drives to find each of the twenty-one Loan Tapes. (*Id*. ¶ 17.) And despite the seeming simplicity of that exercise, it is no small task. There are tens of thousands of folders and subfolders that would have to be searched by a knowledgeable employee manually. (*Id*. ¶ 15.) There are no shortcuts, and no guides. Instead, a key Debtor employee such as Ms. Anderson would have to spend hours upon hours scouring shared drives and trying to find the documents, at the same time they are supposed to be undertaking critical tasks for the estate and restructuring. (*Id*. ¶ 16.)

32. And searching for the final Loan Tapes in archived email is not any easier. Restoring email from multiple custodians who may have emailed the Loan Tapes at issue is a very time-consuming process that requires the involvement of the Debtors' e-discovery team, which is incredibly strained during the restructuring, as well as employees with historical knowledge of who was involved in which aspects of each securitization at issue. Restoring archived email, even after the correct custodian and time frame have been identified, is time consuming and labor intensive. (*Id*. ¶ 14.) Then, the documents must be reviewed to find the relevant documents among potentially tens of thousands of restored emails. (*Id*.)

C. The Financial Costs of the Discovery Sought by FHFA Are Massive

33. Although the huge imposition that FHFA's discovery demands will have on the Debtors, their employees, and the restructuring process alone justifies denying the Motion,

the huge out-of-pocket costs such discovery will impose on the Debtors further demonstrate why the Motion should not be granted.

34. Production by the Debtors of the Loan Files will be tremendously expensive. In the aggregate, these costs will easily reach millions of dollars if the Debtors are required to produce 42,700 or 105,000 Loan Files. (Mongelluzzo Decl. ¶ 54.) Every penny spent on FHFA's discovery requests comes directly out of the money that the Debtors need to run their business and that they will ultimately have to distribute to their creditors.

35. Because of the way Loan Files are stored, as described above, merely collecting them from the various vendors who hold them, converting them to electronic files where necessary, and preparing them for production is extremely expensive. (*Id.* ¶ 49.) On average, it costs $25 to collect and prepare a loan file that is stored in hard copy, and the vast majority of the Loan Files that FHFA is seeking will be in whole or in part stored in hard copy (*Id.* ¶ 52.) Approximately half of these costs are attributable to the storage vendors for finding, shipping, and reshelving Loan Files, and half are attributable to the imaging vendors who charge per page to image Loan Files. (*Id.* ¶ 50.) And, as described above, those costs are likely to increase dramatically—to $75 to $100 per loan file—if the Debtors' contractual limits with their storage vendors are exceeded, a virtual certainty if the Debtors are required to produce 42,700 or 105,000 Loan Files in short order. (*Id.* ¶ 54.) That means that the costs *just to collect and image the Loan Files*, which are far from the total costs of production, could range from more than $3 million (if "only" 42,700 loans are at issue and they must be produced very quickly) to more than $8 million (if all 105,000 loans are at issue and they must be produced quickly).[4] And these are

[4] Even a calculation that assumes (1) "only" 42,700 Loan Files have to be produced and (2) those Loan Files could be produced on "regular" time frames results in costs to the Debtors in excess of $1 million.

out-of-pocket costs that the Debtors must pay their vendors—money that will come directly out of the estates with no benefit returning to the estate (or the other creditors).

36. The costs payable to the storage and imaging vendors are not the end of it. There are costs to the Debtors attributable to preparing Loan Files to be turned over to counsel that, while only a few dollars for each file, can become meaningful when massive numbers of Loan Files, such as what are requested here, are at issue. (*Id.* ¶ 51.) Even then, prior to the actual production of documents, the costs to the Debtors are not over because significant hosting and processing is necessary to actually produce those documents to third parties such as FHFA. (*Id.* ¶ 56.) The documents must be bates stamped, stamped for confidentiality, and in some cases reviewed for privilege or confidentiality. (*Id.* ¶¶ 18, 19a, 20, 26.) These costs, which could be significant, are in addition to the costs described above and in the Mongelluzzo Declaration. (Lipps Decl. ¶ 19.) The costs of attorney time for reviewing documents, redacting confidential information (such as borrower information), as well as ancillary attorney costs (such as the cost of negotiating proper confidentiality agreements, etc.) will also be significant.

37. These massive and unavoidable costs alone justify a continuation of the automatic stay and a denial of the Motion. Stripping millions of dollars of assets from the estates to permit this third-party discovery will prejudice the rights of all other creditors.

II. THE AUTOMATIC STAY APPLIES TO DISCOVERY AGAINST THE DEBTORS, AND FHFA HAS NOT SHOWN CAUSE TO LIFT IT

38. The discovery sought by FHFA is subject to the automatic stay, and because of the significant burden and cost that it will take to produce, FHFA cannot carry the heavy burden required to lift it.

A. The Automatic Stay Applies to the Discovery Sought by FHFA

39. Section 362(a)(1) of the Bankruptcy Code provides, in pertinent part, that the filing of a bankruptcy petition:

> operates as a stay, applicable to all entities, of –
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.
>
> * * *
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate

11 U.S.C. § 362(a).

40. The automatic stay affords "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986) (citations omitted).

41. As this Court stated in the context of the Debtors' earlier Motion to Extend the Automatic Stay, discovery against the Debtors is subject to the automatic stay. (Stay Motion Transcript at 99 ("There is an automatic stay in place with respect to discovery from the debtors" and "if you make the motion to vacate the stay, you're going to carry the burden." "[Y]ou or anyone else who is seeking to lift the stay to launch discovery against the debtors is going to carry a very heavy burden.").) And with good reason: allowing the massive discovery that FHFA is seeking against the Debtors will interfere with the complex restructuring they are undertaking and cause the estates to expend large amounts of money.

42. This Court's statement on that point is well supported, as courts in this district have found that the automatic stay extends to efforts to compel third-party discovery

from a debtor, especially where that discovery would be costly and interfere with the reorganization process, as is the case here. *See In re Johns-Manville Corp.*, 40 B.R. 219, 223 (S.D.N.Y. 1984) (holding third-party discovery allowed "*only* when such discovery will not interfere significantly with the Debtor's reorganization efforts); *Teledyne Indus., Inc. v. Eon Corp.*, 373 F. Supp. 191, 203 (S.D.N.Y. 1974) (same); *In re Penn-Dixie Indus., Inc.*, 6 B.R. 832, 836 (Bankr. S.D.N.Y. 1980) (refusing to lift stay to allow third-party discovery from debtors because "[i]nterference by creditors in the administration of the estate, no matter how small, through the continuance of a preliminary skirmish in a suit outside the Bankruptcy Court is prohibited").

43. Courts in other circuits have similarly held that the automatic stay applies to third-party discovery where that discovery affects the property of the estate, and/or interferes with the debtor's restructuring efforts. *See In re Phila. Newspapers, LLC*, 423 B.R. 98, 105 (E.D. Pa. 2010) (critiquing *In re Miller*, discussed below, because the third-party discovery requests at issue there "would under no circumstances affect the property of the debtor, [and] so much cannot be said here"); *Richards v. Badaracco*, No. 88-836, 1988 U.S. Dist. LEXIS 18294, at *6–7 (D.N.J. July 29, 1988) ("It is [the bankruptcy] court which must, in the first instance, determine the extent to which discovery may be had of [the debtor] without interfering with [the debtor's] necessary involvement in the reorganization proceedings." (citing *In re Johns-Manville*, 41 B.R. 926, 932 (S.D.N.Y. 1984))).

44. Despite this Court and others holding that discovery such as what FHFA is seeking here is subject to the automatic stay, FHFA argues that the discovery it is seeking "clearly falls outsid [sic] the scope of the automatic stay." (Initial Motion at 10.)

45. In support of this proposition, FHFA cites Collier's out of context along with a handful of cases that are completely inapposite and from outside of this Circuit. FHFA fails to cite one controlling decision, or even one relevant non-controlling decision, that supports its argument.

46. The provision of Collier's that FHFA cites is actually an example of a broader principle: namely, "[l]itigation in which the debtor is not a party *and that only collaterally affects the debtor* is not stayed." Collier on Bankruptcy ¶ 362.03[3] (emphasis added).[5] FHFA conveniently ignores the second critical component of this principle—that is, the effect or burden on the debtor—for it knows that its extensive discovery requests would indeed have serious adverse effect on the Debtors' restructuring. Not only would the discovery be costly and burdensome, as described at length above and in the Mongelluzzo and Lipps declarations, but it will be used to pursue a case against the Non-Debtor Affiliates that will have direct negative impacts on the Debtors, including indemnification obligations, depletion of insurance proceeds, and the risk of res judicata, law of the case, and/or collateral estoppel.

47. Collier's then states, as an example of this principle, that third-party discovery against a debtor is not subject to the automatic stay; but the cases it cites—one of the same cases FHFA relies on—is clearly inapplicable to a situation where, as here, a party seeks document discovery that would cause great interference with reorganization. In that case, *Groner v. Miller (In re Miller)*, the court found that a post-petition third-party subpoena to a

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[5] *Steinberg's Bankruptcy Litigation* goes further, simply assuming that the automatic stay applies to third-party discovery, and notes that "[w]here creditors seek relief from the stay for the limited purpose of engaging the debtor in discovery, such requests may be granted unless the debtor can establish: (1) The discovery will interfere with the job performance of high level corporate management or reorganization negotiations; (2) The debtor is involved in a critical process of plan formulation; (3) The expenditures related to discovery will imperil the reorganization or the interest of the debtors' creditors." 2 Howard J. Steinberg, Bankruptcy Litigation § 12:67 (2d ed. 2008) (citing *In re Johns-Manville Corp.*, 40 B.R. at 222–26; *In re Johns-Manville*, 39 B.R. 659, 661–62 (S.D.N.Y. 1984); *In re Towner Petroleum Co.*, 48 B.R. 182, 190–91 (Bankr. W.D. Okla. 1985) (relief denied); *In re Penn-Dixie Indus., Inc.*, 6 B.R. at 836).

Chapter 13 debtor—to depose her in a suit against her husband and to defend against a cross-complaint she brought—did not violate the automatic stay. 262 B.R. 499, 501–03 (B.A.P. 9th Cir. 2001). On its face, *In re Miller* had nothing to do with the kind of complex, multibillion-dollar Chapter 11 reorganization or extensive document discovery at issue here. And even if it did, *Miller* in fact counsels against the relief FHFA is seeking because it on its face only applies where the "discovery requests . . . pertain[] only to the [creditors'] claims against the other, non-debtor defendants." (*Id.* at 504.)

48. While it is true that the Debtors are no longer parties to the FHFA Litigation, they were until just after their bankruptcy filing, and claims against their affiliated entities in that case are tantamount to claims against the Debtors. That is because the claims in the FHFA Litigation are based on the Debtors' conduct and because the Debtors have indemnification obligations to and shared insurance policies with Ally. Moreover, the court's conclusion in *Miller* was premised, at least in part, on the rationale that the automatic stay does not bar actions based on a Chapter 13 debtor's post-petition conduct, and it does not bar post-petition defensive action relating to a pre-petition suit brought by a debtor. *Id.* at 507–08. Neither rationale has any application here.[6]

49. The other cases FHFA cites do no better. For example, in *In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litigation*, the court also allowed only the deposition of a debtor's employees to prosecute a case against a codefendant—and this occurred

[6] The same is true of the second case cited in Collier's. In that case, *In re Carlson*, the court refused to hold a party in contempt for filing a Rule 2004 examination of a bankrupt company's president, on grounds that such a request did not violate the automatic stay in the president's own Chapter 7 bankruptcy. 265 B.R. 346, 346 (Bankr. D.R.I. 2001). The court based its decision, in part, on finding no evidence that the Rule 2004 examination would harass or cause the officer-debtor any unnecessary expense. *Id.* at 348. Again, a case involving a single, undemanding deposition or examination of an individual debtor says nothing about the burdens of enormously expensive and extensive document discovery on the complex reorganization at issue here.

only after the debtor had impermissibly instructed a non-party *former* employee not to attend a scheduled deposition because it erroneously believed that the automatic stay halted that deposition. 140 B.R. 969, 971 (N.D. Ill. 1992). The court said nothing about extensive document discovery, and it expressly stated that it would "issue orders as the need arises clarifying the permitted scope of discovery," clearly contemplating that discovery beyond the scheduled deposition could be curtailed by the automatic stay. *Id.* at 978.

50. *In re Hillsborough Holdings Corp.* also dealt only with depositions, and there the court ruled that, "assuming without conceding" that the automatic stay did apply, the party seeking discovery carried its burden and showed that it was entitled to relief from the automatic stay. 130 B.R. 603, 606 (Bankr. M.D. Fla. 1991). Even then, the court noted that it might "be in a position to control the use of discovery and would certainly be able to prohibit the utilization against [the debtor] of any information obtained through the proposed discovery." *Id.* at 607. The same is not true here: as outlined below, FHFA cannot show that it is entitled to relief, and, unfortunately, this Court would not be in a position to cabin discovery because FHFA's case is pending in the district court.

51. The only case FHFA cites that does not deal solely with depositions is *In re Richard v. Vance & Co.*, 289 B.R. 692 (Bankr. C.D. Ill. 2003). But there the subpoenas duces tecum at issue were directed to the debtor's non-debtor parent company and its bank, and not the debtor itself. *Id.* at 694. The court ruled that discovery from a non-debtor parent did not violate the automatic stay. *Id.* 697–98. This clearly has no bearing on whether discovery can be taken directly from the Debtors.[7]

[7] *Signature Bank v. Ahava Food Corp.*, cited by Judge Cote during the July 17 hearing (Doc. 859-1 at 26:10–16 (citing No. 3893, 2008 WL 4126248 (S.D.N.Y. Aug. 19, 2008)), also offers no help, for it too bears no resemblance to the present case. In *Signature Bank*, the court refused to hold that a company's recent bankruptcy petition precluded plaintiff from deposing two of debtor's employees to continue

52. In short, FHFA can muster no controlling authority that supports its claim that the automatic stay does not apply here because no such controlling authority exists. The automatic stay applies here, and as a result, FHFA must meet a very heavy burden to get the discovery it is seeking.

B. FHFA Has Not, and Cannot, Show Cause to Lift the Automatic Stay

53. Section 362(d) of the Bankruptcy Code provides that the Court shall grant relief from the automatic stay "for cause." 11 U.S.C. § 362(d)(1). The Bankruptcy Code does not, however, define the phrase "for cause." In the context of stayed pre-petition litigation, though, the Second Circuit has outlined a twelve-factor test (the "*Sonnax* Factors") to determine whether "cause" exists to lift the stay to allow the litigation to proceed:

> (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding and (12) impact of the stay on the parties and the balance of harms.

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claims against codefendants when those depositions had been noticed pre-petition. 2008 WL 4126248, at *1. Much like *Carlson*, *Mahurkar*, and *Hillsborough* above—and in contrast to the present case—the *Signature Bank* court noted that the debtor had failed to make any case that the already-scheduled depositions would interfere with reorganization in any way. *Id.* Moreover, even though *Signature Bank* arises in this district, it does not state governing law: the court in *Signature Bank* explicitly stated that it was applying Ninth Circuit law because the underlying bankruptcy was pending in California, and to that end it followed *In re Miller* without question. *Id.*

Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1285-1287 (2d Cir. 1990) (citation omitted); *see also Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 143 (2d Cir. 1999) (vacating a district court order granting stay relief where the bankruptcy court had not applied the *Sonnax* Factors, made only sparse factual findings, and ultimately did not provide the appellate court "with sufficient information to determine what facts and circumstances specific to the present case the court believed made relief from the automatic stay appropriate").

54. Courts have recognized that not all of the *Sonnax* Factors will be applicable to every case, and the Court may disregard irrelevant factors. *See In re Mazzeo*, 167 F.3d at 143. In a case such as this, which deals with onerous third-party discovery sought against the Debtors, that is particularly true. Nonetheless, an analysis of the relevant *Sonnax* Factors makes clear that FHFA has not met its heavy burden.

55. In a request for stay relief, the moving party bears the initial burden to demonstrate that cause exists to lift the stay, using the *Sonnax* Factors, and the court may deny the motion if the movant fails to make an initial showing of cause. *See Sonnax*, 907 F.2d at 1285; *Capital Commc'ns Fed. Credit Union v. Boodrow (In re Boodrow)*, 126 F.3d 43, 48 (2d Cir. 1997) ("We have emphasized that a bankruptcy court should deny relief from the stay if the movant fails to make an initial showing of cause.") (quotation omitted). Further, the cause demonstrated must be "good cause." *Morgan Guar. Trust Co. v. Hellenic Lines Ltd.*, 38 B.R. 987, 998 (S.D.N.Y. 1984).

56. More than failing to meet this heavy burden, FHFA fails to make even an initial showing of cause.[8] FHFA argues that the *Sonnax* Factors "overwhelmingly weigh in favor

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[8] FHFA also faces a heavy burden because it is an unsecured creditor. *In re Leibowitz,* 147 B.R. 341, 345 (Bankr. S.D.N.Y. 1992) ("The general rule is that claims that are not viewed as secured in the context of §

of relief." But FHFA's cursory and conclusory application of those factors falls far short of demonstrating initial cause for relief.

57. The only harm that FHFA mentions in the initial Motion is that "it will be very difficult for [the FHFA Litigation] to proceed" without the documents. (Initial Motion at 14.) In the Supplemental Motion, FHFA relies on basically the same logic, asserting that it is of "paramount importance" to FHFA to receive the Loan Files "to avoid harm to the FHFA Coordinated Actions." (Supplemental Motion at 5.) These harms, they posit, far outweigh any harms to the Debtors, which FHFA simply dismiss out of hand. The only support FHFA has for this proposition is Judge Cote's statement from the bench during the hearing on Debtors' motion to extend the automatic stay in the FHFA Litigation. However, the specific and massive discovery burdens and expenses described by the Debtors above and in the Mongelluzzo and Lipps Declarations were not in the record during that proceeding.

58. Perhaps most tellingly, in the Initial Motion, which relates only to Loan Tapes, FHFA makes much of the "limited number of loan tapes," "limited discovery," "extremely limited" discovery it is seeking, and the "non-existent harm to the Debtors." (Initial Motion at 3, 4, 13, 14.) Then, after having made that "limited" scope and burden argument the very centerpiece of the Initial Motion, FHFA seeks a massive amount of incredibly burdensome discovery in the Supplemental Motion, though rests on the "same bases" as the Initial Motion. (Supplemental Motion at 3.) FHFA's two briefs prove the point: it could only possibly hope to prevail on the Initial Motion because of the "limited nature of discovery" it was seeking, an admission that completely eviscerates a similar claim as to the expansive nature of discovery sought in the Supplemental Motion.

362(d)(1) should not be granted relief from the stay unless extraordinary circumstances are established to justify such relief.").

59. Beyond the fact that FHFA has failed to offer any meaningful analysis or argument of the *Sonnax* Factors describing why cause to lift the stay exists, FHFA has also failed to even describe with any specificity the relief it is seeking. FHFA simply states that it wants "loan files" without specifying which Loan Files it is seeking or even how many it wants. And the difference is important. There are 105,000 total loans in the securitizations at issue in the FHFA Litigation. (Lipps Decl. ¶ 14b.) However, only 42,700 of those loans are in the "supporting loan groups" that FHFA actually owns. (*Id.*) Further, FHFA has sought in the underlying case to sample loans instead of reviewing all of them, which may mean fewer are at issue than 42,700. (*Id.*) But the Debtors are left to guess as to what FHFA is actually seeking, undoubtedly because FHFA knows that what it is asking this Court to allow is massively burdensome, and is seeking to distract from that burden by speaking only broadly of "loan files." It is hard to imagine how FHFA could possibly satisfy the requirement of showing "cause" if it did not even specify the documents it is seeking. The lack of specificity in FHFA's request for third-party discovery is on its own enough to deny the Motion. *Cf. Grigsby & Assocs. v. Rice Derivative Holdings, L.P.*, 2001 U.S. Dist. LEXIS 16112, at *11 (S.D.N.Y. Sept. 21, 2001) (quashing a third party subpoena because it contained only "non-specific, overbroad production requests that would surely amount to truckloads of documents").

60. FHFA's failure to make even an initial showing of cause to overcome this heavy burden is alone grounds for denying the requested relief. *See Sonnax*, 907 F.2d at 1285 ("[If] the movant fails to make an initial showing of cause . . . the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.").

C. The *Sonnax* Factors Weigh Heavily Against Lifting the Automatic Stay

61. Although FHFA fails to make even a minimal showing of cause, a review of the relevant *Sonnax* Factors and the facts demonstrates that it simply cannot do so.

62. First, the early stage of the FHFA Litigation and the type of discovery sought by FHFA before this court demonstrates that first *Sonnax* Factor—whether relief would resolve the issues—and the eleventh *Sonnax* Factor—whether the parties are ready for trial in the other proceeding—weigh heavily against granting relief.

63. A review of the Scheduling Order in the FHFA Litigation shows that the case is years away from going to trial, counseling against granting the Motion. (*See* Pretrial Scheduling Order at 4, *FHFA v. Ally Fin. Inc.*, No. 11-cv-07010 (S.D.N.Y. June 14, 2012), ECF No. 71.) *See Grocery Haulers, Inc. v. A&P (In re A&P)*, 467 B.R. 44, 56 (S.D.N.Y. 2012) (affirming the bankruptcy court's denial of relief, in part because "the parties were not ready for trial in the [other] action").

64. Providing FHFA the relief it is seeking here will not resolve the issues. Lifting the stay here will not resolve even FHFA's discovery demands because it is likely to come back to this Court for more discovery that will further burden the Debtors and further cost the estate money. Indeed, FHFA has already done so once and threatened to do so again. FHFA supplemented the Initial Motion with the Supplemental Motion, which broadened its request to include tens of thousands of Loan Files. Then, in a letter to Judge Cote dated July 30, 2012, FHFA stated that "[t]he Bankruptcy Court is scheduled to hear FHFA's application for loan tapes and loan files on August 14, and FHFA needs time to supplement its application to obtain additional documents from the Debtors based on the information provided at the 30(b)(6) deposition" of Ally Financial, Inc., currently scheduled for August 9, 2012. (Lipps Decl., Ex. B.)

And even that will unlikely be the end of it. That discovery will be burdensome and will all come from the Debtors. (*Id.*) Therefore, *Sonnax* Factors 1 and 11 weigh heavily in favor of denying relief.

65. Second, lifting the stay will undoubtedly interfere with the bankruptcy case (*Sonnax* Factor 2) and prejudice the interests of other creditors (*Sonnax* Factor 7) because it will deplete estate resources. *See Lawrence v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 2010 U.S. Dist. LEXIS 125182, at *11, 16 (S.D.N.Y. Nov. 8, 2010) (affirming the bankruptcy court's refusal to lift a stay, in part, because "allowing [the party] to proceed . . . would force [the debtor] to expend estate resources," which shows that relief from the stay would interfere with the bankruptcy proceeding and prejudice other creditors).

66. FHFA requests access to "loan files relevant to the FHFA Case that are in the Debtors' possession." (Supplemental Motion at 3.) Finding, collecting, and producing Loan Files, as described in detail above, is a very labor-intensive, time-consuming, and expensive process. (*Supra* pp. 4-12.) Complying with FHFA's discovery demands would require a tremendous amount of work from ResCap employees and cost the Debtors a substantial amount of money. (*Id.*) Because lifting the stay would "force [the debtors] to expend estate resources"—in this case millions of dollars of estate money and immeasurable amounts of time from estate employees—*Sonnax* Factors 2 and 7 weigh in favor of denying relief. *In re Motors Liquidation Co.*, 2010 U.S. Dist. LEXIS 125182, at *11 (affirming the bankruptcy court's denial of relief on similar grounds).

67. Third, the tenth *Sonnax* Factor—"the interests of judicial economy and the expeditious and economical resolution of litigation"—weighs in favor of denying relief for similar reasons. The court in *In re Motors Liquidation Co.* affirmed the bankruptcy court's

finding that judicial economy "weighed against relief because allowing Appellant to proceed with his . . . action would open the 'floodgates' to thousands of other litigants with . . . claims against the. . . estate." 2010 U.S. Dist. LEXIS 125182, at *15. The *Motor Liquidators* court correctly noted that, in such a case, lifting the stay would "usher in the very state of affairs the automatic stay was enacted to prevent," namely "centraliz[ing] all disputes concerning property of the debtor's estate in the bankruptcy court so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *Id.* (citing *In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990)).

68. While the court in *Motor Liquidation* was considering lifting the stay of an action against the estate—as opposed to an attempt to force third-party discovery from the Debtors—the same rationale applies. Various plaintiffs have brought dozens of MBS Actions against the defendants. Dozens more plaintiffs have brought suits related to foreclosures, servicing, RESPA, among other claims. All of those plaintiffs are likely to want discovery from the Debtors, and lifting the stay and requiring the Debtors to produce documents to FHFA would inevitably open the "floodgates" to similar requests from those plaintiffs, leading to an even greater potential expenditure of estate resources. Therefore, *Sonnax* Factor 10 weighs heavily in favor of denying relief.

69. Finally, *Sonnax* Factor 12—the impact of the stay on the parties and the balance of the harms—also favors denying relief. As described above, lifting the stay and allowing FHFA to conduct essentially unfettered discovery against the Debtors would "distract [the Debtors'] attention from its primary goal of reorganizing"—indeed a very serious harm. *See, e.g.*, *In re Lyondell Chem. Co.*, 402 B.R. 596, 610 (Bankr. S.D.N.Y. 2009) (denying a party's request to lift the automatic stay) (citation omitted). The Debtors, including the

employees who would be involved in the discovery that FHFA is seeking, are involved in myriad time-sensitive, mission-critical tasks related to the restructuring and operation of the business. Interfering with those tasks could be devastating. The potential harm to the Debtors if the stay is lifted clearly outweighs the potential harm to FHFA if the stay continues. *See id.* (refusing to lift the automatic stay where "a delay of several months, or even more than that" would harm the moving party far less than distracting the debtor from its reorganization efforts would harm the debtor). And the costs and burdens to the Debtors are of course not the only harm: lifting the stay will allow FHFA to immediately pursue its case against the Non-Debtor Affiliates and lead to indemnification claims against the Debtors, depletion of their shared insurance proceeds, as well as risks of res judicata, law of the case, and/or collateral estoppel. Put another way, the huge burden and massive costs that FHFA is trying to foist upon the Debtors will not benefit the Debtors or any creditor (other than FHFA) while allowing FHFA to prosecute its case against the Non-Debtor Affiliates, and ultimately the Debtors.

70. It is clear that FHFA has not come close to meeting its burden, and as a result, its motion should be denied.

CONCLUSION

71. For the foregoing reasons, the Debtors request that the Court enter an Order denying the Motion and grant such other relief as the Court deems proper.

New York, New York
Dated: August 7, 2012

/s/ Joel C. Haims
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Counsel to the Debtors and Debtors in Possession

EXHIBIT 1

Lipps Declaration

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered

DECLARATION OF JEFFREY A. LIPPS

I, Jeffrey A. Lipps, declare:

1. I am a partner with Carpenter Lipps & Leland LLP, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio 43215 (the "Firm").

2. The Firm is retained as special litigation counsel to the above-captioned debtors and debtors in possession (the "Debtors"). The Firm previously served as counsel of record in the *FHFA v. Ally* case (SDNY Case 11 Civ. 7010) for debtors GMAC-RFC Holding Company, LLC, Residential Funding Company, LLC, Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, and Residential Accredit Loans, Inc. (the "Debtors"), and non-debtor affiliate Ally Securities, LLC ("Ally Securities"). Since the spring of 2010, the Firm has represented the Debtors in over a dozen separate lawsuits involving the Debtors' issuance of residential mortgage backed securities.

3. I make this declaration to provide background concerning the *FHFA v. Ally* case and to describe in more detail the specific impact on the Debtors of the discovery requested by the Motion of the Federal Housing Finance Agency Pursuant to the July 11, 2012 Order of the Honorable Denise L. Cote Seeking Limited Discovery from the Debtors and, If Necessary to

That Purpose, Relief from the Automatic Stay and the related Supplement (together, the "FHFA Motion").

Legal Claims Involved in *FHFA v. Ally*

4. In September 2011, the Federal Housing Finance Agency ("FHFA"), in its capacity as conservator for Freddie Mac, filed a lawsuit against Debtors Residential Capital LLC, Residential Funding Corporation ("RFC"), Residential Asset Mortgage Products, Inc. Residential Asset Securities Corporation and Residential Accredit Loans, Inc. and nondebtors Ally Financial, Inc., GMAC Mortgage Group LLC and Ally Securities, LLC (the "Non-Debtor Affiliates") along with a number of third party underwriters for the transactions sponsored by the Debtors. FHFA simultaneously filed 16 other similar actions against other groups of issuers and underwriters. The lawsuit against the Debtors and the Non-Debtor Affiliates involved 21 securitizations, with more than 100,000 loans, in which Freddie Mac invested.

5. After the Debtors filed for bankruptcy, FHFA filed an amended complaint (the "Amended Complaint") which dropped the Debtors, but continued to assert claims relating to alleged misstatements in the offering documents for 21 residential mortgage-backed securitizations issued by the Debtors. A copy of the Amended Complaint is attached hereto as Exhibit A. In the Amended Complaint, FHFA stated that it dropped the Debtors from the case solely because of the automatic stay put in place by the Debtors' bankruptcy filing. See Amended Complaint pg. 10 fn. 4.

6. Thus, FHFA's claims all turn on the same nucleus of facts, namely, the facts and circumstances surrounding the ***Debtors'*** creation and issuance of these 21 mortgage-backed securities; and all turn on the same basic legal theory that the ***Debtors*** made misrepresentations in the offering materials for these securitizations.

<u>The Transactions Involved in *FHFA v. Ally*</u>

7. The 21 securitizations at issue in the case were issued by the Debtors between 2005 and 2007. The Debtors' securitization business was structured around "shelves" that grouped securitizations by type. Thus, securitizations issued by Debtor Residential Accredit Loans, Inc. all have the designation "RALI" in the name, and all involve first-lien mortgages of the "Alt-A" type of loan. These loans were acquired by the Debtors pursuant to specific loan programs that focused on borrowers with "A" credit scores, but that had alternative features or allow alternative or non-standard documentation of income. Similarly, securitizations issued by Debtor Residential Asset Securities Corporation all have the designation "RASC" in the name of the offering, and typically involve subprime first-lien mortgages. And the securitizations issued by Debtor Residential Asset Mortgage Products, designated with a "RAMP" in their names, involved a variety of non-conforming or non-traditional loan products, including some securitizations in this case that were "single seller" transactions in which all the loans were contributed by a single loan originator, a format that was atypical for the Debtors' securitizations.

8. Each securitization shelf was managed by a different group of the Debtors' employees. The personnel involved varied over time.

9. Each loan product type involved different employees of the Debtors. The personnel involved varied over time.

10. Each of the 21 securitizations involved a unique set of mortgage loans.

11. Each of the 21 securitizations had its own offering materials, which were specifically drafted and negotiated.

12. Thus, each of the 21 securitizations involved different specific documents and communications.

13. Here, FHFA has asserted claims relating to:

a. Ten RASC securitizations spanning a three year period;

b. Five RAMP securitizations spanning a two year period; and

c. Six RALI securitizations spanning a three year period.

<u>The Documents Currently Requested in *FHFA v. Ally*</u>

14. The Debtors have sole custody of the vast majority of the documents central to the allegations asserted by FHFA in that case, and the Non-Debtor Affiliates have very few in their custody. The FHFA Motion requests (a) loan tape and originator information and (b) loan files for the securitizations involved in that case.

a. <u>Loan Tapes and Originator Information</u>. FHFA already has access to a wealth of loan-level information via the publicly available GMAC ResCap Vision website, including the 21 spreadsheets containing 50 or 60 fields of loan level data described in their request. Their request goes beyond that, however, seeking additional information about originators that is not already available on Vision, and seeking the *actual* loan tapes created *at the time of issuance.* These pieces of information pose additional issues. The additional originator information typically must be mined from the Debtors' databases, under the direct supervision of the Debtors' personnel who have specific expertise with the data in question. In addition, while loan-level data of the type available on the Vision website is fairly readily available, the actual "final" loan tapes generated at issuance are not. Those must be mined either from shared drive spaces that can only be reliably identified by the Debtors' personnel with substantive knowledge of the files, as described below, or from the collection of historical email correspondence, which, as described below, is also burdensome.

b. Loan Files. None of the Non-Debtor Affiliates have in their custody the "origination files" or loan files for the mortgage loans in the securitizations. Those files are in the possession of the Debtors. The files contain information relating to owner-occupancy representations made by borrowers, property values and appraisals, and borrower creditworthiness assessments. The same is true for the "servicing files," which contain post-closing information related to servicing the loan. There are over 105,000 loan files involved in the 21 securitizations at issue in the *FHFA v. Ally* case. Even if discovery is limited in the first instance to the "Supporting Loan Groups," as was suggested by Judge Cote at the July 17 hearing, over 42,700 individual loan files would be involved. Each of these loan files will likely be several hundred pages. While FHFA has discussed in its court filings in the *FHFA v. Ally* case using sampling to further limit the number of loan files it needs to review, it has not proposed a specific sampling protocol in the *FHFA v. Ally* case or identified any smaller group of loans as a limit to the Debtors' production.

15. Producing the "final" loan tapes at the time of issuance will require research through user electronic files on shared drives and stored emails. Historical email files are accessible only through a burdensome process of manually restoring them from month-end backup tapes. There can be multiple backup tapes that must be restored to access a single

month's email for a single individual. The email files must then be processed, searched, and reviewed before they can be produced. This is time-consuming and burdensome, and due to the large volume of material, outside vendors typically must be engaged, at the Debtors' expense, to assist in the process. In this particular case, where there are 21 securitizations across three different shelves (each with its own constellation of relevant employees), and a three-year time period, even restoring the limited email necessary to locate "final" at issuance loan tapes would likely run in the hundreds of thousands of dollars. To my knowledge, FHFA has not offered to contribute to any of these costs, even though the Debtors are no longer parties to this action.

16. Apart from loan files and email, many relevant documents, including various versions of the preliminary and final loan tapes generated at the time the securitizations were issued, are located on shared drive servers owned by the Debtors. However, these servers are massive, containing literally tens of thousands of folders and subfolders, many of which are not clearly labeled, and very few employees remain with substantive knowledge of *where* on these servers additional relevant materials can be located. Searching these folders will require one or more of the few remaining employees with substantive knowledge to spend hours manually searching these servers to locate responsive materials.

17. By way of example, one such employee, Heather Anderson, is a key resource with respect to the securitization business generally and specifically is a witness with respect to the six RALI securitizations at issue in the *FHFA v. Ally* case. I understand, as set forth in the Declaration of Anne Janiczek submitted in support of the Debtors' motion to extend the automatic stay, that Ms. Anderson also has many significant responsibilities with respect to the restructuring of the Debtors. Assisting with litigation would be a burden and distraction.

18. In order to locate the preliminary and final loan tapes and other securitization-related materials for the 21 offerings in question, we would likely need to ask Ms. Anderson – one of the only remaining employees of the company with substantive knowledge of the documents – to research the locations of those files on shared drive spaces and identify their likely email custodians so that they can be retrieved for review and production. Doing so is a distraction and imposition on her time during this critical juncture in the bankruptcy process.

19. The loan files would also be burdensome to find and produce. The Mongelluzzo Declaration describes the burdens with locating, retrieving and imaging loan files by ACS. The Debtors' fulfillment group then provides that file to counsel handling the litigation. However, the files then need to be re-processed by litigation vendors so that they can be Bates-stamped, rendered searchable, and stamped for appropriate confidentiality protection, which is time-consuming and costly given the millions of pages involved. As an example of these costs, it is my understanding that the cost to retrieve, image, scan and produce the approximately 63,000 loan files in the MBIA v. RFC litigation totaled to more than $1.5 million.

<u>Demands on the Debtors' Limited E-discovery and Other Resources</u>

20. The costs associated with the anticipated discovery are substantial and the requests put a great strain on the Debtors' already-limited resources.

21. Other than loan files, the Debtors' legal and e-discovery staff must participate in the collection and production of all materials sought.

22. Currently, the Debtors' e-discovery team consists of five full time employees. One oversees the process and works with in-house and outside counsel to facilitate the collection and production of materials. One handles the preservation and capture of data, as well as works with collected data as it is processed and filtered. A third employee assists with the processing

and production of electronically stored information, as well as backup tape restoration. This employee is also responsible for managing the ediscovery system. The remaining two employees are involved in development and support for the information technology systems used by the team and do not work on the collection or processing of data.

23. At the current time, this small e-discovery group is already stretched to the limit with existing requests that are a priority for the Debtors as they work to proceed through the bankruptcy process in an orderly fashion. Specifically:

a. The Debtors are currently responding to two very broad subpoenas served by the Securities and Exchange Commission. These subpoena responses have been consuming a substantial amount of the e-discovery team's time spent researching and collecting live data, as well as restoring, processing and searching month-end backup tape to locate additional responsive materials.

b. The Debtors are responding to broad discovery requests which were served pursuant to the Bankruptcy Court's Rule 2004 Order and which are now being pursued by the examiner, which also require the collection of electronic documents and the restoration of month-end backup tape for a number of email custodians over a lengthy period of time.

c. The e-discovery team is required to produce documents in response to certain contested matters in the bankruptcy, such as the Debtors' Motion to approve agreements with Ally Bank.

d. Under the scheduling order recently entered by the Court, parties can now serve discovery on the Debtors in connection with the pending Rule 9019 Motion to Approve RMBS Trust Settlements. The Debtors are anticipating receiving discovery requests in connection with that motion. The scheduling order imposes tight time periods to respond to discovery requests, which will impose additional burdens on the Fulfillment Group and the e-discovery group.

24. These ongoing discovery requests pose a substantial burden for the company's small e-discovery group, and the Debtors have already had to contend with concerns expressed by the SEC and others regarding the pace of document production. Requiring the Debtors to produce documents relating to 21 securitizations during this same time period will unreasonably stretch the Debtors' limited staff.

25. In addition, many aspects of the Debtors' business necessarily involved legal input and advice, and any documents to be produced by Debtors would have to be reviewed so that Debtors can preserve the attorney-client and other applicable privileges. Such review and production is costly and time-consuming.

26. In light of the fact that FHFA sent a letter on July 30, 2012 to Judge Cote regarding the production of email from approximately 36 current or former employees of the Debtors (a copy of which without enclosures is attached as Exhibit B), it appears evident FHFA intends to come back and ask for additional categories of documents which are in the custody of the Debtors. Any such requests would, of course, pose additional burdens on the Debtors and their employees.

27. For these reasons, the suggested discovery requests relating to the 21 securitizations at issue in the FHFA litigation poses a substantial burden on the Debtors and threatens to interfere significantly with the Debtors' efforts to complete a successful and timely restructuring.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true to the best of my knowledge, information, and belief. Executed on August 6 2012, at Columbus, Ohio.

Jeffrey A. Lipps

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL HOME LOAN MORTGAGE CORPORATION, Plaintiff, -against- ALLY FINANCIAL INC., GMAC MORTGAGE GROUP, INC., ALLY SECURITIES, LLC, J.P. MORGAN SECURITIES LLC f/k/a J.P. MORGAN SECURITIES, INC. and as successor-in-interest to BEAR, STEARNS & CO. INC., CREDIT SUISSE SECURITIES (USA) LLC f/k/a CREDIT SUISSE FIRST BOSTON LLC, RBS SECURITIES, INC. f/k/a GREENWICH CAPITAL MARKETS, INC., CITIGROUP GLOBAL MARKETS INC., BARCLAYS CAPITAL INC., UBS SECURITIES LLC, and GOLDMAN, SACHS & CO., Defendants.	**11 Civ. 7010 (DLC)** **AMENDED COMPLAINT**

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Plaintiff Federal Housing Finance Agency ("Plaintiff" or "FHFA"), as Conservator of the Federal Home Loan Mortgage Corporation ("Freddie Mac"), by its attorneys Kasowitz, Benson, Torres & Friedman LLP, for its Complaint against the defendants named herein ("Defendants"), alleges as follows:

NATURE OF ACTION

1. This action arises from false and misleading statements and omissions in registration statements, prospectuses, and other offering materials, pursuant to which certain residential mortgage-backed securities ("RMBS") were purchased by Freddie Mac. Among other things, these documents falsely represented that the mortgage loans underlying the RMBS complied with certain underwriting guidelines and standards, and presented a false picture of the characteristics and riskiness of those loans. These representations were material to Freddie Mac, as they would have been to any reasonable investor, and their falsity violates Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, as well as Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code (the "Virginia Securities Act"). Freddie Mac justifiably relied on Defendants' misrepresentations and omissions of material fact to its detriment. In addition to its strict statutory liability under federal securities law and liability under state law, Defendants' statements and omissions give rise to liability under state common law.

2. Between September 23, 2005 and May 30, 2007, Freddie Mac purchased over $6 billion in Certificates issued in connection with 21 securitizations that were virtually all underwritten by Defendants.[1]

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[1] For purposes of this Amended Complaint, the securities issued under the Registration Statements (defined in note 2 and paragraph 3, *infra*) are referred to as "Certificates." Holders of Certificates are referred to as "Certificateholders."

3. The Certificates were offered for sale pursuant to one of six shelf registration statements (the "Shelf Registration Statements") filed with the Securities and Exchange Commission (the "SEC"). For each of the 21 securitizations sold to Freddie Mac (the "Securitizations"), a prospectus ("Prospectus") and prospectus supplement ("Prospectus Supplement," together with the Shelf Registration Statements and Prospectus Supplements, the "Registration Statements") were filed with the SEC as part of the Registration Statement for that Securitization.[2] The Certificates were marketed and sold to Freddie Mac pursuant to the Registration Statements and other offering materials ("Offering Materials").

4. The Offering Materials contained representations concerning, among other things, the characteristics and credit quality of the mortgage loans underlying the Securitizations, the creditworthiness of the borrowers on those underlying mortgage loans, and the origination and underwriting practices used to make and approve the loans. Such representations were material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. Unbeknownst to Freddie Mac, those representations were materially false because, among other reasons, many of the underlying mortgage loans were not originated in accordance with the represented underwriting standards and origination practices, and did not have the credit quality and other characteristics set forth in the Offering Materials.

5. Among other things, the Offering Materials presented the loan origination guidelines of the mortgage loan originators who originated the loans that underlie the Certificates. The Offering Materials falsely represented that those guidelines were adhered to

[2] The term "Registration Statement" as used herein, and in Appendix A attached hereto, incorporates the Shelf Registration Statement, the Prospectus, and the Prospectus Supplement for each referenced Securitization, except where otherwise indicated.

except in specified circumstances, when in fact the guidelines systematically were disregarded in that the loans were not originated in accordance with those guidelines.

6. An initial forensic review of loan origination files has revealed that the vast majority of loans reviewed did not adhere to the originator's underwriting guidelines as represented in the Offering Materials. A material discrepancy from underwriting guidelines is very serious, and means that the loan should never have been included in the Securitizations. For example, the loan application may: (i) lack key documentation necessary to properly underwrite the loan; (ii) include an invalid, incomplete, or unsupported appraisal; (iii) evidence the underwriter's failure to confirm the reasonableness of the borrower's stated income; or (iv) reflect that the borrower's income, FICO score, debt, debt-to-income ratio ("DTI"), or loan-to-value ratio ("LTV") are outside of the range permitted under the guidelines. Adherence to underwriting guidelines, particularly on such key criteria bearing on loan eligibility, is a material consideration to reasonable investors.

7. The Offering Materials also set forth for each Securitization statistical summaries of the characteristics of the underlying mortgage loans, such as the percentage of loans secured by owner-occupied properties and the percentage of the loan group's aggregate principal balance with loan-to-value ratios within specified ranges. This information was material to reasonable investors, and it was material to Freddie Mac. However, a loan-level analysis of a sample of loans for each Securitization -- a review that encompassed in the aggregate thousands of mortgages across all of the Securitizations -- has revealed that for each Securitization these statistical summaries were false and misleading. The statistics reflected or were based upon misrepresentations of other key characteristics of the mortgage loans and inflated property values.

8. For example, the percentage of owner-occupied properties in the loan pool underlying a RMBS is a material risk factor to the purchasers of certificates, such as Freddie Mac, because a borrower who actually lives in a mortgaged property is generally less likely to stop paying the mortgage and more likely to take care of the property. The loan-level review revealed that the true percentage of owner-occupied properties for the loans supporting the Certificates was materially lower than that represented in the Offering Materials. Likewise, the Offering Materials misrepresented such material information as loan-to-value ratios -- that is, the relationship between the principal amount of the loans and the true value of the mortgaged properties securing those loans -- and the ability of the individual mortgage holders to satisfy their debts.

9. The Offering Materials also set forth ratings for each of the Securitizations. Those AAA ratings were material to a reasonable investor's decision to purchase the Certificates, and they were material to Freddie Mac. The ratings for the Securitizations were based upon false information supplied by Defendants and were materially misleading with respect to the credit quality of the Certificates. Upon information and belief, neither the Defendants nor the rating agencies that issued the ratings believed or had any sound basis to believe in their truthfulness.

10. Defendants, who are underwriters and/or controlled the issuers and sponsors of the Certificates purchased by Freddie Mac are liable for the misstatements and omissions of material fact contained in the Registration Statements and other Offering Materials because they prepared, filed, and/or used these documents to market and sell the Certificates to Freddie Mac, or because they directed and controlled the entities that did so.[3]

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[3] The Certificates purchased by Freddie Mac are identified below in paragraph 46 and are listed *infra* in Table 10.

11. Defendants' misstatements and omissions of material facts have caused loss and injury to Freddie Mac. Freddie Mac purchased the highest rated tranches of Certificates offered for sale by Defendants. Freddie Mac would not have purchased these Certificates but for Defendants' material misrepresentations and omissions concerning the mortgage loans underlying the RMBS. As the truth concerning the misrepresented and omitted facts has come to light, and as the hidden risks have materialized, the market value of the Certificates purchased by Freddie Mac has declined. Freddie Mac has suffered enormous financial losses as a result of Defendants' misrepresentations and omissions. FHFA, as Conservator for Freddie Mac, now seeks rescission and damages for those losses.

PARTIES

Plaintiff and Freddie Mac

12. Plaintiff, the Federal Housing Finance Agency, is a federal agency located at 400 7th Street, S.W. in Washington, D.C. FHFA was created on July 30, 2008, pursuant to the Housing and Economic Recovery Act of 2008, Pub L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4617 *et seq.* ("HERA"), to oversee the Federal National Mortgage Association ("Fannie Mae"), Freddie Mac and the Federal Home Loan Banks. On September 6, 2008, the Director of FHFA, also pursuant to HERA, placed Freddie Mac into conservatorship and appointed FHFA as Conservator. In that capacity, FHFA has the authority to exercise all rights and remedies of Freddie Mac, including, but not limited to, the authority to bring suits on behalf of and/or for the benefit of Freddie Mac. 12 U.S.C. § 4617(b)(2).

13. Freddie Mac is a government-sponsored enterprise chartered by Congress with a mission to provide liquidity, stability and affordability to the United States housing and mortgage markets. As part of this mission, Freddie Mac invested in RMBS. Freddie Mac is located at 8200 Jones Branch Drive in McLean, Virginia.

Defendants

Ally Defendants

14. Defendant Ally Financial Inc. ("Ally Financial"), a leading, multi-national financial services firm with a corporate center in New York, has approximately $179 billion of assets and operations in approximately 25 countries. Ally is the parent and sole owner of Defendants GMAC Mortgage Group, Inc. and Ally Securities, LLC (formerly known as Residential Funding Securities, LLC). Prior to 2010, Ally Financial was known as GMAC, LLC.

15. Defendant GMAC Mortgage Group, Inc. ("GMACM") is a wholly-owned subsidiary and the mortgage arm of Ally. GMACM is a Delaware corporation with its principal place of business at 1100 Virginia Drive, Fort Washington, Pennsylvania 19034. GMACM transacted business in New York.

16. Defendant Ally Securities, LLC is an SEC-registered broker-dealer and is registered to do business in New York. Prior to August 1, 2011, Ally Securities, LLC was known as Residential Funding Securities, LLC, which was doing business as GMAC RFC Securities, and prior to 2007, Residential Funding Securities, LLC was known as Residential Funding Securities Corporation (collectively, "Ally Securities"). Ally Securities is a wholly-owned subsidiary of Ally Financial, and was registered to do business in New York. Ally Securities was the co-lead underwriter for five of the Securitizations and was an underwriter for an additional six of the Securitizations. Freddie Mac purchased Certificates from five of the Securitizations from Ally Securities in its capacity as co-lead underwriter of those Securitizations.

17. Defendants Ally Financial, GMACM and Ally Securities are referred to together herein as "Ally."

Non-Ally Defendants

18. Defendant Barclays Capital Inc. ("Barclays") is a Connecticut corporation with its principal place of business located at 200 Park Avenue, New York, New York 10166. Barclays is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

19. Defendant Citigroup Global Markets Inc. ("Citi") is an SEC-registered broker-dealer. Citi is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 388 Greenwich Street, New York, New York 10013. Citi served as underwriter or co-underwriter for one Securitization.

20. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 11 Madison Avenue, New York, New York 10010. Prior to January 16, 2006, Credit Suisse was known as Credit Suisse First Boston LLC. Credit Suisse is an SEC-registered broker-dealer, and was the co-lead underwriter for four of the Securitizations. Credit Suisse was co-underwriter for three of the Securitizations.

21. Defendant Goldman, Sachs & Co. ("Goldman") is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 200 West Street, New York, New York 10282. Goldman is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

22. Defendant J.P. Morgan Securities, LLC, formerly known as J.P. Morgan Securities, Inc. ("JPMSI"), is a limited liability company organized and existing under the laws of Delaware with its principal place of business located at 277 Park Avenue, New York, New York 10172. JPMSI is an SEC-registered broker-dealer and was underwriter or co-lead underwriter for four of the Securitizations.

23. JPMSI is also the successor-in-interest to Bear, Stearns & Co., Inc. ("Bear Stearns") because on March 16, 2008, Bear Stearns' parent company, Bear Stearns Companies, Inc. ("BSCI"), entered into an Agreement and Plan of Merger (the "Merger") with Bear Stearns Merger Corporation, a wholly-owned subsidiary of JPMorgan Chase & Co. ("JPMorgan Chase"), making Bear Stearns a wholly-owned, indirect subsidiary of JPMorgan Chase. Following the Merger, on or about October 1, 2008, Bear Stearns merged with J.P. Morgan Securities Inc., a subsidiary of JPMorgan Chase, which subsequently changed its name to J.P. Morgan Securities LLC. Thus, BSCI is now doing business as Defendant JPMSI.

24. In a June 30, 2008 press release describing internal restructuring to be undertaken pursuant to the Merger, JPMorgan Chase stated its intent to assume Bear Stearns and its debts, liabilities, and obligations as follows:

> Following completion of this transaction, Bear Stearns plans to transfer its broker-dealer subsidiary Bear, Stearns & Co. Inc. to JPMorgan Chase, resulting in a transfer of substantially all of Bear Stearns' assets to JPMorgan Chase. In connection with such transfer, JPMorgan Chase will assume (1) all of Bear Stearns' then-outstanding registered U.S. debt securities; (2) Bear Stearns' obligations relating to trust preferred securities; (3) Bear Stearns' then-outstanding foreign debt securities; and (4) Bear Stearns' guarantees of then-outstanding foreign debt securities issued by subsidiaries of Bear Stearns, in each case, in accordance with the agreements and indentures governing these securities.

(Press Release, JPMorgan Chase & Co., JPMorgan Chase Announces Internal Restructuring Transactions and Guarantees Related to Bear Stearns Acquisition (June 30, 2008), *available at* http://www.sec.gov/Archives/edgar/data/19617/000089882208000717/pressrelease.htm.) Further, the former Bear Stearns website, www.bearstearns.com, redirects Bear Stearns visitors to JPMSI's website.

25. JPMSI was fully aware of the pending and potential claims against Bear Stearns when it consummated the merger. JPMSI has further evinced its intent to assume Bear Stearns'

liabilities by paying to defend and settle lawsuits against Bear Stearns. JPMSI announced its intention to "convert to a limited liability company, effective September 1, 2010," as part of which it changed its name to J.P. Morgan Securities LLC. As a result of the Merger, Defendant JPMSI is the successor-in-interest to Bear Stearns and is jointly and severally liable for the misstatements and omissions of material fact alleged herein of Bear Stearns. This action is brought against JPMSI as successor-in-interest to Bear Stearns. Prior to acquisition, Bear Stearns was an SEC-registered broker-dealer and served as an underwriter for one Securitization.

26. Defendant RBS Securities, Inc., doing business as RBS Greenwich Capital ("RBS"), is an SEC-registered broker-dealer incorporated in the State of Delaware with offices located at 101 Park Avenue, New York, New York 10178. Prior to April 2009, RBS was known as Greenwich Capital Markets, Inc. RBS served as underwriter or co-underwriter for two of the Securitizations.

27. Defendant UBS Securities LLC ("UBS") is a Delaware limited liability company with its principal place of business located at 677 Washington Boulevard, Stamford, Connecticut 06901. UBS transacts business in New York. UBS is an SEC-registered broker-dealer and served as underwriter or co-underwriter for one Securitization.

28. Defendants Barclays, Citi, Credit Suisse, Goldman, JPMSI, RBS, and UBS are referred to together herein as the "Non-Ally Defendants," and together with Ally Securities as the "Underwriter Defendants."

<u>Non-Party Ally Debtors</u>[4]

29. Residential Capital LLC ("ResCap") is a wholly-owned subsidiary of GMACM and originated, serviced, and securitized mortgage loans. Prior to 2007, ResCap was known as Residential Capital Corporation.

30. GMAC-RFC Holding Company, LLC, doing business as GMAC Residential Funding Corporation ("GMAC-RFC"), is a wholly-owned subsidiary of ResCap and acquired residential mortgage loans, which it then pooled and securitized as mortgage-backed securities sold to investors.

31. Residential Funding Company, LLC ("RFC") is a wholly-owned subsidiary of GMAC-RFC. Prior to October 2006, RFC was known as Residential Funding Corporation. RFC was the sponsor of all 21 of the Securitizations. RFC is the parent and sole owner of Homecomings Financials, LLC ("HFN"), and the originator of loans underlying the Certificates for 13 of the 21 Securitizations. Prior to 2006, HFN was known as Homecomings Financials Network, Inc.

32. Residential Asset Mortgage Products, Inc. ("RAMP") is a wholly-owned subsidiary of GMAC-RFC. RAMP was the depositor for five of the Securitizations.

33. Residential Asset Securities Corporation ("RASC") is a wholly-owned subsidiary of GMAC-RFC. RASC was the depositor for 10 of the Securitizations.

34. Residential Accredit Loans, Inc. ("RALI") is a wholly-owned subsidiary of GMAC-RFC. RALI was the depositor for six of the Securitizations and transacted business in New York. RALI, as depositor, was also responsible for registering the Certificates with the

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[4] The non-party Ally Debtors have filed for Chapter 11 bankruptcy protection and are subject to an automatic stay. But for the automatic stay, plaintiff would have reasserted its claims against each of the Ally Debtors.

SEC and preparing and filing reports required under the Securities Exchange Act of 1934. ResCap, GMAC-RFC, RFC, RAMP, RASC, RALI are referred to together herein as the "Ally Debtors."

Non-Party Originators

35. The loans underlying the Certificates were acquired by the sponsor RFC for each Securitization from the following mortgage originators: HFN; Aegis Mortgage Corporation ("Aegis"); Decision One Mortgage Company, LLC ("Decision One"); EFC Holdings Corporation ("EFC Holdings") and its subsidiary EquiFirst Corporation ("EquiFirst"); Finance America, LLC ("Finance America"); First National Bank of Nevada ("FNB Nevada"); Home123 Corporation ("Home123"); Homefield Financial Inc. ("Homefield Financial"); Mortgage Lenders Network USA, Inc. ("MLN"); New Century Mortgage Corporation ("New Century"); Ownit Mortgage Solutions Inc. ("Ownit"); People's Choice Home Loan, Inc. ("People's Choice"); Pinnacle Financial Corporation ("Pinnacle"); and SCME Mortgage Bankers, Inc ("SCME"). HFN -- a subsidiary of Defendant Ally and an affiliate of Defendant RFC -- originated loans underlying the Certificates for 13 of the 21 Securitizations. Together, the entities identified in this paragraph are referred to as the "Non-Party Originators."

JURISDICTION AND VENUE

36. Jurisdiction of this Court is founded upon 28 U.S.C. § 1345, which gives federal courts original jurisdiction over claims brought by FHFA in its capacity as conservator of Freddie Mac.

37. Jurisdiction of this Court is also founded upon 28 U.S.C. § 1331 because the Securities Act claims asserted herein arise under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l(a)(2), 77(o). This Court further has jurisdiction over the Securities Act claims pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v.

38. This Court has jurisdiction over Plaintiff's common law claims and claims of violations of Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code, pursuant to this Court's supplemental jurisdiction under 28 U.S.C. §1367(a).

39. Venue is proper in this district pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. § 77v, and 28 U.S.C. §1391(b). Defendants are principally located in this district, and many of the acts and transactions alleged herein, including the preparation and dissemination of the Registration Statements, occurred in substantial part within this district. Additionally, the Certificates were actively marketed and sold from this district. Defendants also are subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

I. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

40. The factual allegations set forth in paragraphs 41 through 176 below are made with respect to all causes of action against Defendants and are sufficient to establish Defendants' strict statutory liability under the federal Securities Act of 1933 and the Virginia Securities Act. With respect to such liability, no allegations are made or intended, and none are necessary, concerning Defendants' state of mind. Defendants are strictly liable, without regard to intent on their part or reliance on Freddie Mac's part, for the misstatements in, and material omissions from, the Registration Statements under Sections 11 and 12 and, for control person defendants, under Section 15, of the Securities Act of 1933, and Sections 13.1-522(A)(ii) and 13.1-522(C) of the Virginia Code.

A. The Securitizations

1. Residential Mortgage-Backed Securitizations Generally

41. Asset-backed securitization involves pooling cash-producing financial assets and issuing securities backed by those pools of assets. In residential mortgage-backed securitizations, the cash-producing financial assets are residential mortgage loans.

42. In the most common form of securitization of mortgage loans, a sponsor -- the entity that acquires or originates the mortgage loans and initiates the securitization -- directly or indirectly transfers a portfolio of mortgage loans to a trust. In many instances, the transfer of assets to the trust is a two-step process in which the sponsor first transfers the financial assets to an intermediate entity, typically referred to as a "depositor," and then the depositor transfers the assets to a trust. The trust is established pursuant to a pooling and servicing agreement or trust indenture entered into by, among others, the depositor for that securitization.

43. RMBS are the securities backed by the underlying mortgage loans in the trust. Some residential mortgage-backed securitizations are created from more than one cohort of loans, called collateral groups, in which case the trust issues different tranches of securities backed by different groups of loans. For example, a securitization may involve two groups of mortgages, with some securities backed primarily by the first group, and others primarily by the second group. Purchasers of the securities (in the form of certificates) acquire an ownership interest in the assets of the trust, which in turn owns the loans. These purchasers are thus primarily dependent for repayment of principal and payment of interest upon the cash flows from the designated group of mortgage loans -- primarily mortgagors' payments of principal and interest on the mortgage loans held by the related trust.

44. RMBS are generally issued and sold pursuant to registration statements filed with the SEC. These registration statements include prospectuses, which describe the general

structure of the investment, and prospectus supplements, which set forth detailed descriptions of, among other things, the mortgage groups underlying the certificates. Certificates are issued by the trust and sold pursuant to the registration statement, the prospectus and prospectus supplement. Underwriters purchase the certificates from the trust and then offer, sell or distribute the certificates to investors.

45. A mortgage servicer manages the collection of proceeds from the mortgage loans. The servicer is responsible for collecting homeowners' mortgage loan payments, which the servicer remits to the trustee after deducting a monthly servicing fee. The servicer's duties include making collection efforts on delinquent loans, initiating foreclosure proceedings, and determining when to charge off a loan by writing down its balance. The servicer is required to report key information about the loans to the trustee. The trustee (or trust administrator) administers the trust funds and delivers payments due each month on the certificates to the investors.

2. **<u>Securitizations at Issue in this Case</u>**

46. This case involves the following 21 Securitizations:

i. RASC Series 2005-EMX3 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EMX3 ("RASC 2005-EMX3");

ii. RASC Series 2005-KS10 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-KS10 ("RASC 2005-KS10");

iii. RASC Series 2005-KS11 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2005-KS11 ("RASC 2005-KS11");

iv. RASC Series 2006-EMX8 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX8 ("RASC 2006-EMX8");

v. RASC Series 2006-EMX9 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-EMX9 ("RASC 2006-EMX9");

vi. RASC Series 2006-KS3 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-KS3 ("RASC 2006-KS3");

vii. RASC Series 2006-KS9 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-KS9 ("RASC 2006-KS9");

viii. RASC Series 2007-EMX1 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-EMX1 ("RASC 2007-EMX1");

ix. RASC Series 2007-KS2 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-KS2 ("RASC 2007-KS2");

x. RASC Series 2007-KS3 Trust, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2007-KS3 ("RASC 2007-KS3");

xi. RAMP Series 2005-EFC6 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC6 ("RAMP 2005-EFC6");

xii. RAMP Series 2005-EFC7 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-EFC7 ("RAMP 2005-EFC7");

xiii. RAMP Series 2005-NC1 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-NC1 ("RAMP 2005-NC1");

xiv. RAMP Series 2005-RS9 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-RS9 ("RAMP 2005-RS9");

xv. RAMP Series 2006-RS1 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-RS1 ("RAMP 2006-RS1");

xvi. RALI Series 2005-QO4 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QO4 ("RALI 2005-QO4");

xvii. RALI Series 2006-QO4 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO4 ("RALI 2006-QO4");

xviii. RALI Series 2006-QO5 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO5 ("RALI 2006-QO5");

xix. RALI Series 2006-QO8 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO8 ("RALI 2006-QO8");

xx. RALI Series 2007-QO9 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2006-QO9 ("RALI 2007-QO9"); and

xxi. RALI Series 2007-QH5 Trust, Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH5 ("RALI 2007-QH5").

47. For each of the 21 Securitizations, Table 1 identifies the: (1) sponsor; (2) depositor; (3) underwriter(s); (4) principal amount issued for the tranches[5] purchased by Freddie Mac; (5) date of issuance; and (6) the loan group or groups backing the Certificate for that Securitization (referred to as the "Supporting Loan Groups").

Table 1

Transaction	Tranche	Sponsor	Depositor	Underwriters	Principal Amount Issued ($)	Date of Issuance	Supporting Loan Groups
RALI 2005-QO4	IA1	RFC	RALI	RBS	143,428,800.00	11/29/05	Group I
RALI 2006-QO4	IA1	RFC	RALI	RBS	327,356,000.00	04/27/06	Group I
RALI 2006-QO4	IA2	RFC	RALI	RBS	81,838,000.00	04/27/06	Group I
RALI 2006-QO5	IA1	RFC	RALI	UBS	179,443,000.00	05/30/06	Group I
RALI 2006-QO8	IIA	RFC	RALI	Lehman Brothers	409,198,000.00	10/30/06	Group II
RALI 2006-QO9	IIA	RFC	RALI	Lehman Brothers	284,637,000.00	11/29/06	Group II
RALI 2007-QH5	AII	RFC	RALI	Goldman Ally Securities	143,007,000.00	05/30/07	Group II
RAMP 2005-EFC6	AII	RFC	RAMP	JPMSI Ally Securities	163,581,000.00	11/22/05	Group II
RAMP 2005-EFC7	AII	RFC	RAMP	Ally Securities Barclays	199,376,000.00	12/28/05	Group II
RAMP 2005-NC1	AII	RFC	RAMP	Ally Securities Credit Suisse	405,004,000.00	12/28/05	Group II
RAMP 2005-RS9	AII	RFC	RAMP	Bear Credit Suisse Ally Securities RBS	494,922,000.00	11/29/05	Group II

[5] A tranche is one of the classes of debt securities issued as part of a single bond or instrument. Securities are often issued in tranches to meet different investor objectives for portfolio diversification. Freddie Mac purchased two tranches of Certificates from the RALI 2006-Q04 Securitization, which is why the tables herein have 22 entries for 21 Securitizations.

Transaction	Tranche	Sponsor	Depositor	Underwriters	Principal Amount Issued ($)	Date of Issuance	Supporting Loan Groups
RAMP 2006-RS1	AII	RFC	RAMP	Ally Securities Credit Suisse RBS BOA	409,790,000.00	01/25/06	Group II
RASC 2005-EMX3	AII	RFC	RASC	Ally Securities Credit Suisse	267,481,000.00	09/23/05	Group II
RASC 2005-KS10	AII	RFC	RASC	JPMSI Ally Securities BOA	495,741,000.00	10/28/05	Group II
RASC 2005-KS11	AII	RFC	RASC	Credit Suisse Ally Securities RBS	547,641,000.00	11/29/05	Group II
RASC 2006-EMX8	AII	RFC	RASC	Ally Securities Barclays	236,806,000.00	09/28/06	Group II
RASC 2006-EMX9	AII	RFC	RASC	Barclays Ally Securities	197,896,000.00	10/27/06	Group II
RASC 2006-KS3	AII	RFC	RASC	Citi	232,006,000.00	03/29/06	Group II
RASC 2006-KS9	AII	RFC	RASC	Barclays	153,311,000.00	10/27/06	Group II
RASC 2007-EMX1	AII	RFC	RASC	Ally Securities Credit Suisse	326,812,000.00	03/12/07	Group II
RASC 2007-KS2	AII	RFC	RASC	JPMSI	164,400,000.00	02/23/07	Group II
RASC 2007-KS3	AII	RFC	RASC	JPMSI BOA Ally Securities	167,618,000.00	03/29/07	Group II

3. <u>Securitization Process</u>

a. The Sponsors Grouped Mortgage Loans in Special-Purpose Trusts

48. In each case, the sponsor purchased the mortgage loans underlying the Certificates either directly from the originators or through affiliates of the originators. RFC sponsored all 21 Securitizations at issue here.

49. RFC (the "Ally Sponsor"), as sponsor, then sold the acquired mortgage loans to one of three depositors, all of which are RFC-affiliated entities: RALI, RAMP and RASC (the "Ally Depositors").

50. The Ally Depositors were wholly-owned, limited-purpose financial subsidiaries of GMAC-RFC and affiliates of RFC. The sole purpose of the Ally Depositors as depositors was to act as a conduit through which loans acquired by the sponsor could be securitized and sold to investors.

51. As depositors for all 21 of the Securitizations, the Ally Depositors ostensibly transferred the relevant mortgage loans to the respective trusts for each of those Securitizations.

52. As part of each Securitization, the trustee for that Securitization, on behalf of the Certificateholders, executed a Pooling and Servicing Agreement ("PSA") with the relevant depositor and the relevant servicer. In each case, the trust, administered by the trustee, was required to hold the mortgage loans, pursuant to the related PSA, and issued certificates, including the Certificates. The Certificates were purchased, directly or indirectly, by the Underwriter Defendants. Freddie Mac purchased from the Underwriter Defendants the Certificates, through which it obtained an ownership interest in the assets of the trust, including the mortgage loans.

b. The Trusts Issued Securities Backed by the Loans

53. Once the mortgage loans were transferred to the trusts in accordance with the PSAs, each trust issued Certificates backed by the underlying mortgage loans. The Certificates were then sold to investors, including Freddie Mac. Each Certificate entitles its holder to a specified portion of the cash flows from the underlying mortgages in the supporting loan group for that Certificate. Therefore, the value of the Certificates, derived in part from the likelihood of payment of principal and interest on the Securitizations, depends upon the credit quality of the underlying mortgages, *i.e.*, the risk of default by borrowers and the recovery value upon default of foreclosed-upon properties.

54. The Certificates purchased by Freddie Mac were issued and sold pursuant to Shelf Registration Statements filed with the SEC on a Form S-3.[6] The Shelf Registration Statements ("S-3") were amended by one or more Form S-3/A (the "Amendments" or "S-3/A") filed with the SEC. Corporate officers and/or directors signed the six Shelf Registration Statements (and amendments thereto) that were filed, in each case, by RALI, RAMP or RASC. The SEC filing number, registrants, signatories, and filing dates for all six Shelf Registration Statements with Amendments, as well as the Certificates purchased by Freddie Mac covered by each Shelf Registration Statement, are reflected in Table 2 below.

Table 2

SEC File No.	Date S-3 Filed	Date(s) S-3/A(s) Filed	Registrants	Covered Certificates	Signatories of S-3	Signatories of S-3/A(s)[7]
333-125485	06/03/05	07/07/05	RAMP	RAMP 2005-EFC6 RAMP 2005-EFC7 RAMP 2005-NC1 RAMP 2005-RS9 RAMP 2006-RS1	Bruce Paradis Kenneth Duncan Ralph Flees David Walker	Bruce Paradis Kenneth Duncan Ralph Flees David Walker Diane Wold
333-122688	02/10/05	04/19/05	RASC	RASC 2005-EMX3 RASC 2005-KS10 RASC 2005-KS11 RASC 2006-KS3	Bruce Paradis Davee Olson Ralph Flees David Walker	Bruce Paradis Davee Olson Jack Katzmark David Walker Lisa Lundsten
333-126732	07/20/05	08/09/05	RALI	RALI 2005-QO4	Bruce Paradis Kenneth Duncan Ralph Flees David Walker	Bruce Paradis Kenneth Duncan Ralph Flees David Walker Lisa Lundsten

6 Defendant RALI filed three Shelf Registration Statements that were used to market six of the Securitizations; Defendant RAMP filed one Shelf Registration Statement that was used to market five of the Securitizations; and Defendant RASC filed two Registration Statements that were used to market 10 of the Securitizations.

7 Some corporate officers and/or directors signed certain S-3/As through a power of attorney.

SEC File No.	Date S-3 Filed	Date(s) S-3/A(s) Filed	Registrants	Covered Certificates	Signatories of S-3	Signatories of S-3/A(s)[7]
333-131209	01/20/06	02/23/06 03/21/06 03/30/06	RASC	RASC 2006-EMX8 RASC 2006-EMX9 RASC 2006-KS9 RASC 2007-EMX1 RASC 2007-KS2 RASC 2007-KS3	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson Lisa Lundsten
333-131213	01/23/06	03/03/06 03/06/06	RALI	RALI 2006-QO4 RALI 2006-QO5 RALI 2006-QO8 RALI 2006-QO9	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson	Bruce Paradis Kenneth Duncan Ralph Flees Davee Olson Lisa Lundsten
333-140610	02/12/07	04/03/07	RALI	RALI 2007-QH5	David Applegate David M. Bricker Ralph Flees James Young	James Jones David Bricker Ralph Flees James Young Lisa Lundsten

55. The Prospectus Supplement for each Securitization describes the loan underwriting guidelines that purportedly were used in connection with the origination of the underlying mortgage loans. In addition, the Prospectus Supplements purport to provide accurate statistics regarding the mortgage loans in each group, including: the ranges of and weighted average FICO credit scores of the borrowers, the ranges of and weighted average loan-to-value ("LTV") ratios of the loans, the ranges of and weighted average outstanding principal balances of the loans, the debt-to-income ratios of the borrowers, the geographic distribution of the loans, the extent to which the loans were for purchase or refinance purposes, information concerning whether the loans were secured by a property to be used as a primary residence, second home, or investment property, and information concerning whether the loans were delinquent.

56. The Prospectus Supplement for each Securitization was filed with the SEC as part of the Registration Statements. The Forms 8-K attaching the PSAs for each Securitization were also filed with the SEC. The dates on which the Prospectus Supplement and Form 8-K were

filed for each Securitization, as well as the filing number of the Shelf Registration Statement related to each, are set forth in Table 3 below.

Table 3

Transaction	Date Prospectus Supplement Filed	Date Form 8-K Attaching PSA	Filing No. of Related Shelf Registration Statement
RALI 2005-QO4	11/28/2005	12/15/2005	333-126732
RALI 2006-QO4	4/28/2006	5/15/2006	333-131213
RALI 2006-QO5	5/31/2006	6/14/2006	333-131213
RALI 2006-QO8	11/1/2006	11/14/2006	333-131213
RALI 2006-QO9	11/30/2006	12/14/2006	333-131213
RALI 2007-QH5	5/30/2007	6/14/2007	333-140610
RAMP 2005-EFC6	11/21/2005	12/7/2005	333-125485
RAMP 2005-EFC7	12/22/2005	1/13/2006	333-125485
RAMP 2005-NC1	12/27/2005	1/13/2006	333-125485
RAMP 2005-RS9	11/29/2005	12/12/2005	333-125485
RAMP 2006-RS1	1/25/2006	2/9/2006	333-125485
RASC 2005-EMX3	9/23/2005	10/14/2005	333-122688
RASC 2005-KS10	10/28/2005	11/14/2005	333-122688
RASC 2005-KS11	11/28/2005	12/14/2005	333-122688
RASC 2006-EMX8	9/27/2006	10/13/2006	333-131209
RASC 2006-EMX9	10/27/2006	11/13/2006	333-131209
RASC 2006-KS3	3/29/2006	4/13/2006	333-122688
RASC 2006-KS9	10/30/2006	11/13/2006	333-131209
RASC 2007-EMX1	3/9/2007	3/27/2007	333-131209
RASC 2007-KS2	2/23/2007	3/9/2007	333-131209
RASC 2007-KS3	3/28/2007	4/13/2007	333-131209

57. The Certificates were issued pursuant to the PSAs, and the Underwriter Defendants, along with the Ally Depositors, offered and sold the Certificates to Freddie Mac in the primary market pursuant to the Registration Statements, which, as noted previously, included the Prospectuses and Prospectus Supplements.

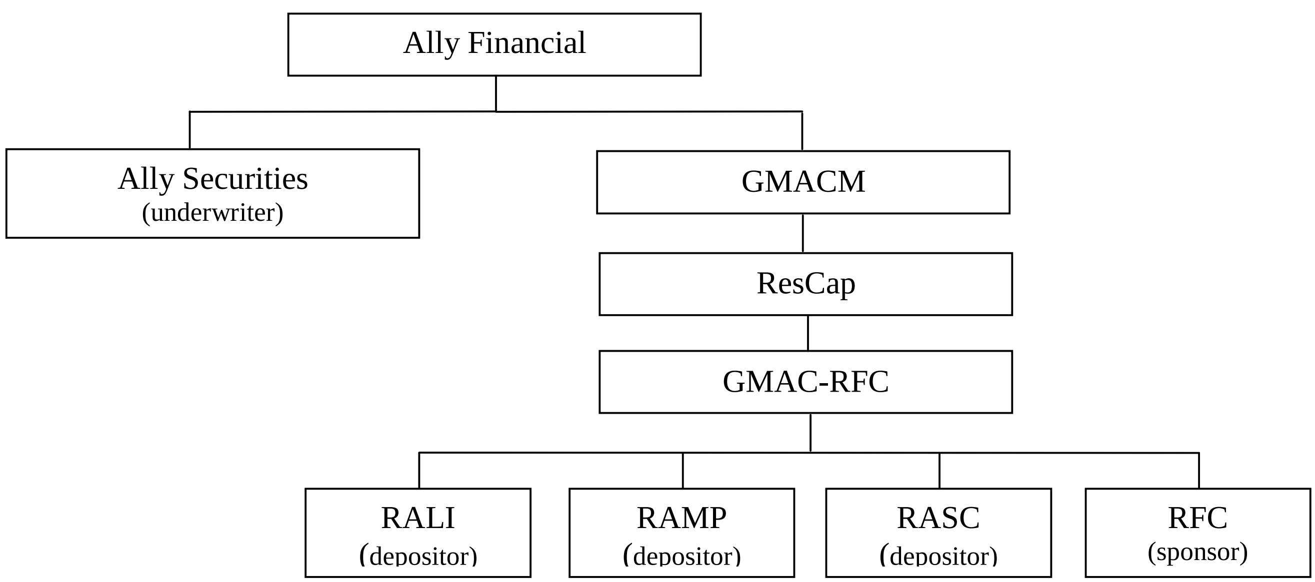
B. Defendants' and the Ally Debtors' Participation in the Securitization Process

58. Each of the Defendants and Ally Debtors played a role in the securitization process and the marketing for some or all of the Certificates purchased by Freddie Mac, which included directly or indirectly purchasing the mortgage loans from the originators, arranging the

Securitizations, selling the mortgage loans to the depositor, ostensibly transferring the mortgage loans to the trustee on behalf of the Certificateholders, underwriting the public offering of the Certificates, structuring and issuing the Certificates, and marketing and selling the Certificates to Freddie Mac.

59. The Defendants are liable, jointly and severally, as participants in the registration, issuance and offering of the Certificates purchased by Freddie Mac, including issuing, causing, or making materially misleading statements in the Registration Statements, and omitting material facts required to be stated therein or necessary to make the statements contained therein not misleading

60. Defendant Ally Financial wholly owns GMACM and Ally Securities and is also the ultimate parent of ResCap, GMAC-RFC, RFC, RALI, RASC and RAMP. The chart below indicates the corporate structure of the relevant Ally entities.



1. The Ally Sponsor: RFC

61. RFC ("Ally Sponsor") was formed in 1985 as a wholly-owned subsidiary of GMAC-RFC for the purpose of issuing mortgage-backed securities through its affiliates, the Ally

Depositors. The Ally Sponsor was a leading sponsor of mortgage-backed securities and was the sponsor of all 21 Securitizations. In that capacity, the Ally Sponsor determined the structure of the Securitizations, initiated the Securitizations, purchased the mortgage loans to be securitized, determined distribution of principal and interest, and provided data to the rating agencies to secure investment grade ratings for the Certificates sold to Freddie Mac. The Ally Sponsor also selected the Ally Depositors as the special-purpose vehicles that would be used ostensibly to transfer the mortgage loans from the Ally Sponsor to the trusts, and selected the Underwriter Defendants for the Securitizations, including its affiliate, Defendant Ally Securities. In its role as sponsor, the Ally Sponsor knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing such loans would be issued by the relevant trusts.

62. For all 21 Securitizations that it sponsored, the Ally Sponsor also ostensibly conveyed the mortgage loans to the Ally Depositors, as depositor, pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. In these agreements, the Non-Party Originators and Ally Sponsor made certain representations and warranties to the Ally Depositors regarding the mortgage loans collateralizing the Certificates purchased by Freddie Mac. These representations and warranties were assigned by the Ally Depositors to the trustees for the benefit of the Certificateholders, and were described in the Prospectus Supplements.

63. The Ally Sponsor had the practical ability to and in fact exercised direction and control of the Ally Depositors. The Ally Sponsor shared overlapping management with the Ally Depositors. For example, in 2005, David C. Walker served as Director of RFC and Director of RALI, RASC, and RAMP. In 2005, Bruce J. Paradis served as CEO and Director of RFC; Director, President and CEO of RALI and RASC; and President and CEO of RAMP. In 2006,

Mr. Paradis served as President of RFC; Director, President and CEO of RALI and RASC; and President and CEO of RAMP. In 2007, David. M. Bricker served as Director of RFC; Director and CFO of RALI; and CFO of RASC and RAMP. In 2005, Davee L. Olson served as Director of RFC; Director of RAMP; and Director and CFO of RASC. In 2007, James N. Young served as CFO of RFC and Director of RALI, RAMP and RASC. In 2007, James G. Jones served as President and Director of RFC and President, CEO and Director of RALI, RASC, and RAMP. In 2005, Kenneth M. Duncan served as CFO of RFC and RAMP. In 2005, Ralph T. Flees served as Controller of RFC and Controller of RASC and RAMP. In 2007, Mr. Flees served as Controller of RFC and Controller of RALI, RASC and RAMP.

2. The Ally Depositors: RALI, RASC and RAMP

64. RALI, RASC and RAMP have been engaged in the securitization of mortgage loans as depositors since their incorporation in 1995, 1994, and 1999, respectively. They are special-purpose entities formed solely for the purpose of purchasing mortgage loans, filing registration statements with the SEC, forming issuing trusts, assigning mortgage loans and all of their rights and interests in such mortgage loans to the trustee for the benefit of certificateholders, and depositing the underlying mortgage loans into the issuing trusts.

65. RALI was the depositor for six of the 21 Securitizations, RASC was the depositor for 10 Securitizations, and RAMP was the depositor for five Securitizations. In their capacity as depositors, the Ally Depositors purchased the mortgage loans from the Ally Sponsor pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. The Ally Depositors then sold, transferred, or otherwise conveyed the mortgage loans to be securitized to the trusts. Together with the Defendants, the Ally Depositors were also responsible for preparing and filing the Registration Statements pursuant to which the Certificates purchased by Freddie Mac were offered for sale. The trusts, in turn, held the mortgage loans for the benefit of the

Certificateholders, and issued the Certificates in public offerings for sale to investors, including Freddie Mac.

3. The Ally Underwriter: Defendant Ally Securities

66. Defendant Ally Securities was formed in 1990 and is a wholly-owned subsidiary of Ally Financial. Defendant Ally Securities is an investment bank, solely operating as a registered broker-dealer with respect to the issuance and underwriting of residential and commercial mortgage-backed securities. At all relevant times, Ally Securities was one of the leading underwriters of mortgage and other asset-backed securities in the United States. According *to Inside Mortgage Finance* in 2004, Ally Securities underwrote over $8.9 billion of non-agency mortgage-backed securities. In 2005, the data shows that Ally Securities underwrote $14.5 billion, and in 2006 and 2007, Ally Securities underwrote $12.4 billion and $10.2 billion in non-agency mortgage-backed securities, respectively.

67. Defendant Ally Securities was the co-lead and selling underwriter for five of the 21 Securitizations and an underwriter for an additional six Securitizations. In that role, it was responsible for underwriting and managing the offer and sale of the Certificates to Freddie Mac and other investors. Ally Securities was also obligated to conduct meaningful due diligence to ensure that the Registration Statements did not contain any material misstatements or omissions, including as to the manner in which the underlying mortgage loans were originated, transferred and underwritten.

4. The Ally Control Persons: Defendants Ally Financial and GMACM

68. As the corporate parent of the underwriter Ally Securities and the ultimate parent of the Ally Sponsor and Ally Depositors, Ally Financial had the practical ability to and in fact exercised direction and control of these subsidiaries in coordinating the securitization process, determining the structure of each offering, and issuing and selling the Certificates purchased by

Freddie Mac. The Securitizations involved Ally at virtually every step in the process, and Ally Financial and GMACM profited substantially from this vertically integrated approach to mortgage-backed securitization.

69. Ally Financial wholly owns and controls GMACM, which owns 100% of ResCap's equity. As discussed *infra*, paragraph 80, GMACM had overlapping management with other Ally entities, and in fact, according to the Ally Debtors, GMACM "does not even have any employees of its own." (*In re Residential Capital, LLC*, Case No. 12-12020 (MG) (S.D.N.Y. Bankr.), Debtors' Motion to Extend Automatic Stay or, in the Alternative, for Injunctive Relief Enjoining Prosecution of Certain Pending Litigation Against Debtors' Directors and Officers and Non-Debtor Corporate Affiliates, at 16.)

70. As stated in ResCap's Form S-4 July 15, 2005 Registration Statement:

> [Ally Financial] control[s] all fundamental matters affecting [ResCap] . . . . [Ally Financial] indirectly owns all of [ResCap's] outstanding common stock and has the power to elect and remove all of [ResCap's] directors, including the two independent directors . . . . [Ally Financial] is also able to approve or reject any action requiring approval of stockholders, including the adoption of amendments to our certificate of incorporation an approval of mergers or sales of all or substantially all of [ResCap's] interests. . . .

(Residential Capital Corp., Registration Statement (Form S-4) ("ResCap Form S-4"), at 23 (July 15, 2005).)

71. Further, Ally Financial supports its subsidiaries financially. In Ally Financial's Form 8-K, filed on June 9, 2005, it disclosed that ResCap would enter into an operating agreement with Ally Financial, under which Ally Financial would agree to "indemnify, defend and hold [ResCap] harmless from and against any losses [ResCap] suffer[s] related to the business and liabilities of [Ally Financial] and its subsidiaries." (Ally Fin. Inc., Current Report (Form 8-K) (June 9, 2005), Ex. 99.1, at 37.) In 2008, Ally Financial announced to the market

that it renewed a funding facility with Citibank, which provided "funding of up to $13.8 billion," a portion of which was specifically earmarked for "mortgage assets across the [Ally Financial] and [ResCap] businesses." (Ally Fin. Inc., Current Report (Form 8-K) (Sept. 19, 2008).)

72. The Ally Debtors concede that they would have defaulted on their debt obligations had they not received the financial support of Ally Financial. On March 14, 2012, the Ally Debtors filed for Chapter 11 bankruptcy protection. In support of the Ally Debtors' first day pleadings in Bankruptcy Court, ResCap's Chief Financial Officer, James Whitlinger stated: "Without capital contributions from AFI [Ally Financial], the Debtors would have breached their Consolidated Tangible Net Worth covenant on a number of occasions." (Whitlinger Aff. ¶ 82.) "Capital contributions by AFI totaled approximately $2.7 billion in 2007, $3.3 billion in 2008, and $4.0 billion in 2009." (*Id.* ¶ 82 n.32.)

73. Moreover, Ally Financial publicly reports on its own business and that of its subsidiaries on an integrated basis: "We engage in the origination, purchase, servicing, sale, and securitization of consumer (i.e., residential) mortgage loans and mortgage-related products." (Ally Fin. Inc., 2009 Annual Report (Form 10-K), at 3 (Feb. 26, 2010).) Ally Financial's Form 10-K Annual Report, for the period ending December 31, 2005, states:

- We operate directly and through our subsidiaries and affiliates in which we . . . have equity investments. . . . We originate, purchase, service, sell and securitize residential and commercial mortgage loans and mortgage related products. (*Id*.)

- [W]e utilize asset and mortgage securitizations and sales as a critical component of our diversified funding strategy. (*Id*. at 2.)

- We are a leading real estate finance company with two of our mortgage segments, GMAC Residential and GMAC-RFC, providing residential real estate products and services. Net income from the operations of GMAC Residential and GMAC-RFC together totaled $1,021 million, which accounted for approximately 43% of our net income in 2005. (*Id.* at 20.)

74. More recently, discussing its various mortgage operations as a single enterprise, Ally Financial stated that "[o]ur Origination and Servicing operations is one of the leading originators of conforming and government-insured residential mortgage loans in the United States. We are one of the largest residential mortgage loan servicers in the United States and we provide collateralized lines of credit to other mortgage originators." (Ally Fin. Inc., 2011 Annual Report (Form 10-K), at 4 (Feb. 28, 2012).)

75. Ally Financial's Form 10-K, for the period ending December 2011, states that "ResCap remains heavily dependent on Ally and its affiliates for funding and capital support . . . ." (*Id.* at 18.) Ally Financial established a "Mortgage Repurchase Reserve" to pay for potential liabilities stemming from repurchase demands made on its mortgage-related subsidiaries, and as of the fourth quarter 2011, Ally Financial's Mortgage Repurchase Reserve balance was $825 million. (Ally Fin., Inc. 4Q Earnings Review, dated February 2, 2012, at 16.)

76. In fact, Ally Financial continues to support and control the Ally Debtors in bankruptcy. The Ally Debtors have proposed an ambitious and expedited reorganization of more than 50 entities with more than $15 billion of assets to be effectuated by the end of 2012. The proposed reorganization includes several significant transactions, including transactions between the Ally Debtors and Ally Financial that purportedly are valued in excess of $2.75 billion. The transactions include (i) Ally Financial's stalking horse bid of up to $1.6 billion for a portfolio of mortgage loans and securities owned by the Ally Debtors; (ii) Ally Financial's $150 million debtor-in-possession loan to the Ally Debtors under an amendment to a pre-petition secured loan agreement; and (iii) Ally Financial's agreement to support a plan of reorganization for the Ally Debtors pursuant to which Ally Financial will contribute $750 million in cash and other consideration (that the Ally Debtors allege should be valued in excess of $1 billion) in exchange

for extensive releases including broad non-consensual third-party releases in favor of Ally Financial.

77. In addition, the Ally Debtors recently disclosed that Ally Financial provides various services to the Ally Debtors, which demonstrate the integrated nature of the Ally Debtors' and Ally Financial's businesses. In the bankruptcy proceedings, the Ally Debtors filed a motion for entry of an order authorizing the Ally Debtors to enter into a shared services agreement with Ally Financial for the "*continued* receipt and provision of shared services necessary for the continued operation of the Debtors' businesses," which services include, among other things, financial services, accounting, tax advisory services, risk management, collateral management, facilities management, information technology support, and legal services. (Debtors' Motion for Interim and Final Order Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Residential Capital, LLC to Enter into a Share Services Agreement with Ally Financial Inc. *Nunc Pro Tunc* to the Petition Date for the Continued Receipt and Provision of Shared Services Necessary for the Operation of the Debtors' Business, *In re Residential Capital, LLC, et al.*, 12-12020-mg (S.D.N.Y. Bankr.) (Docket #41) (emphasis added).) With respect to shared legal services, Ally Financial "provides legal advice and counseling, including regarding changes in laws and regulations applicable to ResCap's business" to the Ally Debtors. The Ally Debtors, "[w]here requested by [Ally Financial], provide legal analysis and support as may be necessary or required by [Ally Financial] from time to time, including without limitation, support for the mortgage correspondent, warehouse, and wholesale lending lines." (*Id.*, Ex. B.) Moreover, the Ally Debtors assert: "Given the integrated nature of the Debtor's and [Ally Financial's] businesses, the continuation of these services pursuant to the Agreement is both

warranted and absolutely necessary to avoid any disruption to the Debtors' day-to-day operations." (*Id.* ¶ 7.)

78. ResCap, as the sole corporate parent of GMAC-RFC, had the practical ability to, and in fact, exercised direction and control over the activities of GMAC-RFC and GMAC-RFC's subsidiaries, the Ally Sponsor and Ally Depositors, in connection with the issuance and sale of the Certificates to Freddie Mac. Indeed, ResCap has no operations separate from its investment in its subsidiaries. (ResCap Form S-4 at 29.)

79. As discussed *supra*, GMAC-RFC employed its wholly-owned subsidiaries, the Ally Sponsor and Ally Depositors, in the key steps of the securitization process. Unlike typical arm's length securitizations, the Securitizations involved various Ally subsidiaries and affiliates at virtually each step in the chain.

80. Furthermore, Ally Financial, GMACM, ResCap, and GMAC-RFC shared overlapping management with each other and/or the Ally Depositors. For example, in 2005 Eric A. Feldstein served as Chairman of the Board of Ally Financial, GMACM and ResCap. In 2005, Linda K. Zukauckas served as Vice President and Corporate Comptroller of Ally Financial and Director of ResCap. In 2005, Sanjiv Khattri served as Executive Vice President and CFO of Ally Financial and Director of GMACM and ResCap. In 2005, Bruce Paradis served as Co-CEO and Director for ResCap; CEO and Director for GMAC-RFC; Director, President, and CEO of RALI and RASC; and President and CEO of RAMP. In 2006, Mr. Paradis served as CEO and Director for ResCap; President for GMAC-RFC; Director, President and CEO for RALI and RASC; and President and CEO of RAMP. In 2005, Davee L. Olson served as CFO and Director for ResCap; Director of GMAC-RFC; CFO and Director for RASC; and Director for RAMP. In 2006, Mr. Olson served as CFO and Director for ResCap and as Director for RALI, RAMP, and

RASC. In 2005, Ralph T. Flees served as Controller of GMAC-RFC, RASC and RAMP. In 2007, Mr. Flees served as Controller of GMAC-RFC, RALI, RASC and RAMP. In 2007, James N. Young served as Chief Accounting Officer and Controller for ResCap; and Director for RALI, RASC, and RAMP. In 2007, James G. Jones served as President, CEO and Director for ResCap, Director of GMAC-RFC, and President, CEO and Director for RALI, RASC, and RAMP.

81. Furthermore, from the inception of this case on September 2, 2011 until March 12, 2012 -- a period of over six months -- Ally Financial, GMACM, Ally Securities, and the Ally Debtors were represented by the same counsel, indicating an identity of interest.

5. Non-Ally Defendants

82. The Non-Ally Defendants were among the nation's largest non-agency mortgage-backed securities underwriters between 2004 through 2007. The Non-Ally Defendants were the co-lead underwriters for 12 Securitizations and underwriters for an additional seven Securitizations. In those roles, the Non-Ally Defendants were responsible for underwriting and managing the offer and sale of Certificates to Freddie Mac. The Non-Ally Defendants also were obligated to conduct meaningful due diligence to ensure that the Registration Statements did not contain any material misstatements or omissions, including as to the manner in which the underlying mortgage loans were originated, transferred and underwritten.

C. Statements in the Registration Statements

83. Plaintiff relies for its claims, in part, upon the Registration Statements in their entirety. Specific representations and warranties in the Registration Statements that form the basis for the claims herein are set forth for each Securitization in Appendix A hereto.

1. Compliance with Underwriting Guidelines

84. The Prospectus and Prospectus Supplement for each of the Securitizations contained detailed descriptions of the underwriting guidelines used to originate the mortgage loans included in the Securitizations. These guidelines were intended to assess the creditworthiness of the borrower, the ability of the borrower to repay the loan, and the adequacy of the mortgaged property as security for the loan. Because payment on, and the value of, the Certificates is based on the cash flows from the underlying mortgage pool, representations concerning compliance with the stated underwriting guidelines were material to reasonable investors. Investors, including Freddie Mac, did not have access to information concerning the collateral pool, and were required to rely on the representations in the Prospectus Supplements concerning that collateral. As explained below, a reasonable investor would not have understood, in light of the representations regarding supposed adherence to underwriting guidelines, that there were pervasive and systemic breaches of those guidelines with respect to the securitized loans.

85. Among other consequences, the failure to originate mortgage loans in accordance with stated guidelines diminished the value of the Certificates by increasing the significant risk that an investor will not be paid its principal and interest. Misrepresentations concerning, or failing accurately to disclose, borrower, loan, and property characteristics bearing on the risk of default by the borrower, as well as the severity of losses given default, can artificially inflate the perceived value of the securities. Without accurate information regarding the collateral pool, reasonable investors, including Freddie Mac, are unable accurately and independently to assess whether the price of an RMBS adequately accounts for the risks they are assuming when they purchase the security.

86. The Prospectus Supplements for each of the Securitizations contained several key statements with respect to the loan purchasing and underwriting standards of the Non-Party Originators that originated the loans in the Securitizations. For example, with respect to the RAMP 2005-EFC7 Securitization, for which EquiFirst was originator, Ally Securities was a co-underwriter, and RASC was the depositor, the Prospectus Supplement states:

> *All of the mortgage loans included in the trust were originated by EquiFirst, generally in accordance with [EquiFirst's] underwriting criteria* [and that] EquiFirst's underwriting standards are 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.

(RAMP 2005-EFC7, Prospectus Supplement (Form 424b5), at S-37 (Dec. 20, 2005) ("RAMP 2005-EFC7 Prospectus Supplement") (emphasis added).)

87. Similarly, with respect to the RALI 2006-QO8 Securitization, for which the Ally originator, HFN, was the primary originator and RALI was the depositor, the Prospectus Supplement states:

> All of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of Residential Funding … Residential Funding will review each mortgage loan for compliance with its underwriting standards prior to purchase . . . .

(RALI 2006-QO8, Prospectus Supplement (Form 424b5), at S-60-61 (Nov. 11, 2006) ("RALI 2006-QO8 Prospectus Supplement").)

88. With respect to the information evaluated by the originator (EquiFirst), the RAMP 2005-EFC7 Prospectus Supplement stated that:

> *EquiFirst considers, among other things, a mortgagor's credit history, repayment ability and debt service-to-income ratio ('Debt Ratio'), as well as the value, type and use of the mortgaged property*" (emphasis added) and that the borrower's "Credit Bureau Risk Score is used along with, but not limited to, mortgage payment history, seasoning on bankruptcy and/or foreclosure, and

> is not a substitute for the underwriter's judgment. EquiFirst's underwriting staff fully reviews each loan to determine whether EquiFirst's guidelines for income, assets, employment and collateral are met.

(RAMP 2005-EFC7 Prospectus Supplement at S-38.)

89. Similarly, with respect to the information evaluated by the originators (including HFN) the RALI 2006-QO8 Prospectus Supplement stated that:

> In accordance with the Seller Guide, the Expanded Criteria Program Seller is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor. As part of the description of the mortgagor's financial condition, each mortgagor is required to furnish information . . . regarding its assets, liabilities, income . . . credit history and employment history, and to furnish an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy. The mortgagor may also be required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts.

(RALI 2006-QO8 Prospectus Supplement at S-59.)

90. The Prospectus Supplement for the RAMP 2005-EFC7 securitization further states:

> EquiFirst's guidelines comply with applicable federal and state laws and regulations and generally require an appraisal of the mortgaged property which conforms to Freddie Mac and/or Fannie Mae standards. All loans are subject to EquiFirst's appraisal review process. Appraisals are provided by qualified independent appraisers licensed in their respective states.

(RAMP 2005-EFC7 Prospectus Supplement at S-39.) The Prospectus Supplement for RALI 2006-QO8 states:

> The appraisal procedure guidelines [described in the Seller Guide] generally require the appraiser or an agent on its behalf to personally inspect the property and to verify whether the property is in good condition and that construction, if new, has been substantially completed. The appraiser is required to consider a market data analysis of recent sales of comparable properties and,

> when deemed applicable, an analysis based on income generated from the property, or replacement cost analysis based on the current cost of constructing or purchasing a similar property. In certain instances, the LTV ratio is based on the appraised value as indicated on a review appraisal conducted by the mortgage collateral seller or originator.

(RALI 2006-QO8 Prospectus Supplement at S-60.)

91. The Prospectus Supplements for each of the Securitizations made similar representations with respect to the underwriting guidelines employed by each of the Non-Party Originators in the Securitizations, which included: Aegis, Decision One, EFC Holdings and its subsidiary EquiFirst, Finance America, FNB Nevada, Home123, Homefield Financial, MLN, New Century, Ownit, People's Choice, Pinnacle, and SCME. *See* Appendix A.

92. Contrary to those representations, however, these originators routinely and egregiously departed from, or abandoned completely, their stated underwriting guidelines, as discussed in Section I.D.2, *infra*. As a result, the representations concerning compliance with underwriting guidelines and the inclusion and descriptions of those guidelines in the Prospectus Supplements were false and misleading, and the actual mortgages underlying each Securitization exposed the purchasers, including Freddie Mac, to a materially greater risk than that represented in the Prospectus Supplements.

93. As reflected more fully in Appendix A, for the vast majority of the Securitizations, the Prospectus Supplements included representations that: (i) the mortgage loans were underwritten in accordance with each originator's underwriting guidelines in effect at the time of origination, subject only to limited exceptions; and (ii) the origination and collection practices used by the originator with respect to each mortgage note and mortgage were in all respects legal, proper and customary in the mortgage origination and servicing business.

94. The inclusion of these representations in the Prospectus Supplements had the purpose and effect of providing assurances to investors regarding the quality of the mortgage collateral underlying the Securitizations. These representations were material to a reasonable investor's decision to purchase the Certificates, and they were material to Freddie Mac. As alleged more fully below, Defendants' representations were materially false.

2. Occupancy Status of Borrower

95. The Prospectus Supplements for each Securitization set forth information about the occupancy status of the borrowers of the loans underlying the Securitization; that is, whether the property securing a mortgage is (i) the borrower's primary residence; (ii) a second home; or (iii) an investment property. This information was presented in tables, typically titled "Occupancy Status of the Mortgage Loans," that assigned all the properties in the collateral group to one of the following categories: (i) "Primary" or "Owner-Occupied"; (ii) "Second Home" or "Secondary"; and (iii) "Investor" or "Non-Owner." For each category, the table stated the number of loans purportedly in that category. Occupancy statistics for the Supporting Loan Groups for each Securitization were reported in the Prospectus Supplements as follows:[8]

Table 4

Transaction	Tranche	Supporting Loan Group	Primary or Owner-Occupied	Second Home / Secondary	Investor
RALI 2005-QO4	IA1	Group I	81.68%	1.71%	16.61%
RALI 2006-QO4	IA1	Group I	79.14%	5.53%	15.33%
RALI 2006-QO4	IA2	Group I	79.14%	5.53%	15.33%
RALI 2006-QO5	IA1	Group I	81.13%	4.10%	14.76%
RALI 2006-QO8	IIA	Group II	81.78%	3.41%	14.81%
RALI 2006-QO9	IIA	Group II	80.99%	4.05%	14.97%
RALI 2007-QH5	AII	Group II	77.36%	5.74%	16.90%

8 Each Prospectus Supplement provides the total number of loans and the number of loans in the following categories: owner-occupied, investor, and second home. These numbers have been converted to percentages for ease of comparison.

Transaction	Tranche	Supporting Loan Group	Primary or Owner-Occupied	Second Home / Secondary	Investor
RAMP 2005-EFC6	AII	Group II	98.15%	0.37%	1.48%
RAMP 2005-EFC7	AII	Group II	100.00%	0.00%	0.00%
RAMP 2005-NC1	AII	Group II	83.96%	5.56%	10.48%
RAMP 2005-RS9	AII	Group II	65.80%	1.35%	32.85%
RAMP 2006-RS1	AII	Group II	78.45%	2.11%	19.44%
RASC 2005-EMX3	AII	Group II	93.92%	2.29%	3.79%
RASC 2005-KS10	AII	Group II	94.42%	0.85%	4.72%
RASC 2005-KS11	AII	Group II	89.88%	2.53%	7.59%
RASC 2006-EMX8	AII	Group II	100.00%	0.00%	0.00%
RASC 2006-EMX9	AII	Group II	100.00%	0.00%	0.00%
RASC 2006-KS3	AII	Group II	99.24%	0.76%	0.00%
RASC 2006-KS9	AII	Group II	95.82%	2.81%	1.36%
RASC 2007-EMX1	AII	Group II	93.65%	1.98%	4.37%
RASC 2007-KS2	AII	Group II	95.23%	0.71%	4.05%
RASC 2007-KS3	AII	Group II	95.56%	1.27%	3.17%

96. As Table 4 makes clear, the Prospectus Supplements reported that 17 of the 22 Supporting Loan Groups contained at least 80 percent owner-occupied loans, and 11 of the 22 Supporting Loan Groups contained at least 90 percent owner-occupied loans.

97. Because information about occupancy status is an important factor in determining the credit risk associated with a mortgage loan -- and, therefore, the Certificates that it backs -- the statements in the Prospectus Supplements concerning occupancy status were material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. These statements were material because, among other reasons, borrowers who live in mortgaged properties are substantially less likely to default and more likely to care for their primary residence than borrowers who purchase properties as second homes or investments and live elsewhere. For example, as stated in the Prospectus for the RALI 2005-QO4 Securitization: "[T]he rate of default on mortgage loans or manufactured housing contracts that are secured by investment properties . . . may be higher than on other mortgage loans or manufactured housing

contracts." (RALI 2005-QO4 Prospectus Supplement (Form 424b5), at 62 (Nov. 28, 2005) ("RALI 2005-QO4 Prospectus Supplement").) Accordingly, the percentage of loans in the collateral group of a securitization that are secured by mortgage loans on owner-occupied residences is an important measure of the risk of the certificates sold in that securitization.

98. Other things being equal, the lower the percentage of loans secured by owner-occupied residences, the greater the risk of loss to Certificateholders. Even modest differences in the percentages of primary/owner-occupied, second home/secondary, and investment properties in the collateral group of a securitization can have a significant effect on the risk of each certificate sold in that securitization, and thus, are important to the decision of a reasonable investor whether, and at what price, to purchase any such certificate. As discussed *infra* at paragraphs 111 through 116, the Prospectus Supplement for each Securitization materially overstated the percentage of loans in the Supporting Loan Groups that were owner-occupied, thereby misrepresenting the degree of risk of the Certificates purchased by Freddie Mac.

3. Loan-to-Value Ratios

99. The loan-to-value ratio of a mortgage loan, or LTV ratio, is the ratio of the balance of the mortgage loan to the value of the mortgaged property when the loan is made.

100. The denominator in the LTV ratio is the value of the mortgaged property, and is generally the lower of the purchase price or the appraised value of the property. In a refinancing or home-equity loan, there is no purchase price to use as the denominator, so the denominator is often equal to the appraised value at the time of the origination of the refinanced loan or home-equity loan. Accordingly, an accurate appraisal is essential to an accurate LTV ratio. In particular, an inflated appraisal will understate, sometimes greatly, the credit risks associated with a given loan.

101. The LTV ratio is among the most important measures of the risk of a mortgage loan for several reasons. First, the LTV ratio is a strong indicator of the likelihood of default because a higher LTV ratio makes it more likely that a decline in the value of a property will completely eliminate a borrower's equity, and will incentivize the borrower to stop making mortgage payments and abandon the property. Second, the LTV ratio is a strong predictor of the severity of loss in the event of a default because the higher the LTV ratio, the smaller the "equity cushion," and the greater the likelihood that the proceeds of foreclosure will not cover the unpaid balance of the mortgage loan.

102. Thus, LTV ratios are material to a reasonable investor's decision to invest in the Certificates, and they were material to Freddie Mac. Even small differences between the LTV ratios of the mortgage loans in the collateral group of a securitization have a significant effect on the likelihood that collateral groups will generate sufficient funds to pay certificateholders in that securitization. Such differences are important to the decision of a reasonable investor on whether to purchase any such certificate, and they affect the intrinsic value of the certificate.

103. The Prospectus Supplements for the Securitizations contain information about the LTV ratio for each Supporting Loan Group. Table 5 below reflects two categories of important information reported in the Prospectus Supplements concerning the LTV ratios for each Supporting Loan Group: (i) the percentage of loans with an LTV ratio of less than or equal to 80 percent; and (ii) the percentage of loans with an LTV ratio greater than 100 percent.[9]

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[9] As used in this Amended Complaint, "LTV" refers to the loan-to-value ratio for first lien mortgages and for properties with second liens subordinate to the lien included in the securitization (*i.e.*, only the securitized lien is included in the numerator of the LTV calculation). Where the securitized lien is junior to another loan, the more senior lien has been added to the securitized one to determine the numerator in the LTV calculation (this latter calculation is sometimes referred to as the combined-loan-to-value ratio, or "CLTV").

Table 5

Transaction	Supporting Loan Group	Percentage of loans, by aggregate principal balance, with LTV less than or equal to 80%	Percentage of loans, by aggregate principal balance, with LTV greater than 100%
RALI 2005-QO4	Group I	94.77%	0.00%
RALI 2006-QO4 (IA1 & IA2)	Group I	94.37%	0.00%
RALI 2006-QO5	Group I	95.44%	0.00%
RALI 2006-QO8	Group II	95.56%	0.00%
RALI 2006-QO9	Group II	93.89%	0.00%
RALI 2007-QH5	Group II	93.70%	0.00%
RAMP 2005-EFC6	Group II	57.86%	0.00%
RAMP 2005-EFC7	Group II	71.74%	0.00%
RAMP 2005-NC1	Group II	57.07%	0.00%
RAMP 2005-RS9	Group II	53.93%	0.00%
RAMP 2006-RS1	Group II	44.73%	0.00%
RASC 2005-EMX3	Group II	47.33%	0.00%
RASC 2005-KS10	Group II	45.62%	0.00%
RASC 2005-KS11	Group II	61.19%	0.00%
RASC 2006-EMX8	Group II	53.72%	0.00%
RASC 2006-EMX9	Group II	41.34%	0.00%
RASC 2006-KS3	Group II	61.60%	0.00%
RASC 2006-KS9	Group II	45.21%	0.00%
RASC 2007-EMX1	Group II	52.14%	0.00%
RASC 2007-KS2	Group II	44.68%	0.00%
RASC 2007-KS3	Group II	43.00%	0.00%

104. Table 5 uses an LTV ratio of 80 percent as the benchmark because, as a condition for making a mortgage loan, lenders traditionally require borrowers to put down at least 20 percent of the value of the property. Accordingly, a down payment of at least 20 percent corresponds to an LTV ratio of less than or equal to 80 percent. As Table 5 makes clear, the Prospectus Supplements for most of the Securitizations reported that the majority of the mortgage loans in the Supporting Loan Groups had an LTV ratio of 80 percent or less. The Prospectus Supplements also reported that *none* of the Supporting Loan Groups contained a single loan with an LTV ratio over 100 percent.

105. As discussed *infra* at paragraphs 117 through 123, the Prospectus Supplements for the Securitizations materially *overstated* the percentage of loans in the Supporting Loan Groups

with an LTV ratio at or less than 80 percent, and materially *understated* the percentage of loans in the Supporting Loan Groups with an LTV ratio over 100 percent, thereby misrepresenting the degree of risk to Certificateholders.

4. Credit Ratings

106. Credit ratings are assigned to the tranches of mortgage-backed securities by the credit rating agencies, including Standard & Poor's, Moody's Investors Service, and Fitch Ratings. Each credit rating agency uses its own scale with letter designations to describe various levels of risk. In general, AAA or its equivalent ratings are at the top of the credit rating scale and are intended to designate the safest investments. C and D ratings are at the bottom of the scale and refer to investments that are currently in default and exhibit little or no prospect for recovery. At the time Freddie Mac purchased the Certificates, investments with AAA or its equivalent ratings historically experienced a loss rate of less than .05 percent. Investments with a BBB rating, or its equivalent, historically experienced a loss rate of less than one percent. As a result, securities with credit ratings between AAA or its equivalent through BBB- or its equivalent were generally referred to as "investment grade."

107. Rating agencies determine the credit rating for each tranche of a mortgage-backed securitization by analyzing the expected loss, factoring in "credit enhancements" such as subordination levels and excess spread, available to protect investors. Rating agencies determine, among other things, the likelihood of repayment of principal and interest based on the quality of the underlying mortgage loans by using sponsor-provided loan-level data. Credit enhancements, such as subordination, represent the amount of "cushion" or protection from loss incorporated into a given securitization.[10] This cushion is intended to improve the likelihood that

[10] "Subordination" refers to the fact that the certificates for a mortgage-backed securitization are issued in a hierarchical structure, from senior to junior. The junior certificates

holders of highly-rated certificates receive the interest and principal to which they are contractually entitled. The level of credit enhancement offered is based on the composition of the loans in the underlying collateral group and entire securitization. Riskier loans underlying the securitization necessitate higher levels of credit enhancement to ensure payment to senior certificateholders. If the collateral within the deal is of a higher quality, then rating agencies require less credit enhancement for an AAA or its equivalent rating.

108. For almost a hundred years, investors such as pension funds, municipalities, insurance companies, and university endowments have relied heavily on credit ratings to assist them in distinguishing between safe and risky investments.

109. Each tranche of the Securitizations received a credit rating before issuance, which purported to describe the riskiness of that tranche. Defendants reported the credit ratings for each tranche in the Prospectus Supplements. For each of the Certificates purchased by Freddie Mac the credit rating provided was always AAA or its equivalent. The credit quality of the Certificates endorsed by these ratings was material to a reasonable investor's decision to purchase the Certificates, and it was material to Freddie Mac. Among other things, the ratings provided additional assurance that investors in the Certificates would receive the expected interest and principal payments. As set forth in Table 8, *infra* at paragraph 168, the ratings for the majority of the Securitizations were severely downgraded after Freddie Mac's purchase of the Certificates. Upon information and belief, the initial ratings were based in substantial part upon the materially inaccurate and incomplete information in the Registration Statements and related information provided to the ratings agencies.

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are "subordinate" to the senior certificates in that, should the underlying mortgage loans become delinquent or default, the junior certificates suffer losses first. These subordinate certificates thus provide a degree of protection to the senior certificates from certain losses on the underlying loans.

D. Falsity of Statements in the Registration Statements

1. The Statistical Data Provided in the Prospectus Supplements Concerning Owner-Occupancy and Loan-to-Value Ratios Were Materially False or Misleading

110. A review of loan-level data for a sample of mortgage loans in each Securitization was conducted to assess whether the statistical information provided in the Prospectus Supplements was true and accurate. For each Securitization, the review included an analysis either of: (i) a sample of 1,000 loans randomly selected from the Supporting Loan Group; or (ii) all the loans in the Supporting Loan Group if there were fewer than 1,000 such loans. The review of sample data has confirmed, on a statistically-significant basis, that the data provided in the Prospectus Supplements concerning owner-occupancy and LTV ratios was materially false and misleading at the time the loans were originated and securitized, and that the Prospectus Supplements contained material misrepresentations with respect to the underwriting standards employed by the originators, and of certain key characteristics of the mortgage loans across the Securitizations at the time of their origination.

a. Owner-Occupancy Data Was Materially False or Misleading

111. The data review reveals that the owner-occupancy statistics reported in the Prospectus Supplements were materially false and inflated at the time of loan origination. Indeed, the Prospectus Supplements over-reported the number of underlying properties that were occupied by their owners, and underreported the number of underlying properties held as second homes or investment properties.

112. To determine whether a given borrower actually occupied the property as claimed, a number of tests were conducted, including, *inter alia*, whether the borrower's tax bill was being mailed to the mortgaged property or to a different address six months after the loan closed, whether the borrower had claimed an owner-occupied tax exemption on the mortgaged

property, and whether the mailing address of the property was reflected in the borrower's credit reports, tax records, or lien records. Failing two or more of these tests constitutes strong evidence that the borrower did not live at the mortgaged property and instead used it as a second home or an investment property, rendering it much more likely that a borrower will not repay the loan.

113. For each Securitization, a significant number of the underlying loans failed two or more of these tests, demonstrating that the owner-occupancy statistics provided to Freddie Mac were materially false and misleading. For example, the Prospectus Supplement for the RAMP 2005-EFC6 Securitization -- for which the Ally Sponsor was the sponsor and Ally Securities was a co-lead underwriter -- stated that 1.85 percent of the underlying properties by loan count in the Supporting Loan Group were not owner-occupied. But the data review revealed that the true percentage of non-owner-occupied properties was 13.67 percent,[11] approximately 700 percent greater than the percentage reported in the Prospectus Supplement because for 12.04 percent of the properties represented as owner-occupied, the owners lived elsewhere.

114. The data review revealed that, for each Securitization, the Prospectus Supplement misrepresented the percentage of non-owner-occupied properties. The true percentage of non-owner-occupied properties, as determined by the data review, versus the percentage stated in the Prospectus Supplement for each Securitization, is reflected in Table 6 below.

[11] The true percentage of non-owner-occupied properties (Table 6 Column C) is calculated by adding the percentage reported in the Prospectus Supplement (Table 6 Column A) to the product of owner-occupied properties reported in the Prospectus Supplement (100 minus Column A) and the percentage of properties reported as owner-occupied but with strong indication of non-owner-occupancy (Table 6 Column B).

Table 6

		A	B	C	D
Transaction	**Supporting Loan Group**	**Reported Percentage of Non-Owner-Occupied Properties**	**Percentage of Properties Reported As Owner-Occupied Misrepresented in the Offering Materials**	**Actual Percentage of Non-Owner-Occupied Properties**	**Understatement of Non-Owner-Occupied Properties in the Offering Materials**
RALI 2005-QO4	Group I	18.32%	14.93%	30.52%	12.19%
RALI 2006-QO4 (IA1 & IA2)	Group I	20.86%	14.86%	32.62%	11.76%
RALI 2006-QO5	Group I	18.87%	13.14%	29.53%	10.66%
RALI 2006-QO8	Group II	18.22%	13.18%	29.00%	10.78%
RALI 2006-QO9	Group II	19.01%	13.84%	30.22%	11.21%
RALI 2007-QH5	Group II	22.64%	15.76%	34.83%	12.20%
RAMP 2005-EFC6	Group II	1.85%	12.04%	13.67%	11.82%
RAMP 2005-EFC7	Group II	0.00%	11.88%	11.88%	11.88%
RAMP 2005-NC1	Group II	16.04%	10.72%	25.04%	9.00%
RAMP 2005-RS9	Group II	34.20%	13.42%	43.03%	8.83%
RAMP 2006-RS1	Group II	21.55%	11.66%	30.69%	9.15%
RASC 2005-EMX3	Group II	6.08%	9.03%	14.56%	8.48%
RASC 2005-KS10	Group II	5.58%	11.97%	16.88%	11.30%
RASC 2005-KS11	Group II	10.12%	11.41%	20.38%	10.26%
RASC 2006-EMX8	Group II	0.00%	12.38%	12.38%	12.38%
RASC 2006-EMX9	Group II	0.00%	12.52%	12.52%	12.52%
RASC 2006-KS3	Group II	0.76%	13.20%	13.86%	13.10%
RASC 2006-KS9	Group II	4.18%	9.06%	12.86%	8.68%
RASC 2007-EMX1	Group II	6.35%	9.44%	15.19%	8.84%
RASC 2007-KS2	Group II	4.77%	10.28%	14.56%	9.79%
RASC 2007-KS3	Group II	4.44%	11.10%	15.05%	10.60%

115. Table 6 demonstrates that the Prospectus Supplement for each Securitization was grossly inaccurate, understating the percentage of non-owner-occupied properties by at least eight percent, and for many Securitizations by 10 percent or more. The inclusion of inaccurate statistics in its Prospectus Supplements was misleading because the Ally Depositors', Ally Sponsor's, and Underwriter Defendants' endorsed the accuracy of such statistics through the inclusion of their names on the document and their express statements in the Prospectus Supplements, similar to that in the Prospectus Supplement for RAMP 2005-EFC7, that investors "should rely on the information provided in the prospectus and accompanying prospectus supplement, including the information incorporated by reference." (RAMP 2005-EFC7

Prospectus Supplement, at "Important Notice About Information Presented In This Prospectus And The Accompanying Prospectus Supplement".)

116. Specific examples of misrepresentations and omissions showing that the owner occupancy statistics reported in the Prospectus Supplements were materially false and inflated at the time of origination are discussed in detail below. (*See infra*, at paragraphs 136-137.) Initial forensic loan reviews reaffirm what the above statistics demonstrate: the owner occupancy data in the Prospectus Supplements was materially false at the time of origination.

b. Loan-to-Value Data Was Materially False

117. The data review has further revealed that the LTV ratios disclosed in the Prospectus Supplements were materially false and understated at the time the loans were originated and securitized, as more specifically set out below. For each of the sampled loans, an industry standard automated valuation model ("AVM") was used to calculate the value of the underlying property at the time the mortgage loan was originated. AVMs are routinely used in the industry as a way of valuing properties during prequalification, origination, portfolio review, and servicing. AVMs rely upon data similar to that upon which appraisers rely -- primarily county assessor records, tax rolls, and data on comparable properties. AVMs produce independent, statistically-derived valuation estimates by applying modeling techniques to this data. The ValuePoint4 ("VP4") AVM was used to analyze the data via appraisal emulation, repeat sales indices, and regression analysis, relying on the sales made within the last 24 months prior to the origination of the mortgage loan at issue.

118. Application of the VP4 AVM to the available data for the properties securing the sampled loans shows that the original appraised value given to such properties was significantly higher than the actual value of the properties as determined by the VP4 retroactive AVM. The result of this overstatement of property values is a material understatement of LTV. That is, if a

property's true value is significantly less than the value used in the loan underwriting, then the loan represents a significantly higher percentage of the property's value. This, of course, increases the risk a borrower will not repay the loan and the risk of greater losses in the event of a default. As stated in the Prospectus for RALI 2005-QO4: "The rate of default . . . on mortgage loans or manufactured housing contracts with higher LTV ratios may be higher than for other types of mortgage loans or manufactured housing contracts." (RALI 2005-QO4 Prospectus Supplement at 62.)

119. For example, for the RALI 2007-QH5 Securitization, for which RFC was the sponsor and Ally Securities was a co-underwriter, the Prospectus Supplement stated that no LTV ratios for the Supporting Loan Group were above 100 percent. In fact, 18.26 percent of the sample of loans included in the data review had LTV ratios above 100 percent. In addition, the Prospectus Supplement stated that 93.70 percent of the loans had LTV ratios at or below 80 percent. The data review indicated that only 45.89 percent of the loans had LTV ratios at or below 80 percent.

120. The data review revealed that, for each Securitization, the Prospectus Supplement misrepresented the percentage of loans with an LTV ratio above 100 percent, as well as the percentage of loans that had an LTV ratio at or below 80 percent at the time of their origination. Table 7 reflects (i) the true percentage of mortgages in the Supporting Loan Group at the time of origination with LTV ratios above 100 percent, versus the percentage reported in the Prospectus Supplement; and (ii) the true percentage of mortgages in the Supporting Loan Group at the time of origination with LTV ratios at or below 80 percent, versus the percentage reported in the Prospectus Supplement. The percentages listed in Table 7 were calculated by aggregate principal balance.

Table 7

		PROSPECTUS	DATA REVIEW	PROSPECTUS	DATA REVIEW
Transaction	**Supporting Loan Group**	**Percentage of Loans Reported to have LTV Ratio at or Less than 80%**	**True Percentage of Loans with LTV Ratio at or Less than 80%**	**Percentage of Loans Reported to have LTV Ratio Over 100%**	**True Percentage of Loans with LTV Ratio Over 100%**
RALI 2005-QO4	Group I	94.77%	61.17%	0.00%	8.18%
RALI 2006-QO4 (IA1 & IA2)	Group I	94.37%	57.25%	0.00%	8.43%
RALI 2006-QO5	Group I	95.44%	53.64%	0.00%	11.09%
RALI 2006-QO8	Group II	95.56%	46.48%	0.00%	11.62%
RALI 2006-QO9	Group II	93.89%	48.39%	0.00%	13.12%
RALI 2007-QH5	Group II	93.70%	45.89%	0.00%	18.26%
RAMP 2005-EFC6	Group II	57.86%	35.31%	0.00%	16.70%
RAMP 2005-EFC7	Group II	71.74%	38.91%	0.00%	13.32%
RAMP 2005-NC1	Group II	57.07%	44.83%	0.00%	13.01%
RAMP 2005-RS9	Group II	53.93%	36.91%	0.00%	17.27%
RAMP 2006-RS1	Group II	44.73%	29.46%	2.60%	22.23%
RASC 2005-EMX3	Group II	47.33%	29.10%	0.00%	19.47%
RASC 2005-KS10	Group II	45.62%	31.29%	0.00%	17.94%
RASC 2005-KS11	Group II	61.19%	44.25%	0.00%	14.41%
RASC 2006-EMX8	Group II	53.72%	30.69%	0.00%	26.94%
RASC 2006-EMX9	Group II	41.34%	21.70%	0.03%	33.84%
RASC 2006-KS3	Group II	61.60%	44.12%	0.00%	11.68%
RASC 2006-KS9	Group II	45.21%	27.87%	0.00%	26.92%
RASC 2007-EMX1	Group II	52.14%	27.06%	0.00%	26.46%
RASC 2007-KS2	Group II	44.68%	28.40%	0.00%	28.40%
RASC 2007-KS3	Group II	43.00%	27.04%	0.00%	29.22%

121. As Table 7 demonstrates, the Prospectus Supplements for all the Securitizations falsely reported that only two of the Supporting Loan Groups had mortgage loans with an LTV ratio over 100 percent. The data review revealed that at least eight percent of the mortgage loans for *every* Securitization had an LTV ratio over 100 percent, and for most Securitizations this figure was much larger. Indeed, for 19 of the 21 Securitizations, the data review revealed that more than 10 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent. For 12 Securitizations, the data review revealed that more than 15 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent and for seven

Securitizations, the data review revealed that more than 20 percent of the mortgages in the Supporting Loan Group had a true LTV ratio over 100 percent.

122. These systemic misrepresentations with respect to reported LTV ratios also demonstrate that the representations in the Registration Statements relating to appraisal practices were false, and that the appraisers routinely furnished appraisals that the appraisers understood were inaccurate and that they knew bore no reasonable relationship to the actual value of the underlying properties. One confidential witness, who was a national appraiser director at New Century, stated that he did not support the practices employed by New Century, noting that his group tried to follow the guidelines, but others at New Century overrode their decisions. According to the witness, New Century was a "very volume driven company" where the "originators did not care about the quality of the loan" because they were being paid by the number of closings. To form a long-lasting relationship with an originator, the witness stated that third-party appraisers were pressured to inflate appraisal values.

123. Indeed, independent appraisers following proper practices, and providing genuine estimates as to valuation, would not systematically generate appraisals that, as demonstrated by Table 7, deviate so significantly (and so consistently upward) from the true values of the appraised properties. These consistent errors demonstrate that, contrary to the representations in the Prospectuses and Prospectus Supplements, the appraisers did not comply with the Uniform Standards of Professional Appraisal Practice but instead generated appraisal values to justify the issuance of a mortgage loan. This conclusion is further confirmed by the findings of the Financial Crisis Inquiry Commission ("FCIC"), which identified "inflated appraisals" as a pervasive problem during the period of the Securitizations, and determined through its investigation that appraisers were often pressured by mortgage originators, among others, to

produce inflated results. (*See* Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (2011) ("FCIC Report"), at 91.)

2. The Originators of the Underlying Mortgage Loans Systematically Disregarded Their Underwriting Guidelines

124. The Prospectus Supplements each contained material misstatements and omissions concerning the underwriting guidelines used by the Non-Party Originators of the loans included in the Securitizations. Among other things, the Prospectus Supplements stated that the Non-Party Originators underwrote all loans in compliance with their respective underwriting guidelines. *See* Appendix A, Sections I-XXI at Subsections B. These statements were materially false.

125. The Non-Party Originators -- companies such as New Century, Decision One, and others -- systematically disregarded their respective underwriting guidelines, as confirmed not only by the pervasively false owner-occupancy and LTV figures alleged *supra*, but also by: (1) an forensic review of loan files; (2) government investigations and private actions relating to their underwriting practices, which have revealed widespread abandonment of their reported underwriting guidelines during the period of the Securitizations; (3) the collapse of the credit ratings of Certificates purchased by Freddie Mac; and (4) the surge in delinquencies and defaults in the mortgages in the Securitizations.

a. A Forensic Review of Loan Files Has Revealed Pervasive Failure to Adhere to Underwriting Guidelines

126. An initial forensic review of 235 loans in the RALI 2006-QO8 and RALI 2007-QH5 Securitizations, for which Ally Sponsor served as the sponsor and an Ally Depositor, RALI, served as the depositor, has revealed that *none* of the reviewed loans had been underwritten in accordance with the applicable underwriting guidelines.

127. The forensic review consisted of an analysis of the loan origination file for each loan, including the documents submitted by the individual borrowers in support of their loan applications, as well as an analysis of information extrinsic to each loan file, such as borrowers' filings in bankruptcy proceedings, motor vehicle registration, or other documentation available at the time of the loan application with pertinent information indicating a borrower's assets or residence.

128. The mortgage loans in both the RALI 2006-QO8 Securitization and the RALI 2007-QH5 Securitization were originated by the Ally originator, HFN, among others. Both the RALI 2006-QO8 Prospectus Supplement and the RALI 2007-QH5 Prospectus Supplement stated that "[p]rior to assigning the mortgage loans to the depositor, Residential Funding Company, LLC will have reviewed the underwriting information provided by the mortgage collateral sellers for the mortgage loans and, in those cases, determined that the mortgage loans were generally originated in accordance with or in a manner generally consistent with the underwriting standards described in the Seller Guide." (RALI 2006-QO8 Prospectus Supplement at S-60; RALI 2007-QH5, Prospectus Supplement (Form 424b5), at S-54 (May 30, 2007) ("RALI 2007-QH5 Prospectus Supplement").) The Prospectus Supplements also stated that "[RFC] reviewed the underwriting standards for the mortgage loans" and "[a]ll of the mortgage loans in the mortgage pool were originated in accordance with the underwriting criteria of [RFC]." (RALI 2006-QO8 Prospectus Supplement at S-59-61; RALI 2007-QH5 Prospectus Supplement at S-54-55.)

129. The results of the forensic review demonstrate, however, the material falsity of the disclosures in the Registration Statements stating that the mortgage loans were underwritten

in accordance with the applicable underwriting guidelines described in the Prospectus Supplements.

130. The underwriting guidelines that were disregarded were designed to assess the likelihood a borrower would be able to repay the loan. The forensic review revealed abandonment of underwriting guidelines, including as follows:

- failure to test the reasonableness of the borrower's stated income, contributing to material misrepresentations of income;
- failure to investigate properly the borrower's intention to occupy the subject properties when red flags surfaced in the origination process that should have alerted the underwriter that the property was intended for investment;
- failure to calculate properly the borrower's outstanding debt, causing the debt-to-income ratio ("DTI") to exceed the maximum allowed under the applicable underwriting guidelines; and
- failure to investigate properly information on the borrower's credit reports of potential misrepresentation of outstanding or potential debt.

131. Although the Prospectus Supplements represented that exceptions would be justified by sufficient compensating factors, none of the loan files reflecting a breach of underwriting guidelines evidenced sufficient compensating factors, as set forth in the underwriting guidelines, that would justify or support such an exception. Similarly, the loan files lack any documentation reflecting whether or how the originators considered, if at all, such compensating factors. A 100 percent breach rate, in any event, could not possibly be explained by the proper application of any such exceptions.

132. The following examples from the initial forensic review of the RALI 2006-QO8 and RALI 2007-QH5 Securitizations illustrate the types of breaches discussed above that pervade the loan pools for these Securitizations.

i. Stated Income Was Not Reasonable

133. Although no verification of income was required for stated income loans, the applicable underwriting guidelines required the underwriter to verify the employment listed by the borrower on the application and to assess whether the stated income was reasonable given the applicant's line of work.

134. The following examples reveal instances where there was no evidence that the underwriter analyzed the reasonableness of the borrower's stated income for the employment listed on the loan application as required by the applicable underwriting guidelines. In fact, the forensic review verified that the borrower misrepresented his or her income on the application. This misrepresentation resulted in a miscalculation of the borrower's DTI. Had the loan underwriter performed an evaluation of the income stated on the application by the borrower, as required by the applicable underwriting guidelines, the unreasonableness of the borrower's stated income would have been evident.

- A loan that closed in April 2007 with a principal balance of $254,000 was originated under HFN's Stated Income Loan Program. The loan application stated that the borrower was employed as an engineer earning $25,833 per month. The borrower's stated income exceeded the Bureau of Labor Statistics 90th percentile salary for an engineer in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported monthly income of $6,333 in 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 261.98 percent, which exceeds the guideline maximum allowable DTI of 45 percent. The loan defaulted, resulting in a loss of $243,148.

- A loan that closed in August 2006 with a principal balance of $328,500 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was self-employed as an owner of a beauty salon, earning $25,000 per month. The borrower's stated income exceeded CBSalary.com's 90th percentile salary for a self-employed owner of a beauty salon in the same geographic region. Moreover, according to the borrower's 2009 bankruptcy petition, the total household income for the borrower and non-borrower spouse for 2006 was $57,141, resulting in a monthly income of

$4,761. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 187.05 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $211,774.

- A loan that closed in August 2006 with a principal balance of $371,250 was originated under Sea Breeze Financial Services' Stated Income Loan Program. The loan application stated that the borrower was employed as a customer service representative, earning $12,700 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a customer service representative in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2010 bankruptcy proceeding, the borrower's income for 2008 was $47,604, resulting in a monthly income of $3,967. From the time the subject loan closed in 2006 to 2008, the borrower was employed with the same employer in the same line of work. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 115.31 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $221,953.

- A loan that closed in August 2006 with a principal balance of $364,000 was originated under BrooksAmerica Mortgage's Stated Income Loan Program. The loan application stated that the borrower was employed as a driver earning $7,340 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a driver in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2010 bankruptcy proceeding, the borrower's income for 2008 was $1,711 per month. Between the time the loan closed in 2006 and 2008, the borrower was employed with the same employer in the same line of work. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 210.15 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $349,723.

- A loan that closed in September 2006 with a principal balance of $240,000 was originated under Golden Empire Mortgage Inc.'s Stated Income Loan Program. The loan application stated that the borrower was employed as a teaching assistant earning $5,379 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a teaching assistant in the same geographic region. Moreover, the forensic underwriter confirmed with the borrower's employer that the borrower's 2006 income was actually $1,283 per month. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 341.08 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $177,784.

- A loan that closed in August 2006 with a principal balance of $284,000 was originated under Flexpoint Funding Corp.'s Stated Income Loan Program. The loan application stated that the borrower was employed in quality control for a food distribution company, earning $6,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for employment in quality control in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2009 bankruptcy proceeding, the borrower's income for 2008 was $25,849, resulting in a monthly income of $2,154. From the time the subject loan closed in 2006 to 2008, the borrower was employed with the same employer in the same line of work. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 115.39 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $234,644.

- A loan that closed in August 2006 with a principal balance of $210,000 was originated under M&T Mortgage Corp.'s Stated Income Loan Program. The loan application stated that the borrower was employed as a cardiac monitor nurse, earning $13,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a cardiac monitor nurse in the same geographic region. Moreover, according to a Statement of Financial Affairs, filed by the borrower as part of a 2008 bankruptcy proceeding, the borrower's total household income, inclusive of income from a non borrowing spouse, for 2006 was $2,083 per month. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a DTI of 212.39 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $153,083.

- A loan that closed in August 2006 with a principal balance of $244,000 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was self-employed as a chemical engineer earning $17,000 per month. The borrower's stated income exceeded CBSalary.com's 90th percentile salary for a small business owner in the same geographic region. Moreover, the borrower's 2008 bankruptcy filing confirms that the borrower's total income for 2006 was negative $45,777. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of DTI based on the borrower's verified income yields a negative DTI due to the borrower's verified negative income and thus exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $127,850.

- A loan that closed in March 2007 with a principal balance of $292,500 was originated under HFN's Stated Income Loan Program. The loan application stated that the borrower was employed as a support specialist earning $6,800 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a support specialist in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2008 Chapter 7 Bankruptcy, the borrower reported income of $1,090 per month in 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on the borrower's verified income yields a DTI of 232.82 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $222,977.

- A loan that closed in April 2007 with a principal balance of $194,803 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was employed as an electronic technician earning $6,200 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for an electronic technician in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported income of $4,015 per month in 2009 from the same employer and in the same line of work as was stated on the subject loan application. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on the borrower's verified near year income and all other evidence uncovered in the forensic review yields a DTI of 87.13 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $104,930

- A loan that closed in March 2007 with a principal balance of $296,000 was originated under HFN's Stated Income Loan Program. The loan application stated that the borrower was employed as a maintenance technician earning $6,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a maintenance technician in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported monthly income of $2,935 for 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on the borrower's verified income yields a DTI of 103.63 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $277,110.

- A loan that closed in March 2007 with a principal balance of $236,000 was originated by Statewide Bancorp, Inc. as a stated income loan. The loan application stated that the borrower was employed as an electrician earning $7,500 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for an electrician in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a

2009 Chapter 13 Bankruptcy, the borrower reported monthly income of $3,697 in 2007. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 98.47 percent, which exceeds the guideline maximum of 38 percent. The loan defaulted, resulting in a loss of $171,787.

- A loan that closed in April 2007 with a principal balance of $143,920 was originated under First National Bank of Arizona's Stated Income Loan Program. The loan application stated that the borrower was employed as a systems analyst earning $12,900 per month. The borrower's stated income exceeded the Bureau of Labor Statistics' 90th percentile salary for a systems analyst in the same geographic region. Moreover, in a Statement of Financial Affairs filed by the borrower as part of a 2009 Chapter 7 Bankruptcy, the borrower reported that he had no income for the two years prior to filing, which includes 2007, the year the subject loan closed. There is no evidence in the file that the underwriter tested the reasonableness of the stated income. The DTI could not be recalculated because the borrower had no income at the time the loan was originated. The loan defaulted, resulting in a loss of $190,108.77.

135. Accordingly, the results of the forensic review demonstrate that the statements in the Registration Statements concerning the originators' verification of the reasonableness of the stated income were materially false and misleading. In particular, a significant number of mortgage loans were made on the basis of "stated incomes" that were facially unreasonable, and were not properly underwritten through efforts to verify the reasonableness of borrowers' income.

ii. Evidence of Occupancy Misrepresentations

136. The following are examples from the forensic review where the loan underwriter did not adequately question the borrower's intended occupancy of the subject property.

- A loan that closed in September 2006 with a principal balance of $208,000 was originated under LoanCity's Stated Income Loan Program. The loan was a refinance of a purported owner occupied property. The applicable guidelines required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, the subject property was located 134 miles away from the borrower's employer, while the borrower's declared rental property was located only 13 miles from the borrower's employer. Further, the forensic underwriter confirmed that the borrower never filed for a homestead exemption at the subject property and that the subject property's utilities had never been in the borrower's name. No evidence in the loan file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the new location. The loan defaulted, resulting in a loss of $193,151.

- A loan that closed in March 2007 with a principal balance of $360,000 was originated under First National Bank of Nevada's Stated Income Loan Program. The loan was a refinance of an owner occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, the hazard policy for the subject property included in the loan file, reflected that the subject property was tenant occupied and that the borrower's address was at a property listed as a "rental" on the application. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the new location. The loan defaulted, resulting in a loss of $175,988.

- A loan that closed in March 2007 with a principal balance of $374,000 was under SCME's Stated Income Loan Program. The loan was a refinance of an owner-occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, the borrower's 2006 W-2, obtained at origination, reflected a different property as the borrower's address. Moreover, the forensic re-underwriter searched Accurint and discovered that the borrower has not occupied the subject property at any point since origination. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the subject property. The loan defaulted, resulting in a loss of $280,897.

- A loan that closed in April 2007 with a principal balance of $300,000 was originated under HFN's Stated Income Loan Program. The loan was a refinance of an owner occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property. The loan was represented as being for an owner occupied residence. However, according to a Statement of Financial Affairs, filed by the borrower as part of a 2008 Chapter 7 Bankruptcy, the borrower did not reside at the subject property at any point during the previous three years. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the subject property. The loan defaulted, resulting in a loss of $173,221.

- A loan that closed in March 2007 with a principal balance of $263,800 was originated SCME's Stated Income Loan Program. The loan was a refinance of an owner occupied property. The underwriting guidelines for this loan required that the borrower occupy the subject property within 60 days after the mortgage loan closed and continue to occupy the property for at least one year. The loan was represented as being for an owner occupied residence. However, according to a Statement of Financial Affairs, filed by the borrower as part of a 2009 Chapter 7

Bankruptcy, the borrower vacated the subject property in May 2007. No evidence in the file indicates that the loan underwriter addressed or challenged the borrower's claim that he intended to reside at the subject property. The loan defaulted, resulting in a loss of $40,058.

137. The results of the forensic review demonstrate that the statements in the Offering Materials concerning the borrower's occupancy status were materially false or misleading and that the loans were not originated in accordance with the underwriting guidelines as represented in the Offering Materials. In particular, the Prospectus Supplements materially understated the proportion of loans secured by non-owner occupied properties. The lack of compliance with the underwriting process in this regard materially increased the credit risk of the loans and the portfolio because investment and second home properties generally have a higher rate of default and higher loss severities than owner occupied primary residences.

iii. Debts Incorrectly Calculated; DTI Exceeded Guidelines

138. Failure to incorporate all of a borrower's monthly obligations precludes the lender from properly evaluating the borrower's ability to repay the loan. The following are some examples where the underwriting process either failed to incorporate all of the borrower's debt or the monthly debt obligations were incorrectly calculated. When properly calculated, the borrower's actual DTI exceeded the limits established by the applicable underwriting guidelines. The failure to properly calculate debt led to material misstatements regarding the credit risk of the securitized loans.

- A loan that closed in September 2006 with a principal balance of $260,000 was originated under HFN's Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained two mortgages prior to the closing of the subject loan, which resulted in total additional monthly payments of $988. Although these loans were not listed on the application for the subject loan, there were three credit inquiries listed on the origination credit report for the previous 90 days. There is no evidence in the file that the underwriter investigated these credit inquiries or took these additional debt obligations into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 34.27 percent to 126.01

percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $213,284.

- A loan that closed in June 2006 with a principal balance of $280,000 was originated under HFN's Stated Income Loan Program. A forensic review of the loan file reveals that, while the underwriter calculated a monthly payment of $812 for the subject loan based on the initial interest rate, the applicable guidelines required the monthly payment for the subject loan to be calculated using the amortized rate, which yields a monthly payment of $1,724. The underwriter also excluded a monthly installment debt of $248, and there was no documentation in the loan file to support this exclusion. Although the underwriter qualified the borrower based on monthly debts of $2974.78, the borrower's actual monthly debts were $4,510.84. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 39 percent to 74.29 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $205,502.

- A loan that closed in September 2006 with a principal balance of $268,000 was originated under First National Bank of Arizona's Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained a mortgage loan prior to the closing of the subject loan, which resulted in an additional monthly payment of $1,445. Although this loan was not listed on the application for the subject loan, there was a credit inquiry listed on the origination credit report for the previous 90 days. There is no evidence in the file that the underwriter investigated this credit inquiry or took this additional debt obligation into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 17.07 percent to 152.46 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted and is in foreclosure.

- A loan that closed in September 2006 with a principal balance of $240,000 was originated under Golden Empire Mortgage Inc.'s Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained an auto loan prior to the closing of the subject loan, which resulted in an additional monthly payment. There is no evidence in the file that the underwriter took the additional debt obligation into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 40.36 percent to 341.08 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $177,784.

- A loan that closed in April 2007 with a principal balance of $154,000 was originated under HFN's Stated Income Loan Program. A forensic review of the loan file reveals that the borrower obtained a mortgage loan prior to the closing of the subject loan, which resulted in an additional monthly payment of $3,243. This loan was not listed on the application for the subject loan. There is no evidence in the file that the underwriter took this additional debt obligation into account in originating the loan. Moreover, the underwriter failed to account for the $343 monthly payment for the subject property's second lien note, which was obtained simultaneously with the subject loan. There was no evidence in the file to support excluding the payment for the second lien note from the borrower's monthly debt obligations. A recalculation of the DTI based on all evidence uncovered in the forensic review results in an increase in DTI from 38.72 percent to 180.81 percent, which exceeds the guideline maximum of 38 percent. The loan defaulted, resulting in a loss of $142,425.

- A loan that closed in March 2007 with a principal balance of $236,000 was originated by Statewide Bancorp, Inc. as a stated income loan. A forensic review of the loan file reveals that the borrower obtained two mortgage loans prior to the closing of the subject loan, which resulted in total additional monthly payments of $1,238. These loans were not listed on the application for the subject loan. There is no evidence in the file that the underwriter took this additional debt obligation into account in originating the loan. A recalculation of the DTI that includes the borrower's undisclosed debt results in an increase in DTI from 42.64 percent to 98.47 percent, which exceeds the guideline maximum of 38 percent. The loan defaulted, resulting in a loss of $171,787.

139. Of the 94 loans reviewed in the RALI 2006-QO8 Securitization, 72.34 percent contained a DTI that exceeded the applicable underwriting guidelines for the product type. Of the 141 loans reviewed in the RALI 2007-QH5 Securitization, 70.92 percent contained a DTI that exceeded the applicable underwriting guidelines for the product type.

iv. Credit Inquiries That Indicated Misrepresentations of Debts

140. The Prospectus Supplements for the RALI 2006-QO8 and RALI 2007-QH5 Securitizations represent that the loan originator "is required to review an application designed to provide to the original lender pertinent credit information concerning the mortgagor" including the mortgagor's "credit history." (RALI 2006-QO8 Prospectus Supplement at S-59; RALI 2007-QH5 Prospectus Supplement at S-53.) The following examples are instances where the borrowers' credit reports contained numerous credit inquiries that should have put the loan underwriters on notice for potential misrepresentations of debt obligations to be included in the borrowers' DTI. In each of these instances, there was no evidence in the origination loan file

that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Failure to investigate these issues prevented the loan underwriting process from appropriately qualifying the loan and evaluating the borrower's ability to make timely payments on the mortgage loan.

- A loan that closed in August 2006 with a principal balance of $187,200 was originated under Choice Capital Funding, Inc.'s Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows 18 credit inquiries within the previous 90 days, including numerous inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, in July 2006 the borrower obtained an undisclosed mortgage loan with a $1,843 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 78.78 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $207,729.

- A loan that closed in August 2006 with a principal balance of $342,000 was originated under Trust One Mortgage Corp.'s Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows nine credit inquiries within the previous 90 days, including numerous inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, in August 2006, prior to the subject loan closing, the borrower obtained an undisclosed mortgage loan with a $2,765 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 105.39 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted, resulting in a loss of $262,622.

- A loan that closed in September 2006 with a principal balance of $193,900 was originated under LoanCity's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows five credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, in August 2006 the borrower obtained an undisclosed mortgage loan with a $2,783 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 99.03 percent, which exceeds the limits established by the applicable underwriting guidelines. The loan defaulted and is in foreclosure.

- A loan that closed in April 2007 with a principal balance of $200,000 was originated under First Financial's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows five credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained two undisclosed installment loans prior to the subject loan closing with total monthly payments of $682. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 77.30 percent, which exceeds the guideline maximum of 40 percent. The loan defaulted, resulting in a loss of $159,689.

- A loan that closed in March 2007 with a principal balance of $312,000 was originated under SCME's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows six credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained an undisclosed installment loan prior to the subject loan closing with a monthly payment of $447. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 108.56 percent, which exceeds the guideline maximum of 50 percent. The loan defaulted, resulting in a loss of $245,599.

- A loan that closed in April 2007 with a principal balance of $254,000 was originated under HFN's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows 13 credit inquiries within the previous 90 days, including several inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained two mortgage loans prior to the subject loan closing with total monthly payments of $3,048. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 261.98 percent. The loan defaulted, resulting in a loss of $243,148.

- A loan that closed in April 2007 with a principal balance of $143,920 was originated under First National Bank of Arizona's Stated Income Loan Program. A credit report included in the origination file dated prior to closing shows 12 credit inquiries within the previous 90 days, including several inquiries from mortgage lenders and servicers. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained no less than 23 undisclosed mortgage loans prior to, or within thirty days of, the subject loan closing with total monthly payments of at least $23,746. A recalculation of the DTI based on all evidence uncovered in the forensic review was not possible because the borrower's income for the year of subject loan closing was verified at $0. The loan defaulted, resulting in a loss of $190,109.

- A loan that closed in April 2007 with a principal balance of $340,000 was originated under M&T Bank's Full Documentation Loan Program. A credit report included in the origination file dated prior to closing shows five credit inquiries within the previous 90 days. There was no evidence in the origination file that the loan underwriter researched these credit inquiries or took any action to verify that such inquiries were not indicative of undisclosed liabilities of the borrower. Moreover, the borrower obtained an undisclosed loan within 30 days of the subject loan closing with a $265 monthly payment. A recalculation of the DTI based on all evidence uncovered in the forensic review yields a DTI of 64.96 percent, which exceeds the guideline maximum of 45 percent. The loan defaulted, resulting in a loss of $282,241.

b. Both Government and Private Investigations Confirm that the Originators of the Loans in the Securitizations Systematically Failed to Adhere to Their Underwriting Guidelines

141. An extraordinary volume of publicly-available information, including government reports and investigations, confirms that the originators whose loans were included by the Defendants in the Securitizations abandoned their loan origination guidelines throughout the period of the Securitizations.

142. For example, in November 2008, the Office of the Comptroller of the Currency ("OCC"), an office within the United States Department of the Treasury, issued a report identifying the "Worst Ten" mortgage originators in the "Worst Ten" metropolitan areas. The worst originators were defined as those with the largest number of non-prime mortgage foreclosures for 2005-2007 originations. Aegis, Decision One, New Century, Ownit,[12] and People's Choice -- the companies that originated loans for the Securitizations at issue here -- were all on that list. (*See* "Worst Ten in the Worst Ten," Office of the Comptroller of the

[12] Ownit, which originated loans for one of the Securitizations, was identified by the OCC as the fifteenth worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the ten metropolitan areas between 2005 and 2007 with the highest rates of delinquency. (*See* "Worst Ten in the Worst Ten: Update," Office of the Comptroller of Currency Press Release, March 22, 2010.)

Currency Press Release, November 13, 2008.) Several of the Non-Party Originators -- including New Century, HFN, a wholly owned subsidiary of RFC, and MLN, which collectively originated loans for 19 of the 21 Securitizations -- have been the target of government investigations or private actions that allege a complete abandonment of their reported underwriting guidelines.

i. New Century Violated Its Underwriting Guidelines

143. New Century and its subsidiary, Home123, originated loans for at least four of the Securitizations. As stated in the Prospectus Supplement for the RAMP 2005-NC1 Securitization, "[f]or the quarter ending September 30, 2005, New Century Mortgage Corporation and Home123 Corporation originated $40.4 billion in mortgage loans." (RAMP 2005-NC1 Prospectus Supplement (Dec. 27, 2005), at S-37.) By the end of 2006, Inside Mortgage Finance reports that New Century was the second largest subprime mortgage loan originator in the United States, with a loan production volume that year of $51.6 billion. Before its collapse in the first half of 2007, New Century was one of the largest subprime lenders in the country. New Century filed for protection from its creditors under Chapter 11 of the federal Bankruptcy Code on April 2, 2007.

144. In 2010, the OCC identified New Century as *the* worst subprime lender in the country based on the delinquency rates of the mortgages it originated in the 10 metropolitan areas with the highest rates of delinquency between 2005 and 2007. (*See* "Worst Ten in the Worst Ten: Update," Office of the Comptroller of Currency Press Release, March 22, 2010, *available at* http://www.occ.gov/news-issuances/news-releases/2010/nr-occ-2010-39d.pdf.) Further, in January 2011, the FCIC Report detailed, among other things, the collapse of mortgage underwriting standards and subsequent collapse of the mortgage market and wider economy. *See* FCIC Report. The FCIC Report singled out New Century for its role:

> New Century—once the nation's second-largest subprime lender—ignored early warnings that its own loan quality was deteriorating and stripped power from two risk-control departments that had noted the evidence. In a June 2004 presentation, the Quality Assurance staff reported they had found severe underwriting errors, including evidence of predatory lending, legal [sic] and state violations, and credit issues, in 25% of the loans they audited in November and December 2003. In 2004, Chief Operating Officer and later CEO Brad Morrice recommended these results be removed from the statistical tools used to track loan performance, and in 2005, the department was dissolved and its personnel terminated. The same year, the Internal Audit department identified numerous deficiencies in loan files; out of nine reviews it conducted in 2005, it gave the company's loan production department "unsatisfactory" ratings seven times. Patrick Flanagan, president of New Century's mortgage-originating subsidiary, cut the department's budget, saying in a memo that the "group was out of control and tries to dictate business practices instead of audit."

(FCIC Report, at 157.)

145. On February 29, 2008, after an extensive document review and conducting more than 100 interviews, Michael J. Missal, the Bankruptcy Court Examiner for New Century, issued a detailed report on the various deficiencies at New Century, including lax mortgage standards and a failure to follow its own underwriting guidelines. Among his findings, the Examiner reported:

> New Century had a brazen obsession with increasing loan originations without due regard for the risks associated with that business strategy. . . . Although the primary goal of any mortgage banking company is to make more loans, New Century did so in an aggressive manner that elevated the risks to dangerous and ultimately to fatal levels.

> New Century also made frequent exceptions to its underwriting guidelines for borrowers who might not otherwise qualify for a particular loan. A Senior Officer of New Century warned in 2004 that the "number one issue is exceptions to the guidelines." Moreover, many of the appraisals used to value the homes that secured the mortgages had deficiencies.

> New Century . . . layered the risks of loan products upon the risks of loose underwriting standards in its loan originations to high risk borrowers.
>
> Senior Management [at New Century] turned a blind eye to the increasing risks of New Century's loan originations and did not take appropriate steps to manage those risks.

(Final Report of Michael J. Missal, Bankruptcy Examiner, *In re New Century TRS Holdings, Inc.*, No. 07-10416 (KJC) (Bankr. Del. Feb. 29, 2008).)

146. On December 9, 2009, the SEC charged three of New Century's top officers with violations of federal securities laws. The SEC's complaint details the blatant falsity of New Century's representations regarding its underwriting guidelines -- for example, its representations that it was committed to "adher[ing] to high origination standards in order to sell [its] loan products in the secondary market" and to "only approv[ing] subprime loan applications that evidence a borrower's ability to repay the loan." (Complaint at ¶¶ 19-20, *Securities and Exchange Commission v. Morrice*, No. SACV09-01426 (C.D. Cal. Dec. 7, 2009).)

147. New Century's failure to adhere to its underwriting guidelines is further reflected in allegations made in the Assurance of Discontinuance signed by Morgan Stanley and the Attorney General of Massachusetts (the "Assurance of Discontinuance"), in *In re: Morgan Stanley & Co. Inc.*, Civil Action No. 10-2538 (Suffolk Cnty. Super. Ct. June 24, 2010). The Massachusetts Attorney General alleged:

- New Century "stretch[ed] underwriting guidelines to encompass or approve loans not written in accordance with the guidelines." (*Id*. ¶¶ 17, 23.)
- "One recurring issue identified by Morgan Stanley was New Century's origination of loans that violated Massachusetts Division of Banks' borrower's best interest standard []." (*Id*. ¶ 18.)
- During the period 2006-2007, 91 percent of the loans approved for securitization that did not meet New Century's underwriting guidelines did not have "sufficient compensating factors to offset such exceptions." (*Id*. ¶ 27.)

- "The loans originated by New Century were "unfair loans to Massachusetts borrowers" and "were in violation of Massachusetts law . . . ." (*Id*. ¶¶ 43-44.)

148. As a result, on or about June 24, 2010, Morgan Stanley agreed to pay $102 million to settle the claims asserted by the Attorney General and also agreed to drastic changes in its underwriting practices. (*See id*. ¶¶ 45-52.)

149. Confidential witnesses confirmed that New Century had abandoned its underwriting guidelines. One confidential witness ("Confidential Witness 1"), an internal bureau quality assurance underwriter, reported that he doubted the quality of the loans he reviewed. A second confidential witness ("Confidential Witness 2"), a national appraisal director at New Century, stated that he did not support New Century's practices, and asserted that the originators often found ways to "massage" the loan package and override his group's decision to decline the loan. Confidential Witness 2 estimated that over 50 percent of the loans reviewed by his group lacked the proper collateral backing, but there were more senior people who approved the loans because they "liked the borrower" or claimed that the loan "came from their best broker." According to Confidential Witness 2, New Century was "a very volume driven company," and the "originators did not care about the quality of the loan" because they were paid by the number of closings. This witness stated that, to form a long-lasting relationship with an originator, third-party appraisers were pressured to inflate appraisal values.

150. Patricia Lindsay, a former Vice President of Corporate Risk at New Century, testified before the FCIC in April 2010 that, beginning in 2004, underwriting guidelines had been all but abandoned at New Century. Ms. Lindsay further testified that New Century systematically approved loans with 100 percent financing to borrowers with extremely low credit scores and no supporting proof of income. (*See* Written Testimony of Patricia Lindsay for the

FCIC Hearing, April 7, 2010 ("Lindsay Testimony"), http://fcic-static.law.stanford.edu/cdn-media/fcic.testimony/2010-0407-Lindsay.pdf, at 3.)

151. Ms. Lindsay also testified that 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." (*Id*. at 5.) Indeed, on May 7, 2007, *The Washington Post* reported that a former New Century appraiser, Maggie Hardiman, recounted how she "didn't want to turn away a loan because all hell would break loose" and that, when she did reject a loan, "her bosses often overruled her and found another appraiser to sign off on it." (David Cho, *Pressure at Mortgage Firm Led to Mass Approval of Bad Loans*, WASHINGTON POST, May 7, 2007.)

ii. HFN Violated Its Underwriting Guidelines

152. HFN, which originated loans for at least 14 of the Securitizations, was under enormous pressure to extend risky loans. A former loan officer at HFN recounted that "[t]he main focus was doing Alt A because that's where the money was," and "[i]n order to keep your market share, you had to be more aggressive." (*See* Steve Law, *Shaky loans may spur new foreclosure wave*, THE PORTLAND TRIBUNE, OCT. 30, 2009.) A mortgage broker confirmed such pressure, stating: "'The V.P.s came down to the office beating the drums about Option ARMs' . . . 'I had Wachovia march through here; *I had GMAC*.'" (*Id.* (emphasis added).)

153. MBIA Insurance Corporation, which insured mortgage-backed securities issued by Ally, has filed two actions against GMACM and RFC, both parents of HFN, alleging, among other things, that GMACM and RFC made fraudulent representations regarding adherence to GMACM's loan origination underwriting guidelines. MBIA alleged that it performed an extensive a review of loan files in advance of making its allegations. Its complaint explains that it performed a review of "loan files associated with 4,104 delinquent or charged off loans" and

that its review revealed that "[a]t least 89% of the 4,104 delinquent or charged off loans . . . were not originated in material compliance with GMAC Mortgage's Underwriting Guidelines." (Complaint at ¶¶ 75, 6, *MBIA Insurance Corp. v. GMAC Mortgage, LLC (f/k/a GMAC Mortgage Corporation*), No. 600837-2010 (N.Y. Sup. Ct. Apr. 1, 2010).) MBIA's complaint further alleges that MBIA, or the experts that performed its review, found that "a significant number of mortgage loans were made on the basis of 'stated incomes' that were grossly unreasonable or were approved despite DTI or CLTV ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines," and that, "contrary to its Underwriting Guidelines, GMAC Mortgage failed in many cases to verify the borrower's employment when required to do so or to verify prior rental or mortgage payment history, approved mortgage loans with ineligible collateral, approved mortgage loans to borrowers with ineligible credit scores, and approved loans without verifying that the borrower had sufficient funds or reserves." (*Id.* at ¶ 76.)

154. In its complaint against RFC, the direct parent of HFN, MBIA also asserted a claim for fraud, among other things, alleging that MBIA's review "[o]f the[] 1,847 defaulted mortgage loans [revealed that] . . . only 129 mortgage loans -- less than 7% of the mortgage loans reviewed -- were originated or acquired in material compliance with RFC's representations and warranties." (Complaint at ¶ 46, *MBIA Insurance Corp. v. Residential Funding Co., LLC*, No. 603552-2008 (N.Y. Sup. Ct. Dec. 4, 2008).)

155. Further, on June 2011, the SEC and the U.S. Department of Justice ("DOJ") launched investigations of, among other things, "potential fraud related to the origination and/or underwriting of mortgage loans" by Ally Financial and its subsidiaries. (Ally Fin. Inc., Amendment No. 3 to Form S-1 (Form S-1/A), at 23 (June 29, 2011).) As an originator of residential mortgage loans for the Ally entities, the scope of the SEC and the DOJ's investigation

will likely include a review of HFN's compliance with its own loan origination underwriting guidelines.

iii. MLN Violated Its Underwriting Guidelines

156. MLN, which originated the loans for four of the Securitizations, filed for bankruptcy on February 5, 2007, and on January 6, 2011, the Liquidating Trustee for MLN filed a motion seeking to destroy certain MLN records and releasing the Trustee from responding to any future requests concerning those records. The United States Attorney objected to the Trustee's motion on the basis that "federal law enforcement records indicate that [MLN's] loans are the subject of many ongoing investigations. As a result, [MLN's] records, including but not limited to the loan files and loan related information . . ., may be relevant to pending federal criminal investigations into mortgage fraud." (Objection to Debtor's Motion for the Destruction for Certain Records, *In re Mortgage Lenders Network USA, Inc.*, No. 07-10146-PJW (Bankr. Del.) (Dkt. 3281).) Accordingly, upon information and belief, government investigations into MLN's origination of loans and compliance with its own underwriting guidelines are ongoing.

157. The originators of the mortgage loans underlying the Securitizations went beyond the systematic disregard of their own underwriting guidelines. The FCIC found that mortgage loan originators throughout the industry pressured appraisers, during the period of the Securitizations, to issue inflated appraisals that met or exceeded the amounts needed for the subject loans to be approved, regardless of the accuracy of such appraisals, and especially when the originators aimed at putting the mortgages into a package of mortgages that would be sold for securitization. Upon information and belief, these inflated appraisals resulted in inaccurate LTV ratios.

iv. Ownit Violated Its Underwriting Guidelines

158. Ownit, which originated loans for at least one of the Securitizations, was a mortgage lender based in Agoura Hills, California. In September 2005, the investment bank Merrill Lynch & Co. ("Merrill Lynch") acquired a 20 percent stake in the company. According to Ownit's founder and chief executive, William D. Dallas, after Merrill Lynch acquired that stake, it instructed Ownit to loosen underwriting standards and originate more stated income loans. (*See* EDMOND L ANDREWS, BUSTED: LIFE INSIDE THE GREAT MORTGAGE MELTDOWN 158-59 (2009).) As a result, the number of stated income loans jumped from near zero to over 30 percent. (*Id*. at 155, 162.) Ownit also lowered the credit scores it required from borrowers. (*Id*. at 162.) Ownit thus abandoned its underwriting standards in order to originate more loans.

v. EquiFirst Violated Its Underwriting Guidelines

159. EquiFirst originated loans for at least two of the Securitizations. Confidential interviews with former EquiFirst employees during the relevant time period reveal that EquiFirst approved loans for borrowers for whom it believed lacked sufficient credit quality or would not otherwise be able to pay back the loan.

160. One EquiFirst underwriter ("Confidential Witness 3") rejected many loans because she did not believe the borrowers had the ability to pay. Often times, however, her supervisors "took the reins" and approved those loans anyway. For example, according to Confidential Witness 3, sometimes documentation regarding a borrower's income would be included in the loan file even if the loan was a stated income loan. In those instances, if the documentation reflected that the borrower's income was insufficient to approve the loan, Confidential Witness 3 would reject that borrower's loan application in accordance with EquiFirst's guidelines. However, those "documents [reflecting that the borrower's income was insufficient] would go away" and the loan application would come back approved by her

supervisors. Confidential Witness 3 also remembers declining loans in accordance with EquiFirst's underwriting guidelines because documents in the loan file were fraudulent or altered. Confidential Witness 3 said that the file would come back with documents reflecting the "correct" income, but she did not feel comfortable approving those loans because of the prior misrepresentation and because the integrity of the entire file was compromised. However, these loans were ultimately approved "behind the scenes."

161. Another EquiFirst underwriter ("Confidential Witness 4") stated that there was "plenty of fraud" in loan file documentation, including false pay stubs and bank statements. When suspicious documents were included in the loan application, Confidential Witness 4 would write a report and submit the file to operations, but often times these loans were still approved.

162. A third EquiFirst underwriter ("Confidential Witness 5") stated that management told the underwriters if they could not find a way to approve loans, it meant losing their jobs. Nine times out of ten she believed that a stated income borrower would not be able to repay his or her loan, yet Confidential Witness 5 received pressure from account managers, title companies, and brokers to push loans through, who would tell her, "there is always an exception to the rule."

vi. Inflated Appraisals

163. As described above, the originators of the mortgage loans underlying the Securitizations went beyond the systematic disregard of their own underwriting guidelines. Indeed, as the FCIC has confirmed, mortgage loan originators throughout the industry pressured appraisers, during the period of the Securitizations, to issue inflated appraisals that met or exceeded the amount needed for the subject loans to be approved, regardless of the accuracy of such appraisals. Appraisal pressure was especially strong when the originators intended to put the mortgages into a package of mortgages that would be sold for securitization. This resulted in

lower LTV ratios, discussed *supra*, which in turn made the loans appear to investors less risky than they were.

164. As described by Ms. Lindsay in her FCIC testimony, 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." (Lindsay Testimony at 5.) Likewise, Jim Amorin, President of the Appraisal Institute, confirmed in his 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.'" (*See* Testimony of Jim Amorin to the FCIC, *available at* www.appraisalinstitute.org/newsadvocacy/downloads/ltrs_tstmny/2009/AI-ASA-ASFMRA-NAIFATestimonyonMortgageReform042309final.pdf.) Faced with this choice, appraisers systematically abandoned applicable guidelines and overvalued properties in order to facilitate the issuance of mortgages that could then be collateralized into mortgage-backed securitizations.

c. The Collapse of the Certificates' Credit Ratings Further Shows that the Mortgage Loans Were not Originated in Adherence to the Stated Underwriting Guidelines

165. The total collapse in the credit ratings of the Certificates invested in by Freddie Mac, typically from AAA or its equivalent to non-investment speculative grade, is further evidence of the originators' systematic disregard of underwriting guidelines, underscoring that these Certificates were impaired from the start.

166. The Certificates purchased by Freddie Mac originally were assigned credit ratings of AAA or its equivalent, which purportedly reflected the description of the mortgage loan collateral and underwriting practices set forth in the Registration Statements. Those ratings

artificially were inflated, however, upon information and belief, in part as a result of the same misrepresentations that the Defendants made to investors in the Prospectus Supplements.

167. Upon information and belief, Ally provided or caused to be provided loan-level information, including LTV ratios, owner-occupancy status, and other loan characteristics to the rating agencies. The rating agencies in turn relied on this information to assign the Certificates credit ratings. Upon information and belief, because the information that Ally provided or caused to be provided was materially false, the models used by the rating agencies under-predicted the likelihood of delinquency and loss, as well as the loss severity. As a result of the false information provided, the Securitizations lacked the level of subordination required for the Certificates to be rated AAA (or its equivalent), and investors, including Freddie Mac, were deprived of the level of protection commensurate with an AAA (or equivalent) rating. As a result, the Certificates were offered and purchased at prices suitable for AAA investment grade securities, when in fact the Certificates actually carried a severe risk of loss and inadequate credit enhancement, and thus should not have been rated AAA (or its equivalent).

168. Freddie Mac could not have discovered facts indicating Defendants' false and misleading statements and omissions prior to, at the earliest March 2008. This is the first month during which any of the Certificates at issue were downgraded below investment grade by a credit rating agency. In subsequent months and years, most of these Certificates were downgraded by the credit rating agencies from AAA (or its equivalent) to below investment grade. Prior to the initial downgrade in March 2008, Freddie Mac had insufficient reason to suspect Defendants' widespread misrepresentations and omissions of material fact in the Registration Statements relating to its Certificates. After these downgrades, it required significant investigation and fact-finding for FHFA to formulate the claims stated herein. The

downgrades beginning in March 2008 raised questions regarding the true underwriting practices used to originate the mortgage loans, and the mortgage loans' true value and credit quality. Table 8 details the extent of the downgrades.[13]

Table 8

Transaction	Tranche	Rating at Issuance (Moody's/S&P/Fitch)	Rating as of April 2012 (Moody's/S&P/Fitch)
RALI 2005-QO4	IA1	Aaa/AAA/AAA	Caa3/CCC/C
RALI 2006-QO4	IA1	Aaa/AAA/--	Ca/CC/--
RALI 2006-QO4	IA2	Aaa/AAA/--	Ca/D/--
RALI 2006-QO5	IA1	Aaa/AAA/--	Caa3/CCC/--
RALI 2006-QO8	IIA	Aaa/AAA/--	Ca/D/--
RALI 2006-QO9	IIA	Aaa/AAA/--	Ca/D/--
RALI 2007-QH5	AII	Aaa/AAA/--	Ca/CC/--
RAMP 2005-EFC6	AII	Aaa/AAA/--	A1/AAA/--
RAMP 2005-EFC7	AII	Aaa/AAA/--	Ca/D/--
RAMP 2005-NC1	AII	Aaa/AAA/--	Ca/D/--
RAMP 2005-RS9	AII	Aaa/AAA/--	Ca/D/--
RAMP 2006-RS1	AII	Aaa/AAA/--	Caa3/CCC/--
RASC 2005-EMX3	AII	Aaa/AAA/--	Aa1/AAA/--
RASC 2005-KS10	AII	Aaa/AAA/--	Baa3/AAA/--
RASC 2005-KS11	AII	Aaa/AAA/--	Ba1/AAA/--
RASC 2006-EMX8	AII	Aaa/AAA/--	Ca/CCC/--
RASC 2006-EMX9	AII	Aaa/AAA/--	Caa3/CCC/--
RASC 2006-KS3	AII	Aaa/AAA/--	Caa1/AA/--
RASC 2006-KS9	AII	Aaa/AAA/AAA	Ca/CCC/C
RASC 2007-EMX1	AII	Aaa/AAA/--	Ca/D/--
RASC 2007-KS2	AII	Aaa/AAA/AAA	Caa3/CCC/CC
RASC 2007-KS3	AII	Aaa/AAA/--	Caa3/CCC/--

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

169. Even though the Certificates were marketed as long-term, stable investments, a significant percentage of the mortgage loans backing the Certificates have defaulted, have been foreclosed upon, or are delinquent, resulting in massive losses to the Certificateholders. The

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

overall poor performance of the mortgage loans is a direct consequence of the fact that their underlying mortgage loans were not underwritten in accordance with applicable underwriting guidelines as represented in the Prospectus Supplements.

170. Loan groups that were underwritten properly and contained loans with the characteristics represented in the Prospectus Supplements would have experienced substantially fewer payment problems and substantially lower percentages of defaults, foreclosures, and delinquencies than occurred here. Table 9 reflects the percentage of loans in the Supporting Loan Groups that are in default, have been foreclosed upon, or are delinquent as of April 2012.

Table 9

Transaction	Supporting Loan Group	Percentage of Delinquent / Defaulted / Foreclosed Loans
RALI 2005-QO4	Group I	38.00%
RALI 2006-QO4 (IA1)	Group I	38.00%
RALI 2006-QO4 (IA2)	Group I	38.00%
RALI 2006-QO5	Group I	41.90%
RALI 2006-QO8	Group II	37.00%
RALI 2006-QO9	Group II	37.50%
RALI 2007-QH5	Group II	50.00%
RAMP 2005-EFC6	Group II	34.80%
RAMP 2005-EFC7	Group II	31.90%
RAMP 2005-NC1	Group II	28.70%
RAMP 2005-RS9	Group II	27.30%
RAMP 2006-RS1	Group II	25.30%
RASC 2005-EMX3	Group II	40.70%
RASC 2005-KS10	Group II	28.10%
RASC 2005-KS11	Group II	27.80%
RASC 2006-EMX8	Group II	53.70%
RASC 2006-EMX9	Group II	64.40%
RASC 2006-KS3	Group II	28.00%
RASC 2006-KS9	Group II	35.70%
RASC 2007-EMX1	Group II	41.60%
RASC 2007-KS2	Group II	36.60%
RASC 2007-KS3	Group II	39.20%

171. The confirmed misstatements concerning owner-occupancy and LTV ratios, the confirmed systematic underwriting failures by the originators responsible for the mortgage loans

across the Securitizations, and the extraordinary drop in credit rating and rise in delinquencies across those Securitizations all indicate that the mortgage loans in the Supporting Loan Groups, contrary to the representations in the Registration Statements, were not originated in accordance with the stated underwriting guidelines.

E. Freddie Mac's Purchases of the Certificates

172. Between September 23, 2005 and May 30, 2007, Freddie Mac purchased from the Underwriter Defendants over $6 billion in Certificates issued in connection with the Securitizations. Table 10 reflects each of Freddie Mac's purchases of the Certificates.[14] To date, Freddie Mac has not sold any of the Certificates.

Table 10

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
RALI 2005-QO4	IA1	761118NL8	11/30/2005	143,428,800.00	100	RBS
RALI 2006-QO4	IA1	75114GAA7	4/27/2006	327,356,000.00	100	RBS
RALI 2006-QO4	IA2	75114GAB5 92911DAA4	4/27/2006	81,838,000.00	100	RBS
RALI 2006-QO5	IA1	75114HAA5	5/30/2006	179,443,000.00	100	UBS
RALI 2006-QO8	IIA	75115FAT7	10/31/2006	409,198,000.00	100	Lehman Brothers
RALI 2006-QO9	IIA	75115HAB2	11/30/2006	284,637,000.00	100	Lehman Brothers
RALI 2007-QH5	AII	75116EAD4	5/30/2007	143,007,000.00	100	Goldman
RAMP 2005-EFC6	AII	76112BL32	11/22/2005	163,581,000.00	100	JPMSI
RAMP 2005-EFC7	AII	76112BR85	12/28/2005	199,376,000.00	100	Ally Securities
RAMP 2005-NC1	AII	76112BR36	12/28/2005	405,004,000.00	100	Credit Suisse
RAMP 2005-RS9	AII	76112BL99	11/29/2005	494,922,000.00	100	Bear Stearns
RAMP 2006-RS1	AII	76112BU24	1/25/2006	409,790,000.00	100	Credit Suisse
RASC 2005-EMX3	AII	75405MAE4	9/23/2005	267,481,000.00	100	Ally Securities
RASC 2005-KS10	AII	75405WAD4	10/28/2005	495,741,000.00	100	JPMSI
RASC 2005-KS11	AII	76110W7C4	11/29/2005	547,641,000.00	100	Credit Suisse

[14] Purchases and holdings of securities in Table 10 are stated in terms of unpaid principal balance ("UPB") of the relevant Certificates. Purchase prices are stated in terms of percentage of par. To date, Freddie Mac has not sold any of the Certificates it purchased as described in this section.

Transaction	Tranche	CUSIP	Settlement Date of Purchase by Freddie Mac	Initial Unpaid Principal Balance	Purchase Price (% of Par)	Seller to Freddie Mac
RASC 2006-EMX8	AII	74924UAE1	9/28/2006	236,806,000.00	100	Ally Securities
RASC 2006-EMX9	AII	74924VAE9	10/27/2006	197,896,000.00	100	Ally Securities
RASC 2006-KS3	AII	76113ABK6	3/29/2006	232,006,000.00	100	Citi
RASC 2006-KS9	AII	75406YAE7	10/27/2006	153,311,000.00	100	Barclays
RASC 2007-EMX1	AII	74924XAE5	3/12/2007	326,812,000.00	100	Ally Securities
RASC 2007-KS2	AII	74924WAE7	2/23/2007	164,400,000.00	100	JPMSI
RASC 2007-KS3	AII	74924YAE3	4/19/2007	167,618,000.00	99.96094	JPMSI

F. Freddie Mac Was Damaged by Defendants' Violations of Sections 11, 12 and 15 of the Securities Act

173. The statements and information in the Registration Statements regarding the credit quality and characteristics of the mortgage loans underlying the Certificates, and the origination and underwriting practices pursuant to which the mortgage loans purportedly were originated, were material to a reasonable investor. Defendants were responsible for the contents of those Registration Statements. But for the misrepresentations and omissions in the Registration Statements concerning those matters, Freddie Mac would not have purchased the Certificates.

174. Based upon sales of the Certificates or similar certificates in the secondary market and other indications of value, Freddie Mac has incurred substantial losses on the Certificates due to a decline in value that is directly attributable to Defendants' material misrepresentations and omissions. Among other things, the mortgage loans underlying the Certificates experienced defaults and delinquencies at a higher rate than would have been the case had the loans underlying the Certificates actually conformed to the origination guidelines, and had the Certificates merited the credit ratings set forth in the Registration Statement.

175. Defendants' misstatements and omissions in the Registration Statement were the direct, proximate and actual cause of Freddie Mac's losses resulting from its purchase of the

Certificates. Among other things, it was foreseeable to Defendants that non-compliant loans would suffer higher incidences of delinquency and default than loans underwritten in accordance with originators' underwriting standards. The precise extent of Freddie Mac's injuries will be proven at trial.

176. At the time it purchased the Certificates, Freddie Mac was unaware of the Defendants' misrepresentations, omissions, and/or untrue statements. Plaintiff was appointed Conservator of Freddie Mac less than one year after the discovery of the untrue statements and omissions contained in the Registration Statements and within three years of the Certificates being offered for sale to the public. Despite the exercise of reasonable diligence, Freddie Mac could not reasonably have discovered the untrue statements and omissions in the Registration Statements more than one year prior to the appointment of the Plaintiff as Conservator. This action is timely pursuant to 12 U.S.C. §§ 4617(b)(12) & (13), which establishes all time periods applicable to the claims brought herein.

II. ADDITIONAL FACTUAL ALLEGATIONS

177. The allegations in paragraphs 178 through 262 below concerning Defendants' knowledge or recklessness concerning the information set forth in or omitted from the Offering Materials provided to Freddie Mac are made solely with respect to Plaintiff's common law claims, as are the allegations set forth in paragraphs 263 through 276 concerning Freddie Mac's reliance on the material misrepresentations and omissions alleged herein.

A. The Fraud Defendants Were Incentivized to Fund Risky Residential Mortgage Loans and to Securitize and Sell Them to Investors

178. Securitizing large volumes of loans was a highly lucrative and competitive business for Defendants. Ally Securities, JPMSI and Goldman (the "Fraud Defendants")[15] each engaged in the securitization business on a massive scale, each doing multiple billions of dollars worth of securitizations during the period when they sold the Certificates to Freddie Mac. Fees, which were a percentage of the balance of the loan pool being purchased, and other transaction revenues associated with the Certificates and with the RMBS securitization business more generally, accounted for a substantial portion of the Fraud Defendants' (and other Defendants') earnings in the relevant time period. The more and the larger the securitizations the Defendants arranged and participated in, the greater their earnings. This financial motive accounts for Defendants' willingness, intentionally or recklessly, to make false statements in, or to omit material facts from, the Offering Materials. In furtherance of this motive, the Fraud Defendants took measures and entered into arrangements designed to ensure that a continuous and high volume of mortgage loans would be available for securitization.

179. Thus, among other things, the Fraud Defendants (or their affiliates) provided "warehouse" funding to mortgage originators to enable these originators to make, and to continue to make, loans. These subprime mortgage originators used those funds to make large numbers of loans, which they then turned around and sold back to the banks whose funds enabled them to make the loans in the first place. The banks then securitized the loans they effectively had funded, and transferred the risk to investors like Freddie Mac through the sale of the RMBS resulting from the securitizations.

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15 The actions of the Fraud Defendants include non-party Bear Stearns.

180. These arrangements between the Fraud Defendants and loan originators undermined the underwriting process for the Certificates because the Fraud Defendants had no incentive to identify and exclude from the Securitizations loans that did not conform to the loan originators' stated guidelines. To the contrary, the Fraud Defendants had the motive to, and did, include loans that they knew -- or were reckless in not knowing -- did not conform to those guidelines, and that lacked the characteristics or did not merit the ratings set forth in the Offering Materials.

181. Bear Stearns and Goldman -- each of whom was an underwriter of the Securitizations -- provided billions of dollars of warehouse lending to New Century. JPMSI lent their own mortgage origination subsidiaries at least $30 billion, between 2005 and 2007. (*See* The Center for Public Integrity, *The Subprime 25*, IWATCH NEWS.ORG (May 6, 2009, 12:00 AM), http://www.iwatchnews.org/2009/05/06/5554/subprime-25.)

182. Ally itself was a fully, vertically-integrated RMBS operation that was dependent on volume. An Ally affiliate, Ally Bank, provides warehouse lines of credit to mortgage originators. GMACM and HFN originated subprime and Alt A loans; the Ally Sponsor sponsored securitizations of such loans and transferred them to the Ally Depositors; and Ally Securities marketed and sold the RMBS to investors. In 2003, 2005 and 2006, ResCap was the largest warehouse lender in the country. At the end of 2005, it had lent $17.8 billion and purchased approximately 15 percent of the mortgage loans financed by warehouse lending. (Residential Capital LLC, 2005 Annual Report (Form 10-k), at 10 (March 28, 2006).) At the end of 2006, ResCap had lent $13.2 billion and purchased approximately 23 percent of the mortgage loans financed by its warehouse lending. (Residential Capital LLC, 2006 Annual Report (Form-10K), at 10 (March 13, 2007); Residential Capital Corp., Registration Statement (Form S-4), at

80 (July 15, 2005).) Finally, in 2007 it had lent mortgage originators $3.3 billion and purchased 17.1 percent of the mortgage loan financed by warehouse lending. (Residential Capital LLC, 2007 Annual Report (Form 10-k), at 12 (Feb. 27, 2008).)

183. HFN, which originated loans for at least 14 of the Securitizations here, was under enormous pressure to extend risky loans. A former loan officer at HFN recounted that "[t]he main focus was doing Alt A because that's where the money was," and "[i]n order to keep your market share, you had to be more aggressive." (*See* Steve Law, *Shaky Loans May Spur New Foreclosure Wave*, PORTLAND TRIBUNE, OCT. 30, 2009.) A mortgage broker confirmed such pressure, stating: "'The V.P.s came down to the office beating the drums about Option ARMs' . . . 'I had Wachovia march through here; I had GMAC.'" (*Id.*)

184. Defendants were motivated to churn out and securitize as many mortgage loans as possible because they earned so much in revenues on both ends of the securitization process, while transferring the ultimate risk of default to investors, such as Freddie Mac. Indeed, several of the Defendants ranked in the top ten of the nation's largest underwriters of RMBS between 2004 and 2007, according to Inside Mortgage Finance. JPMSI was especially prolific. By 2007, JPMSI ranked seventh with $43.5 billion. (*2011 Mortgage Market Statistical Annual*, Vol. II (Inside Mortgage Finance Publ'ns, Inc., 2011).)

B. The Fraud Defendants' Material Misrepresentations and Omissions in the Offering Materials

185. In connection with the sale of the Certificates, the Fraud Defendants, the Ally Depositors (RALI, RASC, and RAMP), and the Ally Sponsor (RFC) each made misrepresentations and omissions of material fact to Freddie Mac in the Offering Materials. The Offering Materials included term sheets, Registration Statements, Prospectuses, Prospectus Supplements, free writing prospectuses, other draft and final written offering documents, loan

data set forth in the applicable Pooling and Service Agreements, Mortgage Loan Purchase Agreements, and electronic files, delivered or made available in connection with the offering. These Offering Materials, which generally replicated the misstatements and omissions in the Registration Statements, described the credit quality and other characteristics of the underlying mortgage loans and were provided to investors, including Freddie Mac.

186. Through the Offering Materials, the Fraud Defendants and Ally Sponsor also furnished Freddie Mac with anticipated credit ratings on the proposed pool of mortgage loans intended for securitization. On information and belief, the Fraud Defendants and Ally Sponsor solicited the anticipated ratings from credit rating agencies based on misrepresentations as to the credit quality of the mortgage loans and the amount of the overcollateralization in the deal. All of the Securitizations had anticipated ratings of AAA or its equivalent.

187. The Offering Materials, among other things: (1) misrepresented the loans and loan originators' adherence to the stated underwriting guidelines; (2) overstated the number of loans for owner-occupied properties; (3) understated the loan pools' average LTV ratios; and (4) failed to disclose that the credit ratings of the Certificates were based on false information and that a higher level of subordination would be required for AAA (or its equivalent) rating. Each misrepresentation and omission created an additional, hidden layer of risk well beyond that known to be associated with non-agency loans or subprime loans.

188. First, the Fraud Defendants', Ally Sponsor's and Ally Depositors' statements regarding the mortgage pools' compliance with stated underwriting guidelines were false. The falsity of such representations is evident from the initial forensic review of loans, disclosures concerning the originators' systematic disregard of their stated underwriting guidelines, as well as the Certificates' high default rates and plummeting credit ratings. Indeed, of the 16 Non-Party

Originators, five were cited as among the "worst ten" in the "worst ten" metropolitan areas: Aegis, Decision One, New Century, Ownit, and People's Choice. Both government and private investigations have confirmed that these originators failed to apply any standards at all when making high-risk loans. Moreover, the high default rates and lowered credit ratings confirm that the loans were not properly underwritten in the first place. As shown in Tables 8 and 9, the average rate of default across the Securitizations is 37.46 percent, and although every tranche of Certificates purchased by Freddie Mac had been rated AAA (or its equivalent) at the time of purchase, by April 2012, 19 of 22 tranches had been downgraded to junk-bond status, with ratings of BB (or its equivalent). *See supra* Parts I.D.2.c and I.D.2.d.

189. These misstatements were material because, as discussed above, the quality of loans in the pool determined the risk of the Certificates backed by those loans. Because a reasonable underwriting process had not been followed, the entire loan pool was much riskier and more prone to default and market losses than represented. The systemic underwriting failures decreased the reliability of *all* the information provided to Freddie Mac about the loans, and thus increased the actual risk to investors. As a result of those failures, the value of the Certificates was substantially lower than the price paid by Freddie Mac for those Certificates.

190. Second, as shown in Table 6, the Fraud Defendants, Ally Sponsor, and Ally Depositors materially understated the non-owner-occupied status for each Securitization by an average of 10.73 percent. This understatement was material to Freddie Mac because it led Freddie Mac to believe that the Certificates it purchased were backed by the high owner-occupancy rates reported to Freddie Mac, which would have made the Certificates safer investments than certificates backed by second homes or investment properties.

191. Third, the Fraud Defendants, Ally Sponsor, and Ally Depositors understated the loan pools' average LTV ratios, which overstated the borrowers' equity "cushion" in the property. As Table 7 demonstrates, on average, only 38.5 percent of the loans actually had LTV ratios of less than 80 percent, as opposed to 64.2 percent as represented in the Offering Materials. Moreover, while all but two of the Certificates were represented to have no loans with an LTV over 100 percent, in reality, every deal contained at least eight percent loans with greater than 100 percent LTV, with an average of 18.5 percent. In other words, in almost all of the Securitizations, a significant percentage of the mortgage loans either were under-secured or "underwater" from the start. The material understatement of LTV ratios was materially misleading because it misrepresented the risk that a borrower would abandon a property if the value dropped below the unpaid balance of the loan, as well as the risk that proceeds from any foreclosure sale would fail to cover the unpaid balance.

192. Further, the Fraud Defendants, Ally Sponsor, and Ally Depositors failed to disclose that the Certificates' credit ratings were false and misleading because, in an attempt to manufacture predetermined ratings, Defendants provided to the ratings agencies the same misinformation contained in the Offering Materials. In testimony before the Senate Permanent Subcommittee on Investigations, Susan Barnes, the North American Practice Leader for RMBS at S&P from 2005 to 2008, confirmed that the rating agencies relied upon investment banks to provide accurate information about the loan pools:

> The securitization process relies on the quality of the data generated about the loans going into the securitizations. *S&P relies on the data produced by others and reported to both S&P and investors about those loans . . . . S&P 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.

(SPSI hearing testimony, April 23, 2010) (emphasis added).) As a result, the ratings failed to reflect accurately the actual risk underlying the Certificates purchased by Freddie Mac because the ratings agencies were analyzing a mortgage pool that had no relation to the pool that actually backed the Certificates purchased by Freddie Mac.

193. Senior executives at Moody's also confirmed that they were supplied with and relied on false information that affected their ratings:

- "We're on notice that a lot of the things that we relied on before just weren't true."
- "There's a lot of fraud that's involved there, things we don't see. . . . We're sort of retooling [our methodologies and approaches] to make sure that we capture a lot of things that we relied on in the past that we can't rely on, on a going forward basis."
- "It's actually quite interesting that we're being asked to figure out how much everybody lied. . . . I mean, if all of the information was truthful and comprehensive and complete, we wouldn't have an issue here."

("Moody's Investors Service: Managing Director's Town Hall Meeting" (Sept. 10, 2007), "Hearing on Wall Street and the Financial Crisis: The Role of Credit Rating Agencies" (April 23, 2010) (Ed. 98).)

194. The AAA (or equivalent) anticipated and final credit ratings were material to Freddie Mac, because the ratings provided additional assurances that Freddie Mac would receive the expected interest and principal payments. Freddie Mac would not have purchased the Certificates without the proper ratings and would not have paid as much for them without the investment grade status.

195. The Fraud Defendants', Ally Sponsor's and Ally Depositors' statements and assurances in the Offering Materials were material to Freddie Mac, just as they were material to any other investor. Freddie Mac was similarly situated to other investors when it purchased the Certificates at issue. For instance, Freddie Mac lacked possession of and access to the

underlying loan files in order to evaluate the credit risk for the borrowers whose loans were included in the Securitizations.

196. Each of the Fraud Defendants, Ally Sponsor, and Ally Depositors is responsible for the representations made in or omitted from the Offering Materials. For its fraud claim, Plaintiff relies, in part, on the Offering Materials identified in Appendix A and Appendix B in their entirety. Specific false and misleading statements in the Offering Materials for the Certificates purchased by Freddie Mac are detailed in Parts I.C. and I.D., Appendix A, and Appendix B, which are incorporated by reference.

197. Because payment on the Certificates ultimately was funded by payments from the mortgagors, Freddie Mac faced a risk of non-payment if too many borrowers defaulted on their loans and the value of the mortgaged properties was insufficient to cover the unpaid principal balance. Accordingly, any representation bearing on the riskiness of the underlying mortgage loans was material to Freddie Mac. By misrepresenting the true risk profile of the underlying loan pools, the Fraud Defendants, Ally Sponsor, and Ally Depositors defrauded Freddie Mac.

198. As the FCIC found:

> The Commission concludes that firms securitizing mortgages failed to perform adequate due diligence on the mortgages they purchased and at times knowingly waived compliance with underwriting standards. *Potential investors were not fully informed or were misled* about the poor quality of the mortgages contained in some mortgage-related securities. *These problems appear to have been significant.*

(FCIC Report at 187 (emphasis added).)

C. The Fraud Defendants, Ally Sponsor, and Ally Depositors Knew or Were Reckless in not Knowing that Their Representations Were False and Misleading

199. The Fraud Defendants, Ally Sponsor, and Ally Depositors knew or were reckless in not knowing that their representations in the Offering Materials were false, and that the

information they omitted from those documents rendered them materially misleading. The same evidence discussed above not only shows that the representations were untrue, but also that the Fraud Defendants, Ally Sponsor, and Ally Depositors knew, or were reckless in not knowing, that they were falsely representing the underlying process and riskiness of the mortgage loans that collateralized the Certificates. Such evidence includes: (i) the consistency of the misrepresentations and omissions across the 21 Securitizations and the vast discrepancies between the information conveyed and the true characteristics of the mortgage loans; (ii) the purported due diligence performed by the Defendants and Ally Sponsor; and (iii) the undue influence exerted by the Fraud Defendants on the Non-Party Originators, appraisers, and credit rating agencies.

1. <u>The Fraud Defendants Ignored Due Diligence Results</u>

200. As discussed above, the credit quality and loan characteristics of the mortgage loans underlying the Certificates repeatedly and materially deviated from what was represented in the Prospectus Supplements and other Offering Materials. *See supra* Part I.D. The defects were so widespread across the Securitizations that they would have been apparent to a party that had performed due diligence on the individual mortgage loans included in the collateral pool. The pervasiveness of the defects is strong evidence that the Fraud Defendants, Ally Sponsor, and Ally Depositors did not innocently make materially false statements and omissions, but actually knew or were reckless in not knowing that (1) the loan originators systematically disregarded their own underwriting guidelines, (2) the LTV ratios presented in the Offering Materials were materially inaccurate, (3) the owner-occupancy rates presented in the Offering Materials were materially inaccurate, and (4) the credit ratings for the Certificates were based on incomplete and inaccurate information and were not believed by the ratings agencies when provided.

201. The Ally Sponsor acquired mortgage loans from the Non-Party Originators for the Securitizations that it sponsored and purportedly performed due diligence on the loans that it was purchasing and on the Non-Party Originators from whom it was purchasing those loans. The Ally Depositors were vertically integrated with the Ally Sponsor, such that it had the same knowledge or recklessly disregarded the same knowledge as the Ally Sponsor. By presenting Offering Materials to Freddie Mac, the Fraud Defendants also impliedly performed due diligence on the loans in each Securitization to determine whether such loans complied with the applicable underwriting guidelines and the other loan characteristics described in the Offering Materials.

202. The Offering Materials represented that the loans were underwritten in accordance with the Non-Party Originators' respective underwriting guidelines and contained further assurances of quality control and due diligence. For example, the Ally Sponsor represented that it conducted due diligence on third-party lenders that originated loans for the RALI 2005-QO4 Securitization:

> Residential Funding Corporation buys conventional mortgage loans under several loan purchase programs from mortgage loan originators or sellers nationwide, including affiliates, *that meet its seller/servicer eligibility requirements* and services mortgage loans for its own account and others.

(RALI 2005-QO4 Prospectus Supplement at 56 (emphasis added).) Similar assurances and representations were made in the Prospectus Supplements for the other Certificates. Thus, by virtue of its role as sponsor and its own purported due diligence, the Ally Sponsor had access to information regarding the true credit quality of the loans collateralizing the Securitizations it sponsored.

203. The Fraud Defendants knew or recklessly disregarded the fact that certain originators were not originating loans in accordance with their underwriting guidelines. Documents released by a third-party due diligence firm, Clayton Holdings, Inc. ("Clayton")

confirm that these Defendants were aware -- on a daily basis -- of the deficiencies in the loan pools and the underwriting standards of the originators they used in their RMBS. Clayton was "hired to identify, among other things, whether the loans met the originators' stated underwriting guidelines and, in some measure, to enable clients to negotiate better prices on pools of loans." (FCIC Report at 166 (footnote omitted).)

204. In January 2008, Clayton disclosed that it had entered into an agreement with the New York Attorney General ("NYAG") to provide documents and testimony regarding its due diligence reports, including copies of the actual reports provided to its clients. According to *The New York Times*, as reported on January 27, 2008, Clayton told the NYAG "that starting in 2005, it saw a significant deterioration of lending standards and a parallel jump in lending expectations."

205. For the 18 month period ending on June 31, 2007, a significant percentage of the loans sampled by Clayton at the direction of several Fraud Defendants failed to meet the various loan originator's underwriting guidelines. (*See* FCIC Report at 166.) Of the loans Clayton reviewed for certain Fraud Defendants, it rejected 13 percent for JPMorgan, 17 percent for Bear Stearns and 16 percent for Goldman. This information was provided to those Fraud Defendants, but they and Bear Stearns overruled Clayton's findings and "waived in" substantial percentages of these loans (approximately 51 percent for JPMSI, 29 percent for Bear Stearns and 29 percent for and Goldman). (*See* Clayton Trending Reports, *available at* http://fcic.law.stanford.edu/hearings/testimony/the-impact-of-the-financial-crisis-sacramento#documents; FCIC Report at 167.)

206. Upon information and belief, these Defendants waived in these loans, found by Clayton to be non-compliant with the relevant originator's origination guidelines, without taking

any adequate steps of their own to determine whether the loans met stated underwriting guidelines or were otherwise consistent with the loan characteristics represented. These loans then found their way into the RMBS that were sold to investors like Freddie Mac. (*See* Clayton Trending Reports; FCIC Report at 167.)

207. The FCIC concluded that the "waiver" or rejected loans that were not subject to any compensating factors rendered the Fraud Defendants' representations regarding the underwriting and due diligence processes misleading. The report concluded:

> [M]any prospectuses indicated that the loans in the pool 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 [loans that failed to meet guidelines] were waived in.
> . . . .
> [O]ne could reasonably expect [the untested loans] to have many of the same deficiencies, at the same rate, as the sampled loans. Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few of the loans were reviewed, raising the question of whether the disclosures were materially misleading, in violation of the securities laws.

(FCIC Report at 167, 170.)

208. Internal due diligence procedures were likewise inadequate. For instance, JPMorgan's internal policies condoned fraud by encouraging its employees to ignore and manipulate JPMorgan's automated underwriting system, called "ZiPPY." (Marc Friesen, *Chase Mortgage Memo Pushes 'Cheats & Tricks'*, OREGONIAN, MARCH 27, 2008.) Chase Home Finance LLC ("CHF"), a wholly-owned subsidiary of JPMorgan Bank, went so far as to explicitly instruct loan originators to falsify loan information in order to elicit approval from the ZiPPY automated underwriting system for stated income loans of poor quality. An internal memorandum circulated by CHF in its Portland, Oregon office titled "Cheats and Tricks" gave originators tips on how to circumvent the underwriting system, including exhortations that a

mortgage broker should '"Never Fear!!"' because ZiPPY '"can be adjusted"' to '"get the findings you need."' (*Id.*) The memorandum encouraged brokers to game the ZiPPY system because "[i]ts super easy! Give it a try!" (*Id.*) It provided the following "handy steps" in order to gain approval for an otherwise rejected Stated Income / Stated Asset loan application:

> (1) In the income section of your 1003, make sure you input all income in base income. DO NOT break it down by overtime, commissions or bonus.
>
> (2) NO GIFT FUNDS! If your borrower is getting a gift, add it to a bank account along with the rest of the assets. Be sure to remove any mention of gift funds on the rest of your 1003.
>
> (3) If you do not get Stated/Stated, try resubmitting with slightly higher income. Inch it up $500 to see if you can get the findings you want. Do the same for assets.

(*Id.*)

209. Management-level employees at JPMorgan Bank and CHF knew that mortgage origination fraud was occurring, and indeed encouraged such fraudulent practices in an effort to increase the volume of loans originated, and thus, their compensation. CHF's former Regional Vice President, James Theckston, explained to The New York Times that 60 percent of his 2006 performance review depended on him increasing the origination of high-risk loans. Mr. Theckston stated that CHF executives could earn a commission for the origination of subprime loans that was seven times higher than for prime mortgages, and that they therefore looked for less savvy borrowers—those with less education, without previous mortgage experience, or without fluent English skills—and directed them toward subprime loans. According to Mr. Theckston, these borrowers ended up paying higher mortgage rates, and were more likely to default and lose their homes. (Nicholas D. Kristof, *A Banker Speaks, With Regret*, N.Y. TIMES (Nov. 30, 2011).)

210. Mr. Theckston further revealed: '"On the application, you don't put down a job; you don't show income; you don't show assets; but you still got a nod."' '"If you had some old bag lady walking down the street and she had a decent credit score, she got a loan . . .You've got somebody making $20,000 buying a $500,000 home, thinking that she'd flip it. It was crazy, but the banks put programs together to make those kinds of loans."' (*Id*.)

211. Mr. Theckston explained that knowledge of this fraud existed at the top levels of management: '"The bigwigs of the corporations knew [about declining lending standards], but they figured we're going to make billions out of it, so who cares? . . . The government is going to bail us out. And the problem loans will be out of here, maybe even overseas."' (*Id.*)

212. Bear Stearns' management was also so eager to securitize as many mortgage loans as possible that it abandoned any adherence to underwriting or due diligence standards. On February 11, 2005, Bear Stearns Senior Managing Director Mary Haggerty e-mailed Vice President of Due Diligence John Mongelluzo with instructions to reduce the amount of due diligence conducted "in order to make us more competitive on bids with larger sub-prime sellers."

213. Bear Stearns Internal Audit Reports also described the various reductions in due diligence. According to February 28, 2006 and June 22, 2006 reports, Bear Stearns would reduce the number of loans in the loan samples that were reviewed as part of the due diligence process, conduct due diligence only after the loans were repurchased ("post-closing" due diligence), eliminate internal reports on defective loans, and conduct no due diligence if such due diligence would interfere with mortgage loan pools being securitized. *The Atlantic* confirmed this abandonment of reasonable due diligence procedures in a May 2010 article describing:

- how Bear Stearns pressured EMC analysts to perform their due diligence of the underlying mortgages in only one to three days;

- how Bear Stearns encouraged EMC analysts to falsify loan data (including FICO scores) if the loan was missing the requisite information; and

- how Bear Stearns pushed EMC analysts to avoid investigating a potentially bad loan and instead focus on making it "fit."

(Teri Buhl, *More Corruption: Bear Stearns Falsified Information as Raters Shrugged*, ATLANTIC, May 15, 2010; *See also* Teri Buhl, *E-mails Suggest Bear Stearns Cheated Clients Out of Billions*, ATLANTIC, Jan. 25, 2011.)

214. Former EMC mortgage analyst Matthew Van Leeuwen, an employee from 2004 to 2006, confirmed in a March 30, 2009 e-mail that "the pressure was pretty great for everybody to just churn the mortgages on through the system," so that if there were "outstanding data issues" analysts should just "fill in the holes." The pressure was directed from the top of Bear Stearns' corporate structure. For example, EMC's Senior Vice President of Conduit Operations, Jo-Karen Whitlock, told her staff to do "whatever is necessary" to meet Bear Stearns' objectives for desired loan production. Her April 14, 2006 e-mail further stated:

> I refuse to receive any more emails … questioning why we're not funding more loans each day. I'm holding each of you responsible for making sure we fund at least 500 each and every day…. [I]f we have 500+ loans in this office we MUST find a way to … buy them…. I expect to see 500+ each day…. I'll do whatever is necessary to make sure you're successful in meeting this objective.

215. Not only did the Fraud Defendants knowingly or recklessly permit low quality loans to pass into their securitizations in exchange for underwriting and securitization fees, they also took the fraud further, affirmatively seeking to profit from this knowledge. Rather than rejecting these loans from the loan pool, as they should have, JPMSI, Bear Stearns and Goldman, used evidence of underwriting defects to negotiate lower prices for the loans and thus boost their own profits. According to the September 2010 FCIC testimony of Clayton's former president,

D. Keith Johnson, the banks would use the exception reports to force a lower price for itself, and not to benefit investors at all:

> I don't think that we added any value to the investor, the end investor, to get down to your point. I think only our value was done in negotiating the purchase between the seller and securitizer. Perhaps the securitizer was able to negotiate a lower price, and could maximize the line. We added no value to the investor, to the rating agencies.

(FCIC Staff Int'v with D. Keith Johnson, Clayton Holdings, LLC (Sept. 2, 2010), *available at* http://fcic.law.stanford.edu/resource/interviews.) In other words, rather than exclude defective loans from collateral pools, or cease doing business with consistently failing originators, investment banks like the Fraud Defendants would instead use the Clayton data simply to insist on a lower price from the loan originators, thereby increasing their own profits while the defective loans were included in the pools for securitization. For instance, Goldman discussed proposals to charge higher warehouse fees to mortgage originators with higher early payment default and "drop out" rates, including New Century. (*See* Sen. Levin, Carl and Sen. Coburn, Tom, U.S. Senate Permanent Subcommittee on Investigations, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* (Committee on Homeland Security and Governmental Affairs, April 13, 2011) ("SPSI Report"), 484 n.2038 (citing Goldman email, dated Feb. 2, 2007).)

216. Moreover, the quality control work of Clayton performed was rendered inadequate because, as Clayton informed the NYAG, "some investment banks directed Clayton to halve the sample of loans it evaluated in each portfolio." (Jenny Anderson, *Loan Reviewer Aiding Inquiry Into Big Banks*, N.Y. TIMES, Jan. 27, 2008.) Upon information and belief, the Fraud Defendants were included in that group of investment banks. Thus, these Defendants made a conscious decision *not* to avail themselves of comprehensive due diligence regarding the

loans they were securitizing, which alone renders their misrepresentations concerning those loans knowing or reckless.

2. Warehouse Lending and Vertical Integration Gave The Fraud Defendants Inside Knowledge of Underwriting Defects

217. The Fraud Defendants' privileged positions as sources of warehouse lending also gave them unique knowledge of the conditions under which mortgage loans were originated. These arrangements allowed several of the Fraud Defendants to control the origination practices of the lenders, which depended on them for funding and gave these Fraud Defendants an insider look into the true quality of the loans they originated. As one publication explained, "[w]arehouse lenders [like the Fraud Defendants] have detailed knowledge of the lender's operations." (Kevin Connor, *Wall Street and the Making of the Subprime Disaster*, at 11 (2007), *available at* http://northstarfund.org/blog/pdfs/wall-street-and-the-making-of-the-subprime-disaster.pdf.)

218. The FCIC found that underwriter/originator warehouse lending relationships led to an environment in which "financial institutions ineffectively sampled loans they were purchasing to package and sell to investors. The Commission's review of many prospectuses provided to investors found that this critical information was not disclosed." (FCIC Report at xii.)

219. Given the Fraud Defendants' close relationships with originators for the Certificates at issue, they had a unique window into the quality of the loans backing the Certificates and undue influence over the loan origination process.

220. Goldman, as well as Bear Stearns, provided warehouse lines of credit to New Century, whose departure from its stated underwriting guidelines has now been extensively investigated and documented. New Century's former president testified before the Bankruptcy

Examiner appointed by the Bankruptcy Court overseeing New Century's Chapter 11 proceeding that New Century often reached deals with loan purchasers to limit the percentage of loans the purchaser would "kick out" of the loan pool due to the poor quality of the loan. (*See* Final Report of Michael J. Missal Bankruptcy Court Examiner, Case No. 07-10416(KJC) (D.Del. Feb. 29, 2008) at 135.) That admission, the warehouse lending relationship between New Century and Goldman and the fact that Goldman did substantial business with this "worst of the worst" originator, all strongly suggest that these Goldman and New Century had such a deal.

221. In the case of the Ally, the Ally entities were so closely integrated and the abusive lending practices so rampant from the top down that the Ally Depositors, Ally Sponsor, and Ally Securities, knew -- or were reckless in not knowing -- that HFN -- a subsidiary of the sponsor -- systematically was disregarding prudent underwriting standards and that its loans lacked the characteristics represented in the Offering Materials. As detailed above, a sampling of GMACM loans conducted by MBIA has revealed a non-compliance rate of at least 89 percent.

222. Indeed, GMACM is currently being investigated by the U.S. Department of Justice (the "DOJ") and the SEC for, among other things, fraud related to the origination and underwriting of mortgage loans. In June 2011, GMACM was served with a subpoena by the DOJ and SEC.

> The subpoena received from the SEC includes a broad request for documentation related to certain "bulk settlements" relating to mortgage loans placed in securitization trusts, which are agreements we entered into with mortgage originators or mortgage sellers whereby we received value in lieu of such mortgage originator or mortgage seller repurchasing a loan from us, as well as a request for materials provided to investors and prospective investors in mortgage securitization transactions. The subpoena received from the U.S. Department of Justice includes a broad request for documentation and other information in connection with its investigation of potential fraud related to the origination and/or underwriting of mortgage loans. These subpoenas, or any

> other investigation or information-gathering request, may result in material adverse consequences including without limitation, adverse judgments, settlements, fines, penalties, injunctions, or other actions.

(Ally Financial, Inc. f/k/a GMAC, LLC, Amendment No. 3 to Form S-1 Registration Statement under the Securities Act of 1933 (Form S-1/A), at 23 (June 29, 2011).)

223. Further, GMACM's abusive or reckless lending and servicing practices, including commingling funds from custodial bank accounts and questionable and unlawful foreclosure practices, have also been revealed. (*See* "Moody's downgrades $1.4 billion in GMAC subprime RMBS," *available at* http://www.housingwire.com/2011/03/25/allstates-mbs-exposure-hits-2-78-billion.)

224. The Ally Defendants also shared substantial overlapping management with HFN. For instance, in 2005, David C. Walker served as Director of HFN, RALI, RASC, RAMP, RFC and GMAC-RFC. In 2007, David M. Bricker served as CFO and Director of HFN; Director and CFO of RALI; CFO of RASC and RAMP; and Director of RFC. In 2005, Davee L. Olson served as Director of HFN; CFO and Director of ResCap and RASC; and Director of RAMP, RFC and GMAC-RFC. In 2007, James N. Young served as Controller of HFN; CAO and Controller of ResCap; CFO of RFC; and Director of RALI, RASC and RAMP. In 2007, James G. Jones served as CEO, President and Director of HFN; CEO, President and Director of ResCap, RALI, RASC and RAMP; President and Director of RFC, and Director of GMAC-RFC. In 2005, Kenneth M. Duncan served as CFO of HFN, RAMP, RFC and GMAC-RFC. In 2005, Ralph T. Flees served as Controller of HFN, RASC, RAMP, RFC and GMAC-RFC. Given the overlapping management and the integrated structure, Ally knew or was reckless in not knowing of the misrepresentations and omissions concerning HFN's underwriting guidelines.

225. Bear Stearns' collapse and subsequent acquisition by JPMorgan has been the subject of intense public scrutiny and investigation, most notably by the FCIC. In February 2011, the FCIC released interviews with Bear Stearns executives regarding its role in the origination, acquisition, and securitization of mortgage loans. The documentary evidence revealed widespread fraudulent conduct on the part of Bear Stearns. Such fraudulent conduct has been the basis for both investigation and litigation by public officials, including the Attorney General of Oregon, who filed an action on behalf of the Oregon Public Employees Retirement Fund against Bear Stearns for misrepresentations in its role as issuer and underwriter in the sale of certificates. (*In re Bear Stearns Mortgage Pass-Through Certificates Litigation*, 08 Civ. 8093 (SDNY).)

226. Through its various affiliates and subsidiaries, Bear Stearns participated in every step of the securitization process, from the origination and servicing of the mortgage loans to the sponsoring and structuring of the securitization, to the underwriting and marketing of the Certificates. According to the FCIC, it was Bear Stearns that actually "pioneered" the "'vertical integration' mortgage model" so that it could have "a stake in every step of the mortgage business—originating mortgages, bundling these loans into securities, bundling these securities into other securities, and selling all of them on Wall Street." (FCIC Report at 204.) Between 2003 and 2006, Bear Stearns' revenue and profit increased by 123.8 percent and 77.6 percent, respectively. This growth was largely driven by mortgage finance and Bear Stearns' securitization machine. By 2006, Bear Stearns' securitizations accounted for 11 percent of the overall U.S. mortgage-securities market. Bear Stearns announced in its 2006 Annual Report: "Our vertically integrated franchise allows us to access every step of the mortgage process, including origination, securitization, distribution and servicing." (Bear Stearns 2006 Annual

Report, at 12, *available at* http://www.scribd.com/doc/7453453/Bear-Stearns-Annual-Report-2006.)

227. This vertical integration allowed Bear Stearns to control and manipulate the loan level documentation, to knowingly choose poor quality mortgage loans for securitization as a method of off-loading the loans to investors as soon as possible, and to selectively make repurchase claims of originators while simultaneously denying those of investors. By virtue of their control over each step in the securitization process, Bear Stearns had knowledge of the true characteristics and credit quality of the mortgage loans.

3. Other Evidence Demonstrating that The Fraud Defendants Knew Or Were Reckless In Not Knowing That Their Representations Were False

228. In addition to the unique insight gained from warehouse lending relationships, other evidence -- including Ally's and the Fraud Defendants' de-risking strategies -- supports the Fraud Defendants', Ally Sponsor's and Ally Depositors' knowledge or reckless disregard of the falsity of their representations in the Offering Materials.

229. Thus, for example, the Ally Sponsor filed over a dozen federal lawsuits in Minnesota against mortgage companies, claiming that the originators had failed to conduct adequate due diligence on borrowers and demanding that the originators repurchase the subject mortgage loans. The defendants in these lawsuits included at least one originator, Pinnacle, that had contributed loans to the Securitizations. (*See, e.g., Residential Funding Co., LLC v. Pinnacle Direct Funding Corp.*, Civ. No. 08-cv-00591 (D. Minn., Feb. 29, 2008); *see also* David Phelps, *ResCap Suing Brokers Who Originated Bad Mortgage Loans*, STAR TRIBUNE, Bus. at 1D, Aug. 10, 2008.)

230. Defendant Goldman's malfeasance in the RMBS market has also been reviewed and reported in detail by the United States Senate. A report issued by the Senate Permanent

Subcommittee on Investigations found that in exchange for lucrative fees, Goldman helped lenders like New Century securitize high risk, poor quality loans, obtain favorable credit ratings for the resulting RMBS, and sell the RMBS securities to investors, pushing billions of dollars of risky mortgages into the financial system. (SPSI Report at 377.)

231. That Goldman knew of the originator's abandonment of applicable underwriting guidelines and of the true nature of the mortgage loans it was securitizing is further evidenced by how Goldman handled its own investments. Goldman internally characterized its offerings as "junk," "dogs," "big old lemons," and "monstrosities." (FCIC Report at 235-36.) Nevertheless, it congratulated itself for successfully offloading such "junk" onto others. As the public learned in the FCIC's Report, by January 2007, "Daniel Sparks, the head of Goldman's mortgage department, extolled Goldman's success in reducing its subprime inventory, writing that the team had 'structured like mad and traveled the world, and worked their tails off to make some lemonade from some big old lemons." (*Id.* at 236.) Also, as early as December 2006, David Viniar, Goldman's Chief Financial Officer urged the head of Sales and Trading at Goldman to "be aggressive" in marketing subprime risk "because there will be very good opportunities as the markets go into what is likely to be even greater distress and we want to be in position to take advantage of them." (*Id.* at 235.)

232. Even more damning than Goldman's decision to use securitization as a tool to move declining loans off of Goldman's own books are the huge bets Goldman placed against the very mortgage-backed investments it sold to Freddie Mac. Goldman coupled those sales with an aggressive campaign to force lenders (the very same ones who originated loans in the Certificates) to repurchase defective loans which, due to the slowing securitization market, had been stuck on Goldman's own books.

233. Beginning in 2005 and into 2006, Goldman began to take an increasingly pessimistic view of the subprime mortgage market. Goldman's sophisticated and powerful proprietary models analyzed trends in the performance of hundreds of thousands of mortgages that collateralized its RMBS, and those models and superior access to data regarding the underlying mortgage positions on its books gave Goldman unique knowledge that those securities were not as safe as their offering materials and ratings represented to investors. In fact, Goldman's models and data showed that the RMBS had declined up to 70 percent from their face amounts. In his book, *Money and Power: How Goldman Sachs Came to Rule the World*, William D. Cohan explained:

> Goldman's RMBS model could analyze all the underlying mortgages and value the cash flows, as well as what would happen if interest rates changed, if prepayments were made, or if the mortgages were refinanced. The model could also spit out a valuation if defaults suddenly spiked upward . . . . [Goldman's] proprietary model was telling [Goldman] that it would not take much to wipe out the value of tranches of a mortgage-backed security that had previously looked very safe, at least in the estimation of the credit-rating agencies that had been paid (by Wall Street) to rate them investment grade. By tweaking the various assumptions based on events that seemed increasingly likely, [Goldman's] models were showing a marked decrease in the value of mortgage-related securities. Goldman's models said even if you don't believe housing prices are going to go down, even if we apply low-probability scenarios about it going negative ... there's no way this stuff can be worth anywhere near one hundred [cents on the dollar].... [Goldman's] models had them pegged anywhere between 30 cents and 70 cents . . . .

(WILLIAM D. COHAN, MONEY AND POWER: HOW GOLDMAN SACHS CAME TO RULE THE WORLD 494-95 (2011).) According to a former Goldman employee, these models as well as other information in Goldman's exclusive possession showed it "the writing on the wall in this market as early as 2005," Gretchen Morgenson & Louise Story, *Banks Bundled Bad Debt, Bet Against It and Won*, N.Y. Times, Dec. 24, 2009, and into the "the early summer of 2006." (SPSI Report at

398.) Goldman exploited its asymmetric access to, and possession of, information about the weakness in the mortgage loans collateralizing the Certificates it marketed and sold.

234. To reduce its massive financial exposure to the subprime mortgage market, Goldman began looking for ways to short the market (*i.e.*, to make investments which would rise in value and/or make payments to Goldman as the subprime mortgage market declined). Its shorting strategies included the purchase of credit default swap protection on the very RMBS positions it sold into the market. Goldman bet that the RMBS would decline in value and/or default; if so, its swap counterparty would be required to pay Goldman.

235. Goldman entered into swaps worth hundreds of millions of dollars during this time period, where it stood on the "short" side of the transaction, while its counterparty went "long." For example, according to the SPSI Report, Goldman underwrote GSAMP 2007-FM2, a securitization it sold to Freddie Mac, and then turned around and bet *against* that same securitization through use of credit default swaps. As the SPSI Report explained:

> Goldman marketed and sold the Fremont securities to its customers, while at the same time purchasing $15 million in CDS contracts referencing some of the Fremont securities it underwrote. Seven months later, by October 2007, the ratings downgrades had begun; by August 2009, every tranche in the GSAMP securitization had been downgraded to junk status.

(SPSI Report at 516 (footnotes omitted).) Goldman's shorting of GSAMP 2007-FM2 was emblematic of its approach to the Securitizations it marketed and sold to Freddie Mac. As a recent magazine article explained, "Goldman was like a car dealership that realized it had a whole lot full of cars with faulty brakes. Instead of announcing a recall, it surged ahead with a two-fold plan to make a fortune: first, by dumping the dangerous products on other people, and second, by taking out life insurance against the fools who bought the deadly cars." (Matt Taibbi, *The People vs. Goldman Sachs*, ROLLING STONE, May 26, 2011.)

236. Continuing from 2006 and 2007, Goldman used its shorting strategy as a way to reduce its own mortgage risk while continuing to create and sell mortgage-related products to its clients. In 2006, Goldman made a massive $9 billion bet that the same type of assets it was selling to investors like Freddie Mac would collapse. (SPSI Report at 419.) Goldman's net short position in 2007 rose as high as $13.9 billion. (*Id.* at 430.) As the SPSI Report explained, Goldman "sold RMBS and CDO securities to its clients without disclosing its own net short position against the subprime market or its purchase of CDS contracts to gain from the loss in value of some of the very securities it was selling to its client." (*Id*. at 9.)

237. On March 9, 2007, Goldman's Daniel Sparks wrote: "Our current largest needs are to execute and sell our new issues—CDO's and RMBS—and to sell our other cash trading positions . . . I can't overstate the importance to the business of selling these positions and new issues." (SPSI Hearing, Ex. 4/27- 76.) A leading structured finance expert, Sylvain R. Raynes, reportedly called Goldman's practice "the most cynical use of credit information that I have ever seen," and compared it to "buying fire insurance on someone else's house and then committing arson." As the SPSI Report found, Goldman "sold RMBS securities to customers at the same time it was shorting the securities and essentially betting that they would lose value." (SPSI Report at 513.)

238. This disregard for the clients' interests became a part of the culture at Goldman. Greg Smith, the former Executive Director of Goldman's equity derivative business, resigned from his position due to the "toxic and destructive" culture at Goldman. Smith lamented that "[i]f you were an alien from Mars and sat in on one of [Goldman's daily sales] meetings, you would believe that a client's success or progress was not part of the thought process at all." (Greg Smith, *Why I am Leaving Goldman Sachs*, N.Y. TIMES, Mar. 14, 2012.) In fact, Smith

recalled "five different managing directors refer[ring] to their own clients as 'muppets'. . . ." (*Id.*) Smith noted that one way to become a "leader" at Goldman was to "persuad[e] your clients to invest in the . . . products that [Goldman was] trying to get rid of because they [were] not seen as having a lot of potential profit" for Goldman. (*Id.*)

239. Another tactic that Goldman used to reduce its subprime exposure in 2006 was to force originators from which it bought mortgages to buy them back. Goldman's repurchase rights arose from mortgage purchase agreements that it entered into with originators. These agreements typically required originators to warrant that their loans were underwritten according to standard guidelines and conformed to certain characteristics, including the accuracy of the mortgage loan schedule, the absence of fraud by the originator or borrower, and compliance with federal and state laws. If a representation was breached, Goldman could demand that the originator repurchase the defective loans as required by the mortgage purchase agreement. Goldman hired third party re-underwriting firms to assist in this "put back" process and to find defects in the loans which would then be used as a basis to require their repurchase.

240. Goldman targeted its "put back" campaign at the originators whose loans Goldman knew were most likely to yield underwriting breaches upon examination. Goldman had unique insight into the quality of the loans purchased from originators, arising from diligence on the originators themselves as well as their loans. Goldman knew based on its many years of dealing with originators such as New Century that their loans were the worst on its books and thus the most likely to yield put back claims.

241. For example, the SPSI Report published a December 14, 2006 email from Goldman's Daniel Sparks which told colleagues, "stay focused and aggressive on MLN. . . ." (*See* SPSI Report at 405.) On January 8, 2007, Daniel Sparks wrote to a colleague, "I just can't

see how any originator in the industry is worth a premium. I'm also a bit scared of [A]ccredited [Aames' parent company] and [N]ew [C]entury, and I'm not sure about taking a bunch of new exposures." (*Id.* at 484 n.2036.)

242. On February 2, 2007, Sparks identified other prime targets of Goldman's repurchase campaign. He said that his "team is working on putting loans in the deals back to the [New Century, among others,] as there seem to be issues potentially including some fraud at origination, but resolution will take months and be contentious." (*Id.* at 484.)

243. On March 7, 2007, Sparks continued emphasizing Goldman's priority in ridding itself of loans issued by certain originators. He described Goldman's exposure as follows:

> As for the big 3 originators – Accredited, New Century and Fremont, our real exposure is in the form of put-back claims. Basically, if we get nothing back we would lose around $60mm vs loans on our books (we have a reserve of $30mm) and the loans in the [CDO and RMBS] trusts could lose around $60mm (we probably suffer about 1/3 of this in ongoing exposures) . . . .

(*Id.* at 485.)

244. In March 2007, following an analysis of a pool of loans, Goldman concluded that about 50 percent of the 200 files reviewed "look to be repurchase obligations." (*Id*. at 486.) Goldman made it a "priority" to re-underwrite and put back loans purchased from originators it considered weak. (*Id*. at 485.)

245. In total, between 2006 and 2007, Goldman made approximately $475 million in repurchase claims to the originators and others for loans in its inventory. All told, Goldman recovered approximately $82 million from this process. (*Id*. at 483.) After reviewing the loan files in one New Century deal, Goldman's analysts recommended to Goldman putting back 26 percent of the loan pool. (*See* SPSI Report at 485-86.)

246. Goldman is the subject of numerous criminal and regulatory probes related to its mortgage underwriting practices. (*See Wall Street Probe Widens*, The Wall Street Journal, May 12, 2010 (reporting on federal criminal and regulatory investigations of whether Goldman and others "misled investors about their roles in mortgage-bond deals").) These investigations further confirm that Goldman's misrepresentations were not mere isolated, innocent mistakes, but the result of the company's reckless or intentional misconduct.

247. For example, Goldman's misconduct prompted the Attorney General of Massachusetts to examine whether Goldman:

- failed to ascertain whether loans purchased from originators complied with the originators' stated underwriting guidelines;
- failed to take sufficient steps to avoid placing problem loans into securitization pools;
- failed to correct inaccurate information in securitization trustee reports concerning repurchases of loans; and
- failed to make available to potential investors certain information concerning allegedly unfair or problem loans, including information obtained during loan due diligence and the pre-securitization process, as well as information concerning Goldman Sachs' practices in making repurchase claims relating to loans in and out of securitizations.

248. Goldman settled with the Commonwealth of Massachusetts, paying it $60 million. (FCIC Report at 226.) In announcing the settlement, the Massachusetts Attorney General stated that Goldman did not take "sufficient steps to avoid placing problem loans in securitization pools." Goldman was also required to forgive all or portions of the balances on many loans it had bought and securitized, which resulted in tens of millions of dollars in additional expenses to Goldman.

249. Similarly, the SPSI Report concluded that Goldman "knowingly sold high risk, poor quality mortgage products to clients around the world, saturating financial markets with

complex, financially engineered instruments that magnified risk and losses when their underlying assets began to fail." (SPSI Report at 476; *see also id.* at 513 ("Goldman originated and sold RMBS securities that it *knew* had poor quality loans that were likely to incur abnormally high rates of default.") (emphasis added).)

250. JPMSI also knowingly included defective loans in its securitizations, thereby passing the risk of delinquency and default to investors. This behavior was continued during the worst period of the financial crisis. As investors were demanding that JPMorgan's newly acquired subsidiary, Bear Stearns, repurchase mortgage loans that were not underwritten to represented standards of quality, JPMorgan was denying those repurchase requests while simultaneously making repurchase demands for the very same loans from the originator, Capital One Financial Corp. In a June 26, 2008 letter to Capital One, Allison Malkin, an executive director with J.P. Morgan Securities (the entity with which Bear Stearns was eventually merged), stated "that it is [Bear Stearns'] position that these breaches materially and adversely affect the value" of the mortgage loans. (Jody Shenn, *JPMorgan Refused Mortgage Repurchases It Also Sought, Ambac Says*, BLOOMBERG.COM (Jan. 24, 2011, 8:46 PM), http://www.bloomberg.com/news/2011-01-25/jpmorgan-refused-mortgage-repurchases-it-also-sought-ambac-filing-claims.html.)

251. By 2006, however, JPMorgan had grown alarmed at the increasing rate of late payments in its subprime portfolio. As the pool quality of these mortgage loans became apparent, JPMorgan decided to exit its subprime positions. This decision came from JPMorgan's CEO, Jamie Dimon, evidencing knowledge of the perilous state of JPMorgan's subprime assets by JPMorgan senior management. An article in *Bloomberg* on February 17, 2010 revealed that JPMorgan CEO Jamie Dimon was fully aware that its residential mortgage backed securities

were of poor and deteriorating credit quality and that he attempted to shed the associated risk from JPMorgan's own balance sheet. The article reported that "[i]n October 2006, Mr. Dimon, JPMorgan's CEO, told William A. King, its then head of securitized products, that [JPMorgan] needed to start selling its subprime-mortgage positions." In late 2008, *Fortune Magazine* quoted the same October 2006 phone conversation, where Mr. Dimon instructed Mr. King to sell JPMorgan's positions: "I really want you to watch out for subprime! . . . We need to sell a lot of our positions. I've seen it before. This stuff could go up in smoke!" (Shawn Tully, *Jamie Dimon's swat team: How J.P. Morgan's CEO and His Crew are Helping the Big Bank Beat the Credit Crunch*, FORTUNE (September 2, 2008, 4:08 PM), *available at* http://money.cnn.com/2008/08/29/news/companies/tully_dimon.fortune/). By the end of 2006, JP Morgan had unloaded $12 billion in subprime assets that JPMorgan itself had originated. (*Id.*)

252. Despite Mr. Dimon's view that JPMorgan's subprime holdings "could go up in smoke!" and JPMorgan's decision to sell its holdings in subprime assets, JPMorgan continued to originate and securitize poorly underwritten mortgage loans and vouch for their quality. This was the time period in which Freddie Mac acquired Certificates that JPMSI underwrote.

253. With respect to Bear Stearns, loans acquired by Bear Stearns began to default at an increasing rate. These triggered concern in Bear Stearns as early as 2005. Rather than improving the quality of loans acquired for securitization, Bear Stearns reacted by changing the time period in which Bear Stearns was required to hold loans it acquired. Previously, Bear Stearns was required to hold third-party loans in inventory for between 30 and 90 days before the loans could be securitized. This allowed Bear Stearns to determine whether any of the loans would suffer from an early payment default. In 2006, Bear Stearns stopped screening out these

defective loans and instead required that all mortgage loans be securitized before the early payment default period expired. Bear Stearns Senior Managing Director Jeffrey Verschleiser confirmed the revised protocol in a June 13, 2006 e-mail to Haggerty stating that they need "to be certain we can securitize the loans with 1 month epd [early payment default] before the epd period expires." This desire to unload bad mortgage loans by selling them to other investors through the securitization process was further evidenced by a May 5, 2007 e-mail from Bear Stearns Managing Director Keith Lind, who demanded "to know why we are taking losses on 2nd lien loans from 2005 when they could have been securitized?????"

254. In addition to purposely acquiring and securitizing defective loans that did not meet their represented underwriting guidelines and selling them to investors, Bear Stearns' subprime subsidiary, EMC, further profited from these bad loans by making repurchase claims against the originator of the loans. Repurchase claims are derived from rights found in mortgage loan purchase agreements, whereby the originator makes representations to the sponsor (EMC) that the loans were underwritten in accordance with certain underwriting standards. If the sponsor (EMC) discovers this not to be the case, it can request that the originator repurchase any affected loans. Similarly, the PSA between EMC and the trust requires that EMC repurchase any loans it knows are defective. Instead of seeking the actual repurchase of these bad loans, however -- which would remove the loans from the trust and compensate the certificateholders -- EMC settled its repurchase claims and kept the settlement proceeds itself. EMC did not pass the proceeds of the repurchase claims on to the trust.

255. EMC came to several settlement agreements and other arrangements as part of its repurchase scheme. On January 30, 2007, an originator agreed to pay over $2.5 million to EMC "in lieu of repurchasing the Defective Loans." On December 18, 2007, an originator agreed to

pay almost $12 million "for full payment and satisfaction of the Monetary Claims, and the balance of the Settlement Amount (if any) for settlement of the Defective Loans." On October 1, 2007, an originator agreed to pay $1 million "in lieu of repurchasing the Defective Loans." According to an internal presentation requested by Bear Stearns' Managing Director and Head of Mortgage-Backed Securities, Thomas Marano, EMC received $1.9 billion from April 2006 to April 2007 in claim resolutions, with most resolutions being settlements. Bear Stearns would also accept discounts on future loan purchases instead of immediate cash settlements, valuing these arrangements at $367 million for the period beginning in 2007 through the first quarter of 2008. (*See also* Teri Buhl, *E-mails Suggest Bear Stearns Cheated Clients Out of Billions*, THE ATLANTIC, Jan. 25, 2011.)

256. These funds should have passed to the trusts but Bear Stearns did not disclose its repurchase settlements with certificateholders in the trust. In a December 11, 2009 deposition, Bear Stearns' Deal Manager Robert Durden could not identify a single "instance in which EMC or Bear Stearns disclosed to Ambac or other investors that it was recovering on EPDs [early payment defaults] from originators with respect to securitized mortgage loans, pocketing the money and not putting it into the trust." Bear Stearns knew this practice breached its representations and warranties made to purchasers of certificates: PriceWaterhouseCoopers advised Bear Stearns that the program was contrary to "common industry practices, the expectation of investors and . . . the provisions in the [deal documents]" in an August 31, 2006 audit, and, according to EMC President Stephen Golden, EMC concluded that it could not retain funds in connection with the repurchase claims in mid-2007. Despite this advice, EMC reached two such agreements in the latter half of 2007 and continued to fail to remit the proceeds to the

trust. (PriceWaterhouseCoopers LLP, Bear Stearns/EMC UPB Break Repurchase Project Audit Report, August 31, 2006 (Haas Decl., Ex. 18, EMC-AMB 006803209).)

257. As active participants in fraudulent origination practices, the Fraud Defendants, Ally Sponsor, and Ally Depositors knew or were reckless in disregarding the falsity of their statements in the Offering Materials concerning underwriting guidelines.

258. The Fraud Defendants, Ally Sponsor, and Ally Depositors also knew or recklessly disregarded that the owner-occupancy statistics and LTV ratios reported in the Offering Materials were false and misleading. Given their role as underwriters, sponsors and depositors of the securities, the relationships they had with loan originators, and this expertise in underwriting and securitizing RMBS, the Fraud Defendants, Ally Sponsor, and Ally Depositors had the practical ability to gain access to loan files and the ability and resources to test the reported data points, such as owner-occupancy rates and LTV ratios. They intentionally elected not to do so, rendering their representations concerning those data knowingly or recklessly false.

259. Moreover, upon information and belief, underwriters, including certain of the Fraud Defendants, influenced the appraisals used to determine LTV ratios. Government investigations have uncovered widespread evidence of appraisers being pressured to overvalue properties so more loans could be originated. For instance, several witnesses, ranging from the President of the Appraisal Institute to appraisers and lenders on the ground, confirmed that appraisers felt compelled to come in "at value" -- *i.e.*, at least the amount needed for the loan to be approved -- or face losing future business or their livelihoods. Given the systemic pressure applied to appraisers, upon information and belief, the appraisers themselves, the originators, and the underwriters did not believe that the appraised values of the properties -- and therefore LTV

ratios -- were true and accurate at the time they communicated the information to potential investors, including Freddie Mac.

260. Further, the Fraud Defendants and Ally Sponsor knew or were reckless in not knowing that the credit ratings reported for the Certificates failed to reflect the actual risk of the securities, and that the ratings agencies had no basis to believe in the accuracy of those ratings. Not only did these Defendants provide the ratings agencies false, loan-level information, but they also routinely engaged in “ratings shopping” -- *i.e.*, pressuring the ratings agencies for favorable ratings and playing the rating agencies off one another with the threat of withholding future business if the sponsoring bank was not given favorable treatment. As detailed in the SPSI Report:

> At the same time Moody’s and S&P were pressuring their RMBS and CDO analysts to increase market share and revenues, the investment banks responsible for bringing RMBS and CDO business to the firms were pressuring those same analysts to ease rating standards. Former Moody’s and S&P analysts and managers interviewed by the Subcommittee described, for example, how investment bankers pressured them to get their deals done quickly, increase the size of the tranches that received AAA ratings, and reduce the credit enhancements protecting the AAA tranches from loss. They also pressed the CRA analysts and managers to ignore a host of factors that could be seen as increasing credit risk. Sometimes described as “ratings shopping,” the analysts described how some investment bankers threatened to take their business to another credit rating agency if they did not get the favorable treatment they wanted. The evidence collected by the Subcommittee indicates that the pressure exerted by investment banks frequently impacted the ratings process, enabling the banks to obtain more favorable treatment than they otherwise would have received.

(SPSI Report, at 278.)

261. As one S&P director put it in an August 8, 2006 e-mail: “[Our RMBS friends have] become so beholden to their top issuers for revenue [that] they have all developed a kind of Stockholm syndrome which they mistakenly tag as Customer Value creation.” (SPSI Report

at 277.) Ratings analysts who complained about the pressure, or did not do as they were told, were quickly replaced on deals or terminated.

262. Summarizing the intense pressure investment banks put on ratings analysts to provide favorable ratings, a former Moody's VP and Senior Credit Officer testified before the FCIC that:

> The willingness to decline to rate, or to just say no to proposed transactions, steadily diminished over time. That unwillingness to say no grew in parallel with the company's share price and the proportion of total firm revenues represented by structured finance transactions . . . coincident with the steady drive toward *commoditization* of the instruments we were rating . . . . The threat of losing business . . . even if not realized, absolutely tilted the balance away from independent arbiter of risk towards a captive facilitator of risk transfer . . . . The message from management was . . . "Must say yes."

(*See* Written Testimony of Richard Michalek (FCIC Hearing, June 2, 2010), *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2008-0602-Michalek-corrected-oral.pdf; *see also* Written Statement of Eric Kolchinsky, Managing Director, Moody's Derivatives Group ("Managers of rating groups were expected by their supervisors and ultimately the Board of Directors . . . to build, or at least maintain, market shares. It was an unspoken understanding that loss of market share would cause a manager to lose his or her job;" "[L]owering credit standards . . . was one easy way for a managing director to regain market share."), *available at* http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=bd65f802-961c-4727-b176-72ece145baef.)

D. Freddie Mac Justifiably Relied on the Misrepresentations and Omissions in the Offering Materials and Was Damaged by the Fraud Defendants' Fraudulent Conduct

263. Freddie Mac is a government-sponsored enterprise chartered by Congress to provide liquidity, stability, and affordability to the U.S. housing and mortgage markets. In furtherance of this mission, Freddie Mac purchases mortgages and invests in RMBS.

264. Generally when purchasing RMBS, Freddie Mac requires compliance with its investment requirements, as well as various representations and warranties concerning, among other things, the credit quality of the underlying loans, evaluation of the borrower's ability to pay, the accuracy of loan data provided, and adherence to applicable local, state and federal law. Such representations and warranties were material to Freddie Mac's decision to purchase RMBS, including the Certificates.

265. The Fraud Defendants, Ally Sponsor, and Ally Depositors intended for investors, including Freddie Mac, to rely on their representations of material facts about the assets backing the Certificates. The Fraud Defendants, Ally Sponsor, and Ally Depositors instructed investors to rely on the information provided by them in the Registration Statements and no other information. Thus, the RAMP 2005-EFC7 Prospectus Supplement states: "You should rely on the information provided in this prospectus and the accompanying prospectus supplement, including the information incorporated by reference. . . . We have not authorized anyone to provide you with different information." The Prospectus Supplements for the remaining Securitizations contain similar language.

266. Furthermore, these Defendants regularly provided prospective RMBS investors with information concerning the volume of their annual securitization business to assure investors that, by virtue of their expertise in and share of the RMBS market, Freddie Mac should

rely upon the representations and warranties in their Offering Materials. (*See, e.g.*, RALI 2006-QO8 Prospectus Supplement.)

267. The Fraud Defendants, Ally Sponsor, and Ally Depositors knew that Freddie Mac had specific requirements for investing in non-agency mortgage-backed securities and the Fraud Defendants, Ally Sponsor, and Ally Depositors intended for Freddie Mac to rely on their fraudulent misstatements as shown by their provision of representations, warranties and anticipated credit ratings in connection with the Certificates, and their repetition of false loan statistics in term sheets, free writing prospectuses, and Prospectus Supplements, among other Offering Materials.

268. When the Fraud Defendants, Ally Sponsor, and Ally Depositors made misrepresentations and omissions in the Offering Materials, they were aware of Freddie Mac's investment requirements for purchasing RMBS. For example, Freddie Mac's guidelines to sellers provided, among other things:

> The methodology used in underwriting the extension of credit for each mortgage loan in the trust employs objective mathematical principles which relate the borrower's income, assets and liabilities to the proposed payment and such underwriting methodology does not rely solely on the extent of the borrower's equity in the collateral as the principal determining factor in approving such extension. Such underwriting methodology confirmed that at the time of origination (application/approval) the borrower had the ability to make timely payments on the mortgage loan.

269. Accordingly, Freddie Mac required the Defendants to provide representations and warranties regarding the origination and quality of the mortgage loans, including that the mortgage loans had been underwritten by the loan originators pursuant to extensive guidelines.

270. Freddie Mac relied, to its detriment, on the Fraud Defendants', Ally Sponsor's, and Ally Depositors' misrepresentations and material omissions in the Offering Materials.

271. Freddie Mac's reliance was justifiable because Freddie Mac necessarily was required to rely upon the Fraud Defendants, Ally Sponsor, and Ally Depositors to provide accurate information regarding the loans. Freddie Mac, as an investor, lacked access to the actual loan files, and the loan-level data essential to perform the necessary statistical tests with respect to, among other things, owner-occupancy and LTV ratios.

272. Freddie Mac's reliance also was justifiable because industry practice was for an investor to rely upon the representations and warranties of the sponsors and underwriters regarding the quality of the mortgage loans and the standards under which they were originated. Information regarding the originators' compliance with underwriting guidelines, owner-occupancy rates, LTV ratios, and data provided to credit ratings agencies, was peculiarly within the knowledge of the Fraud Defendants, Ally Sponsor, and Ally Depositors and investors were therefore required to rely upon the representations made by the sponsors, depositors, and underwriters to address the asymmetry of information concerning the mortgage loans underlying the securitizations.

273. The Offering Materials, including those filed with the SEC, did not provide sufficient information about the individual mortgage loans underlying the Certificates to render the Fraud Defendants', Ally Sponsor's, and Ally Depositors' false statements or omissions not misleading. While some aggregate data was provided about the mortgage loans in the collateral pool, such information did not disclose risk layering, or how many loans contained multiple risk factors. For example, the aggregate data may have disclosed how many borrowers had FICO scores below 650 and how many loans had LTV ratios greater than 80 percent, but it did not disclose how many loans had both characteristics. A loan originator applying underwriting guidelines would have evaluated such risk factors as a whole before extending a loan to the

borrower. Had the Non-Party Originators actually complied with their stated underwriting guidelines, as represented in the Offering Materials, the aggregated data provided in the Offering Materials would not have been misleading as to the credit quality of the loans.

274. Moreover, even if RMBS investors were expected to verify the information concerning each of the thousands of mortgage loans backing the Certificates -- and they are not -- Freddie Mac would not have been able to discover the Fraud Defendants', Ally Sponsor's, and Ally Depositors' misrepresentations and omissions concerning the mortgage loans prior to the closing. The Offering Materials represented what the expected composition of the loan pool would be on the closing date. The mortgage loan pools were not fully populated at the time of the misrepresentations and omissions, such that Freddie Mac necessarily had to rely on the accuracy of the information provided by the Fraud Defendants, Ally Sponsor, and Ally Depositors. (*Compare* Table 3 (Prospectus Supplement Dates) *with* Table 10 (Settlement Dates).) For example, the Prospectus Supplement for RASC 2007-KS3 was filed on March 28, 2007, but the settlement date -- *i.e.*, when the loans were assigned to the trust -- did not occur until several weeks later, on April 19, 2007. (*See id.*) Moreover, the Prospectus Supplements for all of the Securitizations described what the mortgage loan pool would be at the time of closing.

275. Freddie Mac was induced into buying the Certificates based on the false and misleading Offering Materials. Freddie Mac would not have purchased the Certificates had it known the truth concerning the matters alleged herein. Alternatively, Freddie Mac suffered damages because the price it paid for the Certificates was higher than the Certificates' actual value.

276. From the day Freddie Mac purchased the Certificates, Freddie Mac suffered injury. As a result of Defendants' misrepresentations, the true value of the Certificates on the date of purchase was far lower than the price paid for them by Freddie Mac.

FIRST CAUSE OF ACTION

Violation of Section 11 of the Securities Act of 1933
(Against Defendants Ally Securities, JPMSI, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

277. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

278. This claim is brought by FHFA pursuant to Section 11 of the Securities Act of 1933 and is asserted on behalf of Freddie Mac, which purchased the Certificates issued pursuant to the Registration Statements for the Securitizations listed in paragraph 46.

279. This claim is for strict liability based on the material misstatements and omissions in the Registration Statements, which registered securities that were *bona fide* offered to the public on or after September 6, 2005, for the 21 Securitizations (as specified in Table 1, *supra* at paragraph 47), and is asserted against the Underwriter Defendants.

280. The Underwriter Defendants acted as underwriters in connection with the sale of the Certificates for each of the 21 Securitizations (as specified in Table 1, *supra* at paragraph 47), directly and indirectly participated in distributing the Certificates, and directly and indirectly participated in drafting and disseminating the Registration Statements, which registered securities that were *bona fide* offered to the public on or after September 6, 2005. The Underwriter Defendants were underwriters for the Certificates, and are strictly liable for the misstatements and omissions in the Registration Statements under Section 11 of the Securities Act of 1933.

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

282. The untrue statements of material facts and omissions of material fact in the Registration Statements are principally those set forth herein in Sections I.C. & I.D. and Appendix A, and pertain to purported compliance with underwriting guidelines, occupancy status, loan-to-value ratios and credit ratings.

283. Freddie Mac purchased or otherwise acquired the Certificates pursuant to the false and misleading Registration Statements and in the primary market. At the time it purchased the Certificates, Freddie Mac was unaware of the false and misleading statements and omissions alleged herein, and if Freddie Mac had known those facts, it would not have purchased the Certificates.

284. The Underwriter Defendants were obligated to make a reasonable investigation of the statements contained in the Registration Statements at the time they became effective to ensure that such statements were true and correct, and that there were no omissions of material facts required to be stated in order to make the statements contained therein not misleading.

285. The Underwriter Defendants did not exercise such due diligence and failed to conduct a reasonable investigation. In the exercise of reasonable care, these Defendants should have known of the false statements and omissions contained in or omitted from the Registration Statements filed in connection with the Securitizations, as set forth herein.

286. By virtue of the foregoing, Freddie Mac sustained substantial damages, including depreciation in the value of the Certificates, as a result of the misstatements and omissions in the

Registration Statements. Plaintiff is entitled to damages, jointly and severally, from each of the Underwriter Defendants.

287. Based on the foregoing, the Underwriter Defendants are jointly and severally liable for their wrongdoing.

SECOND CAUSE OF ACTION

Violation of Section 12(a)(2) of the Securities Act of 1933 (Against Defendants Ally Securities, JPMSI, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

288. Plaintiff realleges paragraphs 1 through 176 as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

289. This claim is brought by Plaintiff pursuant to Section 12(a)(2) of the Securities Act of 1933 and is asserted on behalf of Freddie Mac, which purchased the Certificates issued pursuant to the Registration Statements in the Securitizations listed in paragraph 47.

290. The Underwriter Defendants are prominently identified as underwriters in each of the Prospectuses (which include the Prospectus Supplements) used to sell the Certificates. The Underwriter Defendants offered, promoted, and/or sold the Certificates publicly, including selling to Freddie Mac their Certificates, as set forth in the "Plan of Distribution" or "Underwriting" sections of the Prospectuses. The Underwriter Defendants offered, promoted, and/or sold the Certificates to Freddie Mac as specified in Tables 1, *supra* at paragraph 47, and Table 10, *supra* at paragraph 172, respectively.

291. The Underwriter Defendants offered, promoted, and/or sold the Certificates to Freddie Mac by means of the Prospectuses that contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. The Underwriter Defendants successfully solicited

Freddie Mac's purchases of the Certificates, and generated millions of dollars in commissions in connection with the sale of the Certificates.

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

293. The Underwriter Defendants actively participated in the solicitation of Freddie Mac's purchase of the Certificates, and did so in order to benefit themselves. Such solicitation included assisting in preparing the Registration Statements, filing the Registration Statements, and/or assisting in marketing and selling the Certificates.

294. Each of the Prospectuses contained material misstatements of fact and omitted information necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Prospectuses.

295. The untrue statements of material facts and omissions of material fact in the Registration Statements, which include the Prospectuses, are set forth above in Sections I.C. & I.D. and Appendix A and pertain to compliance with underwriting guidelines, occupancy status, and loan-to-value ratios.

296. The Underwriter Defendants offered and sold the Certificates directly to Freddie Mac, pursuant to the false and misleading Prospectuses.

297. The Underwriter Defendants owed to Freddie Mac a duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses, to ensure that such statements were true, and to ensure that there was no omission of a material fact required to be stated in order to make the statements contained therein not misleading. The Underwriter Defendants failed to exercise such reasonable care, and in the exercise of reasonable care should

have known that the Prospectuses contained untrue statements of material facts and omissions of material facts at the time of the Securitizations as set forth above.

298. Freddie Mac did not know of the misstatements and omissions contained in the Prospectuses at the time they purchased the Certificates. If Freddie Mac had known of those misstatements and omissions, it would not have purchased the Certificates.

299. Freddie Mac acquired the Certificates in the primary market pursuant to the Prospectuses.

300. Freddie Mac sustained substantial damages in connection with its investments in the Certificates and has the right to rescind and recover the consideration paid for the Certificates, with interest thereon. Plaintiff hereby seeks rescission and makes any necessary tender of its Certificates. In the alternative, Plaintiff seeks damages according to proof.

THIRD CAUSE OF ACTION

Violation of Section 15 of the Securities Act of 1933
(Against GMACM and Ally Financial)

301. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

302. This claim is brought under Section 15 of the Securities Act of 1933, 15 U.S.C. §77o (“Section 15”), against GMACM and Ally Financial for controlling-person liability with regard to the Section 11 and Section 12(a)(2) causes of actions set forth above.

303. The Ally Sponsor was the sponsor for all 21 Securitizations carried out pursuant to the Registration Statements filed by the Ally Depositors (as specified in Table 1, *supra* at paragraph 47), and culpably participated in their violations of Sections 11 and 12(a)(2) by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the

structure of the Securitizations, selecting the Ally Depositors as special-purpose vehicles, and selecting the Underwriter Defendants as underwriters. In its role as sponsor, the Ally Sponsor knew and intended that the mortgage loans it purchased would be sold in connection with the securitization process, and that certificates representing the ownership interests of investors in the mortgages would be issued by the relevant trusts.

304. The Ally Sponsor sold the mortgage loans to the Ally Depositors (as specified in Table 1, *supra* at paragraph 47), and conveyed the mortgage loans to the Ally Depositors pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. RFC controlled all aspects of the business of the Ally Depositors, who were special-purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. As set forth in paragraph 63, *supra*, the officers and directors of the Ally Sponsor overlapped with the officers and directors of the Ally Depositors. In addition, the Ally Sponsor was able to, and did in fact, control the contents of the Registration Statements filed by the Ally Depositors, including the Prospectuses and Prospectus Supplements that contained material misstatements of fact and omitted facts necessary to make the contents therein not misleading.

305. GMAC-RFC is the corporate parent of, and controlled the business operations of, the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMAC-RFC overlapped with the officers and directors of the Ally Depositors. As the sole corporate parent of the Ally Sponsor and Ally Depositors, GMAC-RFC had the practical ability to direct and control the actions of the Ally Sponsor and Ally Depositors in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of the Ally Sponsor and Ally Depositors.

306. GMAC-RFC oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

307. ResCap wholly owns GMAC-RFC and is thus, a parent of RFC and the Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of ResCap overlapped with the officers and directors of GMAC-RFC and the Ally Depositors. ResCap oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

308. Defendant GMACM wholly owns ResCap, and is thus, a parent of GMAC-RFC, RFC, and the Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMACM overlapped with the officers and directors of ResCap. GMACM oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

309. Defendant Ally Financial wholly owns GMACM and Ally Securities and is the ultimate parent of ResCap, GMAC-RFC, the Ally Sponsor, and the Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of Ally Financial overlapped with the officers and directors of GMACM and ResCap. As the sole corporate parent of Ally Securities, Ally Financial had the practical ability to direct and control the actions of Ally Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Ally Securities in connection with the issuance and sale of the Certificates. Ally culpably

participated in the violations of Section 11 and 12(a)(2) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

310. Ally Financial and GMACM are controlling persons within the meaning of Section 15 by virtue of their actual power over, control of, ownership of, and/or directorship of the Ally Sponsor, Ally Securities, and Ally Depositors at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

311. Freddie Mac purchased the Certificates in the primary market. The Certificates were issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, which at the time they became effective, contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Registration Statements.

312. Freddie Mac did not know of the misstatements and omissions in the Registration Statements; had Freddie Mac known of those misstatements and omissions, it would not have purchased the Certificates.

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

FOURTH CAUSE OF ACTION

Primary Violations of the Virginia Securities Act (Against Ally Securities, JPMSI, Credit Suisse, RBS, Citi, Barclays, UBS and Goldman Sachs)

314. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

315. This claim is brought by Plaintiff pursuant to Section 13.1-522(A)(ii) of the Virginia Code and is asserted on behalf of Freddie Mac with respect to those Certificates identified above that were purchased by Freddie Mac and issued pursuant to the Registration Statements.

316. The Underwriter Defendants (as specified in Table 1, *supra* at paragraph 47) made false and materially misleading statements in the Prospectuses for the Securitizations effected under the Shelf Registration Statements.

317. The Underwriter Defendants are prominently identified in the Prospectuses, the primary documents that they used to sell the Certificates. The Underwriter Defendants offered the Certificates publicly, including selling to Freddie Mac the Certificates, as set forth in the "Method of Distribution" or equivalent underwriting section of each Prospectus.

318. The Underwriter Defendants offered and sold the Certificates to Freddie Mac by means of the Prospectuses, which contained untrue statements of material facts and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. The Underwriter Defendants reviewed and participated in drafting the Prospectuses.

319. The Underwriter Defendants successfully solicited Freddie Mac's purchases of the Certificates. The Underwriter Defendants were paid a substantial commission based on the amount it received from the sale of the Certificates to the public.

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

321. The Underwriter Defendants actively participated in the solicitation of the Freddie Mac's purchase of the Certificates, and did so in order to benefit itself. Such solicitation

included assisting in preparing the Registration Statements, filing the Registration Statements, and assisting in marketing the Certificates.

322. Each of the Prospectuses contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Prospectuses, and specifically to Freddie Mac.

323. The untrue statements of material facts and omissions of material facts in the Registration Statements, which include the Prospectuses, are set forth above, and include compliance with underwriting guidelines, occupancy status, loan-to-value ratios, and accurate credit ratings.

324. The Underwriter Defendants offered and sold the Certificates directly to Freddie Mac pursuant to the materially false, misleading, and incomplete Prospectuses.

325. The Underwriter Defendants owed to Freddie Mac, as well as to other investors in these trusts, a duty to make a reasonable and diligent investigation of the statements contained in the Prospectuses, to ensure that such statements were true, and to ensure that there was no omission of a material fact required to be stated in order to make the statements contained therein not misleading.

326. The Underwriter Defendants failed to exercise such reasonable care. These Defendants in the exercise of reasonable care should have known that the Prospectuses contained untrue statements of material facts and omissions of material facts at the time of the Securitizations, as set forth above.

327. In contrast, Freddie Mac did not know, and in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectuses at the time it

purchased the Certificates. If Freddie Mac had known of those untruths and omissions, it would not have purchased the Certificates.

328. Freddie Mac sustained substantial damages in connection with its investments in the Certificates and has the right to rescind and recover the consideration paid for the Certificates, with interest thereon. Plaintiff hereby seeks rescission and makes any necessary tender of its Certificates. In the alternative, Plaintiff seeks damages according to proof.

FIFTH CAUSE OF ACTION

Controlling Person Liability Under the Virginia Securities Act
(Against GMACM and Ally Financial)

329. Plaintiff realleges paragraphs 1 through 176 above as if fully set forth herein. For purposes of this cause of action, Plaintiff hereby expressly excludes any allegation that could be construed as sounding in fraud.

330. This claim is brought under Section 13.1-522(C) of the Virginia Code and is asserted on behalf of Freddie Mac, which purchased the Certificates (identified in Table 10, *supra* at paragraph 172) that were issued pursuant to the Registration Statements. This claim is brought against GMACM and Ally Financial for controlling-person liability with regard to the claim brought by Plaintiff pursuant to Section 13.1-522(A)(ii).

331. The Ally Sponsor was the sponsor for all 21 Securitizations carried out pursuant to the Registration Statements filed by the Ally Depositors (as specified in Table 1, *supra* at paragraph 47), and culpably participated in their violations of Section 13.1-522(A)(ii) by initiating these Securitizations, purchasing the mortgage loans to be securitized, determining the structure of the Securitizations, selecting the Ally Depositors as special-purpose vehicles, and selecting the Underwriter Defendants as underwriters. In its role as sponsor, the Ally Sponsor knew and intended that the mortgage loans it purchased would be sold in connection with the

securitization process, and that certificates representing the ownership interests of investors in the mortgages would be issued by the relevant trusts.

332. The Ally Sponsor sold the mortgage loans to the Ally Depositors (as specified in Table 1 *supra* paragraph 47), and conveyed the mortgage loans to the Ally Depositors pursuant to an Assignment and Recognition Agreement or a Mortgage Loan Purchase Agreement. The Ally Sponsor controlled all aspects of the business of the Ally Depositors, who were special-purpose entities created for the purpose of acting as a pass-through for the issuance of the Certificates. As set forth in paragraph 63, *supra*, the officers and directors of the Ally Sponsor overlapped with the officers and directors of the Ally Depositors. In addition, the Ally Sponsor was able to, and did in fact, control the contents of the Registration Statements filed by the Ally Depositors, including the Prospectuses and Prospectus Supplements that contained material misstatements of fact and omitted facts necessary to make the contents therein not misleading.

333. GMAC-RFC is the corporate parent of, and controlled the business operations of, the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMAC-RFC overlapped with the officers and directors of the Ally Depositors. As the sole corporate parent of the Ally Sponsor and Ally Depositors, GMAC-RFC had the practical ability to direct and control the actions of the Ally Sponsor and Ally Depositors in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of the Ally Sponsor and Ally Depositors.

334. GMAC-RFC oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

335. ResCap wholly owns GMAC-RFC and is thus, a parent of the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of ResCap overlapped with the officers and directors of GMAC-RFC and the Ally Depositors. ResCap oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

336. Defendant GMACM wholly owns ResCap, and is thus, a parent of GMAC-RFC, the Ally Sponsor and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of GMACM overlapped with the officers and directors of ResCap. GMACM culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans' characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

337. Defendant Ally Financial wholly owns and controls GMACM and Ally Securities and is the ultimate parent of GMACM, ResCap, GMAC-RFC, the Ally Sponsor, and Ally Depositors. As set forth in paragraph 80, *supra*, the officers and directors of Ally Financial overlapped with the officers and directors of GMACM and ResCap. As the sole corporate parent of Ally Securities, Ally Financial had the practical ability to direct and control the actions of Ally Securities in issuing and selling the Certificates, and in fact exercised such direction and control over the activities of Ally Securities in connection with the issuance and sale of the Certificates. Ally Financial culpably participated in the violations of Section 13.1-522(A)(ii) set forth above. It oversaw the actions of its subsidiaries and allowed them to misrepresent the mortgage loans'

characteristics in the Registration Statements and established special-purpose financial entities such as the Ally Depositors and the issuing trusts to serve as conduits for the mortgage loans.

338. Ally Financial and GMACM are controlling persons within the meaning of Section 13.1-522(C) of the Virginia Code by virtue of their actual power over, control of, ownership of, and/or directorship of the Ally Sponsor, Ally Securities, and Ally Depositors at the time of the wrongs alleged herein and as set forth herein, including their control over the content of the Registration Statements.

339. Freddie Mac purchased the Certificates, which were issued pursuant to the Registration Statements, including the Prospectuses and Prospectus Supplements, which contained material misstatements of fact and omitted facts necessary to make the facts stated therein not misleading. The facts misstated and omitted were material to a reasonable investor reviewing the Registration Statements, and specifically to Freddie Mac.

340. Freddie Mac did not know, and in the exercise of reasonable diligence could not have known, of the misstatements and omissions in the Registration Statements; had Freddie Mac known of those misstatements and omissions, it would not have purchased the Certificates.

341. Freddie Mac has sustained substantial damages as a result of the misstatements and omissions in the Registration Statements, for which it is entitled to compensation, and for which the Control Persons are jointly and severally liable.

SIXTH CAUSE OF ACTION

Common Law Fraud
(Against Ally Securities, JPMSI and Goldman Sachs)

342. Plaintiff realleges paragraphs 1 through 276 as if fully set forth herein.

343. Freddie Mac was fraudulently induced to purchase the Certificates by the Fraud Defendants' misrepresentations and omissions of material facts.

344. The material representations set forth above and in Appendix A and Appendix B were fraudulent, and the Fraud Defendants' representations falsely and misleadingly misrepresented and omitted material statements of fact. The representations at issue are identified in Sections I.C. and I.D. and in Appendix A and Appendix B.

345. The Fraud Defendants knew their representations and omissions were false and/or misleading at the time they were made, or made such representations and omissions recklessly without knowledge of their truth or falsity.

346. Each of the Fraud Defendants made the misleading statements with the intent and for the purpose of inducing Freddie Mac to purchase the Certificates.

347. Freddie Mac justifiably relied on the Fraud Defendants' false representations and misleading omissions.

348. But for the Fraud Defendants' fraudulent misrepresentations and omissions regarding the Fraud Defendants' underwriting practice and quality of the loans making up the securitizations, Freddie Mac would not have purchased the Certificates.

349. As a result of the foregoing, Freddie Mac has suffered damages in an amount to be proven at trial. Plaintiff hereby demands rescission and makes any necessary tender of the Certificates.

350. Because the Fraud Defendants defrauded Freddie Mac willfully and wantonly, and because, by their acts, the Fraud Defendants knowingly affected the general public, including but not limited to all persons with interest in the Certificates, Plaintiff is entitled to recover punitive damages.

SEVENTH CAUSE OF ACTION

Aiding and Abetting Fraud
(Against Ally Financial and GMACM)

351. Plaintiff realleges paragraphs 1 through 276 as if fully set forth herein.

352. This is a claim for aiding and abetting fraud against Ally and GMACM arising from the intentional and substantial assistance each rendered to the Fraud Defendants to advance the fraud on Freddie Mac.

353. Through overlapping personnel, strategies, and intertwined business operations, and the fluid transfer of information among the Defendants, Ally Financial and GMACM knew of the Fraud Defendants', Ally Sponsor's, and Ally Depositors' fraudulent scheme to offload the credit risks of non-agency loans to investors, including Freddie Mac. Each of these Defendants acted in concert to defraud Freddie Mac.

354. Ally Financial and GMACM through their employees and representatives, substantially assisted in, among other things: (a) the extension of warehouse loans to originators; (b) acquiring the underlying mortgage loans from the originators; (c) packaging up those loans into pools which were deposited into the Trust; (d) waiving into the collateral pools of the Trusts loans previously rejected by Clayton or otherwise non-compliant loans, despite the lack of compensating factors; (e) creating and structuring the Trusts whose Certificates would be sold to investors including Freddie Mac; and (f) preparing the Registration Statements which would be used to market the Certificates.

355. The Fraud Defendants, Ally Sponsor, and Ally Depositors would not have been able to implement their fraud against Freddie Mac without such substantial assistance.

356. Through overlapping personnel, strategies, and intertwined business operations, and the fluid transfer of information among the Defendants, each of the Fraud Defendants knew of the fraud perpetrated on Freddie Mac.

357. The Fraud Defendants, Ally Sponsor, and Ally Depositors could not have perpetrated their fraud without the substantial assistance of Ally Financial and GMACM, in the form of financial, strategic, and marketing assistance for their scheme. Through the fraudulent sale of the Certificates to the Freddie Mac, the Fraud Defendants, Ally Sponsor, and Ally Depositors were able to materially improve their financial condition by reducing their exposure to declining subprime-related assets and garnering millions of dollars in fees from the structuring and sale of the Certificates.

358. As a direct, proximate, and foreseeable result of the conduct of Ally Financial and GMACM Freddie Mac has suffered and will continue to suffer damages in an amount to be proven at trial. Plaintiff hereby demands rescission and makes any necessary tender of the Certificates.

359. Because the Fraud Defendants defrauded Freddie Mac willfully and wantonly, and because, by their acts, the Fraud Defendants knowingly affected the general public, including but not limited to all persons with interests in the Certificates, Plaintiff is entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that judgment be entered:

An award in favor of Plaintiff against all Defendants, jointly and severally, for:

a. Rescission and recovery of the consideration paid for the Certificates, with interest thereon (in connection with this request for rescission, the Certificates are hereby tendered to the Defendants);

b. Freddie Mac's monetary losses, including any diminution in value of the Certificates, lost principal and lost interest payments thereon, and consequential damages, including the cost of investigating the misrepresentations and performance of the underlying collateral to the Certificates, as well as any increased coupon payment on Freddie Mac's senior preferred stock held by the U.S. Treasury Department, arising from losses on the Certificates;

c. Punitive damages;

d. Attorneys' fees and costs;

e. Prejudgment interest at the maximum legal rate; and

f. Such other and further relief as the Court may deem just and proper.

DATED: New York, New York
June 13, 2012

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July 30, 2012

By Hand Delivery and Email

Hon. Denise L. Cote
United States District Court
500 Pearl Street, Room 1610
New York, NY 10007-1312

Re: *Federal Housing Finance Agency v. Ally Financial, Inc., et al.*, 11 Civ. 7010 (DLC)

Dear Judge Cote:

We represent plaintiff Federal Housing Finance Agency ("FHFA") in the above-referenced action. Pursuant to the Court's Order, dated July 24, 2012, we write to seek the Court's assistance in resolving certain discovery disputes between FHFA and defendants Ally Financial Inc. ("AFI") and GMAC Mortgage Group, Inc. ("GMACM," together with AFI, "Ally").

On July 17, 2012, you inquired whether documents existed that FHFA needed from Ally's debtor affiliate, ResCap beyond loan tapes and loan files and gave FHFA permission to take a 30(b)(6) deposition of Ally to clarify the issue. (7/17/12 Tr. 20: 12-15, 26:24-27:3). On July 19, plaintiff served its 30(b)(6) deposition notice, which set forth topics aimed at determining, primarily (i) what categories of responsive documents are in the possession, custody, or control of the Debtors and/or Ally; (ii) any purported burden on the Debtors to produce such documents; and (iii) the extent to which Ally has the legal or practical ability to obtain those documents from the Debtors. (*See* Ex. A).

Although plaintiff informed Ally of its willingness to meet and confer regarding the 30(b)(6) deposition notice, Ally has not provided any information on which to have meaningful discussion nor has it served responses and objections to the notice. Ally advised us after the close of business on Friday that it would not be able to meet and confer until 2 p.m. today. Ally has not advised when it will produce a witness competent to testify regarding the Debtors' possession, custody, or control of documents, or any other parameters regarding the notice.

Ally's delay is extremely prejudicial to plaintiff because Ally has taken the position that the documents, including emails, of the Debtors' current or former employees are not within Ally's possession, custody, or control. Ally will only search the emails and electronically stored information of **four** custodians and refuses to search that of the Debtors' current or former employees—despite the fact that Ally identified at least **36** employees of Residential Funding

Corp. ("RFC") as individuals who are likely to have discoverable information. (Exs. B, C). Ally's position is unsupportable. For example, if the emails of former RFC employees are retained on a server in a building owned by Ally, Ally should be ordered to search and produce responsive emails. The untenable nature of Ally's position is highlighted by one of its own proposed custodians, Jim Young, whom Ally identified as the former CFO of ResCap. (Ex. D; Ex. C at *2 (identifying Young's role)).

As Your Honor aptly observed, "we need to get all the critical documents produced so that they can be analyzed before the depositions begin in January." (7/17/12 Tr. 27:1-3). Ally's refusal to provide information or even make itself available to meet and confer until 2 p.m. today, renders plaintiff unable to articulate specific disputes concerning the 30(b)(6) deposition of Ally. However, to the extent these issues remain outstanding after the meet and confer today, at tomorrow's conference, we would ask you to resolve any remaining disagreements concerning the 30(b)(6) deposition, and direct Ally to produce competent witnesses by August 6, at the latest, for the topics set forth in plaintiff's notice. The Bankruptcy Court is scheduled to hear FHFA's application for loan tapes and loan files on August 14, and FHFA needs time to supplement its application to obtain additional documents from the Debtors based on the information provided at the 30(b)(6) deposition, if so directed by this Court.

Respectfully,

Marc E. K

Marc E. Kasowitz

cc: Counsel of record (via email)

EXHIBIT 2

Mongelluzzo Declaration

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered

DECLARATION OF JOHN G. MONGELLUZZO

I, John G. Mongelluzzo, declare:

1. I am Managing Director at Residential Capital, LLC, a Debtor in this bankruptcy case. (The Debtors and Debtors in Possession are herein collectively referred to as "ResCap.") In that role, I am responsible for capital markets operations. I have been employed at ResCap since April 2009.

2. I head a group of eighty-seven employees who are responsible for capital markets operations. Thirteen of these employees staff the Fulfillment Group, which tracks, researches, and otherwise manages the files ResCap maintains to document the loans it originates, services, and securitizes.

3. ResCap's principal business is brokering, originating, purchasing, selling, securitizing, and servicing residential mortgage loans throughout the United States. For example, ResCap is the fifth largest servicer of residential mortgage loans in the United States, servicing more than 2.4 million mortgage loans.

4. For every loan originated, serviced, or securitized by ResCap, there is an attendant "Loan File," or a file maintained in the course of originating, approving, funding, or servicing the loan that, generally speaking, documents the existence and history of that loan. Because of the scope of ResCap's business, as indicated above, ResCap maintains millions of Loan Files.

5. The job of filing and tracking these Loan Files falls to the Fulfillment Group. Of the Fulfillment Group's thirteen members, four are dedicated to foreclosures, only researching Loan Files and executing affidavits for use in foreclosure proceedings. The remaining nine employees respond to other requests for Loan Files, such as the Federal Housing Finance Agency's requests for Loan Files at issue here.

6. I understand that, in the present case, the Federal Housing Finance Agency ("FHFA") is seeking various documents from ResCap, including many Loan Files. Specifically, it is my understanding that FHFA seeks Loan Files for loans that were included in twenty-one securitizations at issue in FHFA's lawsuit against Ally Financial, Inc., Ally Securities, and GMAC Mortgage Group. These securitizations I understand consist of approximately 105,000 loans and were sponsored by Residential Funding Company, LLC ("RFC"), one of ResCap's two primary operating subsidiaries that acquired and sold mortgage loans in "private label" securitizations. To my knowledge, FHFA has not specifically stated how many Loan Files it is requesting at this time from ResCap. However, for purposes of this declaration, whether FHFA

requests 105,000 Loan Files or some lesser number, the analysis regarding the burden on ResCap to produce Loan Files is the same.

I. COMPOSITION OF LOAN FILES

7. In its request for Loan Files, I understand that FHFA has specifically requested "files that are aggregated and maintained in the course of originating, underwriting, approving, and funding the loan," and "files that are compiled and used in the course of servicing the loan." (Doc. 859 ¶ 5.) These sets of documents are components of Loan Files, and in the industry they are known as (1) origination files and (2) servicing files.

A. The Origination File

8. A Loan File is first started when a loan is originated. Loan documentation created during origination and prior to closing is considered part of the origination file. These documents generally include, for example, loan applications, appraisals, credit reports, underwriter reports, legal and compliance disclosures, income documentation, and asset verifications.

9. If a ResCap entity originated the loan, then ResCap prepared the origination file. If ResCap did not originate the loan but included that loan in one of its securitizations, then that loan would have been originated by a third party and then subsequently purchased by ResCap. For any loan originated by a third party, that third party would have created the origination file, and ResCap would have acquired that file upon purchasing the loan.

B. The Servicing File

10. After a loan is originated or—for those loans originated by third parties—purchased by ResCap, the loan is transferred to ResCap's servicing platform. At this point, a second file, the servicing file, is created.

11. The servicing file is comprised of post-closing documents, such as servicing notes, payment histories, borrower correspondence, foreclosure documentation, bankruptcy

information, insurance claims, and other any post-closing information received from the borrower.

II. LOCATION OF LOAN FILES

12. For a variety of reasons set forth below, for loans of the vintage at issue in the FHFA litigation, it is a labor intensive and time-consuming process to locate and compile these constituent parts to make a complete Loan File.

A. Electronic and Hard Copy File Formats

13. First, the origination and servicing files for most Loan Files include both electronic and hard copy documents.

14. For a period of time, ResCap maintained all of its Loan Files in hard copy format. At some time prior to my arrival at ResCap, ResCap began to image and store electronically the loan documents for new and existing files as it received them. These documents are stored on ResCap's FileNet system. Certain servicing documents, such as payment history and servicing notes, are electronically stored on a separate system maintained by the servicing group called MortgageServ.

15. However, ResCap still maintains hard copies of many documents. For example, paper copies of loan-related documents are arriving in ResCap's offices all the time, and it is simply not practicable to image and store all of them electronically.

16. Also, while some older hard copy files may have been pulled from storage and imaged over the course of the past few years for different reasons—for example, for a foreclosure proceeding—ResCap has not electronically imaged all old paper documents, because that effort would be a mammoth undertaking and would be prohibitively expensive.

17. Due to the transition between hard and electronic copies, there are many Loan Files for which ResCap maintains some hard copy documents and some electronic documents. Thus, in

order to compile a full Loan File, we need to locate the hard copy records and the electronic records, and match the two together.

18. Most of the Loan Files sought by FHFA are likely comprised of both hard copy and electronic files because of their vintage, but we cannot know for certain until we search our databases for each Loan File.

B. Search Capabilities

19. Second, someone in the Fulfillment Group has to locate each Loan File and determine whether the components of such Loan File are stored electronically and/or in hard copy. That effort is not a fully automated process.

20. ResCap maintains the location information for each piece of a Loan File in a series of fourteen computer databases. This information is indexed by loan number. To find the components of any one Loan File, the Fulfillment Group must know the loan number and input that loan number into all fourteen different databases, one database at a time.

21. This process of searching each and every database for each individual loan is the only way to identify the location of the Loan File and its constituent parts. There is simply no way to glean that information from the loan number, the loan's vintage, or the securitization.

22. The Fulfillment Group can search each database for Loan Files in bulk by loan number. In other words, the Fulfillment Group can run one search per database for all of the Loan Files, once they have the corresponding loan number for each file. This process would require having all the loan numbers for the Loan Files at issue. Someone in the Fulfillment Group would have to create a spreadsheet containing all the loan numbers for the search. Simply identifying the loan numbers and creating this spreadsheet to define the search parameters for the thousands of loans at issue would take significant time.

23. For bulk searches, once the spreadsheet is compiled, the Fulfillment Group would then upload it to a computer system that would search for each loan number in the fourteen databases, one database at a time.

24. The time it takes to search in this manner dramatically increases as the volume of loan numbers input into the search system increases. For example, based on my experience, to search for 105,000 loans in just one database would take approximately one night of computing time. For such large searches, we have to employ batch processing overnight to avoid overloading our computer systems during the day. To search through all fourteen databases, therefore, would take approximately two weeks of nearly non-stop nightly batch processing that would, for the most part, lock out my staff from using their computer systems during that processing time.

25. This problem is compounded by the reality of scarce computing time: we simply do not have two weeks of uninterrupted computing time to dedicate to any project. Our resources are already stretched thin as a result of (1) the daily searches attendant to ResCap's ongoing business operations and (2) the other large searches that must be completed as part of ResCap's restructuring efforts, which I will describe in further detail below. Any additional large, bulk searches for Loan Files would have to be prioritized and scheduled around those processes.

26. Moreover, the search process is not complete once the computer systems have finished processing the search requests in all databases. Each database search simply returns Loan File location information for each loan number we input. But each database only contains certain loan numbers, so we must reconcile the search results from each database against every other database to ensure that we have actually found each Loan File. This means the Fulfillment Group must cross-check the results of all fourteen bulk searches. This too takes significant time.

27. Even then, bulk searches of this type are rarely 100% accurate: the system invariably returns false-hits when we search in bulk. For example, our search result may show that some components of Loan Files appear in our system in three different locations; some may come back as not being in the system at all. Again, the Fulfillment Group would have to spend considerable time tracking down these errant Loan Files.

C. Hard Copy Storage Locations

28. Third, ResCap stores its hard copy Loan Files in multiple locations across the country.

29. ResCap contracts with two primary vendors, Iron Mountain and Kenwood Records, plus a few ancillary vendors to store hard copy Loan Files. These vendors own and operate seven or eight different storage sites for origination files and servicing files. The sites are located in California, Illinois, Minnesota, Pennsylvania, and Texas, among other places around the country.

30. Loan Files are not stored by securitization, so Loan Files for loans in one securitization could therefore be in a number of different locations.

31. Each storage site is a large warehouse holding boxes of documents—anywhere from hundreds of thousands to millions of boxes—for various clients. These sites are not solely dedicated to housing ResCap documents. ResCap's millions of Loan Files are stored in boxes among the millions of other boxes according to the vendors' own filing systems.

32. ResCap must therefore rely on its storage vendors to locate, pull, and ship documents. For example, even if today the Fulfillment Group knew which vendors and which storage sites held each Loan File at issue in the FHFA lawsuit, it would still take significant time for our vendors to physically locate and pull those files. Precisely how long would largely depend on the resources the vendors have on hand to devote to the project. In addition, as I will detail further below, ResCap must pay the vendors to retrieve the loan files, and at times the vendors charge ResCap a premium for their efforts.

III. BURDENS AND COSTS OF LOAN FILE PRODUCTION

33. Due to the nature of the process described above, finding, collecting, and producing Loan Files is very labor intensive, time consuming, and expensive.

34. Again, in order to simply identify the location of a Loan File—or, more likely, because the constituent parts are generally not stored together, the various locations of a Loan File—the Fulfillment Group must enter each and every loan number into the fourteen databases, one database at a time. The computing time alone to search for 105,000 loans would take at least two weeks or potentially longer given the Fulfillment Group's other commitments to supporting ResCap.

35. Once the searches are completed, the Fulfillment Group would have to review and reconcile the search results—and that does not include considerable time spent chasing the false-hits that large bulk searches invariably return.

36. Once my team has reconciled the search results, we can then begin retrieving components of Loan Files that are identified as electronically stored on ResCap's systems. At the same time, we would also send requests to the various vendors and facilities identified as the custodians of any hard copy components of the Loan Files.

A. Compiling Electronic Files

37. For any piece of a Loan File that is stored electronically, my team must upload the image files from ResCap's FileNet system to a viewer program. The viewer program allows our staff to review images of pages contained in that piece of the Loan File.

38. After the Fulfillment Group has uploaded the image files and reviewed the images to confirm that we have the piece of the Loan File we searched for, team members can burn those image files to CD to be sent to, in this case, attorneys or e-discovery vendors.

39. This too takes a great deal of time. The Fulfillment Group has the ability to mass-import and burn image files. But they are generally limited to importing only five hundred files at a time.

40. Moreover, uploading the electronic images we have on hand is usually not the end of the story, as the vast majority of Loan Files are comprised of both electronic and hard copy files, as outlined above.

B. Compiling Hard Copy Files

41. If the databases tell the Fulfillment Group that all or part of a Loan File is stored in hard copy, we will contact the vendor or vendors who have custody of the relevant pieces of the Loan File and tell them what we would like them to pull from each storage facility.

42. The vendor must identify in their own filing system which box contains the relevant files. They must locate that box in the storage facility, pull the box, pull the relevant file from the box, and work with members of the Fulfillment Group to confirm that the files they obtain respond to our request.

43. Once the correct box and file are confirmed, the vendor generally ships the file to another vendor, Affiliated Computer Services ("ACS"), a subsidiary of Xerox, for imaging. On average, our storage vendors will charge $11 to $12 to search for, pull, ship, retrieve, and re-shelve a Loan File (though, as detailed below, these costs increase as volume increases).

44. Once ACS receives the file, ACS will work to image it along with the many other imaging projects it has for ResCap. These other projects are considerable. In my experience, ACS has imaged approximately 150 to 175 million pages of documents per year for ResCap alone. For that reason, ACS generally must spread large production requests across days, weeks, or even months of workflow in order to avoid delaying ResCap's daily business operations. Also, ResCap cannot simply speed up the process by contracting with more vendors. Each of

ResCap's vendors must be specially qualified to handle borrowers' sensitive personally identifiable information contained in Loan Files—like social security, bank account, and credit card numbers—and that qualification is itself difficult and time consuming to obtain.

45. Once ACS images a Loan File, the result is electronic image files that ACS can "push" to ResCap's FileNet via a secure internet connection. ACS then returns the hard copy file to the storage vendor for re-shelving. On average, ACS will charge $12 to $13 for imaging costs per Loan File.

46. As with the electronic files discussed above, once ACS pushes image files to FileNet, the Fulfillment Group can upload those images to the viewer program and review them. They can then burn the image files to CD to be shipped to ResCap's attorneys or e-discovery vendors.

C. Overall Burden and Costs

47. All of this work takes a substantial amount of time. How quickly our vendors can respond to our requests will depend largely on the size of the request and the resources the vendor has available at any one time to spend on that request. Even if ResCap is willing and able to pay a premium for a vendor's overtime and additional resources, at some point it is not logistically feasible for a vendor to dedicate more people and resources to a job. For example, only so many employees and forklifts can work at one time in a packed warehouse, and ACS only has so many scanners to image documents.

48. The costs and burdens of this process are staggering. In the *MBIA Insurance Corp. v. Residential Funding Company, LLC* lawsuit, for example, the Fulfillment Group produced roughly 64,000 Loan Files over a period of nine months. Notably, that production occurred prior to the bankruptcy filing, and even then it was not possible to produce documents any faster without impeding ResCap's daily operations.

49. Besides the tremendous amount of time that the collection and processing of Loan Files imposes on my team, and the attendant cost of that labor, the company incurs substantial out-of-pocket costs.

50. For Loan Files stored in hard copy, as indicated above, additional costs include searching, pulling, shipping, retrieving, and re-shelving costs incurred by our storage vendors—which run around $12 to $13 per Loan File—and shipping and imaging costs incurred by ACS—which also run around $12 to $13 per Loan File.

51. For electronically stored files—which includes hard copy files that have been electronically imaged under the process described above and files already stored electronically on FileNet—those costs include approximately twenty-five cents per Loan File to burn CDs, plus an additional $1.25 per Loan File in other internal operating costs. Those costs may seem small on a per-file basis, but producing 105,000 Loan Files will cost ResCap out-of-pocket approximately $157,500 on just this aspect of production.

52. On average, therefore, the out-of-pocket cost of collecting and preparing a single Loan File that contains any hard-copy documents—which nearly every Loan File does—is approximately $25, plus $1.50 in internal costs. Again, this estimate does not include the costs of labor associated with ResCap employees. And, as discussed below, these estimates for average costs are likely substantially lower than the actual costs of producing the Loan Files requested by the FHFA will be due to the sheer volume of what they have requested.

53. It is important to note that the estimate of more than $25 assumes our vendors are retrieving and processing a relatively low volume of Loan Files under our current service-level agreements. Under those agreements, as volume increases, price increases. For example, under current pricing structures, Kenwood and Iron Mountain will pull 250 boxes for us per week—

which could contain 250 distinct Loan Files or pieces of Loan Files, depending on their size. The $25 figure quoted above is based on these base contractual rates. As soon as we ask for more than 250 boxes per week, the vendors will charge for additional staffing and overtime.

54. Although the average cost per Loan File will vary when we request more than 250 boxes per week, based on Loan File size, location, and volume of Loan Files we request, historically it has cost $75 to $100 per Loan File when we exceed our contractual limit of 250 boxes. Again, these are out-of-pocket costs to ResCap. So a large scale production of even 40,000 Loan Files pulled on a short time frame could easily cost $3 million to $4 million in out-of-pocket costs.

55. It is also important to note that any costs associated with preparing and producing Loan Files for production in the context of litigation are costs incurred *after* my team has located, collected, and prepared the Loan Files and turned them over to ResCap's attorneys or e-discovery vendors, and *after* the costs described in paragraphs 50 through 54 above have been incurred.

56. I understand these additional production costs to include hosting, processing, and production fees; but those processes and costs are handled by the legal department and outside litigation counsel. Put another way, the costs I described in paragraph 52 above, *plus* the costs associated with hosting, processing, and production in the context of litigation, are the total out-of-pocket costs for producing loan files.

IV. RESTRUCTURING AND OTHER OBLIGATIONS

57. Unfortunately, as described below, right now and for the foreseeable future my team is already highly taxed because of restructuring-related obligations, among others. We simply do not have time to process a request for a substantial number of Loans Files, such as the 105,000 at issue in the FHFA lawsuit, and meet our existing restructuring-related obligations.

58. My group, among many others at ResCap, is under tremendous pressure to meet the demands of a variety of constituencies during the restructuring process and to meet ResCap's preexisting obligations under various settlements and consent agreements. Based on productivity tracking reports, I estimate that the Fulfillment Group receives tens of thousands of requests to process and produce documents every month.

59. Simply put, anytime anyone needs a Loan File (other than for purposes of a foreclosure) there are only nine employees in the Fulfillment Group who can process and respond to that request. These employees have knowledge of and access to ResCap's comprehensive filing systems and cannot be replaced or supplemented with temporary employees.

60. Among the most time-consuming and pressing of those matters that my team is intimately involved with are the following:

a. Compiling and completing certain loan files as part of the due diligence and other issues regarding the proposed sales of ResCap's servicing operations and legacy loan portfolios. For example, the Fulfillment Group is in the process of pulling and reviewing approximately 54,000 Loan Files in connection with the asset purchase agreement with Berkshire Hathaway, Inc. The Fulfillment Group is also busy researching Loan Files and clearing exceptions in connection with the proposed sales of ResCap's mortgage servicing rights, an effort that ultimately affects the value of those rights and the amount paid under any asset purchase agreements.

b. Producing documents and responding to requests for information in connection with investigations by the Creditors' Committee and the Examiner. For example, I understand the Committee is currently seeking approximately 3,000 to 5,000

Loan Files from ResCap in connection with its review and analysis of the RMBS trust settlement.

c. Assisting with data collection related to various United States government entities and governmental associations to continue to comply with obligations imposed on mortgage originators and servicers such as FNMA, Federal Home Loan Mortgage Corporation, Governmental National Mortgage Association, and Department of Housing and Urban Development.

d. Assisting with document collection and gathering to ensure compliance with the April 13, 2011 Consent Order with the Board of Governors of the Federal Reserve System.

61. These tasks are in addition to the everyday tasks the Fulfillment Group performs to support ResCap's underlying business, including gathering loan files for servicing needs, like foreclosure proceedings, loan payoffs, refinancings, and modifications.

62. Burdening the Fulfillment Group with having to collect, process, and prepare Loan Files for litigation, such as the 105,000 Loan Files at issue in the FHFA lawsuit, will put a tremendous strain on our resources and our ability to meet our other obligations.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true to the best of my knowledge, information, and belief. Executed on August 7, 2012, at Fort Washington, PA.

John G. Mongelluzzo

John G. Mongelluzzo