IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATIONAL CREDIT UNION	)	
ADMINISTRATION BOARD,	)	
as Liquidating Agent of Southwest Corporate	)	
Federal Credit Union,	)	
	)	
	)	Case No.
Plaintiff,	)	
	)	**JURY TRIAL DEMANDED**
v.	)	
	)	
RESIDENTIAL FUNDING SECURITIES, LLC,	)	
n/k/a ALLY SECURITIES, LLC,	)	
	)	
Defendant.	)	

COMPLAINT

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Plaintiff, the National Credit Union Administration Board ("NCUA Board"), brings this action in its capacity as Liquidating Agent of Southwest Corporate Federal Credit Union ("Southwest") against Residential Funding Securities, LLC n/k/a Ally Securities, LLC ("RFS"), as underwriter and seller of certain residential mortgage-backed securities ("RMBS") purchased by Southwest, and alleges as follows:

I. NATURE OF THE ACTION

1. This action arises out of the sale of RMBS to Southwest where RFS acted as underwriter and/or seller of the RMBS.

2. All of the RMBS sold to Southwest were rated as triple-A (the same rating as U.S. Treasury bonds) at the time of issuance.

3. RFS underwrote and sold the RMBS pursuant to registration statements, prospectuses, and/or prospectus supplements (collectively, the "Offering Documents"). These Offering Documents contained untrue statements of material fact or omitted to state material facts in violation of Sections 11 and 12(a)(2) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77k, 77*l*(a)(2) ("Section 11" and "Section 12(a)(2)," respectively), and the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581, § 33 ("Texas Blue Sky law").

4. The Offering Documents described, among other things, the mortgage underwriting standards of the originators who made the mortgages that were pooled and served as the collateral for the RMBS purchased by Southwest ("the Originators").

5. The Offering Documents represented that the Originators adhered to the underwriting guidelines set out in the Offering Documents for the mortgages in the pools collateralizing the RMBS.

6. In fact, the Originators had systematically abandoned the stated underwriting

guidelines in the Offering Documents. Because the mortgages in the pools collateralizing the RMBS were largely underwritten without adherence to the underwriting standards in the Offering Documents, the RMBS were significantly riskier than represented.

7. These untrue statements and omissions were material because the value of RMBS is largely a function of the cash flow from the principal and interest payments on the mortgage loans collateralizing the RMBS. Thus, the performance of the RMBS is tied to the borrower's ability to repay the loan.

8. Southwest purchased certain RMBS underwritten and/or sold by RFS as indicated in Table 1 (*infra*). RFS is therefore liable for material untrue statements and omissions of fact in the Offering Documents for these RMBS under Section 11, Section 12(a)(2) and/or the Texas Blue Sky law as indicated in Table 1 (*infra*).

Table 1

CUSIP[1]	Issuing Entity	Purchaser	Trade Date	Price Paid	Claims
74922XAA5	RALI Series 2006-QA11 Trust	Southwest	11/28/2006	$15,726,700	§ 11, § 12(a)(2) and Texas Blue Sky
74923GAC7	RALI Series 2007-QA1 Trust	Southwest	1/8/2007	$20,000,000	§ 11, § 12(a)(2) and Texas Blue Sky
74922PAC8	RALI Series 2007-QA2 Trust	Southwest	2/22/2007	$17,808,000	§ 11, § 12(a)(2) and Texas Blue Sky
74923XAD8	RALI Series 2007-QA3 Trust	Southwest	4/27/2007	$14,990,494	§ 11, § 12(a)(2) and Texas Blue Sky

9. The RMBS Southwest purchased suffered a significant drop in market value. Southwest has suffered significant losses from those RMBS purchased despite the NCUA Board's mitigation efforts.

II. PARTIES AND RELEVANT NON-PARTIES

10. The National Credit Union Administration ("NCUA") is an independent agency

[1] "CUSIP" stands for "Committee on Uniform Securities Identification Procedures." A CUSIP number is used to identify most securities, including certificates of RMBS. *See* CUSIP Number, http://www.sec.gov/answers/cusip.htm.

of the Executive Branch of the United States Government that, among other things, charters and regulates federal credit unions, and operates and manages the National Credit Union Share Insurance Fund ("NCUSIF") and the Temporary Corporate Credit Union Stabilization Fund ("TCCUSF"). The TCCUSF was created in 2009 to allow the NCUA to borrow funds from the United States Department of the Treasury ("Treasury Department") for the purposes of stabilizing corporate credit unions under conservatorship or liquidation, or corporate credit unions threatened with conservatorship or liquidation. The NCUA must repay all monies borrowed from the Treasury Department for the purposes of the TCCUSF by 2021 through assessments against all federally insured credit unions in the country. The NCUSIF insures the deposits of account holders in all federal credit unions and the majority of state-chartered credit unions. The NCUA has regulatory authority over state-chartered credit unions that have their deposits insured by the NCUSIF. The NCUA is under the management of the NCUA Board. *See* Federal Credit Union Act, 12 U.S.C. §§ 1751, 1752a(a) ("FCU Act").

11. Southwest was a federally chartered corporate credit union with its offices and principal place of business in Plano, Texas. As a corporate credit union, Southwest provided investment and financial services to other credit unions.

12. On September 24, 2010, the NCUA Board placed Southwest into conservatorship pursuant to the FCUA, 12 U.S.C. § 1751, *et seq*. On October 31, 2010, the NCUA Board placed Southwest into involuntary liquidation, appointing itself Liquidating Agent.

13. Pursuant to 12 U.S.C. § 1787(b)(2)(A), the NCUA Board as Liquidating Agent has succeeded to all rights, titles, powers, and privileges of Southwest and of any member, account holder, officer or director of Southwest, with respect to Southwest and its assets, including the right to bring the claims asserted in this action. As Liquidating Agent, the NCUA

Board has all the powers of the members, directors, officers, and committees of Southwest, and succeeds to all rights, titles, powers, and privileges of Southwest. *See* 12 U.S.C. §1787(b)(2)(A). The NCUA Board may also sue on Southwest's behalf. *See* 12 U.S.C. §§ 1766(b)(3)(A), 1787(b)(2), 1789(a)(2).

14. Prior to being placed into conservatorship and involuntary liquidation, Southwest was one of the largest corporate credit unions in the United States.

15. Any recoveries from this legal action will reduce the total losses resulting from the failure of Southwest. Losses from Southwest's failure must be paid from the NCUSIF or the TCCUSF. Expenditures from these funds must be repaid through assessments against all federally insured credit unions. Because of the expenditures resulting from Southwest's failure, federally insured credit unions will experience larger assessments, thereby reducing federally insured credit unions' net worth. Reductions in net worth can adversely affect the dividends that individual members of credit unions receive for the savings on deposit at their credit union. Reductions in net worth can also make loans for home mortgages and automobile purchases more expensive and difficult to obtain. Any recoveries from this action will help to reduce the amount of any future assessments on credit unions throughout the system, reducing the negative impact on federally insured credit unions' net worth. Recoveries from this action will benefit credit unions and their individual members by increasing net worth resulting in more efficient and lower-cost lending practices.

16. RFS, which at all times relevant hereto did business as GMAC RFC Securities, was an SEC registered broker-dealer and acted as the underwriter of the RMBS that are the subject of this Complaint as indicated in Table 1 (*supra*). RFS is now known as Ally Securities, LLC. Ally Securities, LLC is a Delaware limited liability company with its principal place of

business in New York.

III. JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to: (a) 12 U.S.C. § 1789(a)(2), which provides that "[a]ll suits of a civil nature at common law or in equity to which the [NCUA Board] shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy"; and (b) 28 U.S.C. § 1345, which provides that "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

18. Venue is proper in this District under Section 22 of the Securities Act, 15 U.S.C. § 77v(a) and/or 28 U.S.C. §1391(b)(1), because RFS is a resident of/conducts business in this District. This Court has personal jurisdiction over RFS, because it is a resident of/conducts business in this District.

IV. MORTGAGE ORIGINATION AND THE PROCESS OF SECURITIZATION

19. RMBS are asset-backed securities. A pool or pools of residential mortgages are the assets that back or collateralize the RMBS certificates purchased by investors.

20. Because residential mortgages are the assets collateralizing RMBS, the origination of mortgages commences the process that leads to the creation of RMBS. Originators decide whether to loan potential borrowers money to purchase residential real estate through a process called mortgage underwriting. The originator applies its underwriting standards or guidelines to determine whether a particular borrower is qualified to receive a mortgage for a particular property. The underwriting guidelines consist of a variety of metrics, including: the borrower's debt, income, savings, credit history and credit score; whether the property will be owner-occupied among other things. Loan underwriting guidelines are designed

to ensure that: (1) the borrower has the means to repay the loan, (2) the borrower will likely repay the loan, and (3) the loan is secured by sufficient collateral in the event of default.

21. Historically, originators made mortgage loans to borrowers and held the loans on their own books for the duration of the loan. Originators profited as they collected monthly principal and interest payments directly from the borrower. Originators also retained the risk that the borrower would default on the loan.

22. This changed in the 1970s when the Government National Mortgage Association ("Ginnie Mae"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively government sponsored enterprises or "GSEs") began purchasing "conforming" or "prime" loans —so-called because they conformed to guidelines set by the GSEs. The GSEs either sponsored the RMBS issuance (Ginnie Mae) or issued the RMBS themselves after purchasing the conforming loans (Fannie Mae and Freddie Mac). The GSEs securitized the mortgage loans by grouping mortgages into "loan pools," then repackaging the loan pools into RMBS where investors received the cash flow from the mortgage payments. The GSEs guarantee the monthly cash flow to investors on the agency RMBS.

23. More recently, originators, usually working with investment banks, began securitizing "non-conforming loans"—loans originated (in theory) according to private underwriting guidelines adopted by the originators. Non-conforming loans are also known as "nonprime loans" or "private label" and include "Alt-A" and "subprime" loans. Despite the non-conforming nature of the underlying mortgages, the securitizers of such RMBS were able to obtain triple-A credit ratings by using "credit enhancement" (explained *infra*) when they securitized the non-conforming loans.

24. All of the loans collateralizing the RMBS at issue in this Complaint are non-conforming mortgage loans.

25. The issuance of RMBS collateralized by non-conforming loans peaked in 2006. The securitization process shifted the originators' focus from ensuring the ability of borrowers to repay their mortgages, to ensuring that the originator could process (and obtain fees from) an ever-larger loan volume for distribution as RMBS. This practice is known as "originate-to-distribute" ("OTD").

26. Securitization begins with a "sponsor" who purchases loans in bulk from one or more originators. The sponsor transfers title of the loans to an entity called the "depositor."

27. The depositor transfers the loans to a trust called the "issuing entity."

28. The issuing entity issues "notes" and/or "certificates," representing an ownership interest in the cash flow from the mortgage pool underlying the securities (*i.e.*, the principal and interest generated as borrowers make monthly payments on the mortgages in the pool).

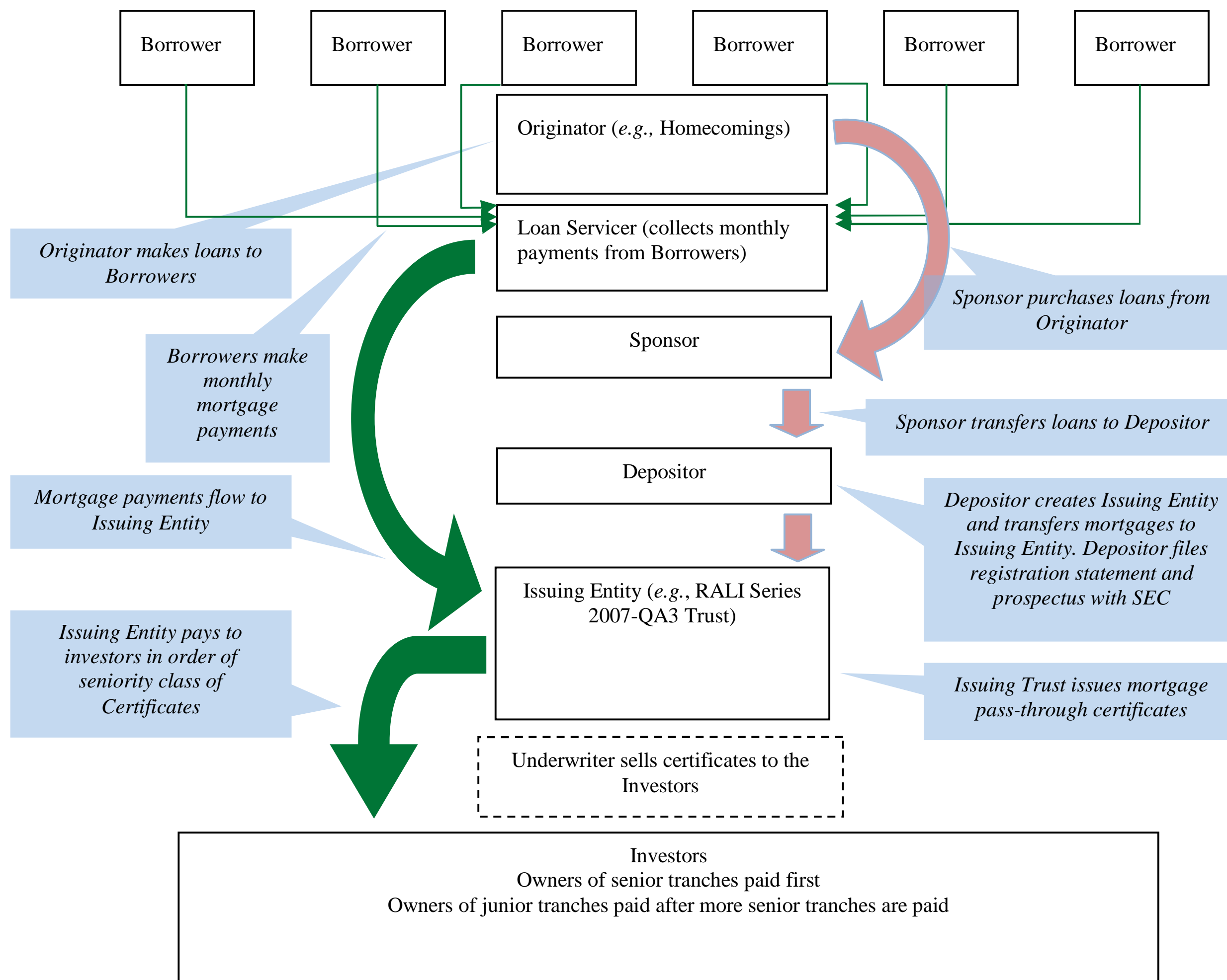
29. The depositor files required documents (such as registration statements and prospectuses) with the SEC so that the certificates can be offered to the public.

30. One or more "underwriters" then sell the notes or certificates to investors.

31. A loan "servicer" collects payments from borrowers on individual mortgages as part of a pool of mortgages, and the issuing entity allocates and distributes the income stream generated from the mortgage loan payments to the RMBS investors.

32. Figure 1 (*infra*) depicts a typical securitization process.

Figure 1
Illustration of the Securitization Process



33. Because securitization, as a practical matter, shifts the risk of default on the mortgage loans from the originator of the loan to the RMBS investor, the originator's adherence to mortgage underwriting guidelines as represented in the offering documents with respect to the underlying mortgage loans is critical to the investors' ability to evaluate the expected performance of the RMBS.

V. RMBS CREDIT RATINGS AND CREDIT ENHANCEMENT

34. RMBS offerings are generally divided into slices or "tranches," each of which represents a different level of risk. RMBS certificates denote the particular tranches of the security purchased by the investor.

35. The credit rating for an RMBS reflects an assessment of the creditworthiness of that RMBS and indicates the level of risk associated with that RMBS. Standard & Poor's ("S&P") and Moody's Investors Service, Inc. ("Moody's") are the credit rating agencies that assigned credit ratings to the RMBS in this case.

36. The credit rating agencies use letter-grade rating systems as shown in Table 2 (*infra*).

Table 2
Credit Ratings

Moody's	S&P	Definitions	Grade Type
Aaa	AAA	**Prime (Maximum Safety)**	**INVESTMENT GRADE**
Aa1 Aa2 Aa3	AA+ AA AA-	**High Grade, High Quality**	
A1 A2 A3	A+ A A-	**Upper Medium Grade**	
Baa1 Baa2 Baa3	BBB+ BBB BBB-	**Medium Grade**	
Ba2 Ba3	BB BB-	**Non-Investment Grade, or Speculative**	**SPECULATIVE GRADE**
B1 B2 B3	B+ B B-	**Highly Speculative, or Substantial Risk**	
Caa2 Caa3	CCC+	**In Poor Standing**	
Ca	CCC CCC-	**Extremely Speculative**	
C	-	**May be in Default**	
-	D	**Default**	

37. Moody's purportedly awards the coveted "Aaa" rating to structured finance products that are "of the highest quality, with minimal credit risk." Moody's Investors Services, Inc., Moody's Rating Symbols & Definitions at 6 (August 2003), *available at* http://www.rbcpa.com/Moody's_ratings_and_definitions.pdf. Likewise, S&P rates a product "AAA" when the "obligor's capacity to meet its financial commitment on the obligation is

extremely strong." Standard & Poor's, Ratings Definitions, *available at* https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1019442&SctArtId=147045&from=CM&nsl_code=LIME.

38. In fact, RMBS could not be sold unless they received one of the highest "investment grade" ratings on most tranches from one or more credit rating agencies, because the primary market for RMBS is institutional investors, such as Southwest, which are generally limited to buying only securities with the highest credit ratings. *See*, *e.g.*, NCUA Credit Risk Management Rule, 12 C.F.R. § 704.6(d)(2) (2010) (prohibiting corporate credit unions from investing in securities rated below AA-); *but see*, *e.g.*, Alternatives to the Use of Credit Ratings, 77 Fed. Reg. 74,103 (Dec. 13, 2012) (to be codified at 12 C.F.R. pts. 703, 704, 709, and 742).

39. While the pool of mortgages underlying the RMBS may not have been sufficient to warrant a triple-A credit rating, various forms of "credit enhancement" were used to obtain a triple-A credit rating on the higher tranches of RMBS.

40. One form of credit enhancement is "structural subordination." The tranches, and their risk characteristics relative to each other, are often analogized to a waterfall. Investors in the higher or "senior" tranches are the first to be paid as income is generated when borrowers make their monthly payments. After investors in the most senior tranche are paid, investors in the next subordinate or "junior" tranche are paid, and so on down to the most subordinate or lowest tranche.

41. In the event mortgages in the pool default, the resulting loss is absorbed by the subordinated tranches first.

42. Accordingly, senior tranches are deemed less risky than subordinate tranches and therefore receive higher credit ratings.

43. Another form of credit enhancement is overcollateralization. Overcollateralization is the inclusion of a higher dollar amount of mortgages in the pool than the par value of the security. The spread between the value of the pool and the par value of the security acts as a cushion in the event of a shortfall in expected cash flow.

44. Other forms of credit enhancement include "excess spread," monoline insurance, obtaining a letter of credit, and "cross-collateralization." "Excess spread" involves increasing the interest rate paid to the purchasers of the RMBS relative to the interest rate received on the cash flow from the underlying mortgages. Monoline insurance, also known as "wrapping" the deal, involves purchasing insurance to cover losses from any defaults. Finally, some RMBS are "cross-collateralized," *i.e.*, when a loan group in an RMBS experiences rapid prepayments or disproportionately high realized losses, principal and interest collected from another tranche is applied to pay principal or interest, or both, to the senior certificates in the loan group experiencing rapid prepayment or disproportionate losses.

VI. SOUTHWEST'S PURCHASES

45. Southwest purchased only the highest-rated tranches of RMBS. All were rated triple-A at the time of issuance. These securities have since been downgraded below investment grade just a few years after they were sold (*see infra* Table 3).

Table 3
Credit Ratings for Southwest's RMBS Purchases

CUSIP	ISSUING ENTITY	PURCHASER	Original Rating S&P	Original Rating Moody's	First Downgrade Below Investment Grade S&P	First Downgrade Below Investment Grade Moody's	Recent Rating S&P	Recent Rating Moody's
74922XAA5	RALI Series 2006-QA11 Trust	Southwest	AAA 1/2/2007	Aaa 1/3/2007	B 10/30/2008	Ba3 9/2/2008	NR 1/30/2013	Ca 12/14/2010
74923GAC7	RALI Series 2007-QA1 Trust	Southwest	AAA 2/2/2007	Aaa 2/15/2007	CCC 4/8/2009	Caa3 1/29/2009	NR 1/30/2013	Caa3 12/14/2010

CUSIP	ISSUING ENTITY	PURCHASER	Original Rating S&P	Original Rating Moody's	First Downgrade Below Investment Grade S&P	First Downgrade Below Investment Grade Moody's	Recent Rating S&P	Recent Rating Moody's
74922PAC8	RALI Series 2007-QA2 Trust	Southwest	AAA 3/1/2007	Aaa 2/27/2007	CCC 7/24/2009	Ba2 9/2/2008	NR 1/30/2013	Caa3 12/14/2010
74923XAD8	RALI Series 2007-QA3 Trust	Southwest	AAA 5/2/2007	Aaa 5/16/2007	B+ 10/27/2008	B1 9/2/2008	NR 12/10/2012	WR 1/5/2012

46. At the time of purchase, Southwest was not aware of the untrue statements or omissions of material facts in the Offering Documents of the RMBS. If Southwest had known about the Originators' pervasive disregard of underwriting standards—contrary to the representations in the Offering Documents—it would not have purchased the certificates.

47. The securities' substantial loss of market value has injured Southwest and the NCUA Board.

VII. THE ORIGINATORS SYSTEMATICALLY DISREGARDED THE UNDERWRITING GUIDELINES STATED IN THE OFFERING DOCUMENTS

48. The performance and value of RMBS are largely contingent upon borrowers repaying their mortgages. The loan underwriting guidelines ensure that the borrower has the means to repay the mortgage and that the RMBS is secured by sufficient collateral in the event of reasonably anticipated defaults on the underlying mortgage loans.

49. With respect to RMBS collateralized by loans written by originators who systematically disregarded their stated underwriting standards, the following pattern is present:

a. a surge in borrower delinquencies and defaults on the mortgages in the pools (*see infra* Section VII.A and Table 4);

b. actual gross losses to the underlying mortgage pools within the first 12 months after the offerings exceeded expected gross losses (*see infra* Section VII.B and Figure 2);

c. a high percentage of the underlying mortgage loans were originated for distribution, as explained below (*see infra* Table 5 and accompanying allegations); and

d. downgrades of the RMBS by credit rating agencies from high, investment-grade ratings when purchased to much lower ratings, including numerous "junk" ratings (*see infra* Section VII.C and *supra* Table 3).

50. These factors support a finding that the Originators failed to originate the mortgages in accordance with the underwriting standards stated in the Offering Documents.

51. This conclusion is further corroborated by reports that the Originators who contributed mortgage loans to the RMBS at issue in this Complaint abandoned the underwriting standards described in the Offering Documents (*see infra* Section VII.D).

A. The Surge in Mortgage Delinquency and Defaults Shortly After the Offerings and the High OTD Practices of the Originators Demonstrate Systematic Disregard of Underwriting Standards

52. Residential mortgages are generally considered delinquent if no payment has been received for more than 30 days after payment is due. Residential mortgages where no payment has been received for more than 90 days (or three payment cycles) are generally considered to be in default.

53. The surge of delinquencies and defaults following the Offerings evidences the systematic flaws in the Originators' underwriting process (*see infra* Table 4).

54. The Offering Documents reported zero or near zero delinquencies and defaults at the time of the Offerings (*see infra* Table 4).

55. The pools of mortgages collateralizing the RMBS experienced delinquency and default rates up to 9.37% within the first three months, up to 14.09% at six months, and up to 26.35% at one year (*see infra* Table 4).

56. As of June 2013, 29.22% of the mortgage collateral across all the RMBS that Southwest purchased was in delinquency, bankruptcy, foreclosure, or real estate owned ("REO"), which means that a bank or lending institution owns the property after a failed sale at a foreclosure auction (*see infra* Table 4).

57. Table 4 (*infra*) reflects the delinquency, foreclosure, bankruptcy, and REO rates on the RMBS as to which claims are asserted in this Complaint. The data presented in the last five columns are from the trustee reports (dates and page references are indicated in the parentheticals). The shadowed rows reflect the group of mortgages in the pool underlying the specific tranches purchased by Southwest; however, some trustee reports include only the aggregate data. For RMBS with multiple groups, aggregate information on all the groups is included because the tranches are cross-collateralized.

Table 4
Delinquency and Default Rates for Southwest's RMBS Purchases

CUSIP	ISSUING ENTITY	RATE AT CUT-OFF DATE FOR OFFERING	1 MO.	3 MOS.	6 MOS.	12 MOS.	RECENT
74922XAA5	RALI Series 2006-QA11 Trust (P.S. dated Dec. 21, 2006)	Zero. (S-45)	12.94% (Jan., p.7	9.37% (Mar,. p.7)	11.32% (June, p.7)	19.73% (Dec., p.7)	29.78% (June 2013, p.7)
74923GAC7	RALI Series 2007-QA1 Trust (P.S. dated Jan.25, 2007)	Zero. (S-44)	3.73% (Feb., p.7)	6.99% (Apr., p.7)	10.78% (July, p.7)	19.80% (Jan., p.7)	27.85% (June 2013, p.7)
74922PAC8	RALI Series 2007-QA2 Trust (P.S. dated Feb. 23, 2007)	Zero. (S-44)	6.68% (Mar,. p.7)	8.30% (May, p.7)	11.82% (Aug., p.7)	25.48% (Feb., p.7)	29.99% (June 2013, p.7)
74923XAD8	RALI Series 2007-QA3 Trust (P.S. dated Apr. 26, 2007)	Zero. (S-50)	3.72% (May, p.7)	7.59% (July, p.7)	14.09% (Oct., p.7)	26.35% (Apr., p.7)	29.25% (June 2013, p.7)

58. This early spike in delinquencies and defaults, which occurred almost immediately after these RMBS were purchased by Southwest, was later discovered to be indicative of the Originators' systematic disregard of their stated underwriting guidelines.

59. The phenomenon of borrower default shortly after origination of the loans is known as "Early Payment Default." Early Payment Default evidences borrower misrepresentations and other misinformation in the origination process, resulting from the systematic failure of the Originators to apply the underwriting guidelines described in the Offering Documents.

60. In January 2011, the Financial Stability Oversight Council ("FSOC"), chaired by United States Treasury Secretary Timothy Geithner, issued a report analyzing the effects of risk retention requirements in mortgage lending on the broader economy. *See* FIN. STABILITY OVERSIGHT COUNCIL, MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS (2011) ("FSOC Risk Retention Report"). The FSOC Risk Retention Report focused on stabilizing the mortgage lending industry through larger risk retention requirements in the industry that can "incent better lending decisions" and "help to mitigate some of the pro-cyclical effects securitization may have on the economy." *Id*. at 2.

61. The FSOC Risk Retention Report observed that the securitization process often incentivizes poor underwriting by shifting the risk of default from the originators to the investors, while obscuring critical information concerning the actual nature of the risk. The FSOC Risk Retention Report stated:

> The securitization process involves multiple parties with varying incentives and information, thereby breaking down the traditional direct relationship between borrower and lender. The party setting underwriting standards and making lending decisions (the originator) and the party making structuring decisions (the securitizer) are often exposed to minimal or no credit risk. By contrast, the party that is most exposed to credit risk (the investor) often has less influence over underwriting standards and may have less information about the borrower. As a result, originators and securitizers that do not retain risk can, at least in the short run, maximize their own returns by lowering underwriting standards in ways that investors may have difficulty detecting. The originate-to-distribute model, as it was conducted, exacerbated this weakness by compensating originators and securitizers based on volume, rather than on quality.

Id. at 3.

62. Indeed, originators that wrote a high percentage of their loans for distribution were more likely to disregard underwriting standards, resulting in poorly performing mortgages, in contrast to originators that originated and then held most of their loans.

63. High OTD originators profited from mortgage origination fees without bearing the risks of borrower default or insufficient collateral in the event of default. Divorced from these risks, high OTD originators were incentivized to push loan quantity over quality.

64. Table 5 (*infra*) shows the percentage of loans originated for distribution relative to all the loans made by the Originators for the years 2005, 2006 and 2007, for those Originators in this Complaint with high OTD percentages. The data was obtained from the Home Mortgage Disclosure Act database.

Table 5
Originator "Originate-to-Distribute" Percentages

Originator Name	OTD % 2005	OTD% 2006	OTD % 2007
First National Bank of Nevada	88	79.9	89.4
GMAC Bank		81	85
GMAC Mortgage, LLC f/k/a GMAC Mortgage Corp.	89.4	85.1	91.8
GreenPoint Mortgage Funding Inc.	89	87.1	95.6
Homecomings Financial, LLC	97.4	97.9	99.9

B. The Surge in Actual Versus Expected Cumulative Gross Losses is Evidence of the Originators' Systematic Disregard of Underwriting Standards

65. The actual defaults in the mortgage pools underlying the RMBS Southwest purchased exceeded expected defaults so quickly and by so wide a margin that a significant

portion of the mortgages could not have been underwritten as represented in the Offering Documents.

66. Every month, the RMBS trustee reports the number and outstanding balance of all loans in the mortgage pools that have defaulted. The running total of this cumulative default balance is referred to as the "gross loss."

67. When defaulted loans are foreclosed upon, the proceeds from the foreclosures are distributed to the investors and any shortfall on the defaulted loan balances is realized as a loss. The running total of this cumulative realized loss (defaulted loan balance minus recovery in foreclosure) is referred to as the "net loss."

68. "Actual loss" is the economic loss the mortgage pool experiences *in fact*. So "actual gross loss" is the *actual* cumulative sum of the balance of the loans in default for a particular security. Likewise, "actual net loss" is the *actual* cumulative realized loss on defaulted loans after foreclosure.

69. At the time a security is rated, the rating agency calculates an amount of "expected loss" using a model based on historical performance of similar securities. So "expected gross loss" is the *expected* cumulative sum of the balance of the loans in default for a particular security. Likewise, "expected net loss" is the *expected* cumulative realized loss on defaulted loans after foreclosure. The amount of expected net loss drives the credit ratings assigned to the various tranches of RMBS.

70. Each credit rating has a "rating factor," which can be expressed in multiples of the amount of credit enhancement over expected net loss (in equation form: CE/ENL = RF). Thus, the rating factor expresses how many times the expected net loss is covered by credit enhancement. A "triple-A" rated security would have a rating factor of "5," so would require

credit enhancement of five times the amount of the expected net loss. A "double-A rating" would have a rating factor of "4," and thus would require credit enhancement equaling four times the expected net loss. A "single-A" rating would have a rating factor of "3" and would require credit enhancement of three times expected net loss. A "Baa" rating would require credit enhancement of 2—1.5 times expected net loss, and a "Ba" rating or lower requires some amount of credit enhancement less than 1.5 times expected net loss.

71. Accordingly, by working backwards from this equation, one can infer expected net loss in an already-issued offering. For example, assume there is a $100 million offering backed by $100 million of assets, with a triple-A rated senior tranche with a principal balance of $75 million. This means the non-senior tranches, in aggregate, have a principal balance of $25 million. The $25 million amount of the non-senior tranches in this hypothetical offering serves as the credit enhancement for the senior tranche. Therefore, on our hypothetical $100 million offering, the expected net loss would be $5 million, which is the amount of the credit enhancement on the triple-A rated senior tranche—$25 million—divided by the rating factor for triple-A rated securities—5. The following equation illustrates: $25,000,000/5 = $5,000,000.

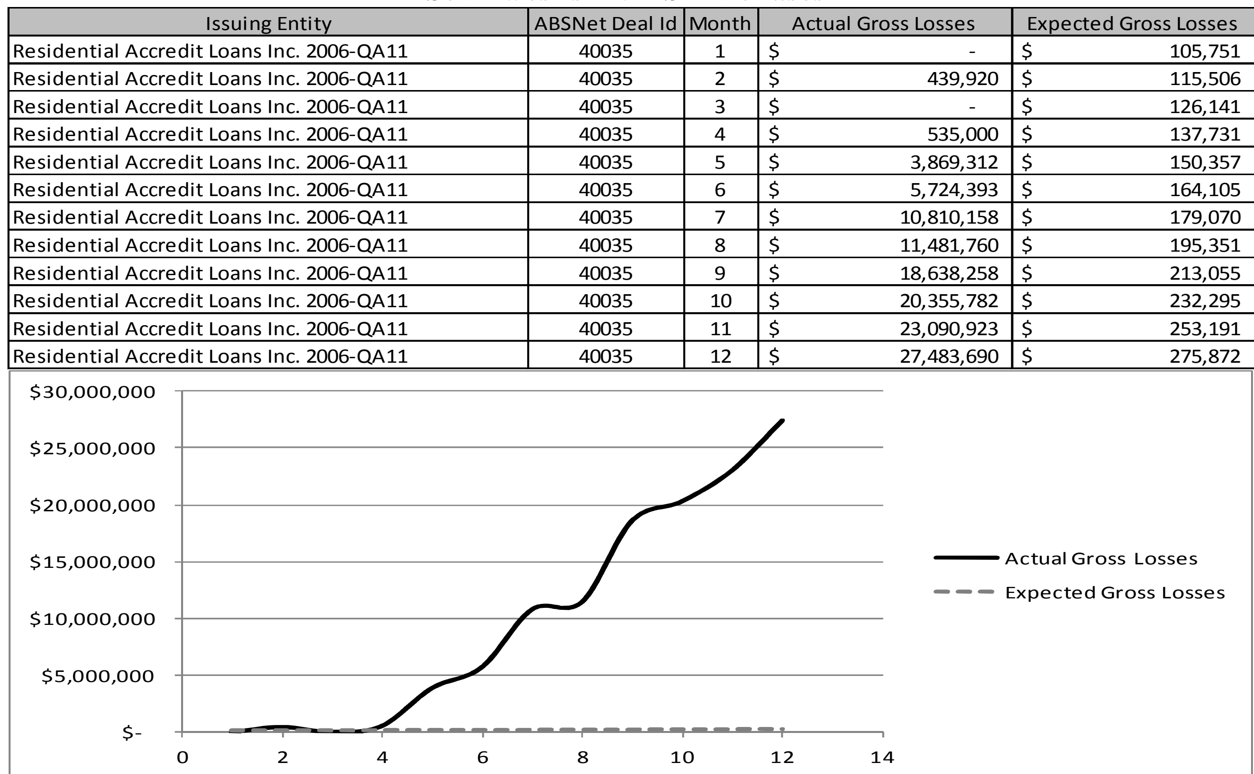
72. Expected gross loss can be then mathematically derived by applying an "expected recovery rate" to the expected net loss (EGL = ENL/(1 – ERR)).

73. A comparison of actual gross losses to expected gross losses for a particular security can be made graphically by plotting the actual versus expected loss data on a line graph. Figure 2 (*infra*) is a series of such line graphs. Figure 2 illustrates the actual gross loss (again, actual defaults) the pools backing the RMBS purchased by Southwest experienced in the first twelve months after issuance compared to the expected gross loss (again, expected defaults) for those pools during the same time period.

74. The actual gross loss data in Figure 2 (*infra*) was obtained from ABSNET, a resource for asset-backed securities related data. The expected gross losses were calculated by “grossing up” the rating-implied expected net losses using an expected recovery rate of 85%.

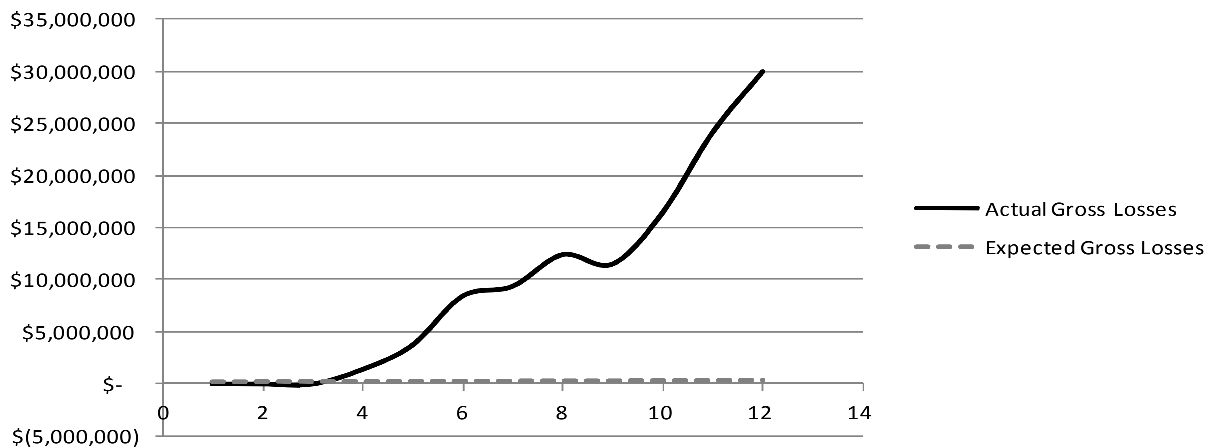
75. As the graphs show, the actual gross losses (the solid lines) far exceeded the expected gross losses (the dotted lines) for the period analyzed. That means that the actual balance of defaulted loans in the first twelve months following issuance far exceeded the expected balance of defaulted loans based on historical performance.

Figure 2
Illustration of Expected Gross Losses v. Actual Gross Losses for Southwest’s RMBS Purchases

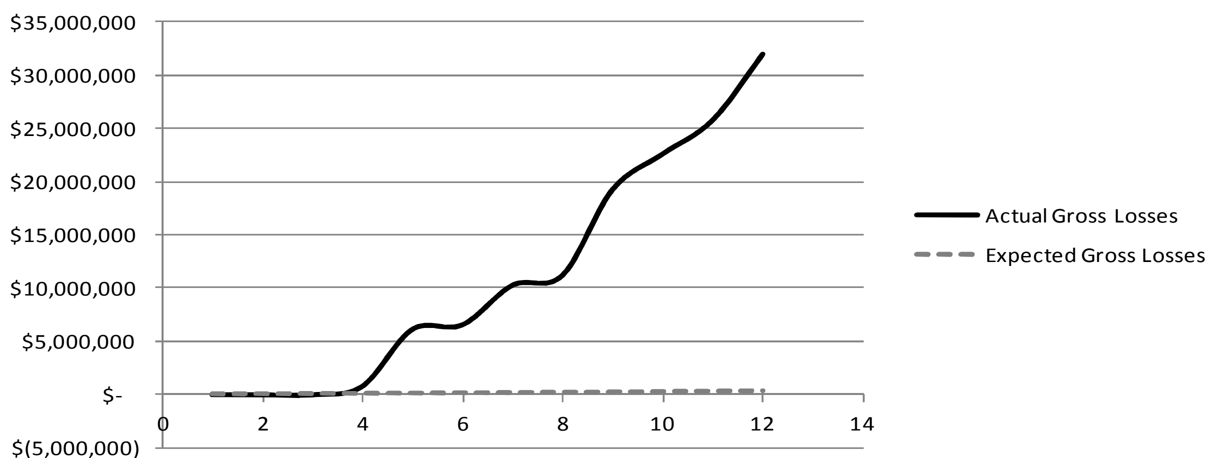


Issuing Entity	ABSNet Deal Id	Month	Actual Gross Losses	Expected Gross Losses
Residential Accredit Loans Inc. 2006-QA11	40035	1	$ -	$ 105,751
Residential Accredit Loans Inc. 2006-QA11	40035	2	$ 439,920	$ 115,506
Residential Accredit Loans Inc. 2006-QA11	40035	3	$ -	$ 126,141
Residential Accredit Loans Inc. 2006-QA11	40035	4	$ 535,000	$ 137,731
Residential Accredit Loans Inc. 2006-QA11	40035	5	$ 3,869,312	$ 150,357
Residential Accredit Loans Inc. 2006-QA11	40035	6	$ 5,724,393	$ 164,105
Residential Accredit Loans Inc. 2006-QA11	40035	7	$ 10,810,158	$ 179,070
Residential Accredit Loans Inc. 2006-QA11	40035	8	$ 11,481,760	$ 195,351
Residential Accredit Loans Inc. 2006-QA11	40035	9	$ 18,638,258	$ 213,055
Residential Accredit Loans Inc. 2006-QA11	40035	10	$ 20,355,782	$ 232,295
Residential Accredit Loans Inc. 2006-QA11	40035	11	$ 23,090,923	$ 253,191
Residential Accredit Loans Inc. 2006-QA11	40035	12	$ 27,483,690	$ 275,872

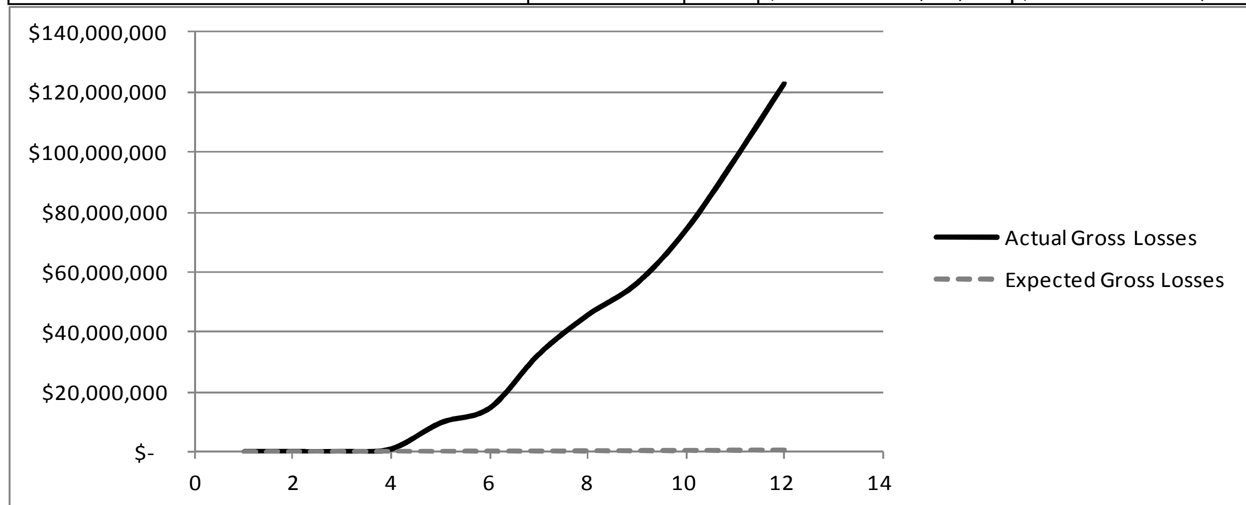
Issuing Entity	ABSNet Deal Id	Month	Actual Gross Losses	Expected Gross Losses
Residential Accredit Loans Inc. 2007-QA1	40398	1	$ -	$ 121,498
Residential Accredit Loans Inc. 2007-QA1	40398	2	$ -	$ 132,706
Residential Accredit Loans Inc. 2007-QA1	40398	3	$ -	$ 144,925
Residential Accredit Loans Inc. 2007-QA1	40398	4	$ 1,405,600	$ 158,240
Residential Accredit Loans Inc. 2007-QA1	40398	5	$ 3,734,836	$ 172,746
Residential Accredit Loans Inc. 2007-QA1	40398	6	$ 8,433,044	$ 188,542
Residential Accredit Loans Inc. 2007-QA1	40398	7	$ 9,380,409	$ 205,736
Residential Accredit Loans Inc. 2007-QA1	40398	8	$ 12,419,235	$ 224,441
Residential Accredit Loans Inc. 2007-QA1	40398	9	$ 11,520,404	$ 244,781
Residential Accredit Loans Inc. 2007-QA1	40398	10	$ 16,455,089	$ 266,886
Residential Accredit Loans Inc. 2007-QA1	40398	11	$ 24,144,756	$ 290,894
Residential Accredit Loans Inc. 2007-QA1	40398	12	$ 29,992,995	$ 316,952



Issuing Entity	ABSNet Deal Id	Month	Actual Gross Losses	Expected Gross Losses
Residential Accredit Loans Inc. 2007-QA2	40837	1	$ -	$ 117,034
Residential Accredit Loans Inc. 2007-QA2	40837	2	$ -	$ 127,830
Residential Accredit Loans Inc. 2007-QA2	40837	3	$ -	$ 139,600
Residential Accredit Loans Inc. 2007-QA2	40837	4	$ 800,000	$ 152,426
Residential Accredit Loans Inc. 2007-QA2	40837	5	$ 6,151,272	$ 166,399
Residential Accredit Loans Inc. 2007-QA2	40837	6	$ 6,583,272	$ 181,615
Residential Accredit Loans Inc. 2007-QA2	40837	7	$ 10,304,075	$ 198,176
Residential Accredit Loans Inc. 2007-QA2	40837	8	$ 11,246,378	$ 216,195
Residential Accredit Loans Inc. 2007-QA2	40837	9	$ 19,302,466	$ 235,787
Residential Accredit Loans Inc. 2007-QA2	40837	10	$ 22,651,494	$ 257,080
Residential Accredit Loans Inc. 2007-QA2	40837	11	$ 25,837,647	$ 280,206
Residential Accredit Loans Inc. 2007-QA2	40837	12	$ 32,037,991	$ 305,306



Issuing Entity	ABSNet Deal Id	Month	Actual Gross Losses	Expected Gross Losses
Residential Accredit Loans Inc. 2007-QA3	41337	1	$ 161,138	$ 289,794
Residential Accredit Loans Inc. 2007-QA3	41337	2	$ 160,982	$ 316,528
Residential Accredit Loans Inc. 2007-QA3	41337	3	$ 160,825	$ 345,672
Residential Accredit Loans Inc. 2007-QA3	41337	4	$ 1,100,668	$ 377,432
Residential Accredit Loans Inc. 2007-QA3	41337	5	$ 9,741,497	$ 412,031
Residential Accredit Loans Inc. 2007-QA3	41337	6	$ 14,665,697	$ 449,707
Residential Accredit Loans Inc. 2007-QA3	41337	7	$ 32,576,050	$ 490,716
Residential Accredit Loans Inc. 2007-QA3	41337	8	$ 45,652,565	$ 535,332
Residential Accredit Loans Inc. 2007-QA3	41337	9	$ 56,215,041	$ 583,847
Residential Accredit Loans Inc. 2007-QA3	41337	10	$ 73,953,263	$ 636,571
Residential Accredit Loans Inc. 2007-QA3	41337	11	$ 97,547,196	$ 693,835
Residential Accredit Loans Inc. 2007-QA3	41337	12	$ 122,685,556	$ 755,987



76. As clearly shown in Figure 2 (*supra*), actual gross losses spiked almost immediately after issuance of the RMBS. Borrowers defaulted on the underlying mortgages soon after loan origination, rapidly eliminating the RMBS's credit enhancement. For example, in the RALI Series 2007-QA3 Trust offering, actual gross losses at month 12 exceeded $122.6 million, or more than 162 times the expected gross losses of approximately $755,987. (*See supra* Figure 2).

77. This immediate increase in actual losses—at a rate far greater than expected losses—is strong evidence that the Originators systematically disregarded the underwriting standards in the Offering Documents.

78. Because credit enhancement is designed to ensure triple-A performance of triple-A rated RMBS, the evidence that credit enhancement has failed (*i.e.*, actual losses swiftly surged

past expected losses shortly after the offering) substantiates that a critical number of mortgages in the pool were not written in accordance with the underwriting guidelines stated in the Offering Documents.

C. The Collapse of the Certificates' Credit Ratings is Evidence of Systematic Disregard of Underwriting Guidelines

79. All of the RMBS certificates Southwest purchased were rated triple-A at issuance.

80. Moody's and S&P have since downgraded the RMBS certificates Southwest purchased to well below investment grade (*see supra* Table 3).

81. Triple-A rated product "should be able to withstand an extreme level of stress and still meet its financial obligations. A historical example of such a scenario is the Great Depression in the U.S." *Understanding Standard & Poor's Rating Definitions*, June 3, 2009, at 14.

82. A rating downgrade is material. The total collapse in the credit ratings of the RMBS certificates Southwest purchased, typically from triple-A to non-investment speculative grade, is evidence of the Originators' systematic disregard of underwriting guidelines, amplifying that these RMBS were impaired from the outset.

D. Revelations Subsequent to the Offerings Show That the Originators Systematically Disregarded Underwriting Standards

83. Public disclosures subsequent to the issuance of the RMBS reinforce the allegation that the Originators systematically abandoned their stated underwriting guidelines.

1. The Systematic Disregard of Underwriting Standards Was Pervasive as Revealed After the Collapse

84. Mortgage originators experienced unprecedented success during the mortgage boom. Yet, their success was illusory. As the loans they originated began to significantly underperform, the demand for their products subsided. It became evident that originators had

systematically disregarded their underwriting standards.

85. The Office of the Comptroller of the Currency (the "OCC"), an office within the Treasury Department, published a report in November 2008 listing the "Worst Ten" metropolitan areas with the highest rates of foreclosures and the "Worst Ten" originators with the largest numbers of foreclosures in those areas ("2008 'Worst Ten in the Worst Ten' Report"). In this report the OCC emphasized the importance of adherence to underwriting standards in mortgage loan origination:

> The quality of the underwriting process—that is, determining through analysis of the borrower and market conditions that a borrower is highly likely to be able to repay the loan as promised—is a major determinant of subsequent loan performance. The quality of underwriting varies across lenders, a factor that is evident through comparisons of rates of delinquency, foreclosure, or other loan performance measures across loan originators.

86. Government reports and investigations and newspaper reports have uncovered the extent of pervasive abandonment of underwriting standards. The Permanent Subcommittee on Investigations in the United States Senate ("PSI") recently released its report detailing the causes of the financial crisis. Using Washington Mutual Bank as a case study, the PSI concluded through its investigation:

> Washington Mutual was far from the only lender that sold poor quality mortgages and mortgage backed securities that undermined U.S. financial markets. The Subcommittee investigation indicates that Washington Mutual was emblematic of a host of financial institutions that knowingly originated, sold, and securitized billions of dollars in high risk, poor quality home loans. These lenders were not the victims of the financial crisis; the high risk loans they issued became the fuel that ignited the financial crisis.

STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 112TH CONG., WALL STREET AND THE FINANCIAL CRISIS: ANATOMY OF A FINANCIAL COLLAPSE 50 (Subcomm. Print 2011).

87. Indeed, the Financial Crisis Inquiry Commission ("FCIC") issued its final report in January 2011 that detailed, among other things, the collapse of mortgage underwriting

standards and subsequent collapse of the mortgage market and wider economy. *See* FIN. CRISIS INQUIRY COMM'N, FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES (2011) ("FCIC Report").

88. The FCIC Report concluded that there was a "systemic breakdown in accountability and ethics." "Unfortunately—as has been the case in past speculative booms and busts—we witnessed an erosion of standards of responsibility and ethics that exacerbated the financial crisis." *Id*. at xxii. The FCIC found:

> [I]t was the collapse of the housing bubble—fueled by low interest rates, easy and available credit, scant regulation, and toxic mortgages—that was the spark that ignited a string of events, which led to a full-blown crises in the fall of 2008. Trillions of dollars in risky mortgages had become embedded throughout the financial system, as mortgage-related securities were packaged, repackaged, and sold to investors around the world.

Id. at xvi.

89. During the housing boom, mortgage lenders focused on quantity rather than quality, originating loans for borrowers who had no realistic capacity to repay the loan. The FCIC Report found "that the percentage of borrowers who defaulted on their mortgages within just a matter of months after taking a loan nearly doubled from the summer of 2006 to late 2007." *Id*. at xxii. Early Payment Default is a significant indicator of pervasive disregard for underwriting standards. The FCIC Report noted that mortgage fraud "flourished in an environment of collapsing lending standards…." *Id*.

90. In this lax lending environment, mortgage lenders went unchecked, originating mortgages for borrowers in spite of underwriting standards:

> Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities. As early as September 2004, Countrywide executives recognized that many of the loans they were originating could result in "catastrophic consequences." Less than a year later, they noted that certain high-risk loans they were making could result not only in

> foreclosures but also in "financial and reputational catastrophe" for the firm. But they did not stop.

Id.

91. Lenders and borrowers took advantage of this climate, with borrowers willing to take on loans and lenders anxious to get those borrowers into the loans, ignoring even loosened underwriting standards. The FCIC Report observed: "Many mortgage lenders set the bar so low that lenders simply took eager borrowers' qualifications on faith, often with a willful disregard for a borrower's ability to pay." *Id*. at xxiii.

92. In an interview with the FCIC, Alphonso Jackson, the Secretary of the Department of Housing and Urban Affairs ("HUD") from 2004 to 2008, related that HUD had heard about mortgage lenders "running wild, taking applications over the Internet, not verifying people's income or their ability to have a job." *Id*. at 12-13 (internal quotation marks omitted).

93. Chairman of the Federal Reserve Board, Benjamin Bernanke, spoke to the decline of underwriting standards in his speech before the World Affairs Council of Greater Richmond on April 10, 2008:

> First, at the point of origination, underwriting standards became increasingly compromised. The best-known and most serious case is that of subprime mortgages, mortgages extended to borrowers with weaker credit histories. To a degree that increased over time, these mortgages were often poorly documented and extended with insufficient attention to the borrower's ability to repay. In retrospect, the breakdown in underwriting can be linked to the incentives that the originate-to-distribute model, as implemented in this case, created for the originators. Notably, the incentive structures often tied originator revenue to loan volume, rather than to the quality of the loans being passed up the chain. Investors normally have the right to put loans that default quickly back to the originator, which should tend to apply some discipline to the underwriting process. However, in the recent episode, some originators had little capital at stake, reducing their exposure to the risk that the loans would perform poorly.

Benjamin Bernanke, Chairman, Federal Reserve Board, Speech to the World Affairs Council of Greater Richmond, *Addressing Weaknesses in the Global Financial Markets: The Report of the President's Working Group on Financial Markets*, Apr. 10, 2008.

94. Investment banks securitized loans that were not originated in accordance with underwriting guidelines and failed to disclose this fact in RMBS offering documents. As the FCIC Report noted:

> 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.

95. Because investors had limited or no access to information concerning the actual quality of loans underlying the RMBS, the OTD model created a situation where the origination of low quality mortgages through poor underwriting thrived. The FSOC found:

> In the originate-to-distribute model, originators receive significant compensation upfront without retaining a material ongoing economic interest in the performance of the loan. This reduces the economic incentive of originators and securitizers to evaluate the credit quality of the underlying loans carefully. Some research indicates that securitization was associated with lower quality loans in the financial crisis. For instance, one study found that subprime borrowers with credit scores just above a threshold commonly used by securitizers to determine which loans to purchase defaulted at significantly higher rates than those with credit scores below the threshold. By lower underwriting standards, securitization may have increased the amount of credit extended, resulting in riskier and unsustainable loans that otherwise may not have been originated.

FSOC Risk Retention Report at 11 (footnote omitted).

96. The FSOC reported that as the OTD model became more pervasive in the mortgage industry, underwriting practices weakened across the industry. The FSOC Risk Retention Report found "[t]his deterioration was particularly prevalent with respect to the

verification of the borrower's income, assets, and employment for residential real estate loans… ." *Id*.

97. In sum, the disregard of underwriting standards was pervasive across originators. The failure to adhere to underwriting standards directly contributed to the sharp decline in the quality of mortgages that became part of mortgage pools collateralizing RMBS. The lack of adherence to underwriting standards for the loans underlying RMBS was not disclosed to investors in the offering materials. The nature of the securitization process, with the investor several steps removed from the origination of the mortgages underlying the RMBS, made it difficult for investors to ascertain how the RMBS would perform.

98. As discussed below, facts have recently come to light that show many of the Originators who contributed to the loan pools underlying the RMBS at issue in this Complaint engaged in these underwriting practices.

2. First National Bank of Nevada's Systematic Disregard of Underwriting Standards

99. First National Bank of Nevada ("FNB Nevada") was a large subprime mortgage lender. It originated or contributed a material portion of the loans in the mortgage pool underlying the RALI Series 2007-QA3 Trust offering. *See infra* Table 6.

100. First National Bank Arizona ("FNB Arizona"), FNB Nevada, and First Heritage Bank were controlled by First National Bank Holding Company ("FNB Holding"), collectively ("FNB Group"). All were under common management. *See* Department of the Treasury, Office of the Inspector General, *Audit Report: Safety and Soundness: Material Loss Review of First National Bank of Nevada and First Heritage Bank, National Association* at 4 (Feb. 27, 2009) ("FNB Nevada OIG Report"), *available at* http://www.treasury.gov/about/organizational-structure/ig/Documents/ oig09033.pdf; David Enrich and Damian Paletta, *Failed Lender Played*

Regulatory Angles, Wall St. J. (Oct. 3, 2008), *available at* http://online.wsj.com/article/SB122298993937000343.html.

101. FNB Arizona ran the FNB Group's residential mortgage lending operation. *See* FNB Nevada OIG Report at 4.

102. The amount of mortgage loans originated by FNB Arizona grew from $1.5 billion in 2001 to $7 billion in 2006. *See* Enrich and Paletta, *Failed Lender Played Regulatory Angles*. FNB Arizona was an OTD lender; in 2006, $6.9 billion of its loans were packaged into RMBS. *See* FNB Nevada OIG Report at 5.

103. A series of investigations by the OCC detail how FNB Arizona achieved its rapid growth by pervasively disregarding its underwriting guidelines.

104. In 2004, the OCC inspected FNB Arizona and determined that it needed better "[p]rocedures to reduce underwriting exceptions" and better "[p]olicies and internal controls over the use of appraisers." FNB Nevada OIG Report at 44.

105. A 2005 OCC investigation found that "[c]redit underwriting and administration need improvement. The quickness of loan production has had priority over quality. Issues include loan appraisal violations (repeat issue) and inadequate practices over standby letters of credit." It recommended FNB Arizona "develop and implement procedures and accountability that are effective in reducing the high level of underwriting exceptions (repeat issue)" and reduce the number of employee and vendor errors in loan origination. It also cited FNB Arizona for two regulatory violations—failing to appraise properties prior to closing and failing to use independent appraisers. *Id.* at 44-46.

106. A 2006 investigation found that FNB Arizona still had not implemented "effective procedures and processes to reduce the level and number of underwriting exceptions."

The OCC also noted that appraisers' reports were often missing or incomplete. *Id.* at 47

107. In 2007, FNB Arizona's liquidity problems prompted the OCC to initiate an informal enforcement action. It cited several matters requiring the direct attention of the bank's board, including internal loan review that lacked independence due to executive management influence, understaffed internal loan review, staffing levels and expertise that were not commensurate with the complexities of the bank's operations, and (yet again) the need to reduce underwriting exceptions. *See id.* at 48-50.

108. FNB Arizona's underwriting practices became so poor that in 2007 it was unable to sell $683 million of residential mortgages to securitizers. It was also forced to repurchase a number of its poorly underwritten mortgages. This contributed to a liquidity crisis for the entire FNB Group. *See id.* at 2, 6.

109. On June 30, 2008 FNB Arizona merged into FNB Nevada. Shortly thereafter, the OCC closed FNB Nevada and appointed the FDIC as its receiver. Press Release, *OCC Closes First National Bank of Nevada and Appoints FDIC Receiver* (July 25, 2008), *available at* http://www.occ.gov/news-issuances/news-releases/2008/nr-occ-2008-87.html.

110. In its capacity as receiver for FNB Nevada, the FDIC sued the former directors and officers of the FNB Group. Compl., *FDIC v. Dorris*, No. 11-1652 (D. Ariz. filed Aug. 23, 2011). The FDIC alleged the same pervasive disregard of underwriting guidelines described above. *See id.* ¶¶ 38-42.

111. That complaint detailed how the bank's compensation structure was tied to the volume of loans originated, creating an incentive for bank employees to disregard the underwriting guidelines. *See id.* ¶ 30. FNB Arizona also used many mortgage brokers who had the same volume-based incentive to disregard underwriting guidelines and to inflate appraisals.

See id. ¶¶ 33-34.

112. The suit settled less than two months after it was filed. Final Judgment Order, *FDIC v. Dorris*, Doc. 15., No 11-1652 (D. Ariz. Oct. 13, 2011).

113. Evidence uncovered in *Plumbers' Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Corp.*, No. 08-10446 (D. Mass. filed Oct. 1, 2012) further highlights FNB Arizona's disregard of its underwriting guidelines. There, the Court allowed the Plumbers' Union to engage in limited discovery, which uncovered four pertinent pieces of evidence:

- "[T]hree 'representative' no-document loans that [FNB Nevada] originated. In each of these 'No Doc' loans, the borrower's income was either unknown or unverified, or inadequate to make payments on the underlying mortgage, or if not, the borrower's debt to income ratio (DTI) belied any realistic probability that the borrower could keep up with mortgage payments over the life of the loan."

- "[T]he declaration of Susan Wright, who underwrote loans at [FNB Nevada] in 2006 and 2007 and generally corroborates the Complaint's allegations about [FNB Nevada]'s underwriting practices." "Wright describes [FNB Nevada]'s business model as trying to 'make as many loans as possible and then sell them as quickly as possible' and explains that their underwriting practices instructed underwriters to remove income and asset information already in the possession of [FNB Nevada] from 'No Doc' loans. She states that [FNB Nevada] regularly made loans to borrowers whom '[FNB Nevada] knowingly qualified on the basis of what appeared to be obviously false information [and] [FNB Nevada] did not appear to reasonably expect that the borrowers would be able to repay these loans.'"

- "[S]everal emails generated by [FNB Nevada] employees, including Mortgage Division President Pat Lamb; Vice President of Risk Management Renea Aderhold; 'SVP Ops/Communication Manager' Beth Rothmuller; Senior Vice President Lisa Sleeper; and Senior Vice President and Risk Officer Eric Meschen, which collectively paint a picture of a devil-may-care underwriting culture."

- "[T]he expert report of Ira Holt, an accountant who performed a forensic analysis of 408 of the Trusts' loans using the [FNB

> Nevada] guidelines that were in place when they were originated. Holt found that 108 (26.5%) had material defects that violated even [FNB Nevada]'s slack underwriting standards." "According to Holt, he was unable to 're-underwrite' some of the 408 loans because of the lack of documentation, as well as the 'scrubbing' of the applicant's disqualifying data by [FNB Nevada]. According to plaintiffs, the number of loans in the sample with material defects may be considerably higher than Holt's estimates."

Plumbers' Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Corp., 08-10446-RGS, 2012 WL 4480735, at *3 & nn. 6, 8 (D. Mass. Oct. 1, 2012).

114. The Court held allegations based on that evidence were sufficient to survive a motion to dismiss. *See id.* at *3 ("[D]efendants' efforts to impugn plaintiffs' evidence is largely factual in nature and better fitted to a summary judgment motion than the relaxed pleading standard that attaches to a Rule 12(b)(6) motion.").

115. Lehman Brothers has also sued FNB Arizona for selling mortgages containing misrepresentations about borrowers' finances, employment, and the nature of the property. That case settled for an undisclosed amount. *See* Philip Shiskin, *Bankers Escape Big Penalties in FDIC Failed Bank Case* (Feb. 23, 2012), *available at* http://www.reuters.com/article/2012/02/23/us-bankers-fdic-idUSTRE81M1UH20120223; Compl., *Lehman Mortg. Trust Mortg. v. First Nat'l Bank of Nev.*, Nos. CV2006-018929 (AZ Super. Ct., Maricopa Cnty. filed Dec. 12, 2006).

3. GMAC's Systematic Disregard of Underwriting Standards

116. GMAC Bank n/k/a Ally Bank and GMAC Mortgage originated or contributed a material portion of the loans in the mortgage pool underlying the RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust, RALI Series 2007-QA2 Trust, and RALI Series 2007-QA3 Trust offerings. *See infra* Table 6.

117. GMAC's abandonment of its underwriting guidelines is at issue in suits filed by

MBIA, Inc. MBIA was a monoline insurer for loans in RMBS. *See* Compl., *MBIA Ins. Corp. v. Ally Fin., Inc.*, No. 12-18889 (MN Ct., Hennepin Cnty. filed Sept. 17, 2012) ("*MBIA v. Ally* Compl."); Compl., *MBIA Ins. Corp. v. GMAC Mortg., LLC*, No. 600837/2010 (N.Y. Sup. Ct. filed Apr. 1, 2010) ("*MBIA v. GMAC* Compl.").

118. MBIA's suits concern loans underlying the GMACM 2004-HE4, GMACM 2006-HE5 and GMACM 2007-HE1 offerings. Ally Bank f/k/a GMAC Bank and GMAC Mortgage were the principal originators for the loans in these offerings. *MBIA v. Ally* Compl. ¶¶ 7, 45; *MBIA v. GMAC* Compl. ¶¶ 2, 44.

119. After sustaining large losses, MBIA conducted forensic analyses of loans underlying these offerings. MBIA found material breaches of representations and warranties in more than 89% of the loans from GMAC Mortgage. These breaches included:

- GMAC Mortgage egregiously and routinely breached its representation and warranty that the mortgage loans were underwritten generally in compliance with GMAC Mortgage's underwriting standards.

- A significant number of mortgage loans were made on the basis of "stated incomes" that were grossly unreasonable or were approved despite debt-to-income ("DTI") or combined loan-to-value ("CLTV") ratios in excess of the cut-offs stated in GMAC Mortgage's Underwriting Guidelines or the Purchase Agreements or Prospectus Supplements.

- Moreover, 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.

- GMAC Mortgage used its proprietary automated electronic loan underwriting program, known as "Assetwise," to approve loans that did not comply with its Underwriting Guidelines. Assetwise assisted in the underwriting of mortgage loans by automating the

> process of determining whether a loan met prespecified underwriting criteria set up in the program. GMAC Mortgage used the program itself and also made the program available to its affiliates. Assetwise, however, failed to analyze proposed mortgage loans using the criteria set forth in GMAC Mortgage's Underwriting Guidelines. As a result, GMAC Mortgage routinely contributed loans to the Transactions that failed to comply with its own underwriting standards.

MBIA v. GMAC Compl. ¶ 76; *see MBIA v. Ally* Compl. ¶¶ 76-83; *MBIA v. GMAC* Compl. ¶¶ 70-79.

120. Representative examples of the breaches encountered by the MBIA include:

- On January 25, 2006, a loan in the amount of $210,000 was made to a borrower in Vacaville, California on a property with an original appraisal value of $460,000 and a senior loan balance of $368,150. The borrower was employed as a correctional officer by the State of California. The loan was approved based on a DTI that was calculated using the borrower's highest reported monthly income, rather than his average income over a 33-month period, as is required by the Underwriting Guidelines. As a result, the true DTI on the loan was 65.56%, which exceeded the maximum ratio of 50% permitted under the applicable loan program. The CLTV ratio of 125.68% also exceeded the maximum CLTV ratio of 100% permitted under the Guidelines. The loan has been charged-off (Loan # 8601487693 — 2004 Transaction.)

- On April 20, 2007, a loan in the amount of $40,000 was made to co-borrowers in Vernon, New Jersey on a property with an original appraisal value of $305,000 and a senior loan balance of $244,000. The loan file is incomplete and lacks, among other documents, verbal verification of either borrower's employment, evidence of sufficient closing funds and reserves, an appraisal, a copy of the note from the senior lien, and the borrowers' credit reports. Further, the loan was approved even though the income stated by each borrower was unreasonable. One claimed to earn $4,583 per month as a counter manager at a discount tire store though, for example, salary.com, a website which maintains a national salary database based on job title and zip code, reports that the income at the 90th percentile for such a position is only $2,801 per month. The second borrower claimed to earn $59,592 annually as a sales associate at a home improvement store, but an income verification database showed that the borrower earned only $28,092 in 2006

and $32,977 in 2007. The loan has been charged-off (Loan # 1000117685 — 2006 Transaction.)

- On December 15, 2006, a loan in the amount of $22,000 was made to a borrower in Medford, Oregon on a property with an original appraisal value of $220,000 and a senior loan balance of $176,000. The loan file is missing many documents that bear upon the borrower's ability to repay and are required to be included in the file, including: verification of down payment funds, a CPA letter, an appraisal, a twelve-month housing history, a copy of the first mortgage, a preliminary title commitment, a credit report, and the final loan application. Moreover, although the borrower, an operator at a drywall company, had declared bankruptcy prior to applying for the loan, the loan file lacks documentation that the bankruptcy had been discharged for at least three years, as required by the Guidelines. The loan has been charged off. (Loan # 8254682837 – 2007 Transaction.)

- On January 23, 2007, a loan with a principal balance of $100,000 was made to a borrower in Yuma, Arizona on a property with an original appraisal value of $298,000 and a senior loan balance of $129,035. The borrowers claimed on their loan application that their combined income was $113,520 per year. However, on May 12, 2009, the borrowers jointly filed for bankruptcy under Chapter 7, and their court filings indicated that they earned only $13,085 in 2007 and $17,650 in 2008. Moreover, no record of the borrower's claimed employer can be located on websites commonly used to verify the existence of a business: manta.com or yellowpages.com. The loan has been charged-off. (Loan # 8254730412 – 2007 Transaction.)

MBIA v. GMAC Compl. ¶ 78.

121. Both suits are still pending. The Court in *MBIA v. GMAC* denied a motion to dismiss; there have been no rulings in *MBIA v. Ally*. *See MBIA v. GMAC*, 914 N.Y.S.2d 604 (N.Y. Sup. Ct. 2010); *MBIA v. RFC*, Order, No. 603552/08 (N.Y. Sup. Ct. Dec. 22, 2009).

122. GMAC's disregard of its underwriting guidelines has led to the repurchase of loans it had sold to Fannie Mae. As of September 10, 2010, Fannie Mae had required GMAC to repurchase 2,887 loans because of violations of representations and warranties regarding those loans. They had a total unpaid principal balance of $544 million. *See* Letter to Gary Cohen,

FCIC (Sept. 21, 2010), Attach. “Total Aggregate Recovery, Data as of 8/31/2010,” at 1, *available at* http://fcic-static.law.stanford.edu/cdn_media/fcic-docs/2010-09-21%20Fannie%20Mae%20Counsel%20letter%20to%20the%20FCIC.pdf.

4. GreenPoint Mortgage Funding Inc.’s Systematic Disregard of Underwriting Standards

123. GreenPoint Mortgage Funding Inc. (“GreenPoint”) contributed a material portion of the loans in the mortgage pool underlying the RALI Series 2006-QA11 Trust offering. *See infra* Table 6.

124. GreenPoint, based in Novato, California, was the wholesale mortgage banking unit of Capital One Financial Corp. (“Capital One”). Capital One acquired GreenPoint when it purchased GreenPoint’s holding company, North Fork Bancorp, in December 2006. Capital One shut down GreenPoint’s operations less than one year later on August 21, 2007.

125. According to a press release issued by Capital One on August 20, 2007, GreenPoint had an “originate and sell” (*i.e.*, OTD) business model with a focus on “prime non-conforming and near-prime markets, especially the Alt-A mortgage sector.” Capital One eventually liquidated GreenPoint in December 2008, taking an $850 million write-down due to mortgage-related losses associated with GreenPoint’s origination business.

126. When originating stated income loans, GreenPoint often inflated the borrowers’ income by as much as 5%. A September 12, 2008, article on Bloomberg reports on GreenPoint’s underwriting practices:

> Many Alt-A loans go to borrowers with credit scores higher than subprime and lower than prime, and carried lower interest rates than subprime mortgages.
>
> So-called no-doc or stated-income loans, for which borrowers didn’t have to furnish pay stubs or tax returns to document their earnings, were offered by lenders such as GreenPoint Mortgage and Citigroup Inc. to small business owners who might have found it difficult to verify their salaries.

> . . .
>
> "To grow, the market had to embrace more borrowers, and the obvious way to do that was to move down the credit scale," said Guy Cecala, publisher of Inside Mortgage Finance. "Once the door was opened, it was abused."
>
> . . .
>
> Almost all stated-income loans exaggerated the borrower's actual income by 5 percent or more, and more than half increased the amount by more than 50 percent, according to a study cited by Mortgage Asset Research Institute in its 2006 report to the Washington-based Mortgage Bankers Association.

Dan Levy & Bob Ivry, *Alt-A Mortgages Next Risk for Housing Market as Defaults Surge*, BLOOMBERG, Sept. 12, 2008, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=arb3xM3SHBVk.

127. U.S. Bank, the indenture trustee of GreenPoint Mortgage Funding Trust 2006-HE1, sued GreenPoint in order to force GreenPoint to repurchase the loans that GreenPoint had contributed to the RMBS. U.S. Bank alleged that GreenPoint "pervasive[ly] fail[ed] to follow its underwriting guidelines during the origination of the Loans." *U.S. Bank Nat'l Assoc. v. GreenPoint Mortg. Funding, Inc.*, No. 600352/09, 2010 WL 841367, at *7 (N.Y. Sup. Ct. Mar. 3, 2010); *see also* Compl., *U.S. Bank Nat'l Assoc. v. GreenPoint Mortg. Funding, Inc.*, 2009 WL 6084150, ¶ 35 (N.Y. Sup. Ct. Feb. 5, 2009) (alleging pervasive misrepresentations of borrowers' income, assets, employment, intent to occupy the property, inflated appraisal values, and violations of GreenPoint's underwriting guidelines regarding credit scores, debt-to-income ratios, and loan-to-value ratios).

128. U.S. Bank based its allegations on its forensic analysis of GreenPoint-originated loans. Of 1,030 randomly sampled loans, U.S. Bank found that 93% were in violation of GreenPoint's underwriting guidelines. *See id.* at *7 n.4. Its complaint survived a motion to dismiss. *See id.* at *8.

129. Syncora Guarantee, a monoline insurer, sued J.P. Morgan Securities, LLC, as successor to Bear Stearns & Co., Inc., in connection with an RMBS underwritten by Bear Stearns and exclusively collateralized by GreenPoint-originated loans. After sustaining large losses due to the poor performance of GreenPoint loans, Syncora hired an independent consultant to "reunderwrite" 1,431 GreenPoint loans, 400 of which were randomly selected without regard to payment status. Over 92% of the 1,431 loans contained misrepresentations, and over 85% of the randomly selected 400 loans contained misrepresentations. The misrepresentations uncovered include:

- Rampant fraud, primarily involving misrepresentation of the borrower's income, assets, employment, or intent to occupy the property as the borrower's residence (rather than as an investment), and subsequent failure to so occupy the property;

- Failure by the borrower to accurately disclose his or her liabilities, including multiple other mortgage loans taken out to purchase additional investment property;

- Inflated and fraudulent appraisals; and,

- Pervasive violations of GreenPoint's own underwriting guidelines without adequate, or any, compensating factors, and in disregard of prudent mortgage lending practices, including loans made to borrowers (i) who made unreasonable claims as to their income, (ii) with multiple, unverified social-security numbers, (iii) with credit scores below the required minimum; (iv) with debt-to-income and loan-to-value ratios above the allowed maximums, or (v) with relationships to the applicable originator or other non-arm's-length relationships.

See Compl., *Syncora Guar. Inc. v. J.P. Morgan Secs. LLC*, ¶¶ 7, 181-82, No. 651566/2011 (N.Y. Sup. Ct. filed June 6, 2011). Syncora's lawsuit survived a combined motion to dismiss and motion for summary judgment. *See* Decision and Order, *Syncora Guar. Inc. v. J.P. Morgan Secs. LLC*, Doc. 50, No. 651566/2011 (N.Y. Sup. Ct. May 2, 2012).

130. GreenPoint's own employees have corroborated the findings of U.S. Bank and

Syncora. A confidential witness in *Federal Home Loan Bank of Indianapolis v. Banc of America Mortgage Securities, Inc.*, confirmed that (1) GreenPoint employees faced intense pressure to close loans at any cost; (2) GreenPoint managers overrode employees' decisions to reject loans and approved loans based upon inflated incomes; (3) GreenPoint approved loans that contained exceptions for which there were no reasonable compensating factors; and (4) GreenPoint failed to adhere to sound underwriting guidelines. This confidential witness was a senior loan underwriter at GreenPoint from October 1997 through August 2007. *See* Compl., *Fed. Home Loan Bank of Indianapolis v. Banc of Am. Mortg. Secs., Inc.*, ¶ 265, No. 49D051010PL045071 (Ind. Sup. Ct., Marion Cnty. filed Oct. 15, 2010) ("FHLB Indianapolis").

131. According to that confidential witness, sales staff and managers at GreenPoint received bonuses based on the number of loans closed. As she said, "sales had tremendous authority" at GreenPoint, and "[t]hey were in business to make more money. They would try to find any way to close a loan." *Id.* ¶ 266.

132. Between 2005 and 2007, the confidential witness said that stated income loans became increasingly popular and GreenPoint managers approved loans based upon inflated incomes that she believed should not have been approved. She saw a lot of loans with stated "income that was more than could be justified by the borrower's employment." When she denied loans because she believed the income was inflated, sometimes the underwriting managers, operations managers, and the regional operations manager overrode her decisions. *Id.* ¶ 267.

133. More often than not, the confidential witness believed that her managers overrode her denials due to the incentives that they received based upon loan volume. As she said, "They were making the decision because they had to hit certain sales numbers." She was aware of such

targets because of comments made in operations meetings about the company needing to meet certain goals. *Id.* ¶ 268.

134. The FHLB Indianapolis suit survived a motion to dismiss, with the Court holding, "the plaintiff has, indeed, stated a claim upon which relief can be granted on the issue of underwriting guidelines." *Fed. Home Loan Bank of Indianapolis v. Bank of Am. Mortg. Secs., Inc.*, No. 49D051010PL045071, 2012 WL 2844690 (Ind. Sup. Ct., Marion Cnty. July 3, 2012).

135. In *Allstate Bank v. J.P. Morgan Chase, N.A.*, Allstate, an RMBS investor, sued J.P. Morgan, the RMBS underwriter, for misrepresentations in RMBS offering documents. Allstate's complaint relied on several confidential witnesses. One confidential witness, who was an underwriting analyst at GreenPoint from 2003 to 2007, stated that GreenPoint reviewed only 10% of the loans it originated for fraud. He thought this was a "mistake" because the fraud and misrepresentation uncovered in the 10% sample indicated that many more loans likely contained fraud. But the remaining 90% of the loans were not reviewed. Am. Compl., *Allstate Bank v. JPMorgan Chase, N.A.*, ¶ 485, No. 11-1869 (S.D.N.Y. filed May 10, 2012).

136. That confidential witness also stated that sales personnel ran GreenPoint, and senior management was comprised of people from sales who were incentivized to push the volume of mortgage loans, not adherence to the underwriting guidelines or due diligence. Managers' bonuses were tied to production volume, and they were not penalized if loans were later found to be fraudulent or if the borrower defaulted on the first payment. He stated that GreenPoint's management deliberately overlooked misrepresentations from mortgage loan brokers, particularly if the broker brought in a high volume of loans. Problem brokers were rarely suspended, and even when they were, there was never a review of the loans they originated that were already in the pipeline. *Id.* ¶ 486.

137. Another confidential witness was a Wholesale Account Manager at GreenPoint from 2004 to 2006. That confidential witness stated that GreenPoint employees understood that if a mortgage loan could eventually be sold to Wall Street, GreenPoint was to approve and fund the mortgage loan. The majority of the loan products originated in the confidential witness's office were stated income-stated asset loans and pay-option ARMs. Despite the risk inherent in these products, the sales force "never learned of negative loan performance" and their compensation was in no way tied to loan performance. *Id.* ¶ 487.

138. Another confidential witness was an Underwriting Supervisor at GreenPoint from 2005 to 2006 and supervised five Underwriters and three Conditions Specialists. That confidential witness stated that GreenPoint management authorized exceptions to loan underwriting guidelines in order to approve applications, even when there were no compensating factors justifying the exceptions. The confidential witness was aware that management overrode decisions to refuse funding in locations known for fraud and property flipping, even when evidence of fraud was found. According to the confidential witness, "if the borrower is breathing and could sign loan documents, they could get a loan" from GreenPoint. *Id.* at ¶ 488.

139. *Allstate's* complaint also alleged that many of GreenPoint's loans were granted by the over 18,000 brokers that were approved to transact with GreenPoint – a large enough number that GreenPoint could not exercise any realistic degree of control. Typically, new brokers were actively monitored for only the first five to seven loans submitted, usually during only the first 90 days of being approved. *Id.* ¶ 490.

140. This was problematic because mortgage brokers were known to commit fraud in order to get loan applications approved by originators. As one former mortgage wholesaler put it, "I'd walk into mortgage shops and see brokers openly cutting and pasting income documents

and pay stubs, getting out the Wite-Out and changing Social Security numbers." Mara Der Hovanesian, *Sex, Lies, and Subprime Mortgages*, Bloomberg Businessweek (Nov. 12, 2008), *available at* http://www.businessweek.com/stories/2008-11-12/sex-lies-and-subprime-mortgages.

141. GreenPoint's pervasive disregard of underwriting standards resulted in its inclusion among the worst ten originators in the 2008 "Worst Ten in the Worst Ten" Report. GreenPoint was identified 7th worst in Stockton, California, and 9th worst in both Sacramento, California, and Las Vegas, Nevada. *See* 2008 "Worst Ten in the Worst Ten" Report. In the 2009 "Worst Ten in the Worst Ten" Report, GreenPoint was listed as 3rd worst in Modesto, California; 4th worst in Stockton, Merced, and Vallejo-Fairfield-Napa, California; 6th worst in Las Vegas, Nevada; and 9th in Reno, Nevada. *See* 2009 "Worst Ten in the Worst Ten" Report.

5. Homecomings's Systematic Disregard of Underwriting Standards

142. Homecomings Financial, LLC f/k/a Homecomings Financial Network, Inc. ("Homecomings") originated or contributed a material portion of the loans in the mortgage pool underlying the RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust, RALI Series 2007-QA2 Trust and RALI Series 2007-QA3 Trust offerings and is a wholly-owned subsidiary of the sponsor of those offerings, Residential Funding Co., LLC f/k/a Residential Funding Corp. ("RFC"). *See infra* Table 6.

143. The Federal Trade Commission opened an investigation into Homecomings mortgage lending and underwriting practices, closing the investigation in January 2009, after Homecomings ceased mortgage loan origination. *See* Letter from Peggy L. Twohig, Associate Dir., Div. of Fin. Practices, Bur. of Consumer Protection, Federal Trade Commission, to Andrew Sandler, Skadden, Arps (counsel for Homecomings) (Jan. 22, 2009).

144. In March 2009, the Portland Tribune reported that Homecomings lending practices allowed for the origination of shaky loans that precipitated a wave of foreclosures. The article reported:

> "In order to keep your market share, you had to be more aggressive," said Tim Boyd, who sold subprime loans in the Portland area for six years and then Alt A loans for seven years for Homecomings Financial.
>
> "The main focus was doing Alt A because that's where the money was," said Boyd, who left the industry. A loan officer arranging a $300,000 Option ARM loan could collect $10,500 in fees, he said.
>
> Lenders could unload shaky loans by selling them to investors, who often resold them in what amounted to a worldwide game of financial musical chairs. Wall Street's insatiable appetite for more loans kept the pipeline filled, even if the deals weren't always sound.
>
> "The V.P.s came down to the office beating the drums about Option ARMs," urging mortgage brokers to sell them to customers, [Bill Ridge, owner of Ridge Mortgage Services] said. "I had Wachovia march through there; I had GMAC."
> . . . .
>
> He said he knows of loan officers who'd tell title agents to keep quiet about Option ARM loan provisions during document-signing time.
>
> "They'd tell the title officer, 'Don't go over this; just glean through it quickly and get the thing signed.'"
>
> Tim Boyd said he drew the line at selling Option ARMs because he saw how that could get people into trouble. "It made me sick," he said.

Steve Law, *Shaky Loans May Spur New Foreclosure Wave*; *Unraveling 'Alt A' Mortgages Could Keep Portland Housing Market Dismal*, PORTLAND TRIB., Mar. 5, 2009.

145. The Offering Documents in the RALI Series offerings at issue in this Complaint indicate that the underlying pools of mortgages were primarily comprised of "payment-option, hybrid adjustable-rate mortgage loans" ("Option ARMs") and/or Alt-A loans.

146. Homecomings' origination practices are also at issue in *Federal Home Loan Bank of Chicago v. Banc of America Funding Corp.,* No. 10 CH 45033 (Ill. Cir. Ct. Cook Cty. filed

Oct. 15, 2010). There, the Federal Home Loan Bank of Chicago ("FHLB Chicago") alleges that Homecomings systemically disregarded its underwriting guidelines when originating mortgages that were subsequently collateralized RMBS. *See* FHLB Chicago Am. Compl.

147. Statements from confidential witnesses in the FHLB Chicago Complaint represented that Homecomings originated mortgage loans in violation of its stated underwriting standards.

148. According to two confidential witnesses in the FHLB Chicago Complaint, the first who was a Homecomings underwriter from January 2006 until December 2006 and the second who was a Homecomings underwriter from May 2005 until October 2007, Homecomings made loans to borrowers who clearly could not make the monthly payments, approved high-risk low-doc or no-documentation loans, approved exceptions with no reasonable compensating factors, and widely abandoned underwriting practices. *See id.* ¶ 447.

149. Those two confidential witnesses described the two different automatic underwriting systems that Homecomings employed to underwrite loans: (1) Desktop Underwriter, and (2) Assetwise. According to the second confidential witness, Homecomings' employees purposefully chose to use Desktop Underwriter for subprime loan applications from low-income applicants because it approved loans with a higher debt-to-income ratio than Assetwise would approve. *See id*. ¶ 450.

150. The first confidential witness described how the Assetwise program required an employee to simply enter in a borrower's information and the program would yield its findings. The confidential witness explained that "one of [her] problems was that [a loan application] would fit inside the guidelines, but if you read between the lines, you could see that the borrower was not going to be able to make the payments." When the confidential witness raised these

pressing concerns to her supervisor, she received unambiguous directions: "It fits, you do the loan. We're going to do this deal." *Id.* ¶ 451.

151. The second confidential witness reported that no matter which automated underwriting system employees chose to use, nearly all of the loan applications were approved. Once the loan application was approved by the automated underwriting system, the underwriters could not reverse the approval. *See id.* ¶ 452.

152. The first confidential witness described how mortgage brokers would appeal loans initially denied until Homecomings supervisors signed off on the loans. The second confidential witness said loan officers were instructed to search for compensating factors that would enable them to approve the loan despite the presence of "red flags." *Id.* ¶¶ 453-54.

153. The FHLB complaint survived the defendants' motion to dismiss. FHLB Ill. Order.

154. Homecomings' underwriting practices are implicated in three lawsuits filed by MBIA, Inc. MBIA provided monoline insurance, a form of credit enhancement, for RMBS containing Homecomings-originated loans. In its suits, MBIA alleges misrepresentations regarding the quality of the loans underlying the RMBS that it insured. Except for one, the RMBS in MBIA's suits were issued in 2006 and 2007. *See* Compl., *MBIA Ins. Corp. v. Ally Fin., Inc.*, No. 12-18889 (MN Ct., Hennepin Cnty. filed Sept. 17, 2012) ("*MBIA v. Ally* Compl."); Compl., *MBIA Ins. Corp. v. GMAC Mortg., LLC*, No. 600837/2010 (N.Y. Sup. Ct. filed Apr. 1, 2010) ("*MBIA v. GMAC* Compl."); Compl., *MBIA Ins. Corp. v. Residential Funding Co.*, No. 603552/2008 (N.Y. Sup. Ct. filed Dec. 4, 2008) ("*MBIA v. RFC* Compl.").

155. The defendants in those suits include Ally Financial, Inc., RFC, and GMAC Mortgage, LLC ("GMAC Mortgage"). RFC, GMAC Mortgage, and Homecomings were all

subsidiaries of GMAC Mortgage Group, LLC, which is now a subsidiary of Ally Financial. *See* Ally Financial, Inc., Form 10-K, Ex. 21 (2011); GMAC LLC, Form 10-K, Ex. 21 (2006).

156. RFC and GMAC Mortgage sponsored the RMBS that MBIA insured. RFC also sponsored each of the RALI Series RMBS at issue in this suit.

157. Homecomings originated many of the loans underlying the RMBS at issue in MBIA's suits. *See also MBIA v. Ally* Compl. ¶¶ 5, 25 (alleging Homecomings originated many of the loans in RMBS sponsored by RFC and GMAC Mortgage).

158. After sustaining large losses, MBIA conducted forensic analyses of several thousand loans underlying the RMBS sponsored by RFC and GMAC, many of which were originated by Homecomings. MBIA found material misrepresentations in over 89% of those loans from GMAC-sponsored RMBS and over 93% of those loans from RFC-sponsored RMBS. The material misrepresentations included, among other things, routine disregard of underwriting guidelines, debt-to-income and combined loan-to-value ratios that exceeded the amounts allowed in the underwriting guidelines, failure to verify employment as required by underwriting guidelines, and improper reliance on the Assetwise program. *See MBIA v. Ally* Compl. ¶¶ 76-83; *MBIA v. GMAC* Compl. ¶¶ 70-79; *MBIA v. RFC* Compl. ¶¶ 42-48.

159. Representative examples of the misrepresentations MBIA uncovered include (1) a loan that had a debt-to-income ("DTI") ratio of 65.56% and a CLTV ratio of 125.68% when the underwriting guidelines imposed a maximum DTI ratio of 50% and a maximum CLTV ratio of 100%, and (2) a loan for a borrower with a stated income of $3700 per month and a CLTV of 94.2% when the underwriting guidelines required an income of $4000 per month and a CLTV not exceeding 80%. *See MBIA v. GMAC* Compl. ¶ 78; *MBIA v. RFC* Compl. ¶ 47.

160. All three of MBIA's suits are still pending. Two have survived motions to

dismiss. *See MBIA v. GMAC*, 914 N.Y.S.2d 604 (N.Y. Sup. Ct. 2010); *MBIA v. RFC*, Order, No. 603552/08 (N.Y. Sup. Ct. Dec. 22, 2009). There have been no rulings in *MBIA v. Ally*.

161. A confidential witness, who was an account executive at Homecomings from August 2001 to September 2008, corroborated the allegations in the *MBIA* complaints regarding improper use of Assetwise. As a subsidiary of RFC, Homecomings used Assetwise in its mortgage origination. According to the confidential witness, Homecomings employees would "game" Assetwise. Assetwise was programmed to make "automated exceptions" that were purportedly within the RFC and Homecomings underwriting guidelines. Homecomings did not monitor what information a loan officer could input in Assetwise, and Assetwise required only a limited amount of information to process and approve a loan. If possible, loan officers would sometimes not submit detrimental information to Assetwise in order to gain approval for a loan that would not have been approved if all known information had been input into Assetwise.

162. The confidential witness also stated that Homecomings' employees would run the same loan through Assetwise several times, making a slight adjustment to the loan application each time until Assetwise approved the loan. This was possible because Homecomings did not place limits on the number of times a loan application could be submitted to Assetwise, and the software itself had no internal limits on the number of times a loan application could be submitted.

163. The confidential witness also corroborated the statements made by the confidential witnesses in the FHLB Chicago Complaint, stating that the lack of following underwriting guidelines at Homecomings was much more severe than what was related in the FHLB Chicago Complaint. The confidential witness sometimes processed as many as 130 to 200 loans per month and received pervasive pressure to get loans approved.

164. RFC is also the defendant in several other cases brought by the Financial Guaranty Insurance Company ("FGIC"), alleging material misrepresentations in the offering documents concerning the characteristics of the mortgages underlying the securities at issue. *See* Compl., *Fin. Guar. Ins. Co. v. Residential Funding Co*, No. 653304/2011 (N.Y. Sup. Ct. filed Nov. 29, 2011). *See also* Nos. 653493/2011, 653621/2011, 653622/2011, 653623/2011, 653303/2011 (related FGIC cases). The complaints allege that Homecomings originated and serviced many of the deficient loans underlying the securities at issue in the FGIC complaints, and that disregard of underwriting standards at Homecomings directly led to the losses incurred by FGIC.

165. As shown by statements from confidential witnesses, former employees in the FHLB Chicago Complaint, and MBIA's forensic analyses of Homecomings' loans, Homecomings' actual mortgage underwriting practices deviated widely from its stated guidelines. This systematic disregard of underwriting standards led to toxic loans being bundled into securities and sold to investors who did not know, and could not have known, about the true nature of the loans backing their securities.

VIII. THE OFFERING DOCUMENTS CONTAINED UNTRUE STATEMENTS OF MATERIAL FACT

166. The Offering Documents included material untrue statements or omitted facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

167. For purposes of Section 11 liability, the prospectus supplements are part of and included in the registration statements of the offerings pursuant to 17 C.F.R. §§ 230.158, 230.430B (2008); *see also* Securities Offering Reform, 70 Fed. Reg. 44722-01, 44768-69 (Aug. 3, 2005).

168. Statements in the Offering Documents concerning the following subjects were material and untrue at the time they were made: (1) the Originators' evaluation of the borrower's capacity and likelihood to repay the loan through application of the stated underwriting standards, including the calculation and use of an accurate DTI ratio and the frequency and use of exceptions to those standards; and (2) adherence to stated underwriting standards for reduced documentation programs.

169. The following table lists the originators that contributed loans to each RMBS, as identified in the Offering Documents. Under SEC's Regulation AB, the Offering Documents must disclose the originators that contributed more than 10% of the loans underlying the RMBS, and the Offering Documents must include underwriting guidelines for the originators that contributed more than 20% of the loans underlying the RMBS. *See* 17 C.F.R. § 229.1110 (2005). For the RMBS listed below, the Offering Documents included only those underwriting guidelines for the Originators that contributed more than 20% of the loans to the RMBS.

Table 6
Originators Supplying Loans for Each RMBS at Issue

CUSIP	Issuing Entity	Tranche	Originator(s)
74922XAA5	RALI Series 2006-QA11 Trust	A-1	Homecomings Financial, LLC (30.5%) GMAC Mortgage, LLC (2.9%) GreenPoint Mortgage Funding, Inc. (25.0%)
74923GAC7	RALI Series 2007-QA1 Trust	A-3	Homecomings Financial, LLC (43.8%) GMAC Mortgage, LLC (13.7%)
74922PAC8	RALI Series 2007-QA2 Trust	A-3	Homecomings Financial, LLC (36.1%) GMAC Mortgage, LLC (20.0%) Provident Funding Assoc., L.P. (10.1%)
74923XAD8	RALI Series 2007-QA3 Trust	A-4	Homecomings Financial, LLC (42.3%) GMAC Mortgage, LLC (9.5%) First National Bank of Nevada (18.4%)

170. Examples of material untrue statements and/or omissions of fact in the Offering Documents of the RMBS listed above follow.

A. Untrue Statements Concerning Evaluation of the Borrower's Capacity and Likelihood to Repay the Mortgage Loan

171. The RALI Series 2006-QA11 Trust Prospectus stated:

> The depositor expects that the originator of each of the mortgage loans will have applied, consistent with applicable federal and state laws and regulations, underwriting procedures intended to evaluate the borrower's credit standing and repayment ability and/or the value and adequacy of the related property as collateral.

RALI Series 2006-QA11 Trust Prospectus, Dec. 6, 2006, at 12; RALI Series 2007-QA1 Trust Prospectus, Dec. 6, 2006, at 12; RALI Series 2007-QA2 Trust Prospectus, Dec. 6, 2006, at 12; RALI Series 2007-QA3 Trust Prospectus, Apr. 9, 2007, at 17.

172. The RALI Series 2006-QA11 Trust Prospectus Supplement stated:

> Program Underwriting Standards. 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, which may have been supplied solely in the application, regarding its assets, liabilities, income (except as described below), 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.

RALI Series 2006-QA11 Trust Prospectus Supplement at S-49; RALI Series 2007-QA1 Trust Prospectus Supplement at S-48; RALI Series 2007-QA2 Trust Prospectus Supplement at S-47; RALI Series 2007-QA3 Trust Prospectus Supplement at S-53.

173. The RALI Series 2006-QA11 Trust Prospectus Supplement included the following statement with respect to the borrower's ability to pay the loan:

> Based on the data provided in the application and certain verifications, if required, a determination is made by the original lender that the mortgagor's monthly income, if required to be stated, will be sufficient to enable the mortgagor to meet its monthly obligations on the mortgage loan and other expenses related to the property, including property taxes, utility costs, standard hazard insurance and other fixed obligations.

RALI Series 2006-QA11 Trust Prospectus Supplement at S-49; RALI Series 2007-QA1 Trust Prospectus Supplement at S-48; RALI Series 2007-QA2 Trust Prospectus Supplement at S-47; RALI Series 2007-QA3 Trust Prospectus Supplement at S-55.

174. UNTRUE STATEMENTS AND OMITTED INFORMATION: The preceding statements were material at the time they were made, because the quality of the loans in the mortgage pool directly affects the riskiness of the RMBS investment, and the quality of the loans is dependent upon the underwriting process employed. The preceding statements were untrue at the time they were made because, as alleged herein, the Originators did not adhere to the stated underwriting guidelines, did not effectively evaluate the borrowers' ability or likelihood to repay the loans, did not properly evaluate whether the borrower's DTI ratio supported a conclusion that the borrower had the means to meet his/her monthly obligations, and did not ensure that adequate compensating factors justified the granting of exceptions to guidelines. Rather, as alleged herein, the Originators systematically disregarded the stated underwriting guidelines in order to increase the volume of mortgages originated (*see supra* Section VII.D). Further evidence of the fact that the loans in the pools collateralizing the Certificates at issue are the product of a systematic disregard of underwriting guidelines is found in, among other things, the surge in delinquencies and defaults shortly after the offerings (*see supra* Table 4), the rate at which actual gross losses outpaced expected gross losses within the first year after the offerings (*see supra* Figure 2), the collapse of the credit ratings (*see supra* Table 3), and the fact that the Originators were engaged in high OTD lending (*see supra* Table 5).

B. Untrue Statements Concerning Reduced Documentation Programs

175. The RALI Series 2006-QA11 Trust Prospectus stated:

General Standards

In most cases, under a traditional “full documentation” program, each mortgagor will have been required to complete 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, the mortgagor will have furnished information, which may be supplied solely in the application, with respect to its assets, liabilities, income (except as described below), credit history, employment history and personal information, and furnished an authorization to apply for a credit report that summarizes the borrower’s credit history with local merchants and lenders and any record of bankruptcy. The mortgagor may also have been required to authorize verifications of deposits at financial institutions where the mortgagor had demand or savings accounts. In the case of investment properties and two- to four-unit dwellings, income derived from the mortgaged property may have been considered for underwriting purposes, in addition to the income of the mortgagor from other sources. With respect to mortgaged property consisting of vacation or second homes, no income derived from the property will have been considered for underwriting purposes. In the case of certain borrowers with acceptable payment histories, no income will be required to be stated, or verified, in connection with the loan application.

If specified in the accompanying prospectus supplement, a mortgage pool may include mortgage loans that have been underwritten pursuant to a streamlined documentation refinancing program. Such program permits some mortgage loans to be refinanced with only limited verification or updating of the underwriting information that was obtained at the time that the original mortgage loan was originated. For example, a new appraisal of a mortgaged property may not be required if the related original mortgage loan was originated up to 24 months prior to the refinancing. In addition, a mortgagor’s income may not be verified, although continued employment is required to be verified. In certain circumstances, a mortgagor may be permitted to borrow up to 100% of the outstanding principal amount of the original mortgage loan. Each mortgage loan underwritten pursuant to this program will be treated as having been underwritten pursuant to the same underwriting documentation program as the mortgage loan that it refinanced, including for purposes of the disclosure in the accompanying prospectus supplement.

If specified in the accompanying prospectus supplement, some mortgage loans may have been originated under “limited documentation,” “stated documentation” or “no documentation” programs that require less documentation and verification than do traditional “full documentation” programs. Under a limited documentation, stated documentation or no documentation program, minimal investigation into the mortgagor’s credit history and income profile is undertaken by the originator and the underwriting may be based primarily or entirely on an appraisal of the mortgaged property and the LTV ratio at origination.

RALI Series 2006-QA11 Trust Prospectus, Dec. 6, 2006, at 12-13; RALI Series 2007-QA1 Trust Prospectus, Dec. 6, 2006, at 12-13; RALI Series 2007-QA2 Trust Prospectus, Dec. 6, 2006, at 12-13; RALI Series 2007-QA3 Trust Prospectus, Apr. 9, 2007, at 18.

176. UNTRUE STATEMENTS AND OMITTED INFORMATION: The preceding statements were material at the time they were made, because the quality of the loans in the mortgage pool directly affects the riskiness of the RMBS investment, and the quality of the loans is dependent upon the underwriting process employed. The preceding statements were untrue at the time they were made, because regardless of the documentation program purportedly employed, the Originators systematically disregarded their underwriting guidelines in order to increase the volume of mortgages originated, emphasizing quantity of loans rather than the quality of those loans (*see supra* Section VII.D). Further evidence of the fact that the loans in the pools collateralizing the Certificates at issue are the product of a systematic disregard of underwriting guidelines is found in, among other things, the surge in delinquencies and defaults shortly after the offerings (*see supra* Table 4), the huge discrepancy between expected and actual gross losses (*see supra* Figure 2), the collapse of the credit ratings (*see supra* Table 3), and the fact that the Originators were engaged in high OTD lending (*see supra* Table 5).

IX. THE CLAIMS ARE TIMELY

177. For actions brought by the NCUA Board as Liquidating Agent, the FCUA extends the statute of limitations for at least three years from the date of the appointment of the NCUA Board as Conservator or Liquidating Agent. *See* 12 U.S.C. § 1787(b)(14)(B)(i).

178. The NCUA Board placed Southwest into conservatorship on September 24, 2010. On October 31, 2010, the NCUA Board placed Southwest into liquidation and appointed itself as Liquidating Agent.

179. Actions brought under Sections 11 and 12(a)(2) of the Securities Act must be:

> brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence . . . . In no event shall any such action be brought to enforce a liability created under section 77k or 77*l*(a)(1) of this title more than three years after the security was bona fide offered to the public, or under section 77*l*(a)(2) of this title more than three years after the sale.

15 U.S.C. § 77m.

180. Actions brought under Section 581-33 of the Texas Blue Sky law must be brought no "(a) more than three years after discovery of the untruth or omission, or after discovery should have been made by the exercise of reasonable diligence; or (b) more than five years after the sale." Tex. Rev. Civ. Stat. Ann. art 581, § 33(H)(2).

181. As the Federal Reserve Board noted in November 2008, the "deteriorating lending standards" and "the surge in early payment defaults suggests that underwriting . . . deteriorated on dimensions that were less readily apparent to investors." Christopher J. Mayer *et al.*, *The Rise in Mortgage Defaults* 15-16 (Fed. Reserve Bd. Fin. & Econ. Discussion Series, Paper No. 2008-59).

182. The FSOC explained that the origination and securitization process contains inherent "information asymmetries" that put investors at a disadvantage regarding critical information concerning the quality and performance of RMBS. The FSOC Risk Retention Report described the information disadvantage for investors of RMBS:

> One important informational friction highlighted during the recent financial crisis has aspects of a "lemons" problem that exists between the issuer and investor. An originator has more information about the ability of a borrower to repay than an investor, because the originator is the party making the loan. Because the investor is several steps removed from the borrower, the investor may receive less robust loan performance information. Additionally, the large number of assets and the disclosures provided to investors may not include sufficient information on the quality of the underlying financial assets for investors to undertake full due diligence on each asset that backs the security.

FSOC Risk Retention Report at 9 (footnote omitted).

183. In addition, Southwest and/or the NCUA Board as their Liquidating Agent are or were members of putative classes in the cases listed in Table 7, below. Therefore, the NCUA Board's claims are subject to legal tolling of the various periods of limitation pursuant to *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) ("American Pipe") and its progeny.

Table 7
Purchases Subject to Tolling Under American Pipe

CUSIP	ISSUING ENTITY	TRADE DATE	AMERICAN PIPE TOLLING COMMENCEMENT DATE
74922XAA5	RALI Series 2006-QA11 Trust	11/28/2006	*New Jersey Carpenters v. RALI,* No. 08-8781 (S.D.N.Y.) Consolidated Amended Complaint **Filed: May 18, 2009**
74923GAC7	RALI Series 2007-QA1 Trust	1/8/2007	*New Jersey Carpenters v. RALI,* No. 08-8781 (S.D.N.Y.) Consolidated Amended Complaint **Filed: May 18, 2009**
74922PAC8	RALI Series 2007-QA2 Trust	2/22/2007	*New Jersey Carpenters v. RALI,* No. 08-8781 (S.D.N.Y.) Consolidated Amended Complaint **Filed: May 18, 2009**
74923XAD8	RALI Series 2007-QA3 Trust	4/27/2007	*New Jersey Carpenters v. RALI,* No. 08-8781 (S.D.N.Y.) Consolidated Amended Complaint **Filed: May 18, 2009**

184. With respect to those RMBS purchases for which the NCUA Board asserts claims for Southwest under Section 11 of the Securities Act (Count 1), the earliest date they were bona fide offered to the public – after accounting for *American Pipe* tolling – was not more than three years prior to September 24, 2010. Accordingly, the NCUA Board's Section 11 claims on behalf of Southwest are not time-barred.

185. With respect to those RMBS purchases for which the NCUA Board asserts claims

for Southwest under Section 12(a)(2) of the Securities Act (Count 2), the earliest sale date – after accounting for *American Pipe* tolling – was not more than three years prior to September 24, 2010. Accordingly, the NCUA Board's Section 12(a)(2) claims on behalf of Southwest are not time barred.

186. With respect to those RMBS purchases for which the NCUA Board asserts claims under state law (Count 3), the earliest purchase date/offering date with respect to those claims was November 28, 2006, or not more than five years prior to September 24, 2010. Accordingly, the NCUA Board's state law claims on behalf of Southwest are not time-barred.

X. CLAIMS FOR RELIEF

COUNT ONE
Section 11 of the Securities Act of 1933
(RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust
RALI Series 2007-QA2 Trust, RALI Series 2007-QA3 Trust)

187. The NCUA Board realleges paragraphs 1 through 186 of this Complaint, as though fully set forth here.

188. The NCUA Board brings this cause of action pursuant to Section 11 of the Securities Act of 1933, with respect to Southwest's purchases of the RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust, RALI Series 2007-QA2 Trust and RALI Series 2007-QA3 Trust certificates against Defendant RFS as the underwriter.

189. At the time the registration statements became effective, it (including the prospectuses and any prospectus supplements) contained untrue statements and omitted facts that were necessary to make the statements made not misleading, as alleged above.

190. The untrue statements and omitted facts were material because a reasonably prudent investor deciding whether to purchase the certificates would have viewed them as important and as substantially altering the total mix of information available, as alleged above.

191. Southwest purchased the certificates pursuant to and traceable to defective registration statements, as alleged above.

192. At the time Southwest purchased the certificates, it did not know of the untrue statements and omissions contained in the registration statements.

193. RFS's conduct as alleged above violated Section 11.

194. Southwest and Plaintiff sustained damages as a result of RFS's violations of Section 11.

195. WHEREFORE, the NCUA Board requests the Court to enter judgment in its favor against Defendant RFS, awarding all damages, in an amount to be proven at trial, costs, and such other relief as the Court deems appropriate and just.

COUNT TWO
Section 12(a)(2) of the Securities Act of 1933
(RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust, RALI Series 2007-QA2 Trust, RALI Series 2007-QA3 Trust)

196. The NCUA Board realleges paragraphs 1 through 186 of this Complaint, as though fully set forth here.

197. The NCUA Board brings this cause of action pursuant to Section 12(a)(2) of the Securities Act, with respect to Southwest's purchases of the RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust, RALI Series 2007-QA2 Trust and RALI Series 2007-QA3 Trust certificates against Defendant RFS as the underwriter and seller of those certificates.

198. Defendant RFS offered to sell and sold the certificates to Southwest through one or more instrumentalities of interstate commerce (*i.e.*, telephone, faxes, mails, email or other means of electronic communication).

199. Defendant RFS offered to sell and sold the certificates, for its own financial gain, to Southwest by means of the prospectuses and/or prospectus supplements, as alleged above,

and/or oral communications related to the prospectuses and/or prospectus supplements.

200. The prospectuses and/or prospectus supplements contained untrue statements and omitted facts that were necessary to make the statements made not misleading, as alleged above.

201. The untrue statements and omitted facts were material because a reasonably prudent investor deciding whether to purchase the certificates would have viewed them as important and as substantially altering the total mix of information available, as alleged above.

202. Southwest purchased the certificates on the initial offering pursuant to the prospectuses and/or prospectus supplements.

203. At the time Southwest purchased the certificates, it did not know of the untrue statements and omissions contained in the prospectuses and/or prospectus supplements.

204. Defendant RFS's conduct as alleged above violated Section 12(a)(2).

205. Southwest and the NCUA Board sustained damages as a result of Defendant RFS's violation of Section 12(a)(2).

206. Under Section 12(a)(2), the NCUA Board is entitled to rescind and recover the consideration Southwest paid for the certificates, minus principal and interest received.

207. WHEREFORE, the NCUA Board requests the Court to enter judgment in its favor against Defendant RFS, awarding a rescissory measure of damages, or in the alternative compensatory damages, in an amount to be proven at trial; costs, and such other relief as the Court deems appropriate and just.

COUNT THREE
Violation of the Texas Securities Act
Tex. Rev. Civ. Stat. Ann. art. 581, § 33
(RALI Series 2006-QA11 Trust, RALI Series 2007-QA1 Trust, RALI Series 2007-QA2 Trust, RALI Series 2007-QA3 Trust)

208. The NCUA Board realleges paragraphs 1 through 186 of this Complaint, as

though fully set forth here.

209. The NCUA Board brings this cause of action pursuant to Section 33 of the Texas Securities Act, with respect to Southwest's purchases of the RALI Series 2006-QA11 Trust, RALI Series 2007-QA1, Trust RALI Series 2007-QA2 Trust and RALI Series 2007-QA3 Trust certificates against Defendant RFS, as the seller of those certificates.

210. Defendant RFS offered to sell and sold the certificates to Southwest by means of written and/or oral communications which included untrue statements of material fact and/or omissions of material facts that were necessary to make the statements made not misleading, as alleged above.

211. The untrue statements of material fact and omitted facts were material because a reasonably prudent investor deciding whether to purchase the certificates would have viewed them as important and as substantially altering the total mix of information available, as alleged above.

212. Defendant RFS sold the certificates to Southwest in Texas.

213. At the time Southwest purchased the certificates, it did not know of these untruths and omissions.

214. If Southwest had known about these untruths and omissions, it would not have purchased the certificates from Defendant RFS.

215. Defendant RFS' sales of the certificates violated Tex. Rev. Civ. Stat. Ann. art. 581, § 33(A)(2).

216. Southwest and Plaintiff sustained damages as a result of Defendant RFS's violations of Tex. Rev. Civ. Stat. Ann. art. 581, § 33(A)(2).

217. WHEREFORE, the NCUA Board requests the Court to enter judgment in its

favor against Defendant RFS, awarding a rescissory measure of damages, or in the alternative compensatory damages, in an amount to be proven at trial; costs, and such other relief as the Court deems appropriate and just.

Jury Demand

Plaintiff hereby demands a trial by jury of all issues properly triable.

Dated: September 23, 2013

NATIONAL CREDIT UNION
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as Liquidating Agent of Southwest Corporate
Federal Credit Union

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