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

SYNCORA GUARANTEE INC.,	:	
Plaintiff,	:	Index No. 650042/09E
- against -	:	IAS Part 3 (Bransten, J.)
COUNTRYWIDE HOME LOANS, INC., COUNTRYWIDE SECURITIES CORP.,	:	
COUNTRYWIDE FINANCIAL CORP., and BANK OF AMERICA CORPORATION,	:	AMENDED COMPLAINT
Defendants.	:	

Plaintiff Syncora Guarantee Inc. ("Syncora"), by and through its undersigned attorneys, for its amended complaint against Countrywide Home Loans, Inc. ("Countrywide Home Loans"), Countrywide Securities Corporation ("Countrywide Securities") Countrywide Financial Corporation ("Countrywide Financial", and collectively with Countrywide Home Loans and Countrywide Securities, "Countrywide"), and Bank of America Corporation ("Bank of America") alleges as follows:

Overview of Claims

1. This is an action for fraud and breach of contract arising out of misrepresentations made by Countrywide in connection with four securitizations of home equity mortgage loans ("HELOCs") and one securitization of closed-end seconds originated by Countrywide and insured by Syncora. To obtain Syncora's agreement to insure these securities against default, and thus enhance their marketability, Countrywide represented to Syncora that Countrywide had acted prudently and responsibly in

underwriting the loans: among other things, Countrywide represented to Syncora that the loans in the portfolios conformed with its published underwriting guidelines and that it knew nothing about the loans that would cause a reasonable underwriter to conclude they would default. These representations were false. It has become clear that, in originating the loans in these portfolios, Countrywide, consistent with its business practices at the time, systematically ignored its own underwriting guidelines and made imprudent loans that no reasonable underwriter would have made in a single-minded pursuit of generating ever-greater volumes of new loans. As a result, thousands of non-performing loans in the securitized portfolios violated Countrywide's own published guidelines and should never have been made, and Syncora has already paid more than $145 million in claims and been noticed of another $257 million of claims. Countrywide's fraudulent inducement of Syncora's agreement to insure the securitizations and Countrywide's breach of its fundamental contractual obligations to Syncora entitle Syncora to compensation for all damages it has suffered as a result of its agreement to insure the securities, including the hundreds of millions of dollars it has paid and will pay in claims. Alternatively, Countrywide is liable for the over two hundred millions of dollars of non-performing loans that it included in the securitizations in breach of its express contractual representations and warranties.

2. Five securitizations of mortgage loans are at issue in this case. Four of these involved HELOCs: Revolving Home Equity Loan Asset Backed Notes, Series 2004-Q ("2004-Q"), the Revolving Home Equity Loan Asset Backed Notes, Series 2004-R ("2004-R"), Revolving Home Equity Loan Asset Backed Notes, Series 2005-K ("the

2005-K Series"), Revolving Home Equity Loan Asset Backed Notes, Series 2006-D ("the 2006-D Series," and collectively with the other three HELOC securitizations the "HELOC Securitizations"). The fifth is a securitization of close-end seconds, the Home Equity Loan Asset Backed Certificates, Series 2006-S7 ("2006-S7," and collectively with the HELOC Securitizations, the "Securitizations").

3. Countrywide created the Securitizations by aggregating thousands of mortgage loans that it and its subsidiaries originated and selling them to trusts. The trusts issued notes and certificates backed by the loans (together "Notes"). Payments of interest and principal on these Notes depend on the continuing stream of interest and principal payments on the mortgage loans held by the trusts. When the borrowers default, the trusts have less money available to pay. If too many borrowers default, the trusts cannot make payments on their obligations.

4. To make the Notes more attractive to investors, Countrywide contracted with Syncora to act as an insurer, or "credit enhancer," of the Notes issued by these Securitizations. Syncora improved the credit rating of the Notes by guaranteeing to their holders that they would receive timely payments of interest and principal, and that Syncora would make up any shortfall between the principal balance of the insured obligations and the principal balance of the mortgage loans that the trusts used as collateral. The risk that Syncora would have to pay claims was directly tied to the soundness of the underlying loans in the portfolio.

5. To induce Syncora to agree to insure the Securitizations, Countrywide made extensive representations about the credit-worthiness of the securitized loans in

prospectuses, loan tapes, and other documents provided to Syncora. Countrywide also represented in these documents and the contracts that it would follow its own published guidelines in originating loans, that it qualified borrowers based on income, that the borrowers' properties (which served as collateral for the loans) had been appraised independently and fairly, that it appropriately verified borrower income, and that its originating activities complied with applicable law.

6. Syncora relied on Countrywide's representations when deciding whether to bid on and provide insurance to the Securitizations. Among other things, Syncora relied on:

- Countrywide's representations about its underwriting processes and standards, made in email to Syncora, in meetings with Syncora, and in the prospectuses and contractual agreements for the Securitizations; and
- The accuracy of information provided by Countrywide on the individual mortgages as part of the bidding process, in the prospectuses and as part of the contractual agreements for the Securitizations.

7. Countrywide knew that these representations were false, since they were inconsistent with Countrywide's current underwriting practices. As disclosures by former Countrywide employees, suits by numerous attorneys general and other public authorities, and Syncora's own investigation of Countrywide's loan files have revealed, Countrywide systematically ignored its published lending guidelines in order to focus on increasing the volume of loan originations, and its own fees, at the expense of any regard for the quality of the loans, the credit-worthiness of borrowers, or the potential impact of its conduct on Syncora or the Noteholders.

8. Countrywide regularly ignored its own published guidelines when they were too stringent to permit a loan, employed inflated home appraisals, and accepted obviously exorbitant, unconfirmed self-reported statements of income in order to justify making loans that should never have been made. Rather than rejecting loans that failed to meet its published underwriting guidelines, Countrywide referred them to more senior underwriters, who almost invariably approved them, based on bogus "compensating factors." As a former senior Countrywide officer put it, "the fiduciary responsibility of making sure whether the loan should truly be done was not as important as getting the deal done."

9. Attorneys general in states across the nation have brought suit against Countrywide for these underwriting practices. Their claims describe in detail how Countrywide sacrificed underwriting standards in order to increase loan volume at the expense of borrowers, the securitized mortgage markets, and insurers like Syncora. For example, the California Attorney General has alleged that Countrywide Financial and Home Loans "set out to double Countrywide's share of the national mortgage market . . . through a deceptive scheme to mass produce loans for the secondary market . . . with little or no regard to borrowers' long-term ability to afford" the loans Countrywide made.

10. As the attorney generals' suits and Countrywide's recent $8.6 billion settlement with eleven states make clear, Countrywide's breaches of its published guidelines reflect a company-wide rejection of responsible underwriting practices in pursuit of greater loan volume, regardless of risk. In 2004, Angelo Mozilo, Countrywide's former chairman and CEO, publicly announced that Countrywide would

double its market share of loan originations within four years. Mozilo claimed that this expansion would lead to "no compromise" in Countrywide's underwriting standards – a claim that has proved to be spectacularly inaccurate. To meet this goal, Countrywide's management pressured its underwriters to ignore underwriting guidelines and generate an enormous volume of loans to be securitized and sold on the secondary market. High-risk borrowers, rather than being a source of concern, became a source of additional fees and points. Countrywide developed an automated "exception processing system" designed, as internal Countrywide documents reveal, to "[a]pprove virtually every borrower and loan profile, with pricing add on where necessary." Countrywide intended that the resulting loans would be sold and securitized, and that Countrywide would retain only a limited residual interest in the securitized loans. The downside risk and cost of default would be borne by the Noteholders who purchased the securities and the companies like Syncora that insured them.

11. The loans in the Countrywide portfolios insured by Syncora reflect the abandonment of sound underwriting practices described by the attorneys general. Syncora has now reviewed thousands of delinquent, non-performing and charged-off loans in the 2004-Q, 2004-R, 2005-K and 2006-D Securitizations. As a result, Syncora has identified more than 2,700 loans – ***with an aggregate principal balance in excess of $250 million*** – that were underwritten in violation of Countrywide's own lending guidelines, lack any compensating factors that could justify their increased risk, and should never have been made.

12. After more than a year of ignoring its contractual obligations to provide updated performance data, Countrywide finally relented and provided this information for two of the Securitizations, 2005-K and 2006-D, only when discovery commenced in this action.

13. However, Countrywide has continued its policy of delay and stonewalling, and has refused to provide updated information for the other three securitizations at issue, 2004-Q, 2004-R and 2006-S7. To date, Countrywide has only provided 298 loan files from 2004-Q and 2004-R, and no loan files from 2006-S7. Syncora has reviewed these 298 loan files, which have a comparable rate of defects to the delinquent loans held by 2005-K and 2006-D. Once Countrywide provides the details for all the non-performing loans in these securitizations Syncora expects that it will uncover the same underwriting flaws because the loans held by all five Securitizations were originated at around the same time, and through the same processes.

14. The harm to Syncora from Countrywide's misrepresentations, omissions, and breaches of its representations and warranties is ongoing. As of April 2010, Syncora had already paid more than $145 million in claims attributable to 2005-K and 2006-D Securitizations, and been given notice of $257 million in additional claims on all five Securitizations. The policies issued in connection with the five Securitizations each state that Syncora's "guarantee" under each policy is "unconditional[] and irrevocabl[e] . . . subject only to the terms of" the policy.

15. In addition to paying claims, and incurring the obligation to pay additional claims in the future, Syncora has already spent more than $140 million to partially liquidate future claims of Noteholders of all five of the Securitizations.

16. Because the New York State Insurance Department determined that Syncora's capital is impaired it ordered Syncora to suspend claims payments. This order remains in place at present.

17. Because Countrywide fraudulently induced Syncora to enter the contracts of insurance based on representations concerning the quality of its loans and its underwriting practices that Countrywide knew to be false, and because Countrywide's intentional, wholesale disregard of its own basic underwriting standards deprived Syncora of the basis of its bargain, Syncora is entitled to recover all losses suffered as a result of entering into the contracts of insurance. In the alternative, Countrywide must compensate Syncora for the thousands of securitized loans that were originated in violation of Countrywide's own guidelines or otherwise materially breached Countrywide's representations and warranties.

The Parties

18. Syncora is a monoline insurance corporation headquartered in New York. It is a wholly-owned subsidiary of Syncora Holdings Ltd., a financial services holding company domiciled in Bermuda. At the time the Securitizations were entered into, Syncora was known by its former name, XL Capital Assurance Inc.

19. Monoline insurers such as Syncora often are engaged to enhance the credit-worthiness of securitizations such as those at issue here by writing "credit enhancement" insurance policies guaranteeing the timely payment to the Noteholders of

the scheduled amounts of principal and interest due on the Notes, and any payments necessary to maintain parity between the balance of the Notes and the collateral.

20. Defendant Countrywide Financial Corporation is, on information and belief, a Delaware corporation, with its headquarters in California. It is the successor to a company of the same name, which was merged into Red Oak Merger Corporation on July 1, 2008, and which was subsequently renamed Countrywide Financial Corporation.

21. Defendant Countrywide Home Loans, Inc. is, on information and belief, a wholly-owned subsidiary of Countrywide Financial Corporation. Countrywide Home Loans is a New York corporation with its principal executive offices in California. Countrywide Home Loans describes itself as "the nation's leading independent home loan lender."

22. Defendant Countrywide Securities Corporation is, on information and belief, a wholly-owned subsidiary of Countrywide Financial. Countrywide Securities is a Delaware corporation with executive offices in California and New York. Countrywide Securities is a registered broker-dealer and underwrites offerings of mortgage-backed securities.

23. Defendant Bank of America Corporation is, on information and belief, a Delaware Corporation, with its headquarters in Charlotte, North Carolina, which does business in New York on a continuous and systematic basis. Bank of America acquired Countrywide Financial (including its subsidiaries, Countrywide Home Loans and Countrywide Securities) on July 1, 2008, and merged it into its own operations, causing it to become liable for the conduct of Countrywide, as set forth in greater detail herein.

24. Countrywide or its affiliates originated, selected, sold and serviced all of the loans at issue here, and marketed the Securitizations backed by those loans, including making all related SEC filings.

Jurisdiction And Venue

25. The Court has jurisdiction, and venue is proper, because Countrywide Home Loans has consented to the jurisdiction of the courts of New York State for any claim arising out of the contracts and transactions at issue and has waived any objections to venue.

26. In addition, Countrywide Home Loans and Countrywide Securities are registered or licensed to do business in New York, have appointed an agent for service of process in New York, and have agreed to the jurisdiction of New York courts over matters arising out of activities in the State. Each of the Countrywide defendants does business in or derives substantial revenue from New York State. Each of the Countrywide defendants made representations and participated in negotiations and other activities within New York that led to the transactions at issue, the transactions themselves occurred within New York, and Syncora was injured in New York.

27. Jurisdiction over Bank of America is proper because Bank of America does business in or derives substantial revenue from New York State.

Factual Allegations

The Securitizations And Syncora's Role As Credit Enhancer

28. A HELOC is a revolving loan secured by a lien against real property, providing the borrower a line of credit that can be drawn up to a specified maximum amount. Closed-end seconds are fixed amount loans and like HELOCs are secured by a

second lien against real property. All of the loans included in the Securitizations are second liens, junior in priority to first liens on the properties. If the property securing one of these loans is foreclosed upon, the first lien holder must be fully paid before there is any recovery for the second lien holder.

29. As represented by Countrywide, all of the mortgage loans in the Securitizations were underwritten by Countrywide or by its affiliates. Countrywide then selected and pooled the mortgage loans into securitizations.

30. For each of the HELOC Securitizations this was done by way of substantially similar agreements. Once Countrywide had selected pools of HELOCs to be included in the securitization, Countrywide affiliates would enter into a "Purchase Agreement," which would transfer all of the loans to another Countrywide affiliate that would act as the "depositor." The depositor would then enter into a "Sale and Servicing Agreement," transferring the loans to a trust established for the purpose of holding the HELOCs as collateral and engaging Countrywide Home Loans to act as servicer for the loans.

a. For 2004-Q, Countrywide Home Loans entered into a Purchase Agreement (the "2004-Q Purchase Agreement") with CWABS, Inc., a Countrywide subsidiary, effective November 23, 2004. Pursuant to this Purchase Agreement, Countrywide Home Loans sold more than 10,000 mortgage loans to CWABS, Inc. Then CWABS, Inc., acting as depositor, deposited the mortgage loans into CWABS Revolving Home Equity Loan Trust, Series 2004-Q (the "2004-Q Trust") by way of the Sale and Servicing Agreement, dated as of

November 23, 2004, among CWABS, Inc., Countywide Home Loans, the 2004-Q Trust, and J.P. Morgan Chase Bank, N.A. ("J.P. Morgan," acting as Indenture Trustee).

b. For 2004-R, Countrywide Home Loans entered into a Purchase Agreement (the "2004-R Purchase Agreement") with CWABS, Inc., effective December 22, 2004. Pursuant to this Purchase Agreement, Countrywide Home Loans sold more than 10,000 mortgage loans to CWABS, Inc. Then CWABS, Inc., acting as depositor, deposited the mortgage loans into 2004-R by way of the Sale and Servicing Agreement, dated as of December 22, 2004, among CWABS, Inc., Countywide Home Loans, 2004-R, and J.P. Morgan.

c. For 2005-K, Countrywide Home Loans and Park Monaco, Inc. ("Park Monaco"), a special purpose vehicle created and controlled by Countrywide, entered into a Purchase Agreement (the "2005-K Purchase Agreement") with CWHEQ, Inc., also a Countrywide subsidiary, effective December 29, 2005. Pursuant to this Purchase Agreement, Countrywide Home Loans and Park Monaco sold more than 10,000 mortgage loans to CWHEQ, Inc. Then CWHEQ, Inc., acting as depositor, deposited the mortgage loans into 2005-K by way of the Sale and Servicing Agreement, dated as of December 29, 2005, among CWHEQ, Inc., Countywide Home Loans, 2005-K, and J.P. Morgan.

d. For 2006-D, Countrywide Home Loans and Park Monaco entered into a Purchase Agreement (the "2006-D Purchase Agreement," and together with the other purchase agreements, the "Purchase Agreements") with CWHEQ, Inc., effective March 30, 2006. Pursuant to this Purchase Agreement, Countrywide Home Loans and Park Monaco sold more than 20,000 mortgage loans to CWHEQ, Inc. Then CWHEQ, Inc., acting as depositor, deposited the mortgage loans into the CWEQ Revolving Home Equity Loan Trust, Series 2006-D (the "2006-D Trust"), by way of the Sale and Servicing Agreement, dated as of March 30, 2006, among CWHEQ, Inc., Countywide Home Loans, 2006-D Trust, and J.P. Morgan (collectively with the other sale and servicing agreements, the "Sale and Servicing Agreements").

31. The process was similar for securitizations of closed-end seconds like 2006-S7. But instead of separating the Purchase and Sale Agreement from the Servicing Agreement, in closed-end second transactions Countrywide caused its affiliates to enter into a single Pooling and Service Agreement, that provided for the loans to be transferred into the trust and established Countrywide Home Loans Servicing LP as master servicer for that securitization. On November 1, 2006, CWHEQ, Inc., Countrywide Home Loans, Countrywide Home Loans Servicing LP, the Bank of New York, along with Park Monaco, and two other special purpose vehicles created and controlled by Countrywide, Park Granada LLC and Park Sienna LLC, entered into the Pooling and Servicing Agreement ("Pooling Agreement").

32. Backed by the deposited loans, the five Trusts issued different classes and series of Notes. The Master Servicer for the transactions, Countrywide Home Loans in the case of the HELOC Securitizations, and Countrywide Home Loans Servicing LP for 2006-S7, collected payments of interest and principal from the borrowers on the

mortgage loans and deposited those funds, at regular contractually-specified intervals, into accounts maintained on behalf of the Trusts. Using those funds, the indenture trustee for each Trust made scheduled payments to the respective Noteholders, at regular monthly intervals as set forth in the contracts.

33. The Securitizations were intended to become over-collateralized because the mortgage loans were expected to generate more interest than had to be paid to the Noteholders. This additional interest was to be used to pay down the aggregate balance of the Notes below the aggregate balance of the mortgage loans, thereby increasing the protection for the Noteholders and Syncora from potential defaults.

34. Syncora was engaged as the credit enhancer for the securitizations. As credit enhancer, Syncora wrote insurance policies guaranteeing the sufficiency of the collateral held by the securitizations and the payment of the amounts due on the bulk of the obligations issued by the Securitizations, as follows:

a. Effective November 23, 2004, Syncora (under its former name of XL Capital Assurance Inc.), Countrywide Home Loans, CWABS, Inc., the 2004-Q Trust, and J.P. Morgan acting as Indenture Trustee, entered into an Insurance and Indemnity Agreement (the "2004-Q Insurance Agreement"). Pursuant to this Agreement, Syncora issued a Financial Guaranty Insurance Policy, dated November 23, 2004, guaranteeing to the Indenture Trustee for the benefit of the noteholders the full and complete payment of the scheduled amounts due on two classes of the notes: the Class 1-A and 2-A. The insured notes, totaling $1 billion, were the bulk of the notes issued by the 2004-Q Series.

b. Effective December 22, 2004, Syncora (under its former name of XL Capital Assurance Inc.), Countrywide Home Loans, CWABS, Inc., the 2004-R Trust, and J.P. Morgan acting as Indenture Trustee, entered into an Insurance and Indemnity Agreement (the "2004-R Insurance Agreement"). Pursuant to this Agreement, Syncora issued a Financial Guaranty Insurance Policy, dated December 22, 2004, guaranteeing to the Indenture Trustee for the benefit of the noteholders the full and complete payment of the scheduled amounts due on two classes of the notes: the Class 1-A and 2-A. The insured notes, totaling more than $1 billion, were the bulk of the notes issued by the 2004-R Series.

c. Effective December 29, 2005, Syncora (under its former name of XL Capital Assurance Inc.), Countrywide Home Loans, CWHEQ, Inc., the 2005-K Trust, and J.P. Morgan acting as Indenture Trustee, entered into an Insurance and Indemnity Agreement (the "2005-K Insurance Agreement"). Pursuant to this Agreement, Syncora issued a Financial Guaranty Insurance Policy, dated December 29, 2005, guaranteeing to the Indenture Trustee for the benefit of the noteholders the full and complete payment of the scheduled amounts due on six classes of the notes: the Class 1-A, 2-A-1, 2-A-2A, 2-A-2B, 2-A-3 and 2-A-4 Notes. The insured notes, totaling more than $1 billion, were the bulk of the notes issued by the 2005-K Series.

d. Effective March 30, 2006, Syncora (under its former name of XL Capital Assurance Inc.), Countrywide Home Loans, CWHEQ, Inc., the 2006-D Trust, and J.P. Morgan acting as Indenture Trustee, entered into a second and similar Insurance and Indemnity Agreement ("the 2006-D Insurance Agreement"). Pursuant to this Agreement, Syncora issued a Financial Guaranty Insurance Policy, dated March 30, 2006, guaranteeing to the Indenture Trustee for the benefit of the noteholders the full and complete payment of the scheduled amounts due on two classes of the notes, the Class 1-A Notes and the Class 2-A Notes. The insured notes, totaling nearly $2 billion, were the bulk of the notes issued by the 2006-D Series.

e. Effective November 30, 2006, Syncora (under its former name of XL Capital Assurance Inc.), Countrywide Home Loans, CWHEQ, Inc., the 2006-S7 Trust, and the Bank of New York acting as Indenture Trustee, entered into an Insurance and Indemnity Agreement ("the 2006-S7 Insurance Agreement" and together with the other insurance agreements, collectively the "Insurance Agreements"). Pursuant to this Agreement, Syncora issued a Financial Guaranty Insurance Policy, dated November 30, 2006, guaranteeing to the Indenture Trustee for the benefit of the certificate holders the full and complete payment of the scheduled amounts due on classes of the certificates, the Class A-1, Class A-2, Class A-3, Class A-4, Class A-5 and Class A-6 Certificates. The insured certificates, totaling nearly $1 billion, were the bulk of the notes issued by the 2006-S7 Series.

35. As credit enhancer and insurer of the Notes, Syncora was ultimately liable for scheduled payments on the notes in accordance with these insurance policies. If the borrowers on the underlying mortgage loans began to default on their obligations in

sufficient numbers that the Trusts could no longer make scheduled payments, Syncora was contractually obligated to make up for the shortfall on the insured Notes.

36. Syncora was also liable for payments to maintain parity between the outstanding principal balance of the underlying mortgages, the collateral for the Notes, and the principal balance of the Notes in the event that defaults and write-offs of loans caused the loan balance to decline below the Note balance.

Countrywide's Representations in SEC Filings and
Other Materials Provided to Syncora Regarding the Securitized Loans

37. Countrywide provided to Syncora and caused to be filed with the SEC a Prospectus and Supplemental Prospectus in connection with each of the Securitizations, dated respectively: (a) for 2004-Q, October 25, 2004, and November 19, 2004; (b) for 2004-R, October 25, 2004, and December 20, 2004; (c) for 2005-K, August 4, 2005, and December 27, 2005; (d) for 2006-D, February 7, 2006, and March 29, 2006 and (e) for 2006-S7, November 15, 2006 and November 29, 2006 (collectively, the "Prospectuses").

38. Countrywide represented and warranted in the Insurance Agreements that all material information furnished to Syncora by Countrywide, including in the descriptions contained in the Prospectuses of Countrywide's operations and the loans held by the Securitizations, was accurate and contained no statement of a material fact which was untrue or misleading in any material respect when made. Syncora was entitled to, and did, rely on Countrywide's representations in the Prospectuses and other SEC filings in agreeing to enter into the contracts to insure the Securitizations.

39. The Prospectuses contain detailed descriptions of a diligent, thorough mortgage origination process that Countrywide had purportedly employed to assess

borrowers' credit-worthiness and ensure the quality of the loans in the Securitizations. In each of the Prospectuses, Countrywide made the following statements and representations:

a. That Countrywide was "an institution experienced in originating and servicing loans" and that it "maintain[s] satisfactory facilities to originate . . . those loans," and that, in respect of the 2004-Q, 2004-R and 2005-K Securitizations, that Countrywide was experienced at originating loans "in accordance with accepted practices and prudent guidelines."

b. That the securitized loans were "underwritten in accordance with standards consistent with those utilized by mortgage lenders generally during the period of origination for similar types of loans."

c. That Countrywide's underwriting procedures as applied to the mortgage loans in the securitized portfolios were "intended to assess the applicant's credit standing and repayment ability, and the value and adequacy of the real property security as collateral for the proposed loan."

d. That each applicant for a mortgage loan was required to submit an application to Countrywide "that lists the applicant's assets, liabilities, income, employment history, and other demographic and personal information," and that, if this information "demonstrates that the applicant has sufficient income and there is sufficient equity in the real property to justify making a" home equity or closed-end second loan Countrywide would then "conduct a further credit investigation of the applicant . . . to evaluate the applicant's ability and willingness to repay."

e. That Countrywide determined based on information in the loan application and credit reports whether an applicant qualified for loans under the various documentation programs offered by Countrywide. The Prospectuses state that borrowers under the full documentation program would be required to document their employment, income and assets, including by providing verifications of employment, one month's paystubs and W-2s from the most recent two years (or, alternatively, no verification of employment, but two years' paystubs and W-2s).

f. That only applicants whose "credit histories . . . demonstrate an established ability to repay indebtedness in a timely fashion" would be eligible to use Countrywide's "Reduced Documentation Program," which "waived . . . certain credit underwriting documentation concerning income and employment verification."

g. That "independent third-party . . . [f]ull appraisals are generally performed on all" closed-end seconds larger than $100,0000 and on all HELOCs.

h. That, after "obtaining all applicable income, liability, asset, employment, credit and property information," Countrywide would determine if the applicant met the loan program guidelines, and whether "the prospective borrower has sufficient monthly income available to support the payments on" the requested loan "in addition to any senior mortgage loan payments . . . and other monthly credit obligations."

i. That only where the applicant met the guidelines – or where compensating factors such as "employment stability, favorable credit history, equity in the related property, and the nature of the underlying first mortgage loan" were present – would Countrywide make the loan.

40. When Countrywide made these representations in the Prospectuses it knew that it was misrepresenting its underwriting process and failing to disclose its routine, material deviations from sound underwriting practices.

41. Countrywide also falsely represented in its annual reports and other public filings that its underwriting process was "sound" and "designed to produce high quality loans." The 2004 Countrywide annual report stated that:

> Our Credit Policy establishes standards for the determination of acceptable credit risks. Those standards encompass borrower and collateral quality, underwriting guidelines and loan origination standards and procedures. Borrower quality includes consideration of the borrower's credit and capacity to pay. We assess credit and capacity to pay through the use of credit scores, application of a mortgage scorecard, and manual or automated underwriting of additional credit characteristics. Collateral quality includes consideration of property value, condition and marketability and is determined through physical inspections and the use of manual and automated valuation models. . . . In addition, we employ proprietary underwriting systems in our loan origination process that improve the consistency of underwriting standards, assess collateral adequacy and help to prevent fraud, while at the same time increasing productivity.

In addition to this purportedly rigorous underwriting process, Countrywide claimed to employ "an extensive post-funding quality control process:"

> Our Quality Control Department, under the direction of the Chief Credit Officer, is responsible for completing comprehensive loan audits that consist of a reverification of loan documentation, an in-depth underwriting and appraisal review, and if necessary, a fraud investigation. We also employ a pre- and post-funding proprietary loan performance evaluation system. This system identifies fraud and poor performance of individuals and business entities associated with the origination of our loans. The combination of this system and our audit results allows us to evaluate and measure adherence to prescribed underwriting guidelines and compliance with laws and regulations.

42. In addition to such representations regarding its underwriting practices, Countrywide provided Syncora with information regarding the loans included in the Securitizations to induce Syncora to insure them. For example, Countrywide provided Syncora with data concerning each securitized loan, in what is commonly known as a "loan tape." The tape made representations about the characteristics of each loan, including debt-to-income ratios and combined loan to value ratios ("CLTVs"). (A CLTV is the ratio of the combined value of the loans on a mortgaged property, including first and second mortgages, to the value of the property.) Countrywide represented that the information contained in these tapes was accurate. These representations have proved to be false and misleading.

43. Countrywide also provided Syncora with aggregated information about the securitized loans in annexes to the Prospectuses, which were updated when new loans were added to the trusts. The annexes contain detailed information about such statistics as CLTV ratios, credit scores, and property ownership characteristics, for stratified segments of each group of loans. Syncora relied on the accuracy of this information in agreeing to insure the securitizations. Syncora's ongoing analysis of non-performing

loans has already demonstrated that these statistics were erroneous, and significantly understated the credit risk of the securitized loans.

44. Countrywide also provided information to the ratings agencies so that they could issue shadow ratings on the pools of mortgage loans to Syncora. Shadow ratings are evaluations of the risk of a proposed securitization issued by third-party rating agencies, based on expected default rates and losses of the underlying loans (without regard to the insurance policy provided by Syncora). Syncora's agreement to insure the securitizations was expressly contingent on certain minimum credit ratings being issued by Standard and Poor's and Moody's. Countrywide solicited these shadow credit ratings from the credit rating agencies through misrepresentations to the agencies concerning the credit-worthiness of the loans and omissions of critical facts about Countrywide's underwriting process, including by providing loan tapes to the ratings agencies containing misrepresentations concerning the characteristics of the securitized loans.

45. Countrywide also provided Syncora with copies of Countrywide's own due diligence on the loans in the portfolios. For example, on March 29, 2006, prior to execution of Syncora's agreement to insure the 2006-D Securitization, Tonya LyBrand of Countrywide provided Linda Kobrin of Syncora with a copy of the Executive Summary of Countrywide's due diligence on the transaction. The Countrywide document described a due diligence review undertaken by Watterson Prime. According to the Executive Summary "the purpose of the audit review was to ascertain that the loans in this security conform to [Countrywide's] credit guidelines and that prudent and reasonable underwriting decisions were made if loans were approved as exceptions to

those guidelines." The Review concluded that "the overall qualify of the loan portfolio sample reviewed was found to be acceptable . . . . There was no discernable pattern across all categories that would deem [sic] to increase both the credit and compliance samples." As Countrywide well knew, Syncora relied on these representations regarding Countrywide's underwriting processes and the characteristics of the securitized loans.

46. Each of the Securitizations involved tens of thousands of individual loans. As Syncora and Countrywide both recognized, the period of a few weeks between Countrywide's solicitation of bids and its selection of a credit enhancer did not provide Syncora sufficient opportunity to evaluate independently more than a tiny fraction of the loans in the portfolios. Many of the loans at issue were not even added to the 2005-K and 2006-D Securitizations until after closing. The few loans that Syncora was able to review in this brief period did not reveal Countrywide's pervasive failure to adhere to underwriting standards, or put Syncora on notice that further review was necessary. Accordingly, both Syncora and Countrywide understood that Syncora was required to rely on the accuracy of Countrywide's representations in agreeing to insure the Securitizations.

Countrywide's Contractual Representations and Warranties Regarding the Securitized Loans

47. The Purchase Agreements for HELOC Securitizations and the Pooling Agreement for 2006-S7 contain more than sixty representations and warranties by Countrywide concerning the quality of the loans in the portfolio and Countrywide's underwriting practices, and covering such topics as the loans' compliance with

Countrywide's underwriting guidelines, applicable law, and Fannie Mae and Freddie Mac standards, the nature of the mortgaged property, and the credit-worthiness of the loan.

48. Among other things, Countrywide represented and warranted that:

- Each mortgage loan in the Securitizations either "was originated in accordance with [Countrywide's] underwriting guidelines" or that its origination had "been in all respects legal, proper, prudent and customary in the mortgage lending and servicing business, as conducted by prudent lending institutions which service mortgage loans of the same type in the jurisdiction in which the Mortgaged Property is located."

- That "[Countrywide] had no knowledge of any fact that would have caused a reasonable originator of mortgage loans to conclude on the date of origination of each Mortgage Loan that each such Mortgage Loan would not be paid in full when due."

- The CLTV of each loan at the time of origination was not in excess of 100%.

- "Before approval of the Mortgage Loan application, an appraisal of the related Mortgaged Property was obtained from a qualified appraiser, duly appointed by the Sponsor, who had no interest, direct or indirect, in the Mortgaged Property or in any loan secured by the Mortgaged Property, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan."

- "The Initial Mortgage Loans, individually and in the aggregate, conform in all material respects to their descriptions in the Prospectus Supplement," and that the Initial Mortgage Loans had the aggregate and average characteristics set out in the adoption annexes to the Purchase Agreements. The Prospectus supplements and adoption annexes included representations concerning weighted average and aggregate CLTVs and credit scores. The Prospectus supplements also described Countrywide's origination practices, including the circumstances under which stated income loans would be made available to borrowers.

- "As of the Closing Date [or Subsequent Closing Date for subsequently added loans] the information in the Mortgage Loan Schedule for the [] Mortgage Loans is correct in all material respects." The Mortgage Loan Schedule contains individual information on each loan, including CLTV and documentation type.

- "At origination, each Mortgage Loan and the related Mortgage Note complied in all material respects with applicable local, state, and federal laws, including all applicable predatory and abusive lending laws, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, or disclosure laws applicable to the Mortgage Loan, and the servicing practices used by [Countrywide] have been consistent with the practices and degree of skill and care [Countrywide] exercises in servicing for itself loans that it owns that are comparable to the Mortgage Loans."

- "As of the Closing Date [or Subsequent Closing Date for subsequently added loans] no default exists under any applicable Mortgage Note or applicable Mortgage Loan." In fact, many loans show evidence of borrower fraud, in particular with respect to stated incomes. This constitutes a default under the terms of the loan agreements, as of the time of their origination, and prior to the Closing Date of the securitizations.

- "No Mortgage Loan is classified as (1) a 'high cost' loan under the Home Ownership and Equity Protection Act of 1994 or (2) a 'high cost,' 'threshold,' 'covered,' 'predatory,' or similar loan under any other applicable state, federal or local law." .

- "[N]o selection procedure reasonably believed by [Countrywide] to be adverse to the interests of . . . [Syncora] was used in selecting the Mortgage Loans."

49. Countrywide is strictly liable for the accuracy of these representations and warranties. For example, the Sale and Servicing Agreements for the HELOC Securitizations provide that Countrywide must pay for these breaches even if Countrywide "did not know the substance of the representation and warranty was inaccurate at the time the representation or warranty was made." Similarly, the Pooling Agreement for 2006-S7 provides that Countrywide must pay notwithstanding its "lack of knowledge with respect to the substance of such representation or warranty."

50. The Insurance Agreements contained further material representations and warranties relating to the quality of individual mortgage loans in the portfolios, Countrywide's origination practices, and the securitizations, including that:

- "Neither the [contractual documents] nor other material information relating to the Mortgage Loans [or] the operations of Countrywide . . . furnished to the Insurer contains any statement of a material fact which was untrue or misleading in any material adverse respect when made."

- "No practice, procedure or policy employed by any of Countrywide, the Depositor or the Issuer in the conduct of its business violates any law, regulation, judgment, agreement, order or decree applicable to it which, if enforced, could reasonably be expected to result in a Material Adverse Change with respect to it or have a material adverse effect on the Transaction."

- The offering of the notes backed by the Securitizations complied "in all material respects with all requirements of law, including all registration and reporting requirements of applicable securities laws."

- For the two securitizations with third-party mortgage insurance, 2006-D and 2006-S7, "none of the Mortgage Loans designated in the Mortgage Loan Schedule as being covered by" the third-party insurance policies covering certain loans in these securitizations "has any characteristics that would result in its being excluded for coverage under" this policy.

51. Countrywide repeatedly and routinely breached these and other contractual representations and warranties, materially and adversely affecting Syncora's interests in the related loans.

Syncora's Contractual Remedies for Countrywide's
<u>Breach of its Representations and Warranties Regarding the Securitized Loans</u>

52. Syncora has the right under the operative documents to the benefit of Countrywide's representations and warranties in the Purchase Agreements and the Pooling Agreement, and to obtain a remedy for their breach. Pursuant to the Insurance

Agreements, each of the representations and warranties contained in the Purchase Agreements and the Pooling Agreement is made "to, and for the benefit of, . . . [Syncora] as if the same were set forth in full herein." Additionally, Syncora is a contractually-defined third party beneficiary to the Sale and Servicing Agreements, which provide remedies for Countrywide's breach of its representations and warranties under the Purchase Agreements. Syncora is also a contractually-defined third party beneficiary to the Pooling Agreement and is expressly provided remedies for the breach of Countrywide's representations. As credit enhancer and insurer of the notes, and pursuant to the Insurance Agreements, Syncora is also subrogated to the rights of the Noteholders to the extent that it has paid claims under the policies. Syncora is thus additionally entitled to assert the Noteholders' claims to damages resulting from Countrywide's breaches of the representations and warranties which, pursuant to the Sales and Service Agreement and the Pooling Agreement, were made for the benefit of the Noteholders as well.

53. The Sale and Servicing Agreements and the Pooling Agreement provide that once Countrywide has been given notice of a material breach of the representations and warranties, it has 90 days in which to cure the breach. Syncora, as the credit enhancer, is one of the parties authorized to give Countrywide notice of breach, triggering Countrywide's obligation to cure.

54. If Countrywide fails to cure a material breach with respect to any loan "within 90 days of becoming aware of it," Countrywide is obligated to repurchase the loan. This repurchase remedy is commonly described as a "put-back" remedy.

55. This put-back mechanism was not intended by the parties to excuse Countrywide from its obligations to act in good faith, to originate loans pursuant to its own underwriting guidelines, and to observe reasonable and prudent procedures to ensure loan quality and borrowers' credit-worthiness, as Countrywide represented when it induced Syncora to enter the insurance contracts. While the put-back remedy is appropriate for individual breaches of the representations and warranties, Countrywide's systematic and pervasive disregard for underwriting standards goes to the basis of Syncora's bargain, and represents fraudulent inducement or a material breach of contract, entitling Syncora to all damages it has incurred as a result of entering into the contracts of insurance.

Loan Defaults In the Securitizations Escalate And
<u>Syncora Begins Making Payments On The Policies</u>

56. In the fall of 2007, defaults began to escalate among the securitized loans. By November 2008, more than 12% of the loans in Series 2005-K and 2006-D were more than 60 days delinquent, and 3% of the loans in each securitization were more than 180 days delinquent. As of the most recent performance data that Countrywide has provided to Syncora, more than 4.3% of loans in 2005-K and 2006-D have been written off.

57. On information and belief, Series 2004-Q, 2004-R and 2006-S7 have also suffered increasing defaults and delinquencies. As of February 2008, the most recent date for which Syncora has performance data, more than 5% of the loans in 2004-Q and 2004-R were already more than 60 days delinquent. While Countrywide has refused to provide further performance data on 2004-Q and 2004-R, and refused to provide any at all for 2006-S7, Syncora started incurring claims on 2006-S7 in May 2009, on 2004-R in

January 2010 and on 2004-Q in April 2010. Countrywide's refusal to honor its contractual obligation to provide performance data on these securitizations has impeded Syncora's efforts to identify specific loans for put back.

58. As a result of defaults and write-offs among the securitized loans, the outstanding principal balance of the loans in each of the five Securitizations no longer exceeds the balance of the related insured notes. Syncora is now liable for the resulting shortfall.

Countrywide's Pervasive Underwriting
Abuses and Failure to Exercise Underwriting Control Come to Light

59. **Countrywide's Abandonment of Underwriting Standards**. In the months before filing of the initial complaint in this action, the extent of Countrywide's misrepresentations and omissions to Syncora concerning Countrywide's underwriting practices had come to light as a result of government investigations and public and private litigation. As revealed in suits filed by state attorneys general and municipalities, borrowers, and Countrywide's own shareholders and employees, far from maintaining any reasonable underwriting discipline, Countrywide adopted a corporate policy of systematically ignoring its own underwriting guidelines and appraisal requirements in an effort to write as many HELOCs and closed-end seconds as possible without regard for borrowers' ability to repay.

60. As these suits have shown, Countrywide routinely routed loans to senior underwriters for the purpose of overriding Countrywide's underwriting standards and ensure that no loan went unwritten. Countrywide even automated the process by developing a computer program in or around 2005, the "Exception Processing System"

("EPS"), which Countrywide used to direct loans rejected by the first-line loan officers and by Countrywide's automated underwriting criteria to central underwriting offices called "Structured Loan Desks" ("SLD") for senior underwriting approval. Many of the loans in the Securitizations appear to have been processed through this same system, including a substantial number of the currently non-performing loans.

61. Once loans arrived at the SLD, senior underwriters found a way to write these loans, regardless of the risk. A Countrywide document, filed as an exhibit in a criminal case against a former Countrywide loan officer, describes the objective of EPS and the SLDs as to "[a]pprove virtually every borrower and loan profile with pricing add on when necessary."

62. This same sentiment is echoed by a former senior level vice president at Countrywide, who has said, according to a securities class action complaint filed against Countrywide, that "'so long as we could sell it, we'd do it,' . . . every loan 'has a price.'" A former senior regional vice president, Brian Koss, told Business Week that Countrywide: "approached making loans like making widgets, focusing on cost to produce and not risk or compliance. Programs like 'Fast and Easy' where the income and assets were stated, not verified, were open to abuse and misuse. The fiduciary responsibility of making sure whether the loan should truly be done was not as important as getting the deal done."

63. As government regulators have alleged, rather than establishing controls to prevent making bad loans, Countrywide implemented "safeguards" to ensure that loans were not rejected, requiring two signatures before its employees could deny a loan

application. Like Countrywide itself, its employees were also rewarded for their ability to generate high volume and high fees rather than their ability to gauge applicants' creditworthiness. As alleged in a securities complaint, a substantial portion of Countrywide's underwriters' compensation was based on the volume of loans they originated. Underwriters' bonuses were based on a point system. Each underwriter would get a number of points for every loan underwritten; however, more points were awarded to underwriters approving loans than to those who denied them. As one former Countrywide employee put it, he could "count on one finger" the number of loans he had rejected.

64. Volume became so important to Countrywide that, as the *Wall Street Journal* reported, in one Countrywide office giant novelty bonus checks hung over employees' desks, letting each employee know how much money their co-workers made by writing loans.

65. Countrywide knew that it could not package and sell a securitization if it told counterparties – such as Syncora – the truth about its underwriting and appraisal standards. Instead Countrywide continued to claim that it was adhering to prudent underwriting standards while, in practice, it ignored them.

66. **Countrywide's $8.6 Billion Predatory Lending Settlement.** By entering into the largest predatory lending settlement in history, Countrywide has now demonstrated that, in addition to misrepresenting its underwriting practices to Syncora, it breached its representation to comply with applicable law. On October 6, 2008, Countrywide entered into a settlement with eleven state attorney generals, resolving

allegations of fraud, deceit and illegal predatory lending in connection with Countrywide's underwriting practices. As part of this settlement, Countrywide agreed to provide $8.6 *billion* in home loan and foreclosure relief to borrowers who were unlawfully deceived into taking on loans that they could not afford. Despite the magnitude of this settlement, Countrywide's origination practices continue to be the object of suits by many attorneys general and other public authorities.

67. The predatory and abusive lending practices alleged by the attorneys general who settled with Countrywide support both that Countrywide misrepresented its origination practices to Syncora and that it violated its representations and warranties that the loans in the Securitizations were in compliance with all applicable state, local and federal laws, including predatory and abusive lending laws.

68. **Countrywide's Abuse of Stated Income Loans**. Countrywide made widely available to borrowers "reduced documentation", or "stated income" loans, which did not require verification of a borrower's claimed income, but qualified borrowers based on income information supplied by the borrowers themselves. As has now become apparent, Countrywide exercised no control over this loan program, accepting borrower statements of income even where the claims of reported income were highly implausible and could easily have been confirmed or disproved.

69. Despite its representations in the Prospectus supplements that it would only make stated income loans available to borrowers with "a credit history that demonstrates an established ability to repay indebtedness in a timely fashion," it is now clear that Countrywide routinely made stated income loans available to borrowers with

below-average credit. Among the non-performing loans that Syncora has now identified as having been improperly granted, more than 80% are stated income loans. Nearly 30% have FICO scores that were "fair" or "poor," based on the standards of Fair Isaac & Company, the originator of the "FICO" score. Stated income loans were even made available to borrowers with recent bankruptcies. Despite Countrywide's assurances that its underwriting was "in all respects legal, proper, prudent and customary," these loans were made without proper consideration of the borrowers' overall credit profile, including their respective credit scores, credit histories, and current and past debt profiles.

70. Moreover, as Syncora has now discovered, substantial numbers of the non-performing loans in the Securitizations rely on stated incomes that are facially unreasonable for the types of jobs the borrowers claim to hold. For example, one HELOC borrower in the 2006-D securitization claimed to earn $600,000 a year as a loan officer. Given the implausibility of this self-reported income, a prudent lender should have converted the loan to a full document loan and required the borrower to substantiate the claimed income with a W-2 or pay stub; Countrywide did not do so. Instead, Countrywide bent its rules even further and loaned this borrower more than double the $200,000 HELOC for which he was eligible based on his *stated* income. No salary.com report was included in this borrower's loan file; and, although Countrywide had the borrower's authorization, no income tax reports were collected. This loan was over 360 days delinquent on the date of the initial complaint in this action.

71. According to one attorney general's investigation, Countrywide at one point required its employees to compare borrower's stated incomes to the results of

salary.com, a website that provides salary ranges based on job title and location. According to the attorney general, Countrywide did not use these reports as a check or safeguard against unreasonable stated incomes. Instead, Countrywide's employees used the reports to coach borrowers to inflate their reported income to help qualify for loans. If the salary.com report suggested that the applicant's stated income was unreasonable, the Countrywide underwriter would discard the report. While salary.com reports appear in some of the loan files in the Securitizations, they are generally absent from files of non-performing loans with unreasonably excessive stated incomes.

72. **Countrywide's Use of Inflated Appraisals**. As has now come to light, Countrywide consistently urged appraisers to inflate the values of properties securing mortgages originated by Countrywide. For example, one former Regional Vice President of a Countrywide joint venture has alleged that Countrywide routinely encouraged its affiliated appraisers to inflate property values. Similarly, a group of independent appraisers has stated in a recently-filed class action that Countrywide pressured them to provide inflated appraisals and use improper appraisal techniques. Independent appraisers who refused to comply would be placed on Countrywide's "Field Review List," a list of firms from which Countrywide would not accept appraisals.

73. By inflating appraisal values Countrywide could falsely suggest that loans that should never have been made complied with its guidelines. For example, the calculation of a CLTV (combined loan-to-value ratio) depends on appraised value. The higher the appraised value, the lower the CLTV. By inflating appraised values, Countrywide could increase the amount lent to a borrower and justify the loan by

reference to a CLTV that appeared to be below 100% or other relevant benchmarks in Countrywide's guidelines, while in reality, based on realistic appraised values, the loan clearly would have exceeded those guidelines and should not have been made.

74. In a review of non-performing loans in the 2005-K and 2006-D Securitizations, Syncora has found that Countrywide's appraisals of properties secured by non-performing loans show a clear pattern of inflation compared to sales prices achieved for comparable properties in the locale at the time of Countrywide obtained its appraisals. Moreover, despite Countrywide's promise in the contractual documents and the Prospectuses to obtain "independent third party" appraisals, the properties underlying the vast majority of the loans in the Securitizations were appraised by Countrywide's own affiliated appraisal company, Landsafe, Inc. ("Landsafe"). Landsafe, like Countrywide Home Loans, is a subsidiary of Countrywide Financial.

75. Because the mortgage loans held by the Securitizations were secured by second liens subordinated to the primary mortgage on the property, the full impact of inflated appraisals was felt by the Trusts, and hence by Syncora.

76. **Undisclosed Agreements to Ease Guidelines**. Not all of the loans in the Securitizations were originated by Countrywide directly, some were instead purchased from third-party originators. For certain favored originators Countrywide entered into confidential agreements, called "accommodation letters," allowing them to sell loans to Countrywide that were outside of Countrywide's guidelines. Despite the fact that these loans did not comply with Countrywide's guidelines, Countrywide nevertheless purchased them and included them in the Securitizations. At no point did Countrywide

ever inform Syncora that it had entered into secret agreements in derogation of its underwriting standards. To the contrary it repeatedly informed Syncora that all loans in the HELOC Securitizations were underwritten prudently and to its own guidelines.

77. **Adverse Selection**. Despite Countrywide's representations that "no selection procedure reasonably believed by [Countrywide] to be adverse to the interests of . . . [Syncora] was used in selecting the Mortgage Loans," Countrywide cherry-picked good loans from its origination channels to keep for its own investment purposes, materially altering the risk profile of the remaining pools of loans used to collateralize the Securitizations. Indeed, Countrywide had two completely different sets of standards, one for the loans that it would keep and the other for those that it would sell. For the loans that it kept Countrywide attempted to minimize risk. For the loans it sold, Countrywide only cared whether it could include the loans in a securitization without alerting the securitization's purchasers and insurers. As is detailed in Financial Guaranty Insurance Company's ("FGIC") suit against Countrywide, Countrywide has admitted to FGIC that the loans it retained for its own investment performed better than those it securitized.

78. **Shadow Guidelines**. To induce Syncora to bid on the Securitizations, Countrywide provided Syncora with portions of its Loan Program Guide, purporting to describe Countrywide's underwriting standards for HELOCs and closed-end seconds. These guidelines set out borrowers' eligibility for loans based on various underwriting factors, including CLTVs and FICO scores. But as Syncora has since learned, these published guidelines are a sham. Starting in or around 2005, Countrywide had its own purely internal set of guidelines, referred to as "Shadow Guidelines," that had

significantly more relaxed standards and that were the actual guidelines used by Countrywide's senior underwriters. Rather than rejecting loans outside of the published guidelines as Countrywide claimed, Countrywide routed them to second line underwriters like the Structured Loan Desk. If the loans fit the Shadow Guidelines, they were approved without regard to adequate compensating factors. At no time did Countrywide ever apprise Syncora of the use – or even the existence – of the Shadow Guidelines. Instead, Countrywide portrayed its published guidelines as its underwriting standards, despite the material differences between these and the Shadow Guidelines. Syncora reasonably relied on Countrywide's misrepresentations about its underwriting standards when Syncora decided to enter into the Insurance Agreements.

Countrywide's Pervasive Breaches of its Representations and Warranties Regarding the Securitized Loans Are Uncovered by Syncora

79. As the securitized loans began defaulting in large numbers, Syncora commenced a review of non-performing loans in order to determine whether the loans had been originated in compliance with Countrywide's representations and warranties.

80. As part of this review, Syncora requested information from Countrywide to which Syncora was contractually entitled concerning the origination and servicing of the loans, including copies of the relevant Countrywide underwriting guidelines and complete loan files, copies of which had been supplied to Syncora were often incomplete or missing key documents. Countrywide has stonewalled, providing this information only grudgingly and after long delays, and often refusing to provide information to Syncora in breach of express contractual obligations.

81. Nonetheless, based on the limited information available to it before it brought suit, Syncora was able to review non-performing loans in the 2005-K and 2006-D Securitizations. This revealed that these non-performing loans had an extraordinarily high level of loans that breached Countrywide's representations and warranties. 75% of the loans reviewed were found to be materially in breach of Countrywide's representations and warranties, representing over $187 million in defective loans.

82. Since filing its initial complaint, Syncora has gained additional information through discovery, including additional loan files and further details about the failings of Countrywide's underwriting processes.

a. Syncora has now reviewed more than 3,700 loans in the 2005-K and 2006-D Securitizations. Of these 2,709 – almost 75% – have severe underwriting defects.

b. To date, Countrywide has only provided detailed information on 298 loans from the 2004-Q and 2004-R Securitizations; however, from this limited sample these Securitizations suffer from a similar rate of defects. An analysis of these loans has revealed that 248, or 84%, of these loans have serious underwriting defects.

c. Countrywide's refusal to provide loan files for 2006-S7 Securitization has prevented Syncora from undertaking a similar assessment loans from that Securitization. However, the loans in this Securitization were originated at the same time, and were underwritten by the same departments, as those in the 2006-D Securitization. Moreover, the 2006-S7 Securitization is the worst performing of all of the five Securitizations. It has already resulted in more than $146 million in claims against Syncora's guarantee. This is amount is more than the claims attributed to any of the other four Securitizations, even more than the $138 million in claims attributable to the 2006-D Securitization, which is almost twice the size as 2006-S7. Syncora reasonably believes that loans in the 2006-S7 Securitization will demonstrate a similar rate of defects as the other Securitizations, once Countrywide produces the loan files (which it has refused to provide for over a year) that will permit Syncora to analyze individual loans in this Securitization.

83. The defective loans breach Countrywide's contractual obligations in many respects, including Countrywide's representation and warranty that each loan was originated in accordance with Countrywide's underwriting guidelines, and that Countrywide had no knowledge of any fact that would have caused a reasonable originator of mortgage loans to conclude that a mortgage loan would not be paid in full. The majority of the non-performing loans in the Securitizations exceed or ignore one or more of the following Countrywide underwriting guidelines:

a. **Excessive DTI**. The guidelines specify the maximum debt-to income ratio ("DTI") that any borrower may have. DTI is the ratio of the borrower's costs to service outstanding debt obligations, including payments on the borrower's first and second mortgages, divided by the borrower's gross income. Countrywide's guidelines allowed for DTIs as high in some cases as 55%, yet numerous loans in the pools have DTIs significantly in excess of even that generous limit, without adequate factors to compensate for the substantial increase in default risk.

b. **Excessive CLTV**. The guidelines set out maximum CLTVs, or combined-loan-to-value ratios, for different types of loans, depending on factors including the property type, the borrower's credit rating, and the level of documentation of the loan. In addition, Countrywide represented and warranted that no loan in the Securitizations had a CLTV higher than 100%. Both the guidelines-imposed CLTV limits and the 100% ceiling were regularly violated by Countrywide's underwriters, without the presence of factors that could compensate for the substantial increase in exposure from lending beyond the value of the borrower's collateral, and numerous currently non-performing loans in the Securitizations were originated with CLTVs which, when properly calculated, exceeded the applicable guidelines and 100% ceiling.

c. **Excessive Loan Amounts**. Countrywide's guidelines impose limits on the maximum size of HELOCs and closed-end seconds depending on the borrower's credit, the type of documentation provided by the borrower, and the CLTV of the loan. Loan amount maximums limit the potential risk and cost of default, yet Countrywide routinely ignored its own limits, offering borrowers loans two, three or more times larger than their credit scores, documentation and property values dictated, geometrically increasing Syncora's risk and exposure.

d. **Improper Calculation Of First-Lien Debt**. Countrywide routinely calculated borrowers' DTI without taking into account the real burden of their first liens. The guidelines require that where a borrower's first lien is negatively amortizing, or there are fewer than 36 months until the first lien amortizes, the borrower's first-lien debt should be calculated on a fully amortized basis. This means that, for first mortgages with reduced interest, interest only, or partial interest payments for the first three years or less, Countrywide was required to calculate the debt associated with the mortgage taking into consideration the full extent of principal and interest payments that would come due thereafter. Any other approach would understate the real debt burden on the borrower. However, in violation of its own guidelines, Countrywide routinely calculated such borrowers' first-lien debt solely on the basis of their interest payments. This practice allowed Countrywide to originate loans that would, if based on a proper calculation of borrower debt, have significantly exceeded Countrywide's own limits on DTI, CLTV and other guidelines parameters

e. **Improper Calculation of Property Values**. Under Countrywide's guidelines, and consistent with industry practice, the value of a mortgaged property purchased within twelve months of the origination of the mortgage is – for purposes of calculating CLTV – the *lower* of the sale price or the appraised value. By ignoring this rule, and basing CLTVs on appraisals in excess of recent sales prices, thereby imputing sky-rocketing appreciation to properties purchased less than 12 months earlier, Countrywide's underwriters were able to approve loans that would, if the property value had been properly calculated, have had a CLTV well in excess of the applicable guidelines limits.

f. **Patently Unreasonable Stated Incomes**. Countrywide's representations that loans had been originated in accordance with its guidelines, such as maximum debt-to-income ratios, would be meaningless if Countrywide did not follow procedures to ensure that stated income loans were reasonable given the borrower's profession and location. Countrywide representatives told Syncora executives, including Linda Kobrin, in a meeting on October 18, 2005 at Countrywide's offices in Calabasas, California, that stated incomes were reviewed by Countrywide underwriters for reasonableness, as part of Countrywide's procedures. Countrywide's own due diligence review on the 2006-D securitization, which Countrywide provided to Syncora and which Countrywide stated was undertaken on the same basis as "that used by [Countrywide] to initially qualify the borrowers," accepted stated borrower incomes "*except as they appeared unreasonable or internally contradictory to [Countrywide's] . . . guidelines.*" In fact, as Syncora has now learned, Countrywide routinely made loans to borrowers on the basis of obviously unreasonable statements of income without making any effort to verify the borrower's claims, or following any review process to identify unreasonable stated incomes. Salary.com reports, which would have demonstrated the unreasonableness of these stated incomes (and which, according to some complaints, Countrywide underwriters routinely ran), are present in some loan files reviewed by Syncora, but are consistently absent from files of applicants with unreasonably high stated incomes. By ignoring or encouraging inflated statements of income, Countrywide breached its own underwriting guidelines and created loans with unacceptably high credit risks.

g. **Borrower Fraud**. In addition, where borrowers fraudulently overstated their incomes (or made other material misrepresentations) in connection with their loan applications, the affected loans were in default under the terms of the loan agreements as of their origination. Countrywide, through its representation and warranty in the Purchase Agreements and Pooling Agreement that no loan would be in default as of the Closing Date (or subsequent date on which the loan was added to the securitizations) also represented and warranted that no loan would be the product of borrower fraud. Yet Syncora has found numerous loans which appear to be the product of fraud on the part of borrowers concerning material issues including stated incomes, employment and occupancy status.

h. **Indiscriminate Availability of Stated Income Loans**. Countrywide claimed in the Prospectus supplements that it made stated income loans available to borrowers with "an established ability to repay indebtedness in a timely fashion." Instead, Syncora has learned that Countrywide made reduced documentation loans available indiscriminately to borrowers in general, including applicants with fair or poor FICO scores.

i. **Inflated Appraisals**. In the Prospectus, and in the Purchase Agreements and the Pooling Agreement, Countrywide represented and warranted that all loans would be appraised by an "independent third-party" appraiser, with no direct or indirect interest in the loan, and whose compensation was not affected by the approval or disapproval of the loan. In fact, appraisals for the vast majority of the loans were performed by a Countrywide affiliate, Landsafe. Syncora's review of non-performing loans has revealed that appraisals provided by Countrywide's affiliated appraiser consistently and significantly exceeded contemporaneous sale prices for comparable properties in the same location. Use by Countrywide of such inflated appraisals artificially reduced CLTVs. Substituting non-inflated appraisals would have resulted in many cases in CLTVs well in excess of the maximum ratios permitted under Countrywide's guidelines.

j. **<u>Insufficient Borrower Credit</u>**. Countrywide's guidelines set a number of parameters for acceptable credit history, which vary depending on the size and nature of the mortgage loan at issue, including minimum FICO scores, restrictions on the maximum number of late mortgage payments by the borrower in the preceding year, and minimum credit depth and credit history requirements. Countrywide routinely violated these restrictions in the absence of factors compensating for the increased risk of default, resulting in the origination of loans with credit risk significantly in excess of Countrywide's own guidelines.

k. **<u>Insufficient Cash Reserves</u>**. The guidelines require Countrywide's underwriters to verify that borrowers have a minimum level of cash on hand to meet their monthly payments. In fact, Countrywide regularly violated that requirement, qualifying borrowers with as little as a month or two of reserves or lacking documented reserves of any kind.

l. **Missing Documentation**. Although specific document requirements varied depending on the documentation program for which a borrower qualified, the guidelines require documentation of borrowers' income, assets, credit, employment, and cash reserves, and the value of the property securing the lien. The documents required by the documentation program applicable to borrowers are regularly missing from Countrywide's loan files. The failure to require documents confirming critical aspects of the loans' credit-worthiness increased the risk of the affected loans.

84. Countrywide's breaches of its guidelines, and of industry standards, are not close calls. Loan after loan reflects Countrywide's systematic disregard of its warranties and guidelines, and of its responsibilities as an underwriter. A few examples follow. As these examples will illustrate, Countrywide's breaches of its guidelines frequently occur in combination, resulting in loans that violate Countrywide's guidelines and responsible underwriting practices in several different respects. This creates "layered risk," which greatly increases the likelihood of default.

a. Loan # 121540538, a representative non-performing loan in the 2006-D Securitization, has a CLTV (when properly calculated, using the lower of the purchase price or appraised value) of 112%; the applicable guidelines maximum is 80%. The borrower claimed to make $13,500 a month as a realtor in Temecula, California. According to salary.com, this is more than *three times* the income earned by the 90th percentile of highest-earning realtors in the borrower's area – in other words, if the borrower's stated income were halved, he would still make more than 90% of comparable realtors. This salary is also incompatible with other evidence in the loan file. The loan was made with a very high DTI – 48.30%, near the guidelines maximum of 50%. Use of a more realistic income would result in a DTI grossly in excess of the guidelines, and over 100%. The borrower had less than the minimum reserves amount required by the guidelines. Finally, important and guidelines-mandated documentation is missing from the loan file, including the terms of the borrower's first lien and documentation required to support the claimed property value.

b. Loan # 127368380, in the 2006-D portfolio, has a CLTV of 111%, when the CLTV is properly calculated; the guidelines maximum was 100%. The borrower claimed a monthly income of $13,333 as an engineer; this stated income is roughly twice the 90th percentile according to salary.com, and is incompatible with the evidence of the borrower's assets in the file. Again, this loan was made with a very high DTI – 49.10% – and the use of a more realistic income would result in a DTI grossly in excess of the guidelines. The borrower also fell short of the guidelines-mandated reserves amount.

c. Loan # 123499779, in the 2005-K portfolio, was made to a borrower who claimed to make $13,520 monthly as a room service attendant in Atlantic City. This is nearly *five times* higher than the 90th percentile for that occupation and location according to salary.com. Using a more realistic income results in a DTI well over 300%. Even if the borrower's highly improbable statement of income could be taken at face value, the loan would still have a DTI of 67.68%, well in excess of the guidelines maximum of 50%, once the negative rents on the borrower's rental property are properly calculated.

d. Loan # 81754508, in the 2006-D portfolio, has a CLTV of 89.20%; the applicable guidelines maximum is 80%. The borrower claimed to make $17,250 monthly as an academic director of a charter school. This income is well over twice the 90th percentile for that position according to salary.com, and inconsistent with evidence of the borrower's assets in the file. Use of a more plausible income results in a DTI of 90% – and, again, even if the borrower's implausible statement of income could be taken at face value, the loan would *still* have a DTI in excess of the guidelines. The borrower's credit score is 649, 11 points lower than the applicable guidelines minimum of 660. The borrower had reserves of only 2.9 months, less than half the applicable guidelines minimum.

e. Loan # 125471962, in the 2006-D portfolio, has a CLTV (properly calculated) of 114.05%; the applicable guidelines maximum is 90%. The borrower claimed to make $32,000 monthly as a realtor in Gilbert, Arizona – more than *five times* his realistic income according to indeed.com. Using a more realistic income results in a DTI over 200%. Additionally, the borrower had only 0.10 months' reserves, well under the 3 months' reserves required by the guidelines. Yet, despite these glaring defects, Countrywide loaned this borrower $193,571, well over the applicable maximum loan amount of $150,000.

f. Loan # 9844523 was made to a borrower who claimed to make $16,754 monthly as a stylist. This is *more than five times* the 90th percentile in incomes for this profession in the borrower's location according to salary.com, and is also inconsistent with other evidence in the loan file. Use of a more realistic income results in a DTI of more than 210%. Additionally, the file does not contain any verification of minimum assets, the guidelines-mandated employment verification, or the required residence history.

g. Loan # 127524136, in the 2006-D portfolio, has a CLTV of 100%, in excess of the applicable guidelines maximum of 95%, and a credit score of 668, well under the guidelines minimum of 700. The borrower claimed to make $10,416 a month as a public school teacher in New York – far in excess of the 90th percentile for this profession according to salary.com. Using a more realistic income results in a DTI of 80%. There are internal inconsistencies in the borrower's file that should have triggered further investigation, but Countrywide ignored them. Countrywide cited as compensating factors the borrower's assets and employment history – and yet, in violation of the guidelines, the file contains no verification of assets or of employment.

h. Loan # 125888186, in the 2006-D portfolio, has a CLTV of 99.9% and a credit score of 656, where the guidelines require a maximum CLTV of 95% and a minimum credit score of 680. According to the loan file, Countrywide approved this loan despite these flaws because the borrower had strong reserves – when in fact the borrower had *less* than the guidelines minimum of 3 months.

i. Loan # 105642182, in the 2005-K portfolio, was made to a borrower who claimed to make $12,500 monthly as an airline technician – more than twice the 90th percentile for this profession according to salary.com. Using a more realistic income results in a DTI of nearly 100%. The loan was originally approved as a fully documented loan, but the originator subsequently reduced and approved the loan as a stated income loan, without explanation – suggesting that Countrywide knew that the borrower could not qualify for the loan if he were required to provide his true income.

j. Loan # 121518097, in the 2005-K portfolio, has a CLTV of 100% and a credit score of 622; the guidelines require a maximum CLTV of 80% and a minimum credit score of 700. The borrower claimed to make $12,500 a month as an antique restorer – well over twice the 90th percentile of incomes for this profession according to salary.com. Using a more realistic income results in a DTI of nearly 100%. Even if one could take the borrower's highly improbable statement of income at face value, the loan would still have a DTI over the guidelines maximum.

85. In addition to these breaches of its representations and warranties, Countrywide has breached its obligations under the Insurance Agreements, including by:

- Including among the loans designated in the Mortgage Loan Schedule for the 2006-D and 2006-S7 Securitizations loans with characteristics that would result in their being excluded for coverage under the third-party Loan Insurance Policy.

- Furnishing Syncora with documents containing numerous untrue and misleading statements of material facts.

- Carrying out practices and policies in the conduct of its business which were in violation of law, which, if enforced, could reasonably be expected to result in a material adverse change to Countrywide or a material adverse effect on the Securitizations.

- Making material misstatements in the offering materials for the Securitizations, in violation of law.

- Ignoring Syncora's requests for contractually-required information.

86. The impact of Countrywide's pervasive breaches of its representations and warranties goes beyond any harm that the "put back" remedy was intended to, or could, remedy. Syncora has already identified put-back claims amounting to many times the aggregate profits that Syncora projected from insuring the portfolios – indeed, many times the premiums on the policies for the entire deal. Countrywide's underwriting conduct fundamentally altered the risk profile of the Securitizations, increasing Syncora's exposure far beyond anything it could have anticipated based on Countrywide's pre-contractual representations and the representations and warranties in the contracts. Had Syncora known the criteria that Countrywide was actually applying in approving loans, the inaccuracy of the descriptions of the loans provided by Countrywide, and the lack of control Countrywide was exercising over its underwriting process, Syncora would never have insured the securitizations, regardless of the availability of a put-back remedy. Countrywide's representations about its underwriting and the characteristics of the securitized loans (as stated, *e.g.*, in the annexes to the Supplemental Prospectuses), which induced Syncora to insure the securitizations, were fraudulent, and Syncora is therefore entitled to all appropriate remedies, including damages representing all claims paid on the Policies. In the alternative, Countrywide's actions constitute a breach going to the basis of the bargain between the parties that cannot be adequately remedied through the put-back mechanism, and which also entitles Syncora to all damages resulting from agreeing to insure the Policies, including all claims paid under the Policies.

Countrywide's Refusal To Repurchase The Defective Loans

87. Syncora has given notice to Countrywide of more than 3000 loans included in 2005-K and 2006-D by notices in or around May 2008, December 2008, March 2009, May 2009, and June 2009, and given notice of more than 200 loans included in 2004-Q and 2004-R, by notices in September 2009. The cure period and repurchase dates in these notices have now expired.

88. Countrywide has not responded to the majority of these noticed loans. To date Countrywide has only agreed to repurchase 7 of the loans that Syncora noticed in 2005-K and 2006-D, and has refused without explanation Syncora's requests to repurchase another 595 loans. Although the cure and repurchase periods for the notices have long since expired, Countrywide has not responded in any fashion to the more than 2000 other loans that Syncora has noticed for repurchase.

Countrywide's Refusal to Provide Syncora With Contractually-Required Information

89. Countrywide is required under each of the Securitizations to provide Syncora with basic information concerning the loans in the portfolios, including origination and servicing files.

90. Prior to bringing suit Countrywide consistently failed to provide Syncora with the information to which it is contractually entitled. Syncora's frequent requests, by telephone, email and letter, have been met with stonewalling, foot-dragging, and unfulfilled promises. Notably:

a. Countrywide stonewalled Syncora's repeated requests for complete copies of the guidelines relied on by Countrywide in the underwriting of the loans in the Securitizations, and provided only a fraction of the relevant materials prior to discovery in this case.

b. Syncora's pre-litigation requests for the servicing files for 2005-K, 2006-D and 2006-S7, went unanswered.

c. Countrywide, ignoring its contractual obligations, has refused to provide the origination files for all but a small fraction of loans included in the 2004-Q, 2004-R, and 2006-S7.

d. In violation of its contractual obligations, Countrywide provided Syncora only a handful of months of performance data on the HELOC securitizations before Syncora brought suit and has continued to refuse to provide any of this information outside of discovery in this action. To date, Countrywide has provided no performance data for 2006-S7 and has not provided updated data on 2004-Q and 2004-R since February 2008.

91. It is obvious why Countrywide has stonewalled Syncora's requests: Countrywide does not want to provide evidence to Syncora that will almost certainly show even more fraudulent conduct and contractual breaches with respect to the Securitizations.

FIRST CAUSE OF ACTION

(Fraudulent Inducement – Against Countrywide Home Loans, Countrywide Securities, and Countrywide Financial)

92. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

93. As set forth above, Countrywide made materially false statements and omitted material facts with the intent to defraud Syncora at precontractual meetings between Syncora and Countrywide officers, and in the Prospectuses, presentations of statistical information concerning the securitized loans, contract drafts, loan tapes, and other documents and information provided to Syncora in order to induce it to enter into the contracts of insurance, which statements and omissions Syncora reasonably relied upon when it entered into the Insurance Agreements and issued the Policies.

94. As a result of Countrywide's misrepresentations, Syncora insured pools of loans which – due to Countrywide's systematic and knowing abandonment of its own underwriting Guidelines – had an overall risk profile far greater than Syncora was led by Countrywide's representations and omissions to expect. The level of defaults on these loans has now caused Syncora to pay over one hundred million dollars of claims to the Noteholders of the Securitizations. Syncora has thus been damaged by Countrywide's fraud, since Syncora would not have been obliged to make these payments had it not been fraudulently induced by Countrywide to insure the Securitizations.

95. Among other things, Countrywide made the following misrepresentations:

a. **Statistical Information About the Loans**. Countrywide provided, in the Prospectuses, loan tapes and other documents, detailed statistical information about the securitized loans, including such parameters as CLTV and DTI. These statistics have proved to be false. Among other things, Countrywide relied on inflated appraisals, miscalculated home values and debt obligations, and inflated reported incomes, resulting in statistics that drastically under-estimated the credit risk of the securitized loans. While Syncora's review of non-performing loans is ongoing, it is already apparent, from the defective loans identified in the notices provided by Syncora to Countrywide, that the statistics included in the Prospectus annexes and loan tapes were materially false and misleading. As Countrywide knew, these misrepresentations were crucial to inducing Syncora to insure the securitizations.

b. **Underwriting Standards**. Countrywide represented in drafts and final contractual documents and Prospectuses that it provided to Syncora that each mortgage loan held by the Securitizations had been underwritten in accordance with its guidelines. In the draft and final Purchase Agreements, Countrywide represented that "each Mortgage Loan was originated in accordance with [Countrywide's] underwriting guidelines." In the draft and final Pooling Agreement, Countrywide represented that all loans originated by Countrywide Home Loans were originated in accordance with its guidance and all others were underwritten in "accordance with customary and prudent underwriting guidelines." The Prospectuses claimed that Countrywide followed an "underwriting process . . . intended to assess the applicant's credit standing and repayment ability." In reality, Countrywide routinely ignored its underwriting guidelines, and purchased loans from third-parties that exhibited imprudent deviation from customary underwriting.

c. **Borrower Income**. Countrywide represented that it would qualify borrowers based on their income. For example, Countrywide stated in the

Prospectuses that it would only accept loans if "the prospective borrower has sufficient monthly income to support the payments on the home equity loan." In fact, Countrywide routinely accepted clearly excessive stated incomes without question. Countrywide based its underwriting decisions on these excessive stated incomes, and provided them (or numbers derived from them) to Syncora.

d. **Appraisal Standards**. Countrywide represented that it would have the properties appraised independently and fairly. In the Prospectuses, Countrywide represented that all properties would generally be appraised by an "independent third-party." Instead Countrywide directed almost every loan to an affiliated appraiser from which it obtained appraisals that were frequently significantly higher than contemporaneous evidence of comparable home sale prices. Countrywide based its underwriting decisions on these inflated appraisals and provided them (or numbers derived from them) to Syncora.

e. **Income Verification**. Countrywide represented in the Prospectuses that it would require appropriate income verification from all borrowers and that it would make its "reduced documentation program," available only to applicants whose "credit histories . . . demonstrate an established ability to repay indebtedness in a timely fashion." Even for such applicants, Countrywide represented that it would only "waive[] . . . certain credit underwriting documentation concerning income and employment verification." Countrywide reiterated this critical representation on other occasions. At a meeting on October 18, 2005 at Countrywide's offices in Calabasas, California, Countrywide representatives assured Syncora that Countrywide underwriters performed a reasonableness review of stated incomes as part of Countrywide's procedures. Countrywide's own due diligence review of the 2006-D securitization, which Countrywide provided to Syncora, indicated that borrower statements of income were reviewed for reasonableness and rejected if *"they appeared unreasonable or internally contradictory to [Countrywide's] . . . guidelines.*" In fact, Countrywide ignored its own criteria for the level of income verification required, made its reduced documentation program available indiscriminately to loan applicants, and, rather than waiving only "certain credit underwriting documentation," required no more of most of these applicants than self-reported statements of income.

f. **Reasonable Originator**. Countrywide represented in the draft and final Purchase Agreements that it "had no knowledge of any facts that would have caused a reasonable originator of mortgage loans to conclude on the date of origination of each Mortgage Loan that each such Mortgage Loan would not be paid in full when due." In fact, Countrywide was in possession of facts concerning most currently non-performing loans that would have caused a reasonable underwriter not to make the loan, including facts concerning the unreasonableness of stated incomes, the absence of factors compensating for one or more violations of its underwriting guidelines, the unreasonableness of the inflated appraisals provided by Countrywide's affiliated appraiser, and the layered risk created by the presence of two or more deficiencies in the same loan application.

g. **Compliance with Law**. Countrywide represented in the draft and final Purchase Agreements that "each Mortgage Loan . . . complied in all material respects with applicable local, state and federal laws, including all applicable predatory and abusive lending laws." As reflected in the pleadings filed in the multitude of suits and actions brought by attorneys general and other public authorities across the country, this representation was false. Countrywide's willingness to settle claims of several attorneys general that Countrywide had engaged in illegal predatory lending for the unprecedented sum of $8.6 billion supports that Countrywide routinely engaged in illegal conduct in its mortgage origination activities.

96. Countrywide omitted material facts necessary to make its other statements in is draft and final contractual documents and Prospectuses not misleading. As described above, Countrywide stated that it would underwrite the mortgage loans held by the Securitizations using borrowers' incomes and property appraisals, but Countrywide did not disclose that it knowingly or recklessly would accept inflated incomes and appraisals and ignore its own underwriting guidelines.

97. Countrywide provided false and misleading draft and final contractual documents to Syncora on multiple occasions, including the following:

a. On November 13, November 19, November 20, and November 23, 2004, Countrywide (including Countrywide Home Loans and Countrywide

Securities) caused its attorneys to transmit the drafts of the contractual documents for 2004-Q to Syncora.

b. On December 10, and December 21, 2004, Countrywide (including Countrywide Home Loans and Countrywide Securities) caused its attorneys to transmit the drafts of the contractual documents for 2004-R to Syncora.

c. On December 15, 2005 and December 29, 2005, Countrywide (including Countrywide Home Loans and Countrywide Securities) caused its attorneys to transmit the drafts of the contractual documents for 2005-K to Syncora.

d. On March 27, 2006 and March 30, 3006, Countrywide (including Countrywide Home Loans and Countrywide Securities) caused its attorneys to transmit the drafts of the contractual documents for 2006-D to Syncora.

e. On November 20 and November 26, 2006, Countrywide (including Countrywide Home Loans and Countrywide Securities) caused its attorneys to transmit the drafts of the contractual documents for 2006-S7 to Syncora.

98. Countrywide provided false and misleading Prospectuses and draft Prospectuses, including annexes with statistical information concerning the loan pools, to Syncora on multiple occasions, including the following:

a. On November 10, 2004, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the first draft of the Prospectus supplement for Series 2004-Q to Syncora.

b. On November 22, 2004, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the final Prospectus supplement for Series 2004-Q to Syncora.

c. On December 8, 2004, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the first draft of the Prospectus supplement for Series 2004-R to Syncora.

d. On December 17, 2004, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit a final draft of the Prospectus supplement for Series 2004-R to Syncora.

e. On December 15, 2005, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the first draft of the Prospectus supplement for Series 2005-K to Syncora.

f. On December 28, 2005, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the final Prospectus supplement for Series 2005-K to Syncora.

g. On March 24, 2006, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the first draft of the Prospectus supplement for Series 2006-D to Syncora.

h. On March 30, 2006, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the final Prospectus supplement for Series 2006-D to Syncora.

i. On November 17, 2006, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the first draft of the Prospectus supplement for Series 2006-S7 to Syncora.

j. On November 30, 2006, Countrywide Home Loans and Countrywide Securities caused Countrywide Home Loans' attorneys to transmit the final Prospectus supplement for Series 2006-S7 to Syncora.

99. Countrywide also provided false and misleading information to Syncora regarding the securitized loans in the loan tapes, containing information concerning each mortgage loan to be included in the Securitizations that Countrywide provided with its bid materials. Among other misrepresentations and misleading statements, the loan tapes contained CLTVs calculated with inflated appraisals, debt-to-income calculations based on inflated incomes, and improperly calculated property values.

100. Countrywide provided false and misleading loan tapes to Syncora on multiple occasions, including the following:

a. On November 1, 2004 David Andersen of Countrywide Home Loans provided a loan tape and statistical data for the loans in 2004-Q to Syncora by electronic mail, as part of Countrywide's efforts to induce Syncora to bid on providing note insurance for 2004-Q. On information and belief, this materials contained misrepresentations, including understating the CLTV for the loans in this securitization.

b. On November 9, 2004, December 6, 2004, and December 21, 2004, David Andersen of Countrywide Home Loans provided loan tapes and statistical information on the loans in 2004-R to Syncora by electronic mail, as part of Countrywide's efforts to induce Syncora to bid on providing note insurance for 2004-R. On information and belief, these materials contained misrepresentations, including understating the CLTV for the loans in this securitization.

c. On November 29, 2005, Garrett Galati of Countrywide Home Loans provided a loan tape for 2005-K to Syncora by electronic mail containing these misrepresentations and requesting a bid from Syncora for the note insurance policy on 2005-K.

d. On December 6, 2005, Tonya LyBrand of Countrywide Securities provided a loan tape for 2005-K to Syncora by electronic mail containing these misrepresentations, as part of Countrywide's efforts to induce Syncora to bid on providing note insurance for 2005-K.

e. On March 15, 2006, Garrett Galati of Countrywide Home Loans provided a loan tape for 2006-D to Syncora by electronic mail containing these misrepresentations and requesting a bid from Syncora for the note insurance policy on 2006-D.

f. On October 26, 2006, November 8, 2006 and November 28, 2006, Garrett Galati of Countrywide Home Loans provided loan tapes and statistical information on the loans in 2006-S7 to Syncora by electronic mail, as part of Countrywide's efforts to induce Syncora to bid on providing note insurance for 2006-S7. On information and belief, these materials contained misrepresentations, including understating the CLTV for the loans in this securitization.

101. Countrywide also submitted loan tapes and statistical information about the loan pools containing these misrepresentations to rating agencies, in order to procure the favorable shadow ratings on which Syncora's consent to insure the Securitizations was expressly conditioned.

102. Prior to insuring the securitizations, Countrywide provided details on its underwriting standards and procedures. These details were incorrect and omitted key disclosures, namely that Countrywide had abandoned its own underwriting standards. For example:

a. Prior to bidding on 2004-Q, the first Countrywide HELOC transaction that Syncora insured, Countrywide provided copies of it HELOC underwriting guidelines, which materially misstated Countrywide's actual underwriting process.

b. At a meeting on October 18, 2005, at Countrywide's offices in Calabasas, California between representatives of Countrywide and Syncora, Countrywide's representatives discussed their underwriting procedures, in order to reassure Syncora as to the soundness of their procedures. In particular, Countrywide officers represented that its underwriters reviewed stated incomes for reasonableness as part of Countrywide's underwriting procedures. Countrywide omitted material facts necessary to make these representations not misleading, failing to disclose that it knowingly or recklessly would accept inflated incomes and appraisals and ignore its own underwriting guidelines.

c. On March 29, 2006, Tonya LyBrand of Countrywide Securities provided Syncora with the Executive Summary of Countrywide's due diligence on the 2006-D transaction. This document stated that the due diligence was conducted on the same basis as "that used by [Countrywide] to initially qualify the borrowers," and that stated borrower incomes were reviewed for reasonableness and rejected if "*they appeared unreasonable or internally contradictory to [Countrywide's] . . . guidelines.*"

103. Countrywide knew at the time it made these representations to Syncora and provided Syncora with these materials that the above statements were false or, at the very least, made recklessly, without any belief in the truth of the statements, because these representations were inconsistent with Countrywide's current underwriting practices.

104. As Countrywide knew, the brief period between solicitation of bids and Countrywide's selection of a credit enhancer for the Securitizations did not allow sufficient opportunity for Syncora independently to evaluate the vast majority of loans in the Securitizations. Accordingly, both Syncora and Countrywide understood that Syncora had to, and did, rely upon the accuracy of Countrywide's representations.

105. Countrywide knew that Syncora would rely on Countrywide's representations at the October 18, 2005 meeting between Syncora and Countrywide officers, and in the contractual documents, loan tapes, due diligence, other bid materials

and Prospectuses. Countrywide also knew that Syncora was relying on Countrywide's expertise, knowledge of its own underwriting process and knowledge of the mortgage loans held by the Securitizations, and Countrywide encouraged this reliance. Countrywide knew that Syncora entered into the Insurance Agreements in reliance on its belief that Countrywide's underwriting process was sound and in accordance with Countrywide's representations, and the mortgage loans were as represented.

106. As a result of Countrywide's false and misleading statements and omissions, Syncora has suffered, and will continue to suffer, damages, including paying out claims under the Policies and being obligated to pay future claims.

107. Because Countrywide committed these acts and omissions maliciously, wantonly and oppressively, and because the consequences of Countrywide's acts knowingly affected the general public, Syncora is entitled to recover punitive damages.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation - Against Countrywide Home Loans, Countrywide Securities, and Countrywide Financial)

108. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

109. As the originator of the loans, and the sponsor, depositor and master servicer for the Securitizations, the facts regarding Countrywide's compliance with its underwriting guidelines and with its representations regarding the quality of the loans were exclusively within Countrywide's knowledge.

110. Countrywide was aware that Syncora relied on Countrywide's expertise and experience in originating, underwriting, selecting and servicing the loans, and that Syncora depended on Countrywide for accurate and truthful information.

111. Countrywide breached its duty to provide Syncora with accurate information regarding the loans, the Securitizations, and Countrywide's underwriting practices.

112. Syncora reasonably relied on the truth of Countrywide's representations and statements and was injured as a result of their falsity.

THIRD CAUSE OF ACTION:

(Breach Of Contract - Against Countrywide Home Loans)

113. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

114. Countrywide has committed multiple material breaches of the Indemnity and Insurance Agreement, Sales and Servicing Agreements, the Pooling Agreement, and the Purchase Agreements, entitling Syncora to damages for all loss it has suffered as a result of entering into the contracts of insurance.

115. Countrywide represented in the Insurance Agreements that "[n]either the contractual documents nor other material information relating to the Mortgage Loans [or] the operations of Countrywide . . . furnished to the Insurer contains any statement of a material fact which was untrue or misleading in any material adverse respect when made." In fact, as set out above, the Prospectuses, the loan tapes, and the contractual documents for the Securitizations contained statements regarding the origination of the

mortgage loans and Countrywide's underwriting practices that were untrue and misleading in material adverse respects.

116. Syncora was a beneficiary of Countrywide's representations and warranties concerning its underwriting practices and the quality of the securitized HELOCs in the Purchase Agreements and, as provided in the Insurance Agreements and the Sales and Servicing Agreements. Countrywide's breaches of those representations and warranties were widespread and systematic; Countrywide did not simply fail to live up to its underwriting standards in a few instances, but abandoned them wholesale. The repurchase remedy provided by the contracts was intended to address the possibility that the securitizations would contain a small number of defective loans. It was never intended to be an adequate remedy for the situation in which Countrywide breached its own guidelines so severely and so consistently that thousands of loans would be defective, and where the risk profile of the entire portfolio would thereby significantly deteriorate. Countrywide's comprehensive pattern and practice of rejecting its own underwriting procedures and underwriting discipline, and the resulting increase in credit risk and defaults in the loan portfolios, goes to the essence of the Insurance Agreements, and represents a material breach of those contracts, entitling Syncora to damages compensating it for all injury resulting from entering into the contracts of insurance, including all claims paid on the Policies.

117. Countrywide represented in the Insurance Agreements that:

> No practice, procedure or policy employed by any of Countrywide, the Depositor or the Issuer in the conduct of its business violates any law, regulation, judgment, agreement, order or decree applicable to it which, if

> enforced, could reasonably be expected to result in a Material Adverse Change with respect to it or have a material adverse effect on the Transaction.

However, as demonstrated by the actions filed by numerous attorneys general and other public officials across the country, and Countrywide's $8.6 billion settlement of a portion of these claims, this representation was not true. Countrywide's practices violated state consumer protection laws, including those that prohibit unfair or deceptive business practices, and state lending laws. These violations of law could reasonably be expected to have a material adverse effect on Countrywide, its operations and the transactions.

118. Countrywide represented in the Insurance Agreements that the offering of the notes backed by the Securitizations complied "in all material respects with all requirements of law, including all registration and reporting requirements of applicable securities laws." However, this was not true. Countrywide made numerous misrepresentations and omissions in the offering materials, as detailed above.

119. By virtue of Countrywide's foregoing material breaches, Syncora has been injured, and is entitled to damages in an amount to be proved at trial.

FOURTH CAUSE OF ACTION:

(Breach Of Contract - Against Countrywide Home Loans)

120. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

121. The Purchase Agreements, Sale and Servicing Agreements, Insurance Agreements and Pooling Agreement are valid and enforceable contracts that give rise to obligations on the part of Countrywide with respect to the mortgage loans.

122. As set out above, Countrywide made extensive representations and warranties in the Purchase Agreements and the Pooling Agreement regarding the underwriting and credit-worthiness of the mortgage loans. Syncora is a third-party beneficiary of the Purchase Agreements and the Pooling Agreement, and the representations and warranties in these agreements are also incorporated for Syncora's benefit in the Insurance Agreements.

123. Syncora is also entitled, under the Insurance Agreements and otherwise, to be subrogated to the Noteholders' claims against Countrywide for breach of these representations and warranties.

124. Countrywide's breaches of its representations and warranties in the Purchase Agreements regarding its underwriting practices and the creditworthiness of the mortgage loans in the Securitizations materially and adversely affect Syncora's interests.

125. The Sale and Servicing Agreements and the Pooling Agreement provide that once Countrywide becomes aware of a material breach of the representations and warranties regarding the mortgage loans, Countrywide must either cure the breach within 90 days or repurchase the affected loans in the month following the expiry of the 90-day cure period. Under the terms of the Sale and Servicing Agreement, Syncora, as the credit enhancer for the securitizations, is authorized to give Countrywide notice of a breach, triggering Countrywide's obligation to cure or repurchase.

126. Syncora has notified Countrywide of numerous material breaches of the representations and warranties for loans included in 2004-Q, 2004-R, 2005-K and 2006-D Securitizations. The contractual period in which to cure or repurchase the defective

loans has now expired, and Countrywide has taken no action to cure or repurchase any defective loan.

127. In addition to the breaches noticed to date, Syncora reasonably believes, based on its review of the loan files that Countrywide has provided, that it will be able to establish that a significant portion of present and projected non-performing loans are in breach of Countrywide's repurchase obligations.

128. Syncora is therefore entitled to damages representing not less than the original principal value, additional net draws, and accumulated interest on all mortgage loans in the Securitizations that are inconsistent with and in breach of Countrywide's representations and warranties concerning the loans and Countrywide's origination practices; costs and expenses incurred as a result of Countrywide's breach of its representations, warranties and contractual obligations, including its failure to timely provide Syncora with contractually-required information concerning the Securitizations; and interest thereon.

129. In the alternative, Syncora is entitled to a declaratory judgment that Countrywide has breached its obligations to repurchase the defective loans identified by Syncora, and is required to repurchase such defective loans and to pay consideration not less than the original principal value, additional net draws, and accumulated interest on all mortgage loans in the Securitizations that are inconsistent with and in breach of Countrywide's representations and warranties concerning the loans and Countrywide's origination practices; costs and expenses incurred as a result of Countrywide's breach of its representations, warranties and contractual obligations; and interest thereon.

FIFTH CAUSE OF ACTION

(Breach of Implied Duty of Good Faith And Fair Dealing – Against Countrywide Home Loans)

130. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

131. Countrywide owed Syncora an implied duty of good faith and fair dealing with respect to matters arising out of the Insurance Agreements and the contractual documents incorporated therein. This implied duty required Countrywide to apply underwriting standards consistent with its representations, with Syncora's reasonable understanding, and with responsible industry practice.

132. The quality and credit-worthiness of the loans in the Securitizations were fundamental to Syncora's agreement to insure them. In the contracts and the Prospectuses for the Securitizations, Countrywide held itself out as an experienced and expert underwriter and originator of mortgage loans. Syncora entered into the Insurance Agreements in reliance on Countrywide's representations.

133. As a result of Countrywide's breach of its implied duty of good faith and fair dealing, Syncora has suffered, and is likely to continue suffering, damages in an amount to be proved at trial, including damages representing Syncora's payments on the Policies.

SIXTH CAUSE OF ACTION

(Indemnification - Against Countrywide Home Loans)

134. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

135. Countrywide is required under the Insurance Agreements to indemnify Syncora for losses, costs and expenses (including attorneys' fees and costs and costs of investigations) arising out of or relating to Countrywide's breach of representations and warranties, to the extent set out in Insurance and Indemnity Agreement § 3.04(a)(iv), or arising out of or relating to untrue statements of material fact in the offering documents or registration statements for the Securitizations. This includes, among other things, an obligation to indemnify Syncora for its attorneys' fees and costs incurred in connection with the present litigation.

SEVENTH CAUSE OF ACTION

(Successor and Vicarious Liability – Against Bank of America)

136. Syncora incorporates by reference all of the foregoing allegations as fully set forth herein.

137. On July 1, 2008, Bank of America acquired Countrywide Financial and the other Countrywide defendants, both of which are Countrywide Financial's subsidiaries. According to defendants' public filings, Countrywide Financial was merged with a specially-created subsidiary of Bank of America, Red Oak Merger Corporation, through an all-stock transaction. Bank of America's 2008 Annual Statement describes the result of the Countrywide acquisition as being "a combined company", a sentiment echoed in other public statements by Bank of America and Countrywide personnel.

138. According to Bank of America's public filings, on November 7, 2008, Countrywide Financial and Countrywide Home Loans transferred "substantially all of their assets and operations" to Bank of America, in return for Bank of America's assumption of certain debt securities and related guarantees. At that time, Countrywide

ceased filing its own financial statements with the United States Securities and Exchange Commission, and instead its assets and liabilities have been included in Bank of America's financial statements.

139. On April 27, 2009, Bank of America retired the Countrywide brand and introduced a new brand known as "Bank of America Home Loans," representing "the combined operations of Bank of America's mortgage and home equity business and Countrywide Home Loans." On information and belief, Bank of America Home Loans is a division of Bank of America, and has taken over all of Countrywide's lending operations and is integrating those operations into a single combined business.

140. Today, Countrywide has ceased ordinary business operations, and all of Countrywide's operations, business, personnel, physical locations, management, and goodwill have been fully absorbed by Bank of America.

141. Bank of America has assumed those Countrywide liabilities necessary for the ordinary continuation of Countrywide's business. For example, Bank of America responded to and paid to settle multiple state attorney generals' lawsuits against Countrywide, including paying for the restructuring of thousands of Countrywide-originated loans. As recently as March 24, 2010, Bank of America agreed to restructure billions of dollars of loans in connection with the settlement of claims brought by the Massachusetts Attorney General. To take advantage of these concessions, consumers were directed to contact Bank of America customer service, not Countrywide. Bank of America has even set up a "Mobile Customer Assistance Unit" to travel New England and assist customers in restructuring their obligations with Countrywide.

142. Bank of America has assumed all of Countrywide's obligations under the agreements for the Securitizations. Bank of America now performs essentially all of Countrywide's obligations under the Insurance Agreements. Bank of America now services the loans held by the Securitizations. Bank of America now provides performance data and other materials to Syncora. Bank of America, and not Countrywide, responded to the repurchase notices that Syncora issued for loans held in the Securitizations. All of Syncora's contacts for the Securitizations identify themselves as being employed by Bank of America. These are generally the same employees who formerly worked for Countrywide and who continue to perform the same job functions, only now these employees work for Bank of America.

143. Bank of America has repeatedly made public statements that Countrywide has merged with Bank of America and that Bank of America is now liable for its obligations.

144. Because Bank of America has effectively or *de facto* merged with Countrywide, and has explicitly and implicitly assumed Countrywide's liabilities, it is liable as the successor to and vicariously for Countrywide.

145. Moreover, from the limited materials available concerning Countrywide's financial position after its merger with Bank of America, and on information and belief, Bank of America has removed substantial assets from Countrywide, replacing them with cash or notes worth less than full or fair value, leaving the Countrywide entities as mere shells, in an attempt to evade Countrywide's liabilities to its creditors.

146. Bank of America is therefore fully jointly-and-severally responsible for Countrywide's liabilities in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. An award of damages, in an amount to be proven at trial, including at a minimum damages representing:

a. Syncora's obligations to pay claims (whether advanced, incurred or reasonably anticipated) on the policies it issued in connection with the Securitizations;

b. The repurchase payments due under the Insurance Agreements (whether advanced, incurred or reasonably anticipated) in respect of each defective mortgage loan;

c. Indemnification for Syncora's damages, losses, costs, and expenses, including its accountants' and attorneys' fees and costs incurred herein;

d. Syncora's other economic and consequential damages, including lost profits;

e. Punitive damages;

f. Prejudgment interest at the maximum legal rate; and

g. Syncora's costs of suit.

2. A judgment declaring that:

a. The defective loans identified by Syncora are in breach of Countrywide representations and warranties and Countrywide is required to repurchase such defective loans, in accordance with the Sale and Servicing Agreements;

b. Countrywide is liable for all claims made (paid and not yet paid) and all future claims on the policies Syncora issued in connection with the Securitizations; and

c. Countrywide is required to indemnify Syncora for its losses, costs and expenses, including accountants' and attorneys' fees and interest incurred as a result of Countrywide's breach of its representations, warranties and contractual obligations.

3. A judgment that Bank of America is jointly and severally liable with Countrywide for any award of damages in this case.

4. A further declaratory judgment that Bank of America is subject to vicarious and/or successor liability for any and all liabilities and responsibilities of Countrywide in connection with the claims made in this Amended Complaint.

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

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury for all issues so triable as a matter of right.

Dated: New York, New York
May 6, 2010

Respectfully submitted,

As to the claims against Countrywide Home Loans, Inc., Countrywide Securities Corporation, and Countrywide Financial Corporation, the first, second and fifth paragraphs of the prayer for relief, and all of allegations in the complaint other than those in paragraphs 23, 27, and 136-46,

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As to the claims against Bank of America Corporation, the third, fourth and fifth paragraphs of the prayer for relief, and the allegations in paragraphs 23, 27, and 136-46,

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