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

NOMURA ASSET ACCEPTANCE CORPORATION ALTERNATIVE LOAN TRUST, SERIES 2007-1, by HSBC BANK USA, NATIONAL ASSOCIATION, in its capacity as Trustee, Plaintiff, -against- NOMURA CREDIT & CAPITAL, INC., Defendant.	Index No. ____________ **COMPLAINT** Plaintiff designates New York County as the place of Trial The basis for venue is CPLR § 503(c) as Defendant's principal New York office is in New York County

Plaintiff, Nomura Asset Acceptance Corporation Alternative Loan Trust, Series 2007-1 (the "Trust" or "NAA 2007-1") by HSBC Bank USA, National Association, in its capacity as Trustee (the "Trustee" or "HSBC") by its attorneys McKool Smith P.C., brings this complaint against Nomura Credit & Capital Inc. (the "Sponsor" or "Nomura"). Except as otherwise indicated as to its own actions and conduct, the Trustee alleges upon information and belief as follows:

NATURE OF THE ACTION

1. This action arises out of Nomura's breaches of contract relating to a securitized pool of 5,780 mortgage loans (the "Mortgage Loans" or "Loans") selected and sold by Nomura and held by the Trust for the benefit of the holders of Certificates issued by the Trust (the "Certificateholders"). The Mortgage Loans were (and remain) the sole source of income from which the Trust makes payments to Certificateholders. Nomura made extensive contractual representations and warranties regarding the characteristics of these Mortgage Loans, including

their credit quality and their compliance with applicable laws. Potential investors in the Certificates relied upon those representations and warranties and did not have access to the information necessary to verify whether the Mortgage Loans were accurately described by Nomura in compliance with them. Thus, Nomura's representations and warranties were essential to the securitization of the Mortgage Loans.

2. Highlighting the critical importance of these representations and warranties, Nomura further promised to cure any breach of the representations and warranties that materially and adversely affected the value of any Mortgage Loan or the interest of Certificateholders in the Loan or, if it failed to cure within ninety days, to repurchase the Loan. This obligation to cure or repurchase was not contingent on any action by any other party; Nomura had an independent obligation both (i) to notify the Trustee when it discovered a breach on its own, and (ii) to cure or repurchase the affected Loan within ninety days of becoming aware of a breach of a representation and warranty through either its own discovery or notice from any other transaction party.[1] In essence, the parties agreed that Certificateholders would assume the risk that there might be defaults on Mortgage Loans which conformed to Nomura's representations and warranties but that Nomura would assume the risk that Loans failed to meet those representations and warranties in the first instance.

3. The Mortgage Loans underlying the Trust and the corresponding Certificates issued by the Trust were divided into two Groups, Group I and Group II. Nomura received notice from the Trustee that, among other breaches, at least 1,725 Group II Mortgage Loans with an aggregate original principal balance of approximately $612,617,878.56 breached

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[1] If the breach was discovered within the first two years after the Trust was created, Nomura could also replace the defective loan with one that complied with the representations and warranties.

representations and warranties. These notices were based on independent analyses by three separate parties: Ambac Assurance Corp. ("Ambac"); one of the financial guaranty insurance providers for the Trust, Wells Fargo Bank, N.A. ("Wells Fargo"), the master servicer and securities administrator for the Trust; and a Certificateholder. In numerous cases, more than one of these parties identified breaches on the same loans. Despite this overwhelming evidence of pervasive breaches of representations and warranties with respect to the Mortgage Loans in the Trust, Nomura has failed, and continues to fail, to fulfill its promise to cure the breaches or repurchase those Loans.

4. In total, among other things Ambac, the Certificateholder, and the master servicer identified at least 1,725 unique Group II Mortgage Loans (the subset of Mortgage Loans at issue here)—***76.7 percent of the loan group***—that breached one or more of Nomura's representations and warranties in a manner that materially and adversely affected the value of those Loans and the interest of Certificateholders therein.

5. The Trustee promptly notified Nomura of these breaches, and provided a detailed description of the basis for each breach. The Trustee demanded that Nomura cure the breaches or repurchase the defective Mortgage Loans as it had promised. At least ninety days have passed since each of the Trustee's demands, but Nomura has failed to cure a single breach or repurchase a single Mortgage Loan—***including 111 Group II Mortgage Loans that Nomura has conceded materially breach its representations and warranties***.

6. The Trustee's notices were not Nomura's first indication that material breaches existed with respect to the Mortgage Loans. Nomura's routine practice was to conduct due diligence on each mortgage pool it intended to securitize by having a third party review a sample of the mortgage loans to determine whether they complied with the applicable underwriting

guidelines. Nomura conducted such due diligence on a sample of the Mortgage Loans and through that due diligence discovered facts demonstrating that its representations and warranties were false with respect to a substantial number of Group II Mortgage Loans, including breaches subsequently identified by both loan reviews and the master servicer. Nomura's discovery of the breaches carried through to the closing of the securitization transaction and beyond that date, such that Nomura had an obligation on day one to both provide notice to the Trustee of the breaches in question and to cure the breaches, substitute non-breaching loans for the breaching loans, or repurchase the breaching loans. It has failed to perform any of these obligations.

7. Nomura's failure to comply with its contractual obligations strikes at the heart of the parties' bargain. The Certificates are priced, marketed, and sold based upon the expected aggregate cash flows generated from principal and interest payments on the Mortgage Loans. Under the terms of the securitization, the Certificateholders assumed the risk that some borrowers might default on their Mortgage Loans and that, as a result, the Trust's cash flows could drop below the level necessary to pay scheduled distributions on the Certificates. But potential Certificateholders' ability to assess that risk depended on an accurate understanding of the credit quality and other characteristics of the Mortgage Loans.

8. Nomura was the "Sponsor" of the transaction. In its role as Sponsor, Nomura selected the mortgage companies from which to obtain mortgage loans, selected the loans to include in the Trust, and chose the servicer of the loans and the parties to administer the Trust. It had far more information about the Mortgage Loans than any other transaction party. Nomura had regular contact, and a direct contractual relationship, with the companies that originated the Mortgage Loans. Moreover, as part of its purchase, Nomura received the documentation supporting each Mortgage Loan (the "Loan File"), which typically included the borrower's loan

application, credit report, income, asset and employment verifications, disclosures and an appraisal of the subject property. Nomura therefore selected the Mortgage Loans to place in the Trust with full access to detailed information on each and thus the ability to ensure its representations and warranties were accurate.

9. By contrast, the Trustee and potential Certificateholders had only one source of information about the Mortgage Loans—Nomura. They had no means to verify the accuracy of information they received from Nomura. They were instead forced to rely exclusively on Nomura's representations and warranties. Indeed, the closing of the transaction ***was expressly conditioned*** on Nomura's representations and warranties being true and correct. The risk that these representations and warranties were inaccurate or incomplete was allocated in its entirety to Nomura through its cure or repurchase obligation.

10. Without Nomura's representations and warranties—and its accompanying promise to cure or repurchase when such representations and warranties are violated—investors would not have invested in the Certificates backed by the Mortgage Loans, and Nomura would not have received the substantial fees and other compensation flowing to it from this transaction.

11. Nomura's decision to include no fewer than 1,725 defective Mortgage Loans in the Trust materially breached Nomura's representations and warranties and, coupled with its subsequent and further breaches in refusing to cure or repurchase those Loans, fundamentally alters the transaction contemplated by the parties in the Pooling and Servicing Agreement (the "PSA") and the Mortgage Loan Purchase Agreement "(the "MLPA"). To begin with, the sheer number of defective loans sold to the Trust far exceeds the reasonable expectations of the parties. While the cure/repurchase mechanism provided a safety valve for a handful of mistakes, it was not a license for Nomura to securitize thousands of defective Mortgage Loans. The nature and

extent of these breaches further destroyed the economic rationale for the transaction, which was intended to create Certificates backed by a pool of mortgage loans with understandable and disclosed risks. The inclusion of at least 1,725 defective Mortgage Loans in the Trust created a significantly different and riskier investment than the Trust and Certificateholders bargained for.

12. Nomura's failure to provide notice of breaches it discovered, and its refusal to cure or repurchase the identified Mortgage Loans (identified either through notice from the Trustee or Nomura's own knowledge), entitle the Trust to compensatory damages and/or specific performance to compel Nomura to repurchase the Mortgage Loans for which it has been given notice, as well as any other Mortgage Loans that Nomura knows or has reason to know contain similar breaches.

PARTIES

13. The Trust is a New York common law trust established pursuant to a Pooling and Servicing Agreement dated April 1, 2007, with a Closing Date of May 10, 2007, among Nomura Asset Acceptance Corporation, as Depositor, GMAC Mortgage LLC, as Servicer, Wells Fargo, as Master Servicer and Securities Administrator, and HSBC, as Trustee (the "PSA").[2] The Trust itself is not a juridical entity. HSBC is a national banking association organized and existing under the laws of the United States with its registered main office in McLean, Virginia, and serves as Trustee of the Trust under the terms of the PSA. HSBC, acting solely in its capacity as Trustee and on behalf of the Trust, has undertaken the conduct of this litigation pursuant to the direction of certain Certificateholders of the Trust.

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[2] A true and correct copy of the PSA is attached hereto as Exhibit 1.

14. Nomura Capital & Credit, Inc. is a Delaware corporation with a principal place of business in New York, New York. Nomura was both the Sponsor under the PSA and the Seller of the Mortgage Loans under a Mortgage Loan Purchase Agreement, dated May 10, 2007 (the "MLPA").[3]

JURISDICTION, VENUE AND CPLR § 205(A)

15. This Court has jurisdiction and venue over this proceeding pursuant to CPLR §§ 301 and 302 because Nomura has its principal place of business in New York and regularly transacts business in New York. In addition, the contracts at issue were negotiated and performed by Nomura in New York. Additionally, the Trust was formed under New York law pursuant to a PSA which contains a New York choice of law provision.

16. Venue is proper in this district pursuant to CPLR § 503(c) because Nomura's principal place of business is in New York County.

17. The Trustee filed a complaint against Nomura based on the same transaction or occurrence in the United States District Court for the Southern District of New York on May 9, 2013. The district court dismissed that action for lack of subject matter jurisdiction on June 24, 2014. This action was commenced within six months after the termination of the federal action. Pursuant to CPLR § 205(a), this action is treated as commenced on May 9, 2013 for purpose of the statute of limitations.

[3] A true and correct copy of the MLPA is attached hereto as Exhibit 2.

FACTUAL BACKGROUND

I. THE NAA 2007-1 SECURITIZATION.

18. This case concerns mortgage-backed pass-through certificates, more commonly known as residential mortgage-backed securities. Asset-backed securitizations distribute risk by pooling cash-producing assets, such as mortgage loans, and issuing securities backed by that pool of assets. The most common form of securitization of mortgage loans involves the creation of a trust to which a sponsor entity sells a portfolio of mortgage loans. The transfer of assets to a trust is typically a two-step process: "the financial assets are transferred by the sponsor first to an intermediate entity, often a limited purpose entity created by the sponsor . . . and commonly called a depositor, and then the depositor will transfer the assets to the [trust] for the particular asset-backed transaction." Asset-Backed Securities, Securities Act Release No. 33-8518, Exchange Act Release No. 34-50905, 84 SEC Docket 1624 (Dec. 22, 2004).

19. After receiving a pool of mortgage loans, the trust issues securities, known as certificates, using the pool of loans as collateral. The certificates represent beneficial ownership interests in the trust, and investors in the certificates acquire rights to the income flowing from the mortgage loans underlying the trust (borrower's payments of principal and interest on their mortgages). Essentially, as borrowers make payments on the underlying loans, those funds are pooled and distributed to the holders of the securities in accordance with the related securitization documents. Typically, senior classes of certificates will receive the first distributions from the Trust, whereas junior classes will incur the first losses.

20. The Trust at issue here was created through, essentially, the process described above. Nomura was the Sponsor of the NAA 2007-1 securitization. As the Sponsor, Nomura selected a mortgage pool of 5,780 Loans with an aggregate principal balance of approximately

$1.59 billion. Nomura purchased the Mortgage Loans from a variety of mortgage origination companies, and sold them to its affiliate Nomura Asset Acceptance Corporation (the "Depositor") on the Closing Date of May 10, 2007, pursuant to the MLPA. Pursuant to the PSA, the Depositor simultaneously conveyed the Mortgage Loans to the Trust, which issued approximately $1.58 billion in Certificates and delivered those Certificates to the Depositor.

21. Concurrently with its transfer of the Mortgage Loans, the Depositor also transferred, assigned, set over and otherwise conveyed to the Trustee "all of its rights and interest under the Mortgage Loan Purchase Agreement." PSA § 2.01. The Trustee was thus "entitled to exercise all rights of the Depositor under the Mortgage Loan Purchase Agreement as if, for such purpose, it was the Depositor." PSA § 2.01.

22. The Mortgage Loans were divided into two groups, Group I and Group II. Group I consisted of approximately 3,532 Mortgage Loans with an aggregate principal balance of approximately $817.6 million. The cash flows from Group I Mortgage Loans are distributed primarily to particular Certificates, the Group I Certificates. Group II consisted of approximately 2,248 Mortgage Loans with an aggregate principal balance of approximately $774.8 million. Cash flows from Group II Mortgage Loans are distributed primarily to the Group II Certificates.

23. As a means to boost the credit rating of the Certificates, Nomura obtained financial guaranty insurance policies for certain of the Certificates. These policies guarantee the monthly distribution to the insured Certificate class; if collections from the Mortgage Loans are insufficient to pay the scheduled distributions to the insured Certificates, the insurer makes up the shortfall. Ambac issued a policy insuring payments to the Class II-A-M Certificates, one of thirteen classes backed by the Group II Mortgage Loans. Financial Security Assurance Inc.

issued a policy for four classes backed by Group I Mortgage Loans; the Class I-A-3, I-A-4, I-A-5, and I-A-6 Certificates.

24. The Trust is administered by several entities, including the Trustee; the Securities Administrator and Master Servicer, Wells Fargo; and the Servicer (for Group II MortgageLoans), Ocwen Loan Servicing, LLC (as successor servicer to GMAC Mortgage, LLC). The Servicer is, among other things, responsible for collecting monthly mortgage payments from borrowers and seeking to recover from borrowers who default on their Mortgage Loans, consistent with the PSA and generally accepted servicing standards. The Master Servicer is responsible for aggregating monthly reports and remittances from the Servicers and for generally overseeing the performance of the Servicers under the governing agreements. The Securities Administrator acts as the certificate registrar and paying agent, which means, among other things, it is responsible for distributions to Certificateholders. The Master Servicer, the Securities Administrator and the Servicer act independently of the Trustee pursuant to the terms of the PSA.

25. The Trust holds the Mortgage Loans for the benefit of the Certificateholders. The Trustee, as assignee of the Depositor, has the right to enforce Nomura's representations and warranties under the MLPA and its obligation to cure or repurchase Mortgage Loans that fail to comply with such representations and warranties in a manner that materially adversely affects the value of the Mortgage Loans or the interests of Certificateholders therein.

II. NOMURA'S REPRESENTATIONS AND WARRANTIES.

26. Nomura's representations and warranties regarding the Mortgage Loans are specified in Section 8 of the MLPA, which is attached as Exhibit C to the PSA, and include, without limitation, the following:

- "No fraud has taken place on the part of the Mortgagor or any other party involved in the origination or servicing of the Mortgage Loan;" MLPA § 8(ii).

- "Any and all requirements of any federal, state or local law including, without limitation, usury, truth in lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing, predatory, fair lending or disclosure laws applicable to the origination and servicing of the Mortgage Loans, including prepayment charges, if any, have been complied with in all material respects, and the consummation of the transactions contemplated hereby will not involve the violation of any such laws;" MLPA § 8(viii).

- "There is no material default, breach, violation event or event of acceleration existing under the Mortgage or the Mortgage Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, and the Seller has not, nor has its predecessors, waived any material default, breach, violation or event of acceleration;" MLPA § 8(xiv).

- "Each Mortgage Loan is and will be a mortgage loan arising out of the originator's practice in accordance with the originator's underwriting guidelines;" MLPA § 8(xli).

27. Nomura's representations and warranties were, and remain, material to the Trust. Indeed, Section 10 of the MLPA expressly makes the accuracy of Nomura's representations and warranties a condition to the closing of the transaction: "The closing shall be subject to each of the following conditions: (a) All of the representations and warranties of [Nomura] under this Agreement shall be true and correct in all material respects as of the date as of which they are made and no event shall have occurred which, with notice or the passage of time, would constitute a default under this [MLPA]."

28. Through the representations and warranties, Nomura promised among other things that, as of the Closing Date, the Mortgage Loans met certain credit quality thresholds regarding the borrowers' ability to repay their loans on time and in full, that the Mortgage Loans were originated in compliance with legal requirements, and that the documentation required to issue (and enforce) the Mortgage Loans was complete.

29. The MLPA provides that "[w]ithin 90 days of [Nomura's] discovery or its receipt of notice of any such missing documentation that was not transferred by the Seller as described above, or of materially defective documentation, or within 90 days of any such breach of a representation and warranty, the Seller promptly shall deliver such missing document or cure such defect or breach in all material respects or, in the event the Seller cannot deliver such missing document or cannot cure such defect or breach, the Seller shall, within 90 days of its discovery or receipt of notice of any such missing or materially defective documentation or within 90 days of any such breach of a representation and warranty, either (i) repurchase the affected Mortgage Loan at the Purchase Price (as such term is defined in the Pooling and Servicing Agreement) or (ii) pursuant to the provisions of the Pooling and Servicing Agreement, cause the removal of such Mortgage Loan from the Trust Fund and substitute one or more Replacement Mortgage Loans." MLPA § 9(a). Pursuant to Section 2.03 of the PSA, substitution of a breaching Mortgage Loan may only occur within two years of the Closing Date. This option is thus no longer available to the Trust, as the Closing Date was in 2007.

30. Consistent with the clear allocation of risk between the Trust and Nomura, the MLPA requires Nomura to repurchase defective Mortgage Loans regardless of whether Nomura was aware of the breach at the time the representations and warranties were made—even with respect to representations and warranties made to the best of Nomura's knowledge.

> With respect to the representations and warranties contained herein as to which the Seller has no knowledge, if it is discovered that the substance of any such representation and warranty was inaccurate as of the date such representation and warranty was made or deemed to be made, and such inaccuracy materially and adversely affects the value of the related Mortgage Loan or the interest therein of the Purchaser or the Purchaser's assignee, transferee or designee, ***then notwithstanding the lack of knowledge by the Seller*** with respect to the substance of such representation and

> warranty being inaccurate at the time the representation and warranty was made, the Seller shall take such action described in the following paragraph in respect of such Mortgage Loan.

MLPA § 9(a) (emphasis added).

31. The PSA provides that upon any party's discovery of a breach, that party must notify the other parties. Thus, if *Nomura itself* discovers a breach, it must provide notice to the Trustee and other parties. If the Trustee or another party discovers a breach, that party must provide notice to Nomura. The Trustee is one of the parties then charged with requesting that Nomura, as Sponsor, cure the breaches or repurchase the Mortgage Loans. PSA § 2.03(c). If Nomura cannot cure the breach it must "repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price." *Id.*

32. The PSA defines Purchase Price as:

> With respect to any Mortgage Loan required to be repurchased by the Sponsor pursuant to Section 2.02, 2.03 or 3.24 hereof and as confirmed by an Officer's Certificate from the Sponsor to the Trustee and the Group I Certificate Insurer or Class IT-A-M Certificate Insurer, as applicable, an amount equal to the sum of (i) 100% of the outstanding principal balance of the Mortgage Loan as of the date of such purchase plus, (ii) thirty (30) days' accrued interest thereon at the applicable Net Mortgage Rate, plus any portion of the Servicing Fee, Servicing Advances and Advances payable to the related Servicer or Master Servicer, as applicable, with respect to such Mortgage Loan plus (iii) any costs and damages of the Trust Fund in connection with any violation by such Mortgage Loan of any abusive or predatory lending law, including any expenses incurred by the Trustee with respect to such Mortgage Loan prior to the purchase thereof.

PSA § 1.01.

33. The PSA also establishes that Nomura "shall promptly reimburse the Trustee for any expenses reasonably incurred by the Trustee in respect of enforcing the remedies for such breach." *Id.* § 2.03(c).

34. Nomura's cure or repurchase obligation was central to the securitization of the Mortgage Loans because it (1) incentivized Nomura to ensure that the Mortgage Loans were issued using prudent lending practices and (2) allocated the risk of poor lending practices to the party best able to detect and prevent them—Nomura. Traditionally, loan originators financed their mortgage business through customer deposits, retained ownership of the loans they originated, and directly received mortgage payments from borrowers. They earned a profit based on the spread between the interest they received on the loans and the interest they paid on the depository accounts. When an originator held a mortgage through the term of the loan, it alone bore the risk of loss if the borrower defaulted and the value of the collateral was insufficient to repay the loan. As a result, originators had a strong economic incentive to apply prudent underwriting standards to verify the borrower's creditworthiness.

35. Mortgage securitization can remove these incentives toward prudent lending. In the securitization context, originators earn a profit from the sale of the loan rather than the interest spread. Once the loans are sold, the credit risk on those loans shifts to investors. Thus, the more loans an originator issues, the more product it has available for sale and the more profit it can generate. Rather than being a key component of profitability, underwriting guidelines and other credit criteria act as a constraint on profitability, because they restrict a lender from issuing more loans to less creditworthy borrowers. By undercutting or ignoring those credit criteria, the lender can issue more loans. As long as the lender sells the loan, it does not take on additional risk by issuing riskier loans—it just makes more money.

36. Likewise, if a sponsor originates or purchases loans to hold on its books as investments, the risk of default will loom large in its decision to issue or purchase the loans. But because securitization sponsors intend to sell and securitize most of the loans, their primary

focus may become increasing volume, even at the expense of credit quality. If they are allowed to escape their obligation to cure or repurchase defective loans, they could pass the increased and undisclosed risk of default onto investors, and thereby will have little incentive to carefully scrutinize the loans they acquire.

37. The cure/repurchase mechanism provides an essential deterrent to such misconduct. If a sponsor is faced with the risk that it will be forced to repurchase a materially deficient loan, the sponsor will have the necessary incentive to ensure that its representations and warranties are accurate. And because the sponsor is in the best position to verify the quality of the loans it intends to securitize, allocating the risk of deficiencies in the loans to the sponsor is appropriate and reasonable.

38. However, the cure/repurchase mechanism was not a cure-all by which investors or trusts accepted the possibility of pervasive breaches—breaches that would leave the trust and investors with either a significantly riskier pool of assets that were far less likely to perform or a far smaller pool of assets (with more limited cash flows) from which to pay investors after the sponsor repurchased the defective loans. Indeed, a sponsor that intended in good faith to abide by its repurchase obligation would never securitize—and would take steps to insure it did not securitize—a pool of mortgage loans rife with violations of representations and warranties.

III. NOMURA'S BREACHES OF ITS REPRESENTATIONS AND WARRANTIES.

39. Loan Files were obtained for the overwhelming majority of Mortgage Loans, including Group II Mortgage Loans, for purposes of conducting the Ambac review and the Certificateholder review. Each loan review analyzed the credit, collateral and compliance components of the Mortgage Loans, comparing the underwriting parameters and standards in place at the time of origination against the representations and warranties contained in the

MLPA. This type of review is also known as a "re-underwriting" because it repeats the loan underwriting exercise the loan originator was supposed to conduct prior to issuing the loan.

40. The Ambac review and the Certificateholder review did not reveal merely that *some* Mortgage Loans breached Nomura's representations and warranties. Of the 2,248 Group II Mortgage Loans reviewed, 1,725 Mortgage Loans (76.7 percent) contained at least one breach that had a material and adverse impact on the value of the Mortgage Loan or the Certificateholders' interests therein; many had multiple such breaches.

41. Wells Fargo also identified breaches of representations and warranties. Some of the Mortgage Loans are covered by mortgage insurance. Mortgage insurance policies insure against borrower nonpayment. If a borrower defaults on her mortgage, the mortgage insurer covers some or all of the resulting loss to the Trust. However, mortgage insurers typically have the right to rescind the policy in certain circumstances, including when the Mortgage Loan does not comply with underwriting guidelines or if the mortgage was procured through fraud or misrepresentation.

42. Here, PMI Mortgage Insurance Co. and Triad Guaranty Insurance each insured some of the Group II Mortgage Loans, and each notified Wells Fargo that certain policies were being rescinded. Based on the information developed by the mortgage insurers' investigators (the "MI Review"), Wells Fargo notified the Trustee of breaches of representations and warranties with respect to three Group II Mortgage Loans. Wells Fargo also learned of title issues with respect to a fourth Group II Mortgage Loan when the attorney handling the foreclosure of the Mortgage Loan informed Wells that the relevant loan agreement had not been executed in full and thus did not convey a complete security interest in the subject unit. On the basis of this finding (the "Title Review" and together with the Ambac review, Certificateholder

review and MI Review, the "Loan Reviews"), Wells Fargo notified the Trustee of breaches of representations and warranties with respect to the Mortgage Loan.

43. The breaches identified in the Loan Reviews included such fundamental issues as misrepresentations of borrower income, the occupancy status of the property and the borrower's debt obligations; violations of underwriting guidelines without any compensating factors; incorrect calculations of debt and debt-to-income ratios; excessive loan-to-value ratios; violation of high cost loan statutes and other applicable laws; and significant inaccuracies in the Mortgage Loan Schedule. The 1,725 defective Group II Mortgage Loans are listed in Exhibit 3 hereto.

44. These breaches substantially undermine the value of these Mortgage Loans and the interests of Certificateholders by, among other things, concealing the heightened risks inherent in the loans. Among other things, a borrower's income and other debt obligations are primary factors used to assess whether the borrower is able to repay a loan. Indeed, the ratio of monthly debt payments to monthly income (also known as the debt-to-income or "DTI" ratio) is a primary criterion in the underwriting process. Loan-to-value ("LTV") ratio is also a key criterion for assessing the likelihood that a borrower will repay a loan, and is also used to determine the ability of the owner of the loan to recover against the subject property in the event foreclosure is necessary. The LTV ratio reflects the percentage of the property value covering the Mortgage Loan. For example, a 75% LTV ratio means that the mortgage equals 75% of the property's value, and the borrower owns the remaining 25% in value as equity. That 25% equity provides the borrower with an important incentive not to default (and potentially lose his/her equity in the property) and also acts as a cushion in the event a borrower is unable to pay. The higher the LTV ratio, the higher the risk that the Trust will be unable to recover the full value of the loan through foreclosure.

45. Occupancy status also directly impacts the risk profile of the loan because the borrower is much less likely to default on a mortgage secured by her primary residence than she is on a loan secured by a second home or investment property. Likewise, accurate information concerning a borrower's cash and other assets is important in assessing risk because these assets provide an alternative source of loan repayment in the event a borrower loses his/her job.

46. Finally, Mortgage Loans with missing documentation or that fail to comply with applicable law can, among other things, be more difficult to enforce against the borrower or subject property, may increase the difficulty and expense of servicing the loans, and make it virtually impossible to fully and completely verify that the Mortgage Loan was as represented. Fundamentally, such Mortgage Loans should never have been issued. As a result, Nomura agreed that any breach of certain representations and warranties concerning the Mortgage Loans' compliance with federal and state law "shall be automatically deemed to affect materially and adversely the interests" of the Trust and Certificateholders. *See* MLPA § 9(a); PSA § 2.03(c).

47. The defective Mortgage Loans in the Trust at issue here often contain breaches of more than one representation and warranty, further increasing the risk to Certificateholders and decreasing the value of the Loans.

IV. NOMURA'S BREACH OF ITS CURE OR REPURCHASE OBLIGATION.

A. The Ambac Breach Notices

48. Between February 2010 and September 2011, Ambac notified the Trustee of breaches of representations and warranties with respect to certain Group II Mortgage Loans. The Trustee promptly sent notice of these breaches to Nomura (the "Ambac Breach Notices"). The Ambac Breach Notices are incorporated by reference herein. The following table lists each Ambac Breach Notice sent by the Trustee and the number of breaching Group II Mortgage

Loans included therein. The Exhibits listed in the table and attached hereto identify the specific Group II Mortgage Loans and breaches detailed in each Ambac Breach Notice:

Date Trustee Sent Ambac Breach Notice to Nomura	Date Ambac Sent Notice to Trustee	Number of Breaching Group II Mortgage Loans	Exhibit No.
March 24, 2010	March 19, 2010	375	4
April 22, 2011	April 21, 2011	100	5
May 27, 2011	May 11, 2011	100	6
July 13, 2011	June 20, 2011	100	7
July 22, 2011	July 20, 2011	100	8
September 14, 2011	September 1, 2011	100	9
September 14, 2011	September 9, 2011	108	10
	Total:	**983**	

49. For each identified Mortgage Loan, Ambac described in detail the relevant defect or defects and identified the specific representations and warranties that were breached. The Trustee included the same information in its own notices to Nomura. The following examples are illustrative of breaches identified with respect to the defective Group II Mortgage Loans:

- Loan xxxxx0456: This Mortgage Loan was originated in 2006 under a No Ratio loan program with an original loan balance of $103,200.00. The borrower failed to disclose seven mortgages totaling $840,620 which were obtained prior to the Mortgage Loan's closing in October 2006. The borrower had also acquired 22 investment properties within the twelve months preceding the Mortgage Loan's closing. In order to service the borrower's existing monthly debts, including the new monthly payment for the subject property, the borrower would have had to earn a monthly salary of $44,486.92. The loan application stated that the borrower had been employed for nine years as a public school teacher. Salary.com indicated that the 90th percentile income level for a public school teacher in the same geographic area was $5,938.42 per month, which would have resulted in a DTI of 449.48%. The borrower's employment was not consistent with the level of income necessary to service payments on the Mortgage Loan as well as the borrower's other confirmed liabilities. Furthermore, the subject property was an investment property, and the relevant guidelines required that a Single Family Comparable Rent Schedule and Operating Income Statement be provided, and that a cash flow test be performed. Neither document was present in the Loan File, and the requisite cash flow test could not be completed as a result.

- Loan xxxxx0471: This Mortgage Loan was originated in 2006 under a Reduced Documentation loan program with an original loan balance of $314,400.00. The borrower stated two years of employment as a nurse, earning $10,000 per month. However, the review confirmed that the borrower earned a total 2006 income of only $28,558.63, or $2,379.89 per month, which resulted in a DTI of 149.89%. The Loan File contained red flags which indicated that the borrower's income was overstated. The origination credit report reflected that the borrower's highest revolving credit limit was only $2,997, and all of the borrower's revolving accounts were at or near maximum utilization. The borrower had no mortgage history, and the borrower's minimal verified assets of only $2,638.07 did not support the income stated. The amount of verified assets was also less than the $10,446.46 in verified assets that were required for the Mortgage Loan to close. Finally, the relevant guidelines required the borrower to provide documentation supporting the borrower's status as a permanent resident alien, however no such documentation was obtained.

- Loan xxxxx0462: This Mortgage Loan was originated in 2006 under a Reduced Documentation loan program with an original loan balance of $193,550.00. The loan application indicated that the borrower had been employed for six years as the Vice President of a food company, earning $25,000 per month. However, information received by the auditor from the borrower's stated employer indicated that the borrower was a broker and was paid consultant/broker fees of only $10,327.88, or $860.66 per month, during the year of the Mortgage Loan's closing. Based on this verified monthly income, the borrower's DTI increased from 46.63% to 1,524.25%, which exceeded the maximum allowable DTI of 60%. There were red flags present at origination which indicated that the borrower's income was overstated. The Loan File included bank statements with all of the deposit information blacked out. If the deposit figures on the bank statements had been adequate to qualify, the subject loan transaction would have closed utilizing the Full Documentation Program, instead of the Reduced Documentation Program. The bank statements were altered, which resulted in a breach of the applicable guidelines. Furthermore, the borrower represented that the Mortgage Loan was originated to facilitate the purchase of a second home, however the Mortgage Loan was actually used to purchase a non-owner occupied property. Red flags existed in the loan file which should have alerted the underwriter to the occupancy misrepresentation. The purchase contract indicated that possession of the property would be delivered to the borrower at closing unless there was an existing tenant who would continue to occupy the residence. The purchase contract also contained an "Addendum Regarding Lease" which indicated that the existing tenant had indeed continued to occupy the residence. Additionally, the appraisal indicated that the subject property was then tenant-occupied. Had the underwriter questioned these red flags, the transaction would have closed as an investment property. Finally, the applicable guidelines indicated that the total of the first lien, second lien and seller's contribution could not exceed a CLTV of 100%. Here, the sum of the first lien, second lien and seller's contribution was $246,739.80, which exceeded the purchase price of $241,990 and the appraised value. This resulted in a CLTV ratio greater than 100%, which was a violation of the guidelines. The seller contribution of $4,839 also comprised a violation of the applicable guidelines' prohibition against seller contributions on transactions with CLTVs in excess of 97%.

B. The Holder Breach Notices

50. Between June and September of 2012, the Certificateholder directing the Certificateholder review notified the Trustee of breaches of representations and warranties with respect to 1,584 Group II Mortgage Loans. The Trustee promptly forwarded breach notices regarding the loans in question to Nomura (the "Holder Breach Notices"). The Holder Breach Notices are incorporated by reference herein. The following table lists each Holder Breach Notice sent by the Trustee and the number of breaching Group II Mortgage Loans included therein, as well as the Exhibit identifying the specific Group II Mortgage Loans and associated breaches detailed in each Holder Breach Notice:

Date Trustee Sent Certificateholder Breach Notice to Nomura	Date Trustee Received Notice from Holders	Number of Breaching Group II Mortgage Loans	Exhibit No.
June 14, 2012	June 11, 2012	235	11
July 16, 2012	July 10, 2012	175	12
July 19, 2012	July 16, 2012	229	13
July 20, 2012	July 18, 2012	28	14
August 1, 2012	July 25, 2012	190	15
August 7, 2012	August 2, 2012	140	16
August 20, 2012	August 10, 2012	43	17
August 29, 2012	August 17, 2012	134	18
August 30, 2012	August 21, 2012	233	19
September 13, 2012	September 5, 2012	194	20
	Total[4]:	**1,584**	

51. Though it was under no obligation to do so, the Trustee provided with each Holder Breach Notice voluminous reports and supporting documentation detailing the breaches found with regard to each of the 1,584 Group II Mortgage Loans, including both (i) the specific representations and warranties breached for each Mortgage Loan and (ii) a detailed narrative description of the facts establishing the breach. The Holder Breach Notices demanded that Nomura repurchase the defective Mortgage Loans in the event Nomura was unable to cure the breaches. In most cases, multiple breaches of representations and warranties were identified with respect to the defective Mortgage Loan. The following examples are illustrative of breaches the Certificateholder found with respect to the Group II Mortgage Loans:

[4] Certain loans were included in more than one Certificateholder Breach Notice. This figure reflects only the unique loan numbers contained in the Notices.

- Loan xxxxx7918: This Mortgage Loan was originated in 2006 under a Stated Income/Verified Asset loan program with an original loan balance of $560,000.00. On the loan application, the borrower stated self-employment as the owner of a security company, earning $33,000 per month. The borrower's claimed income was grossly unreasonable and was not supported by the information in the Loan File, which contained a copy of the borrower's Social Security Statement reflecting that the highest annual income that the borrower had earned was $42,096 in 2004, or only $3,508 per month. The borrower subsequently filed for bankruptcy in 2008, and the bankruptcy court filings revealed that the borrower's actual monthly income in 2007 was $5,710. Further, the borrower's debt obligations were underreported. The underwriting guidelines required the borrower to disclose all debt obligations, including debts not yet listed in the borrower's credit report. A property and credit records search revealed that the borrower also had four other debt obligations, in amounts of $480,000, $120,000, $13,658 and $65,661, which were not disclosed. These additional obligations increased the borrower's monthly debt obligations by approximately $6,074, which severely decreased the borrower's ability to repay the Mortgage Loan. In addition, based on the borrower's actual monthly income and undisclosed debts, the borrower's DTI was 422.16%, which far exceeded the lender's guideline maximum of 60%. Further, the underwriting guidelines required that either a written verification of deposit or two months of consecutive bank statements be obtained in order to verify that the borrower's assets were properly sourced and seasoned for 60 days. Despite this requirement, the Loan File contained bank statements covering only a one month period, resulting in a $38,006 shortage of verified assets. Finally, the underwriting guidelines required a fully executed second lien note when second lien was established simultaneously with the first lien. Here, the first lien and second lien were originated at the same time, yet the Loan File did not contain a copy of the second lien note as required.

- Loan xxxxx4351: This Mortgage Loan was originated in 2006 under a Stated Income/Verified Asset loan program with an original loan balance of $1,500,000.00. On the loan application, the borrower stated self-employment as the "Owner" of a financial services company, earning $45,000 per month. The borrower's claimed income was not supported by the information in the Loan File, which contained a CPA letter evidencing the borrower's self-employment which listed the same address and contact information for the CPA as for the borrower's stated business. A public records search revealed that the CPA license referred to in the letter was actually associated with a different name. The CPA and firm identified in the letter could not be located. Additionally, the borrower filed for bankruptcy in 2009, and the bankruptcy court filings revealed that the borrower held no business ownership and received no income in the preceding six years. Further, the underwriting guidelines required that the payment shock associated with the Mortgage Loan not exceed 200%, yet the borrower's monthly housing payment increased from $3,400 to $14,058, resulting in a payment shock of 313.47%. Finally, the underwriting guidelines required verification of the borrower's housing history for the twelve months preceding the subject loan's closing. Despite this requirement, the Loan File was missing verification of five months of the borrower's rental payments.

- Loan xxxxx3589: This Mortgage Loan was originated in 2006 under a Stated Income/Verified Asset loan program with an original loan balance of $754,400.00. On the loan application, the borrower stated self-employment for three years as a "Co-Owner/Development" of a condominium, earning $83,333 per month. The borrower's claimed income was grossly unreasonable and was not supported by the information in the Loan File. The Loan File did not contain any verbal verification of the borrower's employment, as was required by the underwriting guidelines, the origination credit report did not reflect the borrower's claimed employment, seven of nine verifications of deposit contained in the Loan File were not in the borrower's name and the borrower indicated total assets of only $26,869. Further, the borrower's debt obligations were underreported. The underwriting guidelines required the borrower to disclose all debt obligations, including debts not yet listed in the borrower's credit report. A property and credit records search revealed that the borrower also held six other mortgages associated with properties in the same development as the subject property in amounts of $754,500, $89,080, $712,640, $89,080, $81,720 and $94,300, none of which were disclosed. These additional mortgages increased the borrower's monthly debt obligations by $17,249, which severely decreased the borrower's ability to repay the Mortgage Loan. Further, the subject was a condo-hotel, which was identified by the applicable underwriting guidelines as an ineligible property type unless the subject property measured a minimum of 600 square feet and contained kitchen facilities, and the subject development had been open and operating as a condo-hotel for at least two years with an independent homeowner's association and at least 75% of the units sold or conveyed. However, the appraisal in the Loan File indicated that the subject unit was a studio with no kitchen facilities and that the condo-hotel project was a new conversion that had not been operating for two years. No units had been sold or conveyed, and the homeowner's association remained under the control of the developer. The applicable underwriting guidelines further required that all condo-hotel purchases be approved under the Full Documentation/Alternative Documentation program, yet the Mortgage Loan was approved under the Stated Income/Verified Asset loan program. The applicable underwriting guidelines also permitted a maximum CLTV 75% for condo-hotel units with a loan amount exceeding $350,000, but the Mortgage Loan was approved and closed with a CLTV of 90%. The underwriting guidelines further permitted a maximum seller concession of 0% for loans with a CLTV of 90%, yet the final HUD-1 indicated that the borrower received seller contributions of $25,408.84, or 2.69% of the loan amount. The underwriting guidelines also required the disclosure of any non-arms' length transaction. However, the final HUD-1 indicated that a business in which the borrower had an interest was an owner of the subject property, a fact not disclosed by the borrower. Finally, the warranties (and the underwriting guidelines) required loans to comply with all federal, state and local regulatory requirements and to maintain the final Truth in Lending statement executed by the borrower in the Loan File. Despite this requirement, the final Truth in Lending statement was missing from the Loan File.

C. The Master Servicer Breach Notices

52. Between August 2012 and March 2013, Wells Fargo notified the Trustee of breaches of representations and warranties with respect to four Group II Mortgage Loans. The Trustee promptly forwarded breach notices regarding the loans in question to Nomura (the "Master Servicer Breach Notices"). The Master Servicer Breach Notices are incorporated by reference herein. The following table lists each Master Servicer Breach Notice sent by the Trustee and the number of breaching Group II Mortgage Loans included therein, and Exhibit 21 identifies the specific Group II Mortgage Loans and associated breaches included in each Master Servicer Breach Notice:

Date Trustee Sent Master Servicer Breach Notice to Nomura	Date Wells Sent Notice to Trustee	Number of Breaching Group II Mortgage Loans
November 13, 2012	August 14, 2012	1
November 30, 2012	September 10, 2012	1
April 5, 2013	March 27, 2013	1
April 5, 2013	March 29, 2013	1
	Total:	**4**

53. The following examples are illustrative of the breaches of which Wells Fargo was made aware with respect to the four Group II Mortgage Loans:

- Loan xxxxx7233: This Mortgage Loan was originated in 2006 under a No Ratio loan program with an original loan balance of $558,000.00. The Loan File contained an appraisal indicating that the value of the subject property as of 10/27/2006 was $620,000. Based on this amount and other facts contained in the origination file, the LTV ratio relied on to underwrite the Mortgage Loan was 90%. The mortgage insurer obtained a retrospective review appraisal on the property, which indicated that the true value of the property as of 10/27/2006 was $493,000, which was a variance of $127,000, or 20.5%, from the value indicated in the origination appraisal. Based on the retrospective appraisal, the insurer concluded that the origination appraiser materially misrepresented the value of the property at origination by at least $127,000 and that the accurate LTV for the Mortgage Loan was 113%. The insurer rescinded the mortgage insurance coverage for the Mortgage Loan on this basis.

- Loan xxxxx5787: This Group II Mortgage Loan was reviewed as a part of both the Ambac and the Holder Reviews. In each case, the reviewing party found an asset violation relating to the underwriter's failure to verify the borrower assets required for the loan to close. The mortgage insurer for the Mortgage Loan conducted a subsequent investigation into the borrower's assets, both internally and through the use of an independent investigator. That investigation confirmed the breach identified by both Loan Reviews, finding that the borrower's assets had indeed been misrepresented. In order to close the Mortgage Loan, the borrower was required to contribute $10,700 of the borrower's own funds. The HUD-1 settlement statement in the Loan File indicated that the borrower had paid $5,700 to close the transaction after receiving a $5,000 earnest money deposit and a credit for "seller paid closing costs" of $10,000. The Loan File contained verifications of deposit from two banks which reflected deposits of $4,875.93 and $12,656, respectively. The mortgage insurer's investigation revealed that both verifications of deposit were false documents. Employees at each bank confirmed that the borrower's actual deposits at the time of the Mortgage Loan's closing were only $1,571.18 and negative $271. Based on this information, the insurer concluded that the borrower's assets were misrepresented, that the VODs in the Loan File were false and that the borrower did not contribute the required funds to close the subject transaction. The insurer further concluded that the broker for the loan in question, participated in, knew, or should have known of the misrepresentations in question. On this basis, the insurer rescinded the mortgage insurance policy.

54. With respect to many of the Mortgage Loans, including Loan xxxxx5787 described above, multiple parties provided notice to the Trustee of the ***same or similar breaches*** with respect to the ***same loans***. This alone provides substantial evidence of the pervasive and unequivocal nature of such breaches and shows that the breaches would have been clear to Nomura from a review of the loan documentation that Nomura had in its possession at the time it sold the Mortgage Loans to the Trust.

V. NOMURA'S RESPONSE TO THE BREACH NOTICES.

55. The MLPA required Nomura to attempt to cure the identified breaches within ninety days of receiving notice from the Trustee and, if it could not cure the breaches, to repurchase the affected Group II Mortgage Loans. Nomura has failed either to cure or to repurchase a single such Loan.

56. In response to the Ambac and Master Servicer Breach Notices, Nomura categorically denied any obligation to repurchase the defective Group II Mortgage Loans. According to Ambac, even after it, without any obligation to do so and solely as a courtesy to Nomura, provided Nomura with underlying documentation demonstrating the alleged breaches, Nomura failed to repurchase a single Group II Mortgage Loan.

57. In response to the Holder Breach Notices, on the other hand, ***Nomura conceded that 111 Group II Mortgage Loans materially breached one or more representations and warranties*** (the "Admitted Breaches"). Nomura failed to cure the remaining breaches and failed to repurchase any of the identified Group II Mortgage Loans, even ones with Admitted Breaches. Significantly, the Admitted Breaches are typical of breaches found throughout the Holder Breach Notices, but which Nomura continues to dispute.

58. With respect to the Group II Mortgage Loans with Admitted Breaches, Nomura apparently decided to stall. It stated that it would consider repurchasing such loans if the Trustee (i) calculated the Purchase Price for each Loan; (ii) confirmed that such loans were "non-performing"; and (iii) confirmed that none of the Loans had been liquidated. Neither the PSA nor the MLPA require the Trustee to do any these things. To the contrary, the definition of "Purchase Price" requires Nomura to provide an Officer's Certificate to the Trustee confirming the Purchase Price, and Section 2.02(d) of the PSA requires Nomura to "provide written notice to

the Securities Administrator detailing the components of the Purchase Price, signed by an authorized officer." Nevertheless, in an effort to accommodate Nomura's request, the Trustee requested that the Master Servicer calculate the Purchase Price, and provided the Master Servicer's information to Nomura as it was received.

59. Further, the payment status of a Mortgage Loan has no bearing on Nomura's repurchase obligation. Neither the PSA nor the MLPA limit Nomura's repurchase obligation to the narrow group of Mortgage Loans that are non-performing but not yet liquidated by the Servicer. The parties would surely have written such a limitation on the cure/repurchase mechanism into the contract if they had intended to so substantially narrow Nomura's obligations and the Trust's safeguards against undisclosed risks. For a breaching Mortgage Loan to be subject to repurchase, the breach must simply materially adversely affect the value of the Mortgage Loan or the interests of Certificateholders therein. A representation and warranty breach with respect to a performing loan can materially adversely affect the value of the Loan and the interests of Certificateholders because the breach—for example, misrepresentations regarding a borrower's other debt obligations or income—can significantly increase the risk that the loan will default in the future. That increased risk is sufficient to trigger Nomura's repurchase obligation.

60. Whether a Mortgage Loan has been liquidated is also irrelevant. Section 9 of the MLPA and Section 2.03 of the PSA require Nomura to repurchase a breaching "Mortgage Loan" if it is unable to cure the breach. The definition of "Mortgage Loan" makes clear that this includes all mortgage loans "identified in the Mortgage Loan Schedule, *notwithstanding foreclosure or other acquisition of title of the related Mortgaged Property*." PSA § 1.01 (emphasis added). Indeed, not only is Nomura's assertion contrary to the terms of the governing

agreements, it is flatly contradicted by Nomura's practice under contracts with substantially similar terms. The Depositor—Nomura's affiliate—is required to file quarterly ABS-15G reports with the Securities & Exchange Commission disclosing, among other things, the number and dollar value of loans that were the subject of a repurchase demand and the number and dollar value of loans repurchased by the responsible party. The ABS-15G reports explain that the dollar value of the loans submitted for repurchase is based on the outstanding principal balance of each loan as of "the end of the reporting period or the most recent balance available for assets that remain in the pool at that time, or the balance as of the date of the last payment made by the obligor *if the asset was liquidated or removed from the pool* prior to the end of the reporting period."[5] The reports also state that the number of loans that Nomura actually repurchased, or had actually agreed to repurchase, "***may include [loans] that were previously liquidated, and for which a make-whole payment was made in lieu of repurchase***."[6] Nomura is the responsible party for all of the trusts included in the Depositor's filings in which loans were actually repurchased or make-whole payments were made.

61. Nomura's practice, as described in the ABS-15G reports, is consistent with industry practice. The term "repurchase" is a recognized industry term that is understood to refer to a mechanism to make a mortgage loan purchaser whole for a seller's breach of its representations and warranties with respect to the securitized loans. The mechanism ensures that the sponsor is responsible for and retains the entirety of the risk of loss associated with any breach of the representations and warranties. Make-whole payments also ensure that disputes

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[5] *See, e.g.*, Nomura Asset Acceptance Corp. Form ABS-15G filed Feb. 14, 2013, *available at* http://www.sec.gov/Archives/edgar/data/888874/000089109213001375/e52071ex99_1.htm (emphasis added).

[6] *Id.* (emphasis added).

between the Trustee and Nomura relating to representation and warranty breaches do not hinder loss mitigation efforts with respect to Loans in default. Under the PSA, the Servicer is required to service the Mortgage Loans in the best interests of the Certificateholders, consistent with industry standards and in the same way it would service loans in its own portfolio. When a borrower has ceased making mortgage payments, industry standards require the Servicer to, among other things, diligently pursue repayment from the borrower, including through foreclosure. Parallel efforts to recover from the borrower should be allowed to proceed unimpeded by disputes regarding Nomura's repurchase obligation. Indeed, such loss mitigation efforts would reduce Nomura's potential repurchase liability—for example, recoveries through the foreclosure process could reduce the outstanding principal balance included in the Purchase Price.

62. Nomura's opportunity to cure has long since expired, yet Nomura has failed to repurchase a single defective Mortgage Loan, even though it has admitted at least some exist.

VI. NOMURA DISCOVERED DEFECTIVE MORTGAGE LOANS LONG BEFORE RECEIVING NOTICE FROM THE TRUSTEE.

63. Upon information and belief, prior to making its representations and warranties, Nomura performed its own due diligence on either all, or a representative sample of, the mortgage loans it intended to securitize. Nomura obtained the loan files from the originators and hired a third-party due diligence firm to review the loans. The due diligence firm examined each loan file to determine if: (1) the loan adhered to the seller's underwriting guidelines; (2) the loan complied with applicable federal, state and local laws; and (3) the mortgaged property had been accurately appraised and thus provided appropriate security for the loan. If a loan did not meet the applicable underwriting guidelines, the due diligence firm determined whether sufficient "compensating factors" existed to offset the deficiency. A loan failing these tests would breach

one or more representations and warranties. The due diligence firm would inform Nomura of every loan it reviewed that failed these tests.

64. In 2010, Clayton Holdings, Inc. ("Clayton")—a major provider of mortgage loan due diligence services for various RMBS sponsors, including Nomura—supplied evidence to the Financial Crisis Inquiry Commission regarding the services it provided to Nomura and others prior to the financial crisis. Clayton's evidence included the "All Clayton Trending Report,"[7] which stated that in the period between the January 2006 and June 2007, Clayton determined that 37.9% of the mortgage loans it reviewed for Nomura did not comply with applicable underwriting guidelines (and had no compensating factors) or had other material defects that breached representations and warranties.[8] Clayton also stated that the percentage of materially defective mortgage loans was even higher for loans reviewed between January 2007 and June 2007—the precise period during which Clayton would have reviewed the Mortgage Loans at issue here.

65. Despite being informed of these material defects, Clayton's report indicates that Nomura ignored Clayton's findings and "waived in" 58% of loans Clayton said should be rejected. Moreover, where a sample, but not the entire mortgage pool was reviewed, the sample was intended to be representative of the entire pool of mortgages to be included in the securitization and thus the un-sampled portion of the pool likely contained similarly deficient

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[7] *See* http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0923-Clayton-All-Trending-Report.pdf

[8] Clayton assigned grades to each loan it reviewed, from "Event 1" to "Event 3." Clayton graded loans as Event 3 when the loan (1) was not originated in compliance with applicable laws and regulations; (2) did not comply with applicable underwriting guidelines and lacked sufficient offsetting compensating factors; or (3) the loan files was missing key documentation. Clayton graded the materially defective loans described above as Event 3.

mortgage loans. Upon information and belief, Nomura never conducted any due diligence on the loans not included in the sample and securitized 100% of the defective un-sampled loans.

66. Upon information and belief, Nomura conducted due diligence on the Mortgage Loans consistent with the due diligence it conducted on other securitizations and as described by Clayton. Given the thousands of breaches and hundreds of defective loans identified in the Loan Reviews to date, it is not plausible that the due diligence Nomura conducted on the Mortgage Loans did not reveal at least some of representation and warranty breaches identified in the Breach Notices and/or material breaches of the same types and severities.

67. Based on the volume and percentage of defective loans identified in the Loan Reviews, as well as Nomura's practice of "waiving in" loans as described above, Nomura had notice of breaches of the representations and warranties from the inception of the Trust. However, Nomura took no steps to notify the Trustee or other parties to the transaction, in disregard of its express obligation to do so. (*See* PSA § 2.03(c); MLPA § 9(a)).

FIRST CAUSE OF ACTION

Breach of Contract: Failure to Repurchase Upon Notice

68. Plaintiff incorporates by reference the allegations in the preceding paragraphs 1-67 as if they were set forth fully herein.

69. The MLPA is a valid, enforceable agreement to which Nomura is a party. The PSA is a valid and enforceable agreement related to, and executed contemporaneously with, the MLPA.

70. Under the terms of the MLPA, and through the assignment in the PSA of the Depositor's rights under the MLPA, the Trustee is given the right and duty to enforce the obligations of Nomura to the Trust and Certificateholders.

71. The Trustee has performed all of its obligations and prerequisites with regard to and in advance of filing this action described herein. In particular, the Trustee delivered the Breach Notices to Nomura on March 24, 2010, April 22, 2011, May 27, 2011, July 13, 2011, July 22, 2011, September 14, 2011, September 14, 2011, June 14, 2012; July 16, 2012; July 19, 2012; July 20, 2012; August 1, 2012; August 7, 2012; August 20, 2012; August 29, 2012; August 30, 2012; September 13, 2012, November 13, 2012, November 30, 2012 and April 5, 2013 identifying among other things, 1,725 unique Group II Mortgage Loans that were in breach of one or more representations and warranties. More than ninety days have passed since the Trust notified Nomura of its breaches of representations and warranties.

72. Section 2.03(c) of the PSA and Section 9 of the MLPA require Nomura to repurchase any Mortgage Loan within 90 days of discovery or notice of a breach of its representations and warranties if that breach has not been cured by Nomura and materially adversely affects the value of such Mortgage Loan or the interest therein of the Certificateholders.

73. Nomura breached these obligations by failing to cure the identified breaches of representations and warranties or repurchase the defective Mortgage Loans.

74. Nomura's response to the Breach Notices demonstrates its intention not to repurchase any defective Mortgage Loans in the Trust within the contractually specified ninety-day period and that it will refuse to repurchase any defective Mortgage Loans in the Trust that have previously been liquidated. Thus, Nomura has repudiated its obligations under the PSA and MLPA. It would be futile for the Trustee to notify Nomura of any additional breaches or make any additional repurchase demands.

75. The Trust has been damaged by Nomura's breaches. Nomura's breaches materially and adversely affect the value of the Mortgage Loans and the interests of the Certificateholders.

76. The Trustee is therefore entitled to damages, or an Order of specific performance, requiring Nomura to repurchase all Mortgage Loans breaching Nomura's representations and warranties, both those listed in the Breach Notices as well as those previously identified and those identified through this lawsuit, as required under the PSA and MLPA. Further, as Nomura has refused to comply with its repurchase obligations, the Trust should not be limited to its contractual repurchase remedy. This is especially true where, as here, Nomura, the party responsible for the inclusion in the Trust of a widespread number of breaching Mortgage Loans, has frustrated the implementation of that remedy.

SECOND CAUSE OF ACTION

Breach of Contract: Failure to Notify and Repurchase Upon Discovery

77. Plaintiff incorporates by reference the allegations in the preceding paragraphs 1-67 as if they were set forth fully herein.

78. The MLPA is a valid, enforceable agreement to which Nomura is a party. The PSA is a valid and enforceable agreement related to, and executed contemporaneously with, the MLPA.

79. Under the terms of the MLPA, and through the assignment in the PSA of the Depositor's rights under the MLPA, the Trustee is given the right to enforce the obligations of Nomura to the Trust and Certificateholders.

80. The Trustee has performed all of its obligations and prerequisites with regard to and in advance of filing this action described herein.

81. Section 9 of the MLPA and Section 2.03 of the PSA require Nomura to notify the Trustee of a breach of any of its representations and warranties in Section 8 of the MLPA that materially and adversely affects the value of the Mortgage Loan or the interests of Certificateholders therein promptly upon its discover of such breach.

82. Section 9 further requires Nomura to repurchase any Group II Mortgage Loan within 90 days of its discovery of such a breach if that breach has not been cured by Nomura.

83. On information and belief, based on the due diligence it conducted on a sample of the Mortgage Loans and the pervasive breaches found in the Loan Review, Nomura discovered that certain of the Group II Mortgage Loans breached its representations and warranties, including Group II Mortgage Loans not identified in the Breach Notices, and that these breaches materially and adversely affect the value of the Loan and the interests of Certificateholders therein.

84. Nomura breached its obligations under the MLPA by (a) failing to provide notice to the Trustee of breaches identified during its due diligence and otherwise with breaches it thereafter should have identified with respect to Group II Mortgage Loans; (b) failing to cure the discovered breaches or repurchase the defective Group II Mortgage Loans within the ninety-day period specified in the MLPA.

85. Nomura's breaches of the MLPA have fundamentally defeated the protection the cure/repurchase mechanism was intended to provide.

86. The Trust is entitled to an Order that Nomura must specifically perform its obligation to repurchase Group II Mortgage Loans with respect to which Nomura discovered breaches of representations and warranties, which materially adversely affect the value of the Loans and/or the interests of the Trust and Certificateholders therein.

87. The Trust is further entitled to an award of damages for Nomura's failure to notify the Trustee of breaches of representations and warranties that Nomura discovered and its subsequent failure to cure such breaches or repurchase such Group II Mortgage Loans, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

(a) On the first cause of action, for an Order of specific performance that Nomura be required to repurchase all Mortgage Loans breaching Nomura's representation and warranties, including without limitation those listed in the Breach Notices and those identified by the Trust in this lawsuit or an award of damages against Nomura compensating the Trust for Nomura's breaches of the PSA and MLPA, in an amount to be proven at trial;

(b) On the second cause of action, for an Order of specific performance that Nomura be required to repurchase all Group II Mortgage Loans with respect to which Nomura discovered breaches of representations and warranties or an award of damages for Nomura's failure to comply with its obligations to notify the Trustee of such breaches, cure such breaches or repurchase the affected Mortgage Loans;

(c) All costs of the Trust associated with this action (including the Trustee's attorneys' fees), in an amount to be proven at trial;

(d) Prejudgment interest as approved by the Court; and

(e) For all such other relief to which the Plaintiff is entitled under law or in equity.

DATED: New York, New York
September 17, 2014

MCKOOL SMITH, P.C.

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